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(1) Since submitting its response, the Council
(2) met on June 7-8, 1997, and made several policy and
(3) procedural changes. Staff received a copy of
(4) documents on Friday, June 13, 1997, representing
(5) the actions taken by the Council. However, staff
(6) has not fully reviewed these documents. Therefore,
(7) I will defer to the representatives of the Council
(8) to present the results of that meeting regarding
(9) changes to its practices, policies, standards and
(10) interpretations as well as its bylaws.

(11) I will now present or address the primary
(12) issues disclosed in the staff analysis. The first
(13) issue of primary concern to the Department is that
(14) of the separate and independent requirement. The
(15) Council must address several elements of the
(16) "separate and independent" requirement. First, the
(17) element requiring the members of the agency's
(18) decision-making body who make its accrediting
(19) decisions, establish its accreditation processes,
(20) policies or both are not elected or selected by the
(21) board or chief executive officer of any related,
(22) associated or affiliated trade association or

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(1) membership organization.
(2) Under its current structure, it is not the
(3) Council but the ABA's House of Delegates, an
(4) elected body of delegates from the professional
(5) association, that makes final accrediting
(6) decisions, approves recommended policies and
(7) standards, and hears appeals.

(8) The second element requires the Council to
(9) demonstrate that at least one member of the
(10) agency's decision-making body is a representative
(11) of the public with no less than one-seventh of the
(12) body consisting of a public representative. The
(13) Council indicated that it would address changes in
(14) its bylaws at the June 7-8 meeting, and that it
(15) included a provision to have a public
(16) representative in the required ratio on both its
(17) accreditation committee as well as the Council.
(18) However, the Council at this point has not provided
(19) information as to whether there are any public
(20) representatives in the House of Delegates with the
(21) required ratio. Additionally, any changes that the
(22) Council makes to its bylaws will not become

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(1) effective approved by the ABA's Board of Governors.
(2) Third, the Council needs to address the
(3) element requiring it to establish and implement
(4) guidelines for each member of the decision-making
(5) body to avoid conflicts of interest in making
(6) decisions. The Council indicated that it would
(7) adopt the draft of its proposed conflict-of-interest policy
(8) or practice at its June 7-8
(9) meeting. If adopted in substantially the same form
(10) as presented in the draft with its petitions, this
(11) change still does not address the conflict of
(12) interest on the part of the ABA's House of
(13) Delegates.

(14) Lastly, the Council needs to address the
(15) element regarding the development of its budget
(16) without review or consultation with any other
(17) entity or organization. As a second primary
(18) concern or as a sub-issue, staff wishes to provide
(19) this committee with additional information
(20) concerning circumstances surrounding the waiver of
(21) the separate and independent requirement. Under
(22) the current structure of the ABA, staff's opinion

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(1) is that the ABA or the Council cannot meet the
(2) requirements for a waiver.
(3) Although the Council was listed by the
(4) Secretary as a nationally recognized agency before
(5) October 1, 1991, it must demonstrate that the
(6) existing relationship between the Council and the
(7) ABA's House of Delegates does not compromise the
(8) independence of the accreditation process. The
(9) Council cannot demonstrate this independence
(10) because the House of Delegates of the ABA has final
(11) approving authority to make or ratify the
(12) accreditation decisions and policy of the Council.
(13) Staff observed the House of Delegates in more than
(14) a pro forma capacity at the ABA's annual meeting in
(15) August 1996. At that meeting, the House of
(16) Delegates voted to accept a standard in a form
(17) different than the form recommended by the Council.

(18) Lastly, the Council must demonstrate that
(19) it provides to the related association or
(20) affiliated trade association or membership
(21) organization only information that it makes
(22) available to the public. The consent decree

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(1) entered into between the ABA and the Justice
(2) Department requires the Council to quote: "send an
(3) annual report to the Board of Governors of the ABA
(4) that may be done on a confidential basis if
(5) necessary on its accreditation activities during
(6) the preceding year including a list identifying all
(7) law schools on report or under review and for each
(8) law school, identifying the areas of actual or
(9) apparent non-compliance and the length of time the
(10) law school has been on report or under review."
(11) The condition in the consent decree that
(12) prevents the Council from meeting this element for
(13) a waiver is couched in the terms that allow the
(14) Council to submit confidential information that may
(15) not necessarily be available to the public, at
(16) least while this decree is in effect.

