as goals that an approved law school "should" seek to achieve."

Preliminary discussion of proposed changes to the ABA's Standards were first initiated in November 2004 by the ABA Standards Review Committee and assisted by a set of recommendations for revisions prepared by the Section's Diversity Committee. The Council considered the Committee's recommendations and additional recommendations offered by Gary Palm ("the Palm proposals") on behalf of himself and other members of the Clinical Legal Education Association (CLEA) and the Society of American Law Teachers (SALT).

Standard 211

Among the proposed changes is proposed revised "Standard 211," the "Equal Opportunity and Diversity Effort." Previously, the Standard only governed admissions; the revisions extend its reach to cover faculty hiring. In February, the Council proposed the Standard state:

> A law school shall 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, and a commitment to having a student body that is diverse with respect to gender, race and ethnicity…[And law schools] shall demonstrate by concrete action a commitment to having a faculty and staff that are diverse with respect to gender, race and ethnicity.

Standard 211 had not been substantially reviewed since 1994. Discussions began in the Standards Review Committee, which developed a proposal in March 2005. The Council of the Section of Legal Education and Admissions to the Bar approved distribution of the proposal for comment in August of 2005. The proposal was then posted on the web site, preceding a hearing to discuss the proposal at the Association of American Law Schools Annual Meeting in January 2006. Written and e-mailed comments were submitted to the ABA. All of the feedback was taken into account, and a final recommendation was submitted at the Council's February 2006 meeting at which time some modifications were made. The new Standard 211 will be officially voted on by the ABA's House of

ABA Fined by the Department of Justice for Violating 1996 Consent Decree

The controversy regarding the ABA's requirements for law school accreditation extends beyond its recently revised diversity standards. On June 23, the ABA agreed to pay $185,000 in fees and costs relating to charges for violating six provisions of a 1996 antitrust consent decree.

In June of 1995 the United States Department of Justice filed an antitrust lawsuit against the ABA in the U.S. District Court for the District of Columbia. The suit claimed that the ABA had been involved in anti-competitive conduct when it allowed its law school accreditation process to be misused by law school personnel who had a direct economic interest in the outcome of accreditation reviews. The 1996 consent decree, which resulted from this suit, prohibited the ABA from fixing faculty salaries and compensation, from boycotting state-accredited law schools by restricting the ability of their students and graduates to enroll in ABA-approved law schools, and from boycotting for-profit law schools. The consent decree also required the ABA to abide by newly created structural reforms and compliance obligations.

These structural reforms and compliance obligations became the subject of this lawsuit. The consent decree was set to expire on June 25, 2006, but before that date, the Department of Justice charged the ABA with violating six structural compliance provisions of the 1996 consent decree. The six provisions the ABA violated included the following requirements:

> o Annually certify to the court and the United State that it has compiled with the terms of the final judgment;

o Provide proposed changes to accreditation standards to the United States for review before such changes are acted on by the ABA's Council of the Section of Legal Education and Admissions to the Bar;
o Provide briefings to certain ABA staff and volunteers concerning the meaning and requirements of the decree;
o Obtain annual certifications from certain ABA staff and volunteers that they agree to abide by the decree and are not aware of any violations;
o Ensure that no more than half of the membership of the ABA's Standards Review Committee be comprised of law school faculty; and
o Include in the on-site evaluation teams, to the extent reasonably feasible, a university administrator who is not a law school dean of faculty member.

ABA President Michael Greco released a statement declaring: "Contrary to the impression resulting from a press release issued last week by the Department of Justice, the stipulation executed by the parties and the order entered by the court make clear that there was no finding of civil contempt. The ABA remains committed to assuring the highest quality education for lawyers because this benefits both the public and our profession. The ABA Section of Legal Education and Admissions to the Bar will promote this commitment by continuing to administer the law school accreditation process in full compliance with antitrust law, and by the ABA's services to law schools and to the bar admissions process."

Delegates at the ABA's annual meeting held this August in Hawaii.

The ABA revisited Standard 211 because of its commitment to diversity in the legal profession. The disparity between the minority population and minorities in the legal profession continues to grow, and the Council contended it was impossible to achieve diversity at the current rate of minority matriculation. In light of the recent U.S. Supreme Court case, *Grutter v. Bollinger*, 539 U.S. 306 (2003), the ABA determined the timing was prudent to clarify its commitment to diversity through the accreditation standards.

In *Grutter*, the Supreme Court held that law schools could "within constitutionally proscribed limits" consider an applicant's minority status when deciding whom they would admit into the school. A school may not establish a quota for minorities; that would be "outright racial balancing, which is patently unconstitutional." However, schools may aspire to have a diverse class, if they believe that such diversity would further their educational goal.

Many critics of racial preferences and affirmative action policies sharply criticized the ABA's tactics in constructing Standard 211. The Standard's opponents argue that the ABA's racial diversity standard is not an option and is being forced upon them. *Grutter* stated that a law school *may* use race and ethnicity in the admissions process to promote its educational goal of diversity; however, the ABA states that "law school[s] *shall* take concrete actions to enroll a diverse student body" (Interpretation 211-2). These critics allege that the ABA has misrepresented the Court's decision in *Grutter*. In addition, the ABA's requirements are results oriented and thus, the opponents contend, law schools have no other choice but to use race based admissions.

The Standard's critics also contend that the ABA is forcing law schools to not only break their own admissions policies, but also state and federal laws. Interpretation 211-1 has stated that the "requirement of a constitutional provision or statute that purports to prohibit consideration of gender, race, ethnicity or national origin in admissions or employment decisions is not a justification for a school's non-compliance with Standard 211. A law school that is subject to such constitutional or statutory provisions would have to demonstrate the commitment required by Standard 211 by means other than those prohibited by the applicable constitutional or statutory provisions." Consequently, these critics allege that the ABA has placed itself above the law and has told the law schools to join them.