IN THE SUPREME COURT OF FLORIDA
Case No. 90,990

PETITION OF MASSACHUSETTS SCHOOL OF LAW FOR WAIVER OF BAR ADMISSION RULE AND APPROVAL OF CERTAIN MASSACHUSETTS SCHOOL OF LAW GRADUATES TO TAKE THE FLORIDA BAR EXAMINATION

AMENDED BRIEF OF AMICUS CURIAE AMERICAN BAR ASSOCIATION

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INTRODUCTION

The Massachusetts School of Law ("MSL") has petitioned this Court (the "MSL Petition") for a determination that graduates of MSL may sit for the Florida Bar Examination despite the fact that MSL is not a law school approved by the American Bar Association ("ABA"), as required by Rules 2-11.1 and 4-13.2 of the Rules of Admission to the Florida Bar (the "Rules").[1]

Since at least 1955, the Florida Supreme Court has relied upon ABA accreditation to decide the eligibility of applicants to sit for the Florida Bar. In fact, this Court reaffirmed and strengthened its reliance on ABA accreditation in In re Hale, 433 So.2d 969, 971-72 (Fla. 1983), rejecting as " inefficient and chaotic" the alternative approach of evaluating whether the program offered by individual [unaccredited] law schools was substantially equivalent to a J.D. degree from an [ABA-Iaccredited law school.

MSL claims that the circumstances upon which this Court relied in deciding Hale have changed. Further, MSL's Petition contains allegations about the validity of the ABA Standards for the Approval of Law Schools, and the process the ABA employed in evaluating MSL. The ABA submits this brief to assist the Court in the evaluation of the MSL Petition and to support the position of the Florida Board of Bar Examiners, urging the Court to uphold the requirement

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[1] The former Rules of the Supreme Court Relating to Admissions To The Bar were amended effective June 5, 1997. The amendment, *inter alia*, renamed and reconfigured the former seven Articles into five Rules of Admission to the Florida Bar. The requirement which MSL urges this Court to waive was embodied as former Article III, Section l(a), requiring graduation from an ABA-accredited law school as a prerequisite for admission to the General Bar Examination, cited throughout MSL's Petition as Rule l(a). That requirement is now codified as Rules 2-11.1 (requiring graduation from an accredited law school) and 4-13.2 (defining an "accredited law school" as one approved or provisionally approved by the American Bar Association at the time of or within 12 months of the applicant's graduation). The ABA will refer to the current Rules throughout this brief

that applicants graduate from an ABA-approved law school in order to qualify for admission to the General Bar Examination.

The ABA is a national organization of lawyers and judges having more than 342,000 members.[2] From its inception in 1878, the ABA has been devoted to the improvement of the legal profession through efforts to maintain high professional standards and to assure the competency and good moral character of those who apply for admission to the Bar.

The ABA Standards for the Approval of Law Schools ("ABA Standards") and the ABA's accreditation program are intended to ensure that lawyers are competent to represent their clients. Despite significant improvements in standards of legal education, the concern for assuring minimum levels of quality that originally prompted ABA involvement remains a continuing priority. That concern may be even more essential today because of the increasing importance of the law in our society, the great complexity of the law, and the ever-growing number of persons seeking law degrees. Because no bar examination can test all of the skills required of a lawyer, a demonstrably sound legal education is a critical factor in evaluating an applicant's overall qualifications for the practice of law. The ABA Standards and the accreditation program are designed to ensure that institutions proposing to train new attorneys provide the essential elements of a sound legal education.

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[2] Neither this brief nor the decision to file it should be interpreted to reflect the views of any judicial member of the American Bar Association. No inference should be drawn that any member of the Judicial Division Council has participated in the adoption of or endorsement of the positions in this brief. This brief was not circulated to any member of the Judicial Division Council prior to filing.

Because of its concern for the quality of legal education, the ABA urges this Court to deny the MSL Petition in order to avoid a decline in the standards for entry into the legal profession in the State of Florida

SUMMARY OF ARGUMENT

The vast majority of states, like Florida, limit bar admission to graduates of ABA-accredited law schools, either by supreme court rule, statute or policy of the board of bar (law) examiners. The Rules for Admission to the Florida Bar require graduation from an ABA-accredited law school as a prerequisite to take the General Bar Examination, Moreover, in In re Hale, 433 So.2d 969 (1983), this Court instituted a "no-waiver" policy regarding ABA accreditation, recognizing that attempts to make its own assessment of the quality of unaccredited legal education programs would overwhelmingly burden the finances and resources of the Court.

