



## **Lowering the Bar to Get a Passing Grade**

by Charles Chieppo

### **Introduction**

Southern New England School of Law (SNESE) is a regionally accredited law school located in North Dartmouth, Massachusetts. It was founded in 1981 and unsuccessfully sought American Bar Association (ABA) accreditation in 1997 and again in 1999. Among the reasons for the rejections were inadequate financial resources and sub-standard academic quality, as reflected in incoming student credentials and the pass rates of its graduates who sat for the Massachusetts bar exam.

After its failed attempts to gain ABA accreditation, SNESE turned its attention to merging with the University of Massachusetts at Dartmouth (UMass) to become the Commonwealth's public law school. Connecticut and Maine are currently the only New England states with public law schools, although New Hampshire is in the process of creating one. The initial merger effort, which called for a \$2.5 million annual state subsidy, was turned down in 2000. Proponents claimed that a 2005 merger proposal wouldn't cost the taxpayers anything. That plan was approved by the UMass board, but turned down by the state Board of Higher Education. A third attempt to combine the two schools is currently underway. This time, SNESE has offered to donate its assets to UMass.

### **Conflicting Goals**

As in 2005, the current proposal is based on the assertion that SNESE can be absorbed into UMass at no cost to taxpayers or the university. Delivering on that claim would require the achievement of conflicting goals.

The plan hinges on more than doubling enrollment at the law school to at least 559 by 2017 to generate desperately needed revenue. But that goal is at odds with the need to improve quality in order to gain ABA accreditation

Simultaneously increasing the school's enrollment and improving the quality of education would be a long and costly road. After SNESE's last attempt to gain ABA approval in 1999 failed, the school relaxed admission standards and cut costs, cashiering a number of full-time faculty<sup>1</sup>, eliminating bar preparation support and dramatically cutting expenditures on its meager library. Predictably, the percentage of SNESE students passing the Massachusetts bar exam has been less than half the state average in eight of the last nine years.

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The difficulty of attracting students to an unaccredited law school poses another obstacle to achieving the plan's ambitious goals. Other schools have had to offer steep discounts to do it. This year, the University of California at Irvine's new Law School is giving a 100 percent tuition credit. Ave Maria Law School, which is now accredited, offered an 87 percent tuition discount during its first year, decreasing to 52 percent by its fourth and fifth years. St. Thomas School of Law in Minneapolis, which sought provisional ABA approval in 2003, discounted tuition by 67 percent its first year of operation, 50 percent in the second and by decreasing amounts in subsequent years<sup>2</sup>. Expanding enrollment without offering deep discounts while dramatically increasing student academic credentials at the same time would be virtually impossible.

### **An Expensive Proposition**

Indiana University School of Law Professor Emeritus James White, who oversaw the ABA's accreditation system for more than 25 years, conservatively assumes that a UMass Law School would have to discount student charges by half in year one and gradually decrease the discount to 10 percent by the its fifth year of operation. Under that scenario, White estimates the school would need a subsidy of \$9.6-\$13 million in its first year<sup>3</sup>. It is unlikely UMass could absorb these costs – the percentage of the system's operating budget that comes from the Commonwealth is already down to 20 percent. That means that over five years, state taxpayers would have to come up with \$52-\$62 million<sup>4</sup>, according to White.

The red ink doesn't stop there. Supporters argue that annual tuition and fees, which would be \$23,565 for in-state and \$31,209 for out-of-state students next year, would largely cover the school's costs. But the average per-student expenditure for public law schools in the northeast is \$36,396 per year. For New England's two public law schools it's \$38,737. Next year, in-state tuition and fees at the University of California at Berkeley Law School will be about \$50,000. In-state charges at the University of California's Hastings Law School will climb to \$39,085.

White estimates that the gap between proposed charges and the cost of educating law students means

that if, as projected, the school enrolls at least 559 students by 2017, annual subsidies of \$8-\$11 million would be needed. The projections don't take other costs into account, like bringing SNESSL's faculty and law library up to ABA standards.