(17) The third primary concern requires the
(18) agency to show that as a result of its program of
(19) review, each of its standards provides a valid
(20) measure of the aspects of educational quality and a
(21) consistent basis for determining the educational
(22) quality of different institutions or programs.

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(1) Although the Council is collecting data, it will
(2) not complete its program of review until 2003.
(3) While a determination of the validity and
(4) reliability of the standards is to be based on data
(5) several years away, it should be noted that the
(6) Council is implementing its systematic program of
(7) review under Section 602.23(b)(5), which was
(8) accepted by this committee and the Secretary.

(9) With respect to the fourth primary
(10) concern, the Council must show that it has a
(11) standard regarding rates in the student loan
(12) program under Title IV, based on the most recent
(13) data provided by the Secretary. If the Council
(14) adopted the draft standard at its June 7-8, 1997
(15) meeting, the House of Delegates must still vote on
(16) the standards before it becomes effective.

(17) The fifth primary concern requires the
(18) Council to demonstrate that it has a written
(19) standard addressing an institution's
(20) responsibilities under Title IV of the Higher
(21) Education Act, including any results of financial
(22) or compliance audits, program reviews, and such

(1) other information as the Secretary may provide to
(2) the agency.
(3) Of the other issues, three that concern
(4) the Department involve the Council's current
(5) structure. The Council must demonstrate that the
(6) House of Delegates is composed of competent and
(7) knowledgeable individuals, qualified by experience
(8) and training to make accrediting decisions. The
(9) Council must also demonstrate that the members of
(10) its policy and decision-making bodies who serve in
(11) the House of Delegates represent individuals from
(12) the academic, administrative, education and
(13) practitioner communities.
(14) Although the Council indicated that it
(15) would adopt revisions to address the conflict-of-interest
(16) policy, it still must demonstrate that it
(17) has clear and effective controls against conflicts
(18) of interest or the appearance of conflicts of
(19) interest regarding the House of Delegates.
(20) The other remaining issues require the
(21) Council to establish written policies to address
(22) required submissions to the Secretary under Section

(1) 602.4; the accreditation record retention
(2) requirement; a business plan submission policy for
(3) institutions; publication of accreditation review
(4) dates for institutions and programs, and for public
(5) comment; providing notice and comment on proposed
(6) new or revised criteria with the opportunity for
(7) comment; all elements of public disclosure of
(8) institution's or program's accreditation status; a
(9) record of student complaints; requirement to take
(10) prompt action on adverse actions or to take adverse
(11) actions promptly; to develop a time frame for
(12) compliance with the agency standards; an accredited
(13) institution's or program's right to representation
(14) by counsel; notification of its accrediting
(15) activities to other agencies; and consideration of
(16) decisions of states or other accrediting agency in
(17) making its decisions.
(18) The Council in its supplemental petition
(19) and response to the staff analysis submitted drafts
(20) that it would consider at the June 7-8, 1997
(21) meeting. Staff reviewed the drafts and indicated
(22) in the analysis its determination of whether the

(1) drafts would meet the requirements for recognition.
(2) However, the Council is present today and may have
(3) information about the status of the proposed draft
(4) as a result of its recent meeting.
(5) As for the report that this committee
(6) requested the Council to submit outlining its
(7) progress in working with ALDA, the Department
(8) received the progress report on February 14, 1997.
(9) The progress report demonstrates that the Council
(10) and ALDA have a continuing dialogue regarding the
(11) standards and education policy.
(12) The Department received comments from
(13) third parties, both supporting and opposing the
(14) Secretary's renewal of recognition of the Council
(15) as the nationally recognized accrediting body for
(16) professional law schools.
(17) Two writers recommended a deferral. The
(18) focus of one letter to defer is based on the
(19) existence of a validation plan. This writer does
(20) not believe that the Council has a validation plan
(21) and wants recognition deferred until the Council
(22) submits a revised validation plan that would start