It is against this backdrop that MSL petitions this Court to waive for its graduates the requirement of graduation from an ABA-accredited law school, alleging that -- notwithstanding its failure to receive ABA accreditation -- the quality of the legal education it provides is equivalent to that provided by ABA-accredited law schools. In support, MSL attacks the ABA accreditation process, lauds the quality of its educational program, and argues that this Court can safely rely upon two substitutes for ABA-accreditation: approval by the Massachusetts Higher Education Coordinating Committee ("HECC") and a complimentary report by an allegedly independent group of visitors to the school.

None of MSL's contentions stand up to scrutiny. Contrary to MSL's allegations, the ABA Standards and the ABA accreditation process represent the best thinking of legal educators over most of the last century. The ABA Standards and the ABA's status as the nationally-

recognized accrediting agency for law schools remain strong and viable. ABA accreditation continues to justifiably receive the confidence of every state supreme court, the U.S. Department of Education, and the Conference of Chief Justices. The ABA accreditation process is thorough, sophisticated, and fair, and MSL's legal challenges to ABA accreditation, including that based on its own failure to receive ABA accreditation, consistently have been rejected by both the courts and the U.S. Department of Education.

Moreover, the facts do not support MSL's argument that this Court can rely upon MSL's own evaluation of its educational program, the report of allegedly independent lawyers and judges, or approval by the HECC. MSL's self-analysis is far from rigorous and omits out significant information, Not only does the HECC's approval date from 1989, but, in the years since, the HECC has raised repeated and significant concerns about MSL's educational program. Then there is the alleged report of a "team of distinguished independent lawyers and judges" on which MSL would have this Court rely. In litigation filed by MSL against the ABA, in which MSL also asserted the same report as evidence that the ABA unfairly denied it accreditation, the court concluded that that report in fact was written by MSL's dean and its paid consultant, not by the team of distinguished visitors who signed it.

Given the continued reliability and quality of the ABA accreditation program, MSL has failed to provide this Court with any legitimate justification for rejecting the principles set forth in Hale and for taking on the excessive burdens that would arise from, in effect, this Court establishing its own accreditation program. Accordingly, the ABA urges this Court to deny MSL's Petition.

ARGUMENT

I. THE STATE INTEREST IS BEST PROMOTED BY RULES SUCH AS FLORIDA RULES 2-11.1 AND 4-13.2, WHICH USE ABA ACCREDITATION AS THE MEASURING DEVICE TO ASSURE THE QUALITY OF AN APPLICANT'S LEGAL EDUCATION.

A. The ABA Standards Reflect The ABA's Unique And Historic Role In Improving The Quality Of Legal Education.

The ABA has long been concerned with maintaining and improving the quality of legal education throughout the country. The Committee on Legal Education was one of the seven original committees formed when the ABA was first established in 1878. The first set of standards for the approval of law schools was recommended by the Council of the Section of Legal Education at the 1918 ABA Annual Meeting. In 1921, the ABA adopted a statement of minimum standards for legal education. In that same year, the ABA began publishing a list of schools that complied with those standards, and assigned the Section of Legal Education and Admissions to the Bar to administer the program. These efforts began against a background of minimal or nonexistent formal legal educational requirements of any kind for the practice of law. In most states, not even a high school diploma was required. Many proprietary law schools existed, including low-standard diploma mills, and concern was widespread about the competency of the persons admitted to the practice of law. Moreover, there was no uniformity of quality in the legal education offered by the various institutions in the country.

As the highest courts of the states recognized these problems, they began in the early 1920s to look to the ABA accreditation standards to determine bar admission criteria. The state courts began to adopt rules requiring graduation from an ABA-approved law school as a

prerequisite to practice law within the state. Through the leadership of the Section of Legal Education and Admissions to the Bar, the National Conference of Bar Examiners was organized in 193 1, and a close relationship between those two organizations has continued over the years. Today, graduation from an ABA-approved law school satisfies the legal education requirement for admission to the bar in all fifty states and the District of Columbia.

The ABA Standards are intended to ensure that persons who practice law are competent to perform the many functions required of lawyers on behalf of their clients, the members of the public. Unfortunately, no bar examination can either test all the skills required of a lawyer or determine whether the applicant's education has adequately prepared him or her to participate effectively in the legal profession. Yet a comprehensive and sound legal education is a critical factor in evaluating an applicant's overall qualifications for the practice of law.

The ABA Standards reflect the requisites of a sound legal education, which can be obtained only through broad exposure to core areas of the law, training in legal analysis and reasoning, contact and communication with experienced faculty, experience in legal research and writing, instruction in professional skills, interaction with other students, and access to a current and complete library. The ABA Standards are designed to ensure that institutions proposing to train new attorneys provide such a comprehensive legal education and also adhere to sound standards of academic achievement, In an era of intense concern with consumer protection in many areas, the ABA continues to be concerned with legal consumer protection, namely, the assurance to the public that persons holding themselves out as lawyers possess the necessary skills to protect their clients' rights.