### **Long March to Accreditation**

Putting aside the costs of educating law students and attracting students to an unaccredited law school, the plan to absorb SNESSL into UMass would result in the Commonwealth having an unaccredited law school on its hands for at least six years and probably longer. Many of SNESSL's students are part-time. That means it would take at least four years for them to graduate. Even if the UMass affiliation were to result in a vast and immediate upgrade in its students' academic profile (which would likely require steep discounts, as noted above), it would be four years before the bulk of those students graduated and took the bar exam.

When considering the application of a law school that historically has poor bar pass rates (see Figure 1 on page 3), the ABA generally requires at least two years of improved pass rates before granting provisional approval. Even in the unlikely case of an immediate spike in pass rates, it would be six years before the school could gain even provisional ABA approval.

### **Questionable Claims**

The proposal for UMass to take over SNESSL contains a number of other dubious claims. The 2005 merger plan classified the law school as "continuing education," which would have allowed UMass to keep tuition proceeds, rather than forwarding them to the Commonwealth. This time, supporters note that UMass would turn over law school tuition proceeds. But only about \$3,063 of the \$23,565 in student charges would be for tuition<sup>5</sup>. The rest are fees, which the campuses retain.

UMass values the assets SNESSL proposes to turn over at \$22.6 million. The university breaks down the valuations as follows:

- \$7.7 million for the building and real estate
- \$11.5 million in library resources

**FIGURE 1: PASS RATES FOR ALL TAKERS OF THE MASSACHUSETTS BAR EXAMINATION**

JULY MA BAR EXAMINATION DATE	Percentage Pass Rate Of All Takers	Percentage Pass Rate Of All SNESL Takers	FEBRUARY MA BAR EXAMINATION DATE	Percentage Pass Rate Of All Takers	Percentage Pass Rate Of All SNESL Takers
July 1993	77.1	39.0	Feb 1993	N/A	N/A
July 1994	82.5	33.3	Feb 1994	N/A	N/A
July 1995	78.3	29.0	Feb 1995	N/A	N/A
July 1996	77.3	34.0	Feb 1996	N/A	N/A
July 1997	79.7	36.2	Feb 1997	N/A	N/A
July 1998	73.0	30.4	Feb 1998	N/A	N/A
July 1999	74.0	25.4	Feb 1999	57.6	36.0
July 2000	73.0	45.8	Feb 2000	53.6	24.0
July 2001	75.2	31.3	Feb 2001	51.8	30.9
July 2002	72.6	21.4	Feb 2002	45.3	22.5
July 2003	72.0	23.6	Feb 2003	47.6	22.4
July 2004	77.3	26.3	Feb 2004	58.3	20.0
July 2005	76.5	30.2	Feb 2005	60.4	27.8
July 2006	82.3	33.3	Feb 2006	61.6	27.0
July 2007	82.7	28.3	Feb 2007	58.7	27.3
July 2008	86.4	38.2	Feb 2008	60.6	25.5
July 2009	85.7	47.9	Feb 2009	54.3	31.0

- \$2.5 million in technology, furnishings, etc
- \$1 million in cash

These valuations are questionable at best. Those assets were valued at \$9.5 million at the time of the 2005 merger proposal, not including \$2.6 million in mortgages on the property. The town of Dartmouth assessed the law school building at \$7.7 million, independent of existing mortgages.

SNESL’s library was identified as a weakness by reviewers of the proposed 2005 merger and by the ABA during the school’s two failed accreditation attempts. Today, SNESL pegs the value of “library resources” it would give UMass at \$11.5 million<sup>6</sup>. However, even excluding depreciation, the school reported the cost of its law library books at less than \$1.6 million on its 2007 tax filing, which covers the fiscal year that ended on June 30, 2008. It would be logical to look to electronic resources to make up for the difference, but the school reported the cost of all its electronic equipment to be about 253,000 on

the same tax return. For the \$11.5 million claim to be true, the market value of these fully depreciated books and electronic equipment would have to be more than six times their cost.

