

But, aside from the bureaucratic momentum that stifles change in any self-regulatory mechanism, there is no evidence that the traditional antitrust concern, market power, underlies this resistance to change. And, as we suggest below, there is legitimate controversy within the law school community about the wisdom of wholesale changes in accreditation standards.

The vast majority of men and women who have chosen to teach in American law schools do so because they believe in, and truly enjoy, the teaching and writing that is the core of the profession. For the most part, individuals who make this choice could have opted for higher paying jobs in the private bar or, perhaps, in government. The deans and administrators of law schools come from the ranks of these academics. They share with their colleagues strong commitments to the profession that they serve, the students that they teach, and the institutions that they lead.

The decisions of those who have led American legal education have not prevented development of a fiercely competitive market. Among the 178 ABA accredited law schools (there have been roughly 40 additions to this number over the past three decades) are a great range of institutions in

all parts of the nation. The programs, the teaching methods, the tuition rates, and the reputations of these institutions vary widely. One example of this diversity, and the kind of program innovation it generates, is found at our own law school, which offers an ABA approved 24-month program leading to a J.D. degree.¹ The program discards traditional law school courses in favor of instructional units that stress concepts common to many subjects of the law. The existence of such programs tends to refute claims that ABA accreditation requirements stifle experimentation and creativity.

For reasons that we explain below, our fear is that the decree may result in relaxation of ABA accreditation standards, thereby heightening information problems for matriculating law students and distorting the allocation of legal educational services. Although the impact of the consent decree will be felt in all states, it is helpful to focus on the decree's potential impact in California. Aside from being the most populous State, California also has the most open system of legal education of any of the fifty states.

There are three categories of law schools now operating in California:

(1) ABA accredited law schools (16 schools);

(2) law schools certified by the State Bar (19 schools);

(3) law schools lacking certification from the State Bar (24 schools and an additional 13 correspondence schools).

Tuition demanded by these schools varies widely, as do the teaching methods, faculty student ratios, the percentage of full time instructors, library facilities, and other student support services. Unaccredited and uncertified schools may have no library facilities, few if any full time instructors, and few support services for students or faculty. Schools falling in the second category (certified by the State Bar) tend to offer some of these advantages but not to the extent of ABA accredited schools. Although accreditation standards are stiff, seven of the sixteen ABA accredited schools have achieved that status since 1960.²

Students attending the various categories of schools do not perform equally on the State Bar examination. The chart below compares the 1994 passage rate for first time takers from each of the three categories of law schools.

CALIFORNIA STATE BAR EXAMINATION PASSAGE RATE FOR FIRST-TIME TAKERS
[Calendar Year 1994]³

	Took	Pass	Pass (percent)
California ABA Accredited Law Schools	3555	3048	85.7
State Certified Law Schools	1090	572	52.5
Unaccredited Law Schools (including correspondence schools)	159	59	37.1

The figures are skewed because the most gifted students tend to select among the ABA accredited schools. Indeed, students do not treat all ABA accredited schools as equivalent, discriminating among these schools based upon reputation, location, and tuition. Whatever the reason, the low bar-passage rates for many of the schools raise troubling consumer protection questions. There is ongoing debate about whether schools should be allowed to recruit students to pay out thousands of dollars of tuition and dedicate three or four years of their lives to obtain a legal education, only to find that their chances of passing the bar are quite low. The California Legislature has seen fit to require a "baby bar examination" for all students attending unaccredited and uncertified law schools.⁴ Students are required to pass this examination before commencing their second year of studies at

these unaccredited or uncertified institutions.

Even if students pass the bar examination, the market for jobs is skewed against those who attend unaccredited or state certified schools. The reputation of the school (and its status as an accredited, certified, or unaccredited institution) are considered by employers, making job prospects bleak indeed for those who have attended unaccredited schools.

These realities about bar passage rates and job prospects are probably understood by most matriculating law students. Students are aided in their understanding by the clear distinctions among the three categories. It is our sense that most applicants who have a choice will choose among ABA accredited schools, further refining their choice by assessing the reputation of an individual school. Indeed, some students who fail to gain admission to an ABA accredited school

may decide not to pursue a legal education. We doubt that anything suggested in the decree will alter these fundamental market realities. On the other hand, the direction in which the decree appears to push ABA law school—toward relaxation of accreditation requirements such as faculty-student ratios and library facilities—will blur distinctions between ABA and non-ABA accredited schools, and make it easier for schools that lack that advantages now needed for ABA accreditation to obtain it. For reasons that we explore below, this may create greater information problems for applicants and pressure second-level, currently accredited law schools⁵ to relax quality standards.

We digress at this point to offer an overview of such second-level law schools. At present, each of the ABA-accredited law schools in California operates as a non-profit, educational institution. Most have excellent law libraries, highly respected full-time

¹ Southwestern's Conceptual Approach to Legal Education, or "SCALE" as it is commonly known.

² California law schools that have gained ABA accreditation since 1960 are: University of San Diego (1961); California Western (1962); University of California-Davis (1968); University of the Pacific (McGeorge) (1969); southwestern University (1970); Pepperdine University (1972); and Whittier College (1978).

³ This data is compiled from figures provided by the State Bar for the February and August 1994 administrations of the examination.

It is also significant that there is little overlap in the results among the various categories. For example, in the August 1994 administration of the bar examination, the passage rate for first-time-takers, calculated for individual ABA accredited schools, ranged from 77.9% to 94.4%. For State Certified schools, the rates for individual schools range from 16.7% to 76.3%.

⁴ State Bar Act, § 6060(g). We understand that a bill has been introduced in the legislature to repeal this requirement. Its changes of success are unclear.

⁵ We use the term "second-level" law schools to describe those ABA accredited schools that tend not to compete for the top five or ten percent of law school applicants, but will generally deny admission to those not meeting minimum objective qualifications. Our rough definition probably includes about twelve of the sixteen ABA accredited schools in California.