B. The ABA Accreditation Process Is Appropriately Rigorous But Also Provides Procedural Protection To Applicant Law Schools.

Far from being arbitrary or capricious, as MSL contends, a brief review of the ABA accreditation process demonstrates that it is thorough, fair, and designed to ensure that law school graduates receive a comprehensive legal education.

ABA accreditation or approval of a law school is granted tier a procedural and substantive determination that a school complies with the minimum requirements of a basic legal education. The procedural process of achieving accreditation is twofold, for it requires both self-evaluation of a school by the founders, administrators and faculty, and an independent evaluation by the ABA Accreditation Committee, by the Council of the ABA Section of Legal Education and Admissions to the Bar (the "Council"), and ultimately by the House of Delegates of the ABA. The substantive Standards established by the ABA provide the guidelines for each procedural step of the accreditation process and set forth the criteria under which a law school can achieve and maintain a minimum level of acceptable legal education.[3]

The Standards include the following general categories: Organization and Administration, Program of Legal Education, Faculty, Admissions, Library, and Facilities. If a law school meets these Standards, qualified students will receive the benefits of an education that will enable them to represent the interests of clients and the profession, to become effective members of the practicing bar, and to handle current and anticipated legal problems.

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[3] A set of the current Standards, Interpretations, Rules of Procedure, and other criteria and practices relating to the ABA accreditation of law schools is provided as Exhibit A. The exhibits to this brief are separately bound as an Appendix. Throughout this brief, references to Exhibits are to those provided in the Appendix.

Under the ABA Rules of Procedure for accreditation, the self-evaluation process should be commenced before a school is established, With the assistance of a qualified adviser, a school conducts a feasibility study that includes an evaluation of its proposed educational program, the characteristics of potential students, and the resources required to sustain the proposed school, The feasibility study is critical to the accreditation process, for it enables those who establish a school to make an informed and realistic assessment of both the degree to which the proposed school can meet the ABA Standards and when the school might qualify for provisional ABA approval.

In preparation for provisional approval, the Dean and the faculty are to complete a self-study of the educational program and of the goals of the law school. The ABA requirements of both a feasibility study and a self-study demonstrate the thorough scholastic, financial, and demographic analyses that should be conducted before founders, administrators, and faculty assume the responsibility for educating aspiring lawyers.

Provisional approval may be sought after the law school has completed its first full year of academic operation. Substantial compliance with the ABA Standards and assurance that full compliance will be achieved within three years of provisional approval constitute the only requirements for provisional approval. Graduates of a school that has been granted provisional approval, like graduates of a fully approved law school, are eligible to take the bar examination in every state and the District of Columbia.

The application for provisional approval shall include, in addition to the feasibility study and the self-study, a letter from the Dean and President certifying that they believe the school complies with the requirements for provisional approval, a completed site evaluation

questionnaire, a completed annual questionnaire, financial operating statements and balance sheets, documents detailing the fair market value and interests of the school, and a request that the ABA Consultant on Legal Education schedule an on-site evaluation of the school.

The site evaluation is conducted by an objective team composed of legal educators, a law librarian, and where feasible, a non-law school university administrator, and a judge or a practicing member of the Bar. Before the site evaluation, the inspection team receives all pertinent materials relating to the school and the accreditation process, including those submitted by the school.

The site evaluation usually requires three and one-half days and is conducted while the school is in session. During the visit, the team reviews financial data and admissions policies; assesses the facilities; interviews deans, administrators, faculty members, staff, and students; reviews the curriculum; audits classes; and attempts to gather all of the data necessary to assess the school's compliance with the ABA Standards.

Following the visit to the school, the team submits a written, objective report to the ABA Accreditation Committee. The team itself makes no recommendation concerning approval of the school but reports on factual matters relevant to the decision. The law school has the opportunity to review the report and to suggest corrections of factual errors. The ABA Accreditation Committee then evaluates whether the school satisfies the criteria for provisional approval and submits a recommendation regarding provisional approval to the Council. The Council, in turn, submits a recommendation to the ABA House of Delegates.

The law school administration has the right to appear before both the Accreditation Committee and the Council to present its views and to suggest corrections of any errors or

inadequacies in the inspection team's report. The school is permitted to appeal any adverse decision to the next level. The ABA House of Delegates makes the ultimate decision as to whether a school will be granted provisional approval. A school that is granted provisional approval is reviewed annually until the school receives full approval. When the law school applies for full approval, the same procedure is followed, with the final determination being made by the ABA House of Delegates.