(1) a valid, accurate and reliable methodology for
(2) assessing the outcomes of law schools' educational
(3) programs and he seeks a revision in the site
(4) inspection procedures so that it is a systematic
(5) method for obtaining data regarding curriculum
(6) offerings, bar passage rates, student achievement,
(7) faculty hiring and retention, and gathering student
(8) data. The other writer wants clarification of the
(9) separate and independent issue and of the
(10) measurement used to determine the validity and
(11) reliability of its standards. This particular
(12) writer is present and will make an oral
(13) presentation:

(14) Department staff notes that the Council
(15) has a two-step ongoing systematic program of review
(16) that is in place which addresses concerns raised
(17) regarding the data collection process used to
(18) determine the validity and reliability of its
(19) standards. However, the validation plan will not
(20) fully produce the results that are needed to
(21) demonstrate validity and reliability of the
(22) standards until the plan of review is completed in

(1) 2003.
(2) Department staff concurs that the Council
(3) must address the separate and independent
(4) requirement. Department staff does not concur that
(5) the concerns raised by these writers is sufficient
(6) for granting a deferral of recognition but
(7) recommends that the ABA and Council clarify its
(8) organizational status for recognition as the
(9) nationally recognized accrediting agency.
(10) Another writer supports the renewal of
(11) recognition based on recent changes in the ABA's
(12) accreditation process and the consent decree. This
(13) writer in support of a waiver of the separate and
(14) independent requirement encourages ABA continued
(15) involvement in the accreditation process by the
(16) House of Delegates. The Department believes that
(17) the ABA and Council will address the separate and
(18) independent requirements through discussions about
(19) its accrediting structure.
(20) Two additional writers, both deans of
(21) independent law schools, submitted written comment.
(22) One of the independent law school deans, who is

(1) also the chair of the Independent Law School
(2) Committee called ILSC of the Section of Legal
(3) Education and Admissions to the Bar, indicated that
(4) the ILSC adopted a resolution urging the Council to
(5) continue to seek recognition by the Secretary.
(6) The other independent law school dean did
(7) not explicitly submit written comments but
(8) expressed concerns that the National Advisory
(9) Committee recommended and the Secretary requested
(10) the Council to work specifically with ALDA. He
(11) contends that the committee's invitation to work
(12) with the deans should have included the deans of
(13) the independent law schools who rely on the ABA's
(14) continued recognition to Title IV funds. Each
(15) independent law school dean supported continued
(16) recognition of the ABA through the Council.
(17) The Department received requests to make
(18) oral presentations before this committee from
(19) several persons, including a representative from
(20) ALDA.
(21) In summary, the Council has made concerted
(22) efforts to establish written policies, rules of

(1) procedure and standards to come into compliance
(2) with the requirements for recognition. However,
(3) there are still major problems. The Council and
(4) the ABA need to address the separate and
(5) independent requirements and the role of the House
(6) of Delegates in making final accreditation policy
(7) and decisions.

(8) Because of these problems, staff believes
(9) that its recommendation to grant recognition for a
(10) period of three years is consistent with the
(11) magnitude of the deficiencies as compared to
(12) periods recommended for other agencies with similar
(13) deficiencies. Staff also recommends that the
(14) Council submit an interim report addressing its
(15) progress on each of the remaining issues by
(16) November 1, 1998. This concludes my remarks.

(17) CHAIRPERSON DELCO: Thank you very much.
(18) The readers for this agency are Gordon Ambach and
(19) Robert Hawkins. Gentlemen.

(20) MR. HAWKINS: Thank you very much. I'll
(21) give you a chance to get your breath and take
(22) another sip of water, Ms. Jones. Can you tell me

(1) or tried to draw an analogy of just where the
(2) Council was if it chose to make a request for a
(3) waiver of the separate and independent requirement.

(4) As it stands now, I did that because it
(5) was with the understanding that the Council would
(6) be taking steps both in February of '97 when it met
(7) and in June of '97 when it met to address primarily
(8) these issues and to discuss how they will, in fact,
(9) handle these issues as it relates to any
(10) conversations that they may have with the American
(11) Bar Association.

(12) MR. HAWKINS: Are they technically
(13) eligible for the waiver? Do they meet the time
(14) line? I'm not sure. Are they eligible for the
(15) waiver in terms of the time line? I'm not clear on
(16) that.

