Dear Mr. Greaney: Enclosed please find the comments of the Clinical Legal Education Association on the proposed Consent Decree to be entered in the above case. CLEA is very concerned that the proposed decree will exacerbate the very problems it identifies by further entrenching the power of legal academics, and, more importantly, may not fully serve the public interest by interfering with the ability of accreditation to improve the quality of lawyers.

There are two ways in which this ''final'' judgment will not really be final. First, many of its most important terms await the outcome of recommendations to be made by the ''special commission'' and reviewed by the United States. Second, the United States retains the authority to review all changes in accreditation standards, interpretations and rules. CLEA would greatly appreciate the opportunity to participate in these ongoing processes. We believe that we can be a useful voice in insuring that accreditation serves the needs of students to learn how to practice law and the needs of their future clients for competent lawyers. Additionally, we would be happy to meet with you at any time to discuss the concerns expressed in the attached comments.

Sincerely,

Mark J. Heyrman,

Secretary-Treasurer.

Enclosure.

Comments of the Clinical Legal Education Association on the Proposed Consent Decree Between the United States of America and the American Bar Association

The Clinical Legal Education Association (CLEA) is an organization of more than 400 clinical teachers affiliated with more than 125 law schools. It is the only independent organization of clinical teachers. Because clinical teachers have a dual identity as law teachers and practicing lawyers, we believe that we are in a unique position to address issues concerning the relationship between law schools and the bar and to evaluate the competing demands upon law schools which make the accreditation process so difficult.

1. Law schools have two major purposes: (1) to prepare students for the competent, ethical and effective practice of law; and (2) to conduct research designed to increase our understanding of law and legal institutions with the ultimate aim of improving our system of justice. Any system of accreditation must be designed to increase the likelihood of achieving these purposes. It must also recognize that law is a diverse and complex field and that a sound legal education system will include law schools that are diverse in their methods and practices and in the balance they chose to strike between these sometimes competing goals.

2. Because of law's complexity, few non-lawyers are able adequately to assess the ability of lawyers to perform on their behalf. Additionally, few prospective law students are able to assess the skills and qualities of mind that they will need to practice law effectively. Thus, the ordinary market mechanisms are insufficient to insure either that law students demand an appropriate legal education or that clients, the ultimate consumers of legal education, can with confidence locate lawyers who are capable of competently assisting them. On the other hand, most law faculty derive the largest share of their prestige within the legal education community from their scholarly output. Consequently, while the accreditation process should enhance the ability of law schools to produce scholarship, there is far less need for outside pressure to insure that this important goal will be met. Thus, the consent decree must be designed to insure that its efforts to eliminate anti-competitive practices do not interfere with the most important goal of accreditation: the need to improve the quality of lawyers. (See ¶33 of the Complaint, describing the legitimate goals of accreditation.)

3. Because, as alleged in the Complaint (¶¶9–14), the accreditation process has been dominated by academics and deans, it has not been able to serve the function of insuring that students are adequately prepared to practice law. The failure of law schools to prepare students to practice law competently and ethically has been documented repeatedly, most recently in *Legal Education and Professional Development: An Educational Continuum*, the 1992 Report of the ABA Task Force on Law Schools and the Profession: Closing the Gap (this Report is commonly referred to as the MacCrate Report after the Task Force's chairman, Robert MacCrate). Thus, CLEA supports those aspects of the proposed decree which will improve the likelihood that accreditation serves students and clients, not deans and academics.

4. Unfortunately, the proposed consent decree will not necessarily further that goal. Indeed, it may weaken an accreditation process which is already quite weak. One of the ways in which the decree may weaken the accreditation process is its insistence that each site visit team include ''one university administrator who is not a law school dean or faculty member'' (Decree, p. 4). This requirement is apt to increase the likelihood that law school resources are expended on research rather than on education. University administrators have neither an ethical obligation to, nor a highly developed interest in, insuring that the quality of lawyering be improved. Indeed, the principle tension between law schools and the universities with which they are affiliated is the concern the law schools are not sufficiently academic. Since the prestige of most universities is most commonly measured by the scholarly output of its faculty, these administrators are apt to pursue the goal of improving scholarly output as their highest priority. Finally, if the Complaint is correct in alleging that accreditation has been taken over by a ''guild'' of academics, then it seems odd to add to the accreditation process persons so completely identified as running the guild.

5. The requirement that site visit teams include a university administrator, when coupled with the new requirement that the majority of each team not be full-time faculty members, is also apt to reduce the likelihood that these teams contain clinical teachers. Since clinical teachers are the only full-time members of most faculties who practice law, this result may exacerbate the imbalance between research and the education of lawyers which already exists.

6. More importantly, the Proposed Consent