C. The ABA Is Uniquely Able To Provide Uniform National Standards For Evaluation Of Legal Education.

The availability of a central accrediting body has allowed accreditation to be national in scope rather than fragmented among the fifty states and the District of Columbia. Thus, graduation from an approved law school allows the graduate to take the bar examination anywhere in the country and obviates the need for the high court of each state to assess independently every applicant's educational qualifications or to evaluate the educational programs provided by each applicant's school. The ABA's Standards also obviate any need for the courts to become arbiters of educational policy, a role for which this Court has decided it is not suited. Hale, 443 So.2d at 971-72. Moreover, its national character provides the ABA with a comparative picture of the status of legal education throughout the country that would be difficult, if not impossible, for local jurisdictions to obtain,

This Court recognized in Hale the sophistication of the ABA's system of accreditation. Id. This sort of sophistication is possible only because the ABA's approval process is a continuing one. Provisionally-approved schools are inspected every year to insure their continued progress toward full approval. Even after full approval is granted, every school is reinspected at regular

intervals. In addition, the ABA monitors educational quality between inspections through annual questionnaires and other means and may require schools to submit additional information when it has reason to believe that a school is not complying with the Standards. In certain instances, the ABA may conduct interim fact-finding inspections or site evaluations. The continuing relationship between the ABA and the schools allows the ABA to remain aware of the quality and progress of various schools around the country, and prevents approval from becoming a recognition of adequate performance in the past rather than an assurance of present or future quality.[4] As this Court has noted, the ABA accreditation process is immensely time-consuming and cannot be duplicated at the state level because impractical amounts of personnel time and financial resources would be required. Id..

The unique stature of the ABA in this field allows it to draw upon the time, experience, and expertise of judges, legal educators, university administrators, practitioners and public representatives from all over the country, For example, the current Accreditation Committee and Council include distinguished representatives of the bench, the practicing bar, law professors and deans, state bar admission officials, and non-lawyer representatives of the public. (See Exhibits B (Council members) and C (Accreditation Committee members).) Collegial support and a continuing trade in ideas and experiences keep the inspection process from being either a parochial or a merely critical enterprise.

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[4] As discussed below, the need for and appropriateness of continuing evaluation is evident in this matter. MSL's petition asserts that the last time the quality of MSL's educational program was independently affirmed was in 1991, more than six years ago. MSL provides no current verifiable information from an independent source to support its claim that the education it provides is "substantially equivalent" to that of an ABA approved law school,

The ABA's unique ability to provide national standards for legal education is attested to by the widespread reliance on ABA accreditation of law schools. Since the adoption of the first law school approval standards by the ABA in 1921, state supreme courts and other bar admitting authorities have encouraged the ABA's efforts. Graduation from an ABA-approved law school satisfies the legal education requirements for admission to the bar in every jurisdiction, and a large majority of states rely exclusively upon ABA approval.

Similarly, since 1952, the United States Department of Education and its predecessor have officially recognized the Council of the Section of Legal Education and Admissions to the Bar of the ABA as the "nationally recognized accrediting agency" for law schools. The Department of Education has consistently reaffirmed its recognition of the Council, despite, in recent years, challenges to renewal that MSL has made.. (See infra pp. 18-20) In addition, the Council has been recognized since 1966 by the national organizations of peer professional accrediting agencies: initially, the National Commission on Accrediting, which was succeeded by the Council of Postsecondary Accreditation and then the Council on Recognition of Postsecondary Accreditation.

D. The ABA Standards Reflect The Views Of Many Groups And Advance The Basic Goal Of Providing A Sound Legal Education.

As this Court recognized in Hale, the ABA Standards are comprehensive and sophisticated. 433 So.2d at 972. They are the result of a thorough and continuing process that has taken place over nearly a century. As part of that process, proposals for new or revised Standards, Interpretations, and Rules of Procedure are subject to public hearings and to review by the Council and its Standards Review Committee. Proposals are distributed to, and comments are

solicited from many groups, including state supreme courts, state boards of bar examiners, and deans of ABA-approved law schools. In addition, all Standards, Interpretations and Rules are subject to approval by the ABA House of Delegates, The Standards have been derived and applied as minimum standards for acceptable legal education and training to enter the practice of law.

Contrary to MSL's allegations, the ABA is not engaged in an effort to make every school equal to the best, or to restrict approval to any particular kind of school. The ABA Standards have not prevented the establishment of different and innovative law schools; they simply reflect the cumulative judgment of the profession that a school satisfying the Standards offers an adequate legal education. Indeed, the staff of the Department of Education expressly rejected MSL's allegations that the ABA has throttled diversity among law schools. (See U.S. Dept. of Education, Staff Analysis of the Interim Report Submitted by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association, 4-5 (Oct. 18, 1994), Exhibit D.) There are no matters included in the Standards that are not relevant to the basic goal of adequate legal education.