Supporters cite a demand for low-cost legal education and that more of the school’s graduates would pursue careers in public interest law. But New York and Delaware are the only states with more lawyers per capita than Massachusetts<sup>7</sup>. There are already seven ABA-accredited law schools in the Commonwealth and Rhode Island’s Roger Williams University, which is less than 20 miles from SNESL, closed its law school’s evening program due to lack of demand. As for producing more public interest lawyers, Northeastern University is home to one of New England’s most expensive law schools. It’s also near the top in terms of the percentage of graduates pursuing public service.

## **A Rescue Effort**

SNESL's financial condition appears to be grim. The school seems to have abandoned efforts to achieve ABA accreditation on its own, pinning its hopes instead on the UMass affiliation. One of the reasons cited for failure of the 1999 ABA accreditation effort was inadequate resource stability. The failure of that effort made a bad situation worse. Enrollment dropped precipitously and a financial crisis ensued. A 2000 audit cited SNESL for defaulting on the terms of a letter of credit required as part of its Massachusetts Industrial Financing Authority education bond financing<sup>8</sup>.

Among the people UMass hired to analyze the takeover was Peter Glenn, who was dean of the Dickinson Law School when it merged with the Pennsylvania State University. Glenn wrote, "If this particular proposal is not approved, it appears likely that SNESL... will disintegrate<sup>9</sup>."

## **Conclusion**

For the planned UMass takeover of Southern New England School of Law to succeed, the law school would have to increase enrollment dramatically while at the same time achieving equally dramatic upgrades in the credentials of the students it attracts, the quality of the school's academic programs and law library. According to Indiana University School of Law Professor Emeritus James White, who oversaw the ABA's accreditation system for more than 25 years, deeply discounted student charges are likely the only way to achieve these conflicting goals. But discounts would siphon off desperately needed revenue.

Because deep discounting of student charges would likely be needed to attract higher-performing students to an unaccredited law school and proposed student charges are far below the cost of educating law students in the region, accepting Southern New England School of Law's donation would cost taxpayers more than \$50 million over the next five years, exclusive of the substantial cost of enhancing the school's academic quality enough to gain accreditation to the American Bar Association.

After that, White estimates that the necessary annual subsidy would likely be in the \$8-\$11 million range, before inflation.

The University of Massachusetts' Board of Trustees has voted to accept Southern New England School of Law's offer, leaving just one last hurdle. The proposal must be approved by the state Board of Higher Education, which is expected to vote on it in February.

SNESL's interest in offering itself to the UMass is clear. It appears to be no less than a matter of life and death for the embattled law school. The benefits that would accrue to the citizens of Massachusetts are far less obvious. At the very least, the Commonwealth's taxpayers should be made aware of the costs that would likely be associated with turning SNESL into the University of Massachusetts Law School before a final decision is made.

## **Endnotes**

1. Letter from James P. White, consultant emeritus on legal education to the American Bar Association, to Robert Manning, Chair of the University of Massachusetts Board of Trustees, pp. 2-3, November 12, 2009
2. Ibid, p.3.
3. Ibid.
4. Final Application for New Program, Proposal to Add Juris Doctor Degree, University of Massachusetts Dartmouth, fall 2009, Appendix B, P. 81.
5. Southern New England School of Law 2007 federal tax return, Form 990.
6. See [http://www.averyindex.com/lawyers\\_per\\_capita.php](http://www.averyindex.com/lawyers_per_capita.php). Site reviewed on January 14, 2010.
7. Sansivieri, Kimball & McNamee, LLP, "Independent Auditors Report," August 2, 2000, page 4.
8. Comments on the University of Massachusetts Dartmouth Proposal for Approval to Award the Juris Doctor Degree, Peter G. Glenn, November 16, 2009, p. 3.



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