Opponents of Affirmative Action Seek Revocation of ABA's Accrediting Power

By KATHERINE S. MANGAN

Three prominent groups opposed to affirmative action asked the U.S. Department of Education on Wednesday to revoke the American Bar Association's authority to accredit law schools unless the association drops requirements that the groups consider "discriminatory" and "politically correct."

The Center for Equal Opportunity and the National Association of Scholars each sent letters to the department complaining about the association's new, tougher stance aimed at ensuring compliance with its diversity requirements. A third group, the Center for Individual Rights, was drafting a similar letter late Wednesday and expected to send it by the end of the day.

"It is outrageous that the ABA should use its accreditation authority to force law schools to engage in politically correct and illegal discrimination," Roger B. Clegg, president of the Center for Equal Opportunity, said in a written statement accompanying his letter. "It would be even more outrageous were the Department of Education to allow the ABA to extort such illegal and unfair behavior."

He specifically objected to the new "Equal Opportunity and Diversity" standard, approved last month by the association's accrediting arm, the Council of the Section of Legal Education and Admissions to the Bar. The standard, which will be presented to the bar association's House of Delegates for approval in August, would require law schools to demonstrate the specific steps they were taking to diversify their student bodies, faculties, and staffs (The Chronicle, February 14).

The policy states that law schools are not exempt from those requirements even if they are located in states, like California and Washington, that ban racial preferences in college and university admissions.

That provision, says Terence J. Pell, president of the Center for Individual Rights, will provide such law schools "with a backdoor loophole to evade the judgment of the voters in those states that race should not be a factor in admissions."

John A. Sebert, the bar association's consultant on legal education, said law schools in those states could find other ways, through recruiting or similar efforts, to achieve diversity. He denied that the ABA was trying to force law schools to meet specific numerical quotas to demonstrate their commitments to diversity.

"The council expressly rejected requests that it include a requirement that schools achieve a critical mass of students from underrepresented groups because that kind of requirement could in fact be criticized as
being a quota," he said on Wednesday.

Nevertheless, in his letter to the Education Department, Mr. Clegg objected to the bar association's new stress on measuring the results of diversity efforts.

"First, its emphasis on law schools' getting their numbers right inevitably pushes them toward discrimination and preference on the basis of race, color, national origin, and sex," in violation of federal and state laws, he wrote.

He said the U.S. Supreme Court's 2003 decision involving the University of Michigan's law school did not require higher-education officials to give preference to applicants based on their race or sex; it simply determined that they could do so (The Chronicle, July 4, 2003).

The letter from the National Association of Scholars was signed by its president, Stephen H. Balch, and the chairman of its law section, Gail Heriot. Ms. Heriot is also a professor of law at the University of San Diego. They, too, objected to the ABA's emphasis on showing the results of diversity efforts.

"No law school that is up for its seven-year review will fail to recognize the implicit message: A law school must do what's necessary to obtain the undefined, unspecified diversity 'results' that will satisfy the ABA or face the disastrous possibility that its accreditation will be revoked or held up. If that means employing racial, ethnic, or gender preferences that the law-school faculty believes are academically ill-advised, then so be it. Anything is better than de-accreditation." (Italics are the letter-writers'.)

The letter adds: "It is difficult to avoid the interpretation that the ABA is attempting to pressure law schools into breaking the law. If so, it is highly irresponsible. Doing so under color of authority of the Department of Education is simply appalling."

The groups also argue that such policies hurt not only the students who are denied admission, but also those who are accepted at schools for which they are not academically prepared.