The ABA Standards reflect almost a century of consensus concerning the minimum requirements of a sound legal education. As the majority of state supreme courts have implicitly concluded by adopting it as a requirement for admission to the bar, graduation from an ABA-accredited law school is the most reliable and efficient method of determining whether an applicant has received a legal education that has adequately prepared the applicant to become a practicing member of the legal profession.

II. NONE OF THE REASONS ADVANCED BY MSL JUSTIFY WAIVER OF THE RULE REQUIRING GRADUATION FROM AN ABA-ACCREDITED LAW SCHOOL.

MSL asserts three reasons why this Court should waive the ABA-accreditation rule: 1) MSL was inspected and approved by the Higher Education Coordinating Council of the Commonwealth of Massachusetts ("HEW') in 1989; 2) the quality of MSL's legal education was corroborated in 1991 by a team of visiting lawyers and judges; and 3) confidence in the ABA's system of accreditation allegedly has been eroded. Upon close inspection, it is apparent that none of these reasons withstand scrutiny or justify waiver of the ABA-accreditation rule.

A. The Court Should Not Rely Upon HECC Approval Of MSL.

In its petition, MSL relies heavily on the decision of the Massachusetts Board of Regents to approve MSL in 1989, four years before the ABA denied MSL's application for accreditation. MSL goes so far as to suggest that this Court should defer to that decision and allow MSL's graduates to take the Florida bar examination. The limitations and dangers of such an approach, however, are demonstrated by the serious concerns that the Board's successor, the HECC, has subsequently expressed regarding MSL's education program.

As the court found in MSL's litigation against the ABA, the HECC "has repeatedly expressed concern over many aspects of MSL's education program." Massachusetts School of Law at Andover. Inc. v. American Bar Ass'n, 937 F. Supp. 435,442 n. 12 (E.D. Pa. 1996), aff' d, 107 F.3d 1026 (3d Cir. 1997). For example, the HECC has expressed serious concerns regarding MSL's low admissions standards and high attrition rate (see letter from Tossie E. Taylor to Lawrence R. Velvel (Jan. 14, 1994), Exhibit E; excerpts of deposition of Carol Fallon, deputy counsel of the HECC, 20:10 - 21:13, 25:6 - 26:8, 28:12 - 29:22, 53:2 - 54:17, 58:11-17, 64:12 -

65: 10, 118:9-18, Exhibit F), as well as concerns about the size and administrative responsibilities of MSL's full-time faculty. (See letter from Tossie E. Taylor to Lawrence R. Velvel (Dec. 5, 1991), Exhibit G; Fallon Dep. (Ex. F) 89:19 - 92: 16, 95: 19 - 96: 12. 98:22 - 100: 16, 119:2-5.) Indeed, the court found, based on the sworn testimony of the deputy counsel of the HECC, that the HECC has received an "unprecedented number of formal written student complaints filed against MSL." 937 F. Supp. at 442 n. 12. (See also Fallon Dep. (Ex F) 15:20 - 17:24; Ex. E at 2-3 (for example, the HECC stated that "[w]e are further concerned that [MSL] is financing the costs of its successful students at the expense of tuition and fees charged to students who are unable to make it through the first year.")) Based on these continuing concerns, in January 1994, the HECC threatened to revoke MSL's degree-granting authority. (Fallon Dep. 74.20 - 76:8, 78:4 - 79:2 (Ex. F) ; Ex. E at 3.)

The HECC's experience with MSL both supports and illustrates the policy concerns underlying this Court's opinion in Hale. MSL's assertion that granting its petition "will not lead to a burden on judicial resources (MSL Pet. at 2 n.2) is belied by HECC's difficulties in attempting to monitor MSL's continuing compliance with its regulatory requirements. A system of continuing monitoring and endorsement, such as that implemented by the ABA (see supra pp. 10- 1 1)), is essential if determinations of educational quality are to have any legitimacy and relevance to bar admissions determinations. Moreover, granting MSL's petition would force this Court independently to verify the true quality of the school, an option this Court rejected in Hale, and which undoubtedly would lead to additional petitions from unaccredited law schools throughout the United States, further compounding the resulting administrative and financial burden on the Court.

Moreover, notwithstanding MSL's suggestion that this Court should defer to the educational judgments of the HECC, the Massachusetts Supreme Judicial Court in MSL's own home state earlier this year reaffirmed its reliance upon ABA accreditation decisions. In re Corliss, 675 N.E.2d 398, 399 (Mass. 1997). The court declined to abandon its reliance on the ABA based on MSL's challenge to the ABA accreditation program:

> We decline to accept Corliss's invitation to reconsider our holding in Tocci merely because the ABA accreditation process is presently being challenged by another party [MSL] in the Federal courts. We may be forced to reconsider our reliance on the ABA's process if and when the process is finally declared to be illegal or unconstitutional. To anticipate such a ruling, however, or to make such a determination ourselves in this case, would be premature and well beyond the scope of this appeal.

Id. As set forth below, MSL's referenced challenges to the ABA's accreditation program have now been resolved and, rather than being declared illegal or unconstitutional, the courts in both cases have rejected MSL's allegations and granted summary judgment in favor of the ABA.

B. The Circumstances Surrounding The Report Of The Distinguished Visitors Undercuts Its Reliability.

MSL would have this Court place great stock in the report of a visiting group of Boston area lawyers and judges lauding the school. As with HECC's approval, MSL fails to bring to this Court's attention the true facts surrounding that report.

During the course of discovery in one of the lawsuits brought by MSL against the ABA, a request was made for the documents related to the visiting group's report. MSL intentionally withheld these documents from discovery and finally produced them only after a succession of court orders and the imposition of sanctions against MSL's counsel for obstructing discovery. See

Massachusetts School of Law at Andover, Inc. v. the American Bar Ass'n, 914 F. Supp. 1172, 1173-74 (E. D. Pa. 1996).

Upon reviewing these documents, it became abundantly clear why MSL had defied court orders and vigorously resisted their production. As the district court found, the report on which MSL now asks this Court to rely was written, not by the visiting group, but by MSL's paid consultant and its dean:

> In connection with its plan to obtain accreditation, [MSL] hired Ansel Chaplin, as its ABA consultant. Mr. Chaplin is an attorney, but apparently his principal service to MSL was recruiting seven New England lawyers who agreed to inspect MSL. After they did so, MSL's dean, Lawrence Velvel, with Mr. Chaplin's help, wrote a laudatory report that these attorneys eventually signed.

Id. at 1173.

MSL disserves this Court and the bar admission process by continuing to tout this outdated, self-serving report and by arguing that this Court should rely upon it in deciding whether to waive its own accreditation rules.

C. Confidence In The ABA Accreditation System Remains Justifiably Strong.

MSL contends that a number of recent events have led to an erosion of confidence in the ABA's accreditation program. MSL's allegations are contradicted by the recent action of the Conference of Chief Justices, which reaffirmed its support for the ABA accreditation program during the ABA's recodification of its accreditation standards last year. In a resolution adopted last summer, the Conference reaffirmed the State Supreme Courts' reliance on ABA accreditation and "endorse[d] the proposed revisions to the American Bar Association Standards for the Approval of Law Schools and direct[ed] its delegate to the ABA House of Delegates to support

those revisions on the floor of the House." (Resolution of the Conference of Chief Justices (Aug. 1996), Exhibit H.) Although MSL's contends that the ABA process is in disrepute, its "support" fails to tell the whole story.

1. The Department Of Education Continues To Recognize The ABA's Status As The Nationally Recognized Accrediting Agency For Legal Education.

As noted above, the Council has been the nationally recognized accrediting agency for American law schools since 1952. Under the Higher Education Act, 20 U.S.C. § 1099b, nationally recognized accrediting agencies are periodically reviewed by the staff of the Department of Education and the National Advisory Committee for Institutional Quality and Integrity ("NAC") to determine whether such agencies should retain their designation 34 C.F.R. $602.10 - .16.

In its petition, MSL quotes at length from the transcript of an interim hearing before the NAC where some members of the NAC raised concerns about the ABA's accreditation program. MSL neglects to inform this Court, however, that at the most recent hearing before the NAC, held June 16-18, 1997, the NAC voted unanimously to recommend to the Secretary of Education that the ABA's status as a nationally recognized accrediting agency be extended for three years. (Excerpts of transcript of proceedings before the National Advisory Committee on Institutional Quality and Integrity at 391 (June 16, 1997), Exhibit I.) The Secretary has concurred in this recommendation. (Letter from Richard Riley to James P.White, (August 1, 1997), Exhibit J.) [5]

[5] This decision by the NAC took place before MSL filed its petition with this Court on July 14, 1997. MSL's Dean and Associate Dean attended the NAC hearing where this action took place, so they presumably were aware of the NAC's position.

Moreover, in 1992 and 1994, the Department of Education rejected MSL's attacks on the ABA, which were based on the same allegations that it advances here, challenging the validity and reliability of the ABA Standards. (See Ex. D). Indeed, in 1994 the Department staff explicitly concluded that MSL's allegations were "without merit:"

> While MSL may not like the Council's current standards and may question their validity and reliability, it has not provided convincing evidence to contradict the Council's assertion that its current standards have in fact been adopted by its members in the manner that has been agreed to by the members for the establishment of accreditation standards. Thus, even though they may be found at some future date not [to] be fully valid or reliable indicators of educational quality, at the present time the Council's standards represent the current best thinking of those in the profession,
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> Department staff further believes that the Council's standards have been subject to regular, systematic review by the profession and have been changed whenever the profession deemed necessary. It also appears to Department staff that any changes to the standards have been decided upon only after proper consultation with the membership and other relevant constituencies. Thus, from the Department's perspective, the Council has acted in accordance with the criteria for recognition as far as the review and subsequent revision of its standards is concerned.

Id. at 3-4.

Similarly, MSL contends that criticism of the ABA accreditation program by the American Law Deans Association ("ALDA") demonstrates a further erosion of confidence. It is hardly unusual that individuals and organizations, such as ALDA, that are interested in the quality of legal education, hold a wide range of opinions on issues of educational policy. The ABA, through its accreditation process, provides the forum in which such divergent opinions can be discussed in an orderly, thorough and fair manner.

In recognition of the essential function performed by the ABA, ALDA in fact endorsed the ABA accreditation program before the NAC at its most recent hearing in June 1997, stating that: "ALDA as an organization recommends that you renew the recognition of the ABA as the accrediting agency for law schools. We believe they have the experience and the expertise to do the job." (Ex. H at 3 14-15 (remarks of Judith Areen, Dean of the Georgetown University Law Center).) Somehow, notwithstanding its reliance on some of ALDA's prior comments, MSL neglected to bring ALDA's position on this issue to this Court's attention.

2. The Courts Have Rejected MSL's Legal Challenges to the ABA's Accreditation Program.

MSL notes in its petition that it "has been at the forefront of a challenge to the ABA's accreditation authority." The petition fails to apprise this Court, however, that all of MSL's legal challenges have been summarily rejected.

In November 1993, MSL filed an antitrust action in federal court in Philadelphia against the ABA, 21 individuals involved in the ABA's accreditation process, the Association of American Law Schools, and the Law School Admissions Council, which administers the Law School Admission Test. In that lawsuit, MSL advanced the same allegations that it makes here, broadly asserting that the Council's accreditation criteria do not measure educational quality, its procedures are unfair, its decisions are inconsistent, and its actions -- particularly its denial of MSL's accreditation application -- are dictated by a small group of academics conspiring to further the interests of full-time faculty. The court rejected MSL's arguments, entered summary judgment against MSL and held that there was no competent evidence to support its claims. Massachusetts School of Law at Andover, Inc. v. American Bar Ass'n, 937 F.Supp. 435 (E.D.

Pa. 1996), aff'd, 107 F.3d 1026 (3d Cir. 1997). Indeed, the court concluded that MSL had used its litigation "as a field on which to wage a war of attrition, a war directed at bleeding the defendants into submission." (Order at 3 (July 3 1, 1996), Massachusetts School of Law at Andover, Inc. v. American Bar Ass'n, No. 93-6206 (E.D. Pa.), aff'd, 107 F.3d 1026 (3d Cir. 1997), Exhibit K.)

In September 1995, MSL filed a second lawsuit, this time in Massachusetts, against the ABA and others, including 14 individuals involved in the accreditation process. In that lawsuit, MSL again advanced the same broad allegations that it makes here. The court rejected MSL's arguments, dismissed MSL's claims, and held as a matter of law that MSL failed to comply with the ABA Standards or to qualify for a waiver of those standards. Massachusetts School of Law at Andover. Inc. v. American Bar Ass'n, No. 95-CV-12320-MEL, 1997 U.S. Dist. LEXIS 7033 (D. Mass. May 8, 1997).

Finally, in opposing the entry of the consent decree agreed to by the ABA and the Department of Justice, MSL repeated the same broad allegations that it makes here, including its assertions that the current student-faculty ratio and prohibition on requiring students to take a bar review course are against educational and public interest. In response, a fourth federal court rejected MSL's arguments, and the appellate court affirmed that decision. United States v. American Bar Ass'n, 934 F.Supp. 435 (D.D.C. 1996), aff'd, 118 F.3d 776 (D.C. Cir. 1997).

3. The ABA's Evaluation of MSL Was Based on MSL's Failure to Comply with the Standards.

Finally, MSL claims that the ABA did not address the quality of MSL's education, but instead applied various "checklist" criteria. Once again, the facts do not support this claim.