(17) MS. JONES: They have been recognized by
(18) the Secretary.

(19) MR. HAWKINS: Right.

(20) MS. JONES: Since before October 1, 1991.

(21) MR. HAWKINS: So they are eligible.

(22) MS. JONES: Yes, they are.

(1) if the Department received third-party requests to
(2) present at today's meeting after the deadline, the
(3) deadline which I believe was published in the
(4) Congressional Record? And if so, the status of
(5) those requests?

(6) MS. JONES: Yes, we did. We received a
(7) mailing on May 19, which was a request-of this
(8) year-which was a request for oral presentation
(9) with a multitude of documents. We also received
(10) not just a third party-well, we received that
(11) request from Dean Lawrence Velvel, the
(12) Massachusetts School of Law. At this point, in
(13) preparation for this meeting, staff has not had an
(14) opportunity to fully review the documents that we
(15) received. We also received not necessarily a
(16) third-party comment but written materials from the
(17) ABA on this past Friday, June 13. I think I
(18) mentioned that. Staff has not had an opportunity
(19) to fully review the documents received in that
(20) regard, and I'm sure that the ABA or the Council
(21) will address those items.

(22) MR. HAWKINS: All right. Thank you. My

(1) MR. HAWKINS: All right.
(2) MS. JONES: With the exception of the
(3) consent decree, which I tried to point out.

(4) MR. HAWKINS: Right.

(5) MS. JONES: There is a problem or a
(6) perceived problem with regard to the element
(7) involving the confidential nature of passing along
(8) accreditation actions to the Board of Governors.

(9) MR. HAWKINS: Thank you.

(10) CHAIRPERSON DELCO: Dr. Ambach.

(11) MR. AMBACH: Thank you, Madam Chair. I
(12) have just one question which probably will be more
(13) pertinently addressed to the Council
(14) representatives. We have a circumstance here where
(15) there have been identified a number of issues, and
(16) yet just last week there was action taken, as I
(17) understand it. What I'm trying to understand is
(18) how many of the issues are actually covered by the
(19) actions taken in the past week? I understand you
(20) did not receive the materials until just last
(21) Friday and perhaps want simply to defer to the
(22) Council representatives to comment on this. But

(1) second question is I draw your attention to a fact
(2) that comes up several times when you talked about
(3) various deficiencies and with an added note that if
(4) the Council-and I'm quoting-"If the Council were
(5) given final policy and decision-making authority
(6) rather than the House of Delegates, then the
(7) Council would meet the requirements of this
(8) section." I see this, I think, I know more than
(9) once several times, which I suspect suggests a
(10) slight bias on the part of the Department perhaps
(11) that they should be given separate and independent
(12) status. That's one alternative. Can you talk a
(13) little bit about another alternative they might
(14) have to come into compliance?

(15) MS. JONES: I think, first of all, what I
(16) did or what staff did in preparing that analysis
(17) was to try to point out to the committee that there
(18) are current structural problems that the Council
(19) has in terms of meeting the separate and
(20) independent requirement. But in the analysis I
(21) also presented not a request for a waiver of the
(22) separate and independent requirement but an analogy

(1) have you any sense as of now as to what degree the
(2) actions taken last week meet the issues which were
(3) identified in your earlier reports?

(4) MS. JONES: For the purpose of our
(5) comment, I will indicate or defer to the Council.
(6) However, staff did reviews of the proposed policies
(7) that were some of the essential issues that the
(8) Council needed to address. If those policies were
(9) adopted in pretty much the same form at this past
(10) June meeting, only those that have to go to the
(11) House of Delegates for approval are still sort of
(12) in limbo where they would not meet the requirement
(13) because they are not currently effective policies.

(14) And I think that the reason that I would
(15) defer to the Council is I think they can best speak
(16) to the status or exactly where those decisions
(17) about what they adopted and what they still have
(18) yet to adopt or might be required by the House of
(19) Delegates for action before they become effective.
(20) So I'm not really sure in that regard.

(21) MR. AMBACH: Well, since the Council
(22) representatives are here, let that be a prelude to