The ABA's decision to deny accreditation to MSL was reached in accordance with the procedures detailed at pages 7-10 above. The site evaluation of MSL resulted in a lengthy report (Exhibit L), and based upon that report and the materials and information submitted by MSL, the Accreditation Committee determined that MSL was not in substantial compliance with the ABA Standards in eleven substantive respects going to the heart of MSL's education program. (Letter from James P. White to Stafan Tucker and Lawrence R. Velvel at 9-10 (July 1, 1993), Exhibit M.)

The following passage from the site evaluation report discussing MSL's faculty, based in part on the team's observation of 30 classes, is indicative of the thoroughness of the ABA's evaluation:

> MSL states that it has four categories of faculty: Full-time faculty, Adjunct faculty, Adjunct Research and Writing Faculty, and Adjunct Writing for Lawyers Faculty. Figures submitted by MSL are based upon 12 full-time faculty, plus the dean.
>
> * * * *
>
> The student faculty ratio is high. Even viewed in the light most favorable, based upon the application of the ABA definitions of full-time faculty, only six individuals at MSL meet the qualifications. There are currently, . , 293 full-time students and 5 15 part-time students for a total of 808 students. If the full-time student equivalent (FTE) of 633 (part-time/full-time) is used, then the faculty-student ratio is 105 to 1 instead of 135 to 1. .
>
> The impact on the quality of legal education at MSL of a student/faculty ratio in excess of one hundred students to one full-time professor affects the educational experience. Classroom instruction by the six full-time faculty is forced into a pattern of large sections, some small classes and very limited seminars. The faculty is placed in a position of a large number of student demands for counseling and informal instruction. Students will have much of their course work with instructors who are part-time, or adjuncts who are not regularly in the building throughout the day, who share a single office, and who are not available at the school most of the week.

(Ex. L at 18-19).

Finally, MSL provides no independently-verified information to corroborate its self-serving assertions concerning the quality of its own educational program. For example, MSL's assertion that 86% of its graduates have passed the Massachusetts bar examination (MSL Pet. at 17) is misleading and of limited relevance here, in that it is artfully drafted to provide no information regarding the passage rate for first-time takers, the number of times that the MSL graduates took the bar examination, or the passage rates for the bar examination of other states. Such distinctions are significant for at least three reasons.

First, MSL requires students to take a six-credit bar review course geared to preparing for the Massachusetts bar examination. Putting aside the pedagogical problems of providing credit for review work done in a "cram" course, similar coverage of Florida law is not provided. Second, in 1996 the aggregate bar passage rate nationally for graduates of ABA-approved law schools was 75%, more than twice as high as the 32% rate for graduates of law schools not approved by the ABA. (See Exhibit N, reporting bar passage rates nationally and for those states in which at least 10 graduates of unapproved schools have taken the bar examination, taken from 1996 Statistics, 66 The Bar Examiner No.2 (May 1997), Exhibit 0.) Indeed, at the time of the ABA site evaluation of MSL in 1993, the most recent information provided by MSL indicated that 46.8% of MSL graduates had passed the July 1992 bar examination, compared with a state-wide rate of 80.7%. (Ex. L at 8) Finally, passage of the Florida bar examination, rather than an examination used by Massachusetts or any other state, is required to practice law in Florida. For these reasons, educational quality and success in the Florida bar cannot reasonably be inferred from the information provided by MSL.

The ABA's evaluation of MSL's program was based on extensive information and a legitimate application of the ABA Standards. Although MSL asks this Court to reject the ABA's conclusion, by waiving the requirements of its Rules of Admission, MSL provides inadequate and misleading support for its contention that its graduates have received an education equivalent to that provided by ABA-accredited law schools.

CONCLUSION

For the foregoing reasons, the American Bar Association believes that Rules 2- 11.1 and 4-13.2 of the Rules of Admission to the Florida Bar are the appropriate means of protecting the citizens of Florida by assuring that persons admitted to the practice of law in Florida have received a quality legal education, and that this Court is justified in relying upon the ABA accreditation program. Accordingly, the ABA urges this Court to deny the MSL Petition *in toto*.

Respectfully submitted,

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Date: September 5, 1997

CERTIFICATE OF SERVICE

I , David R. Stewart, an attorney, hereby certify that, pursuant to Rule 9.420(c)(1) of the Rules of Appellate Procedure, the foregoing MOTION FOR LEAVE TO FILE AMENDED BRIEF and AMENDED BRIEF OF THE AMERICAN BAR ASSOCIATION AS AMICUS CURIAE was served this day upon the following counsel of record by causing true and accurate copies thereof to be deposited in the mail on September 5, 1997, postage prepaid and addressed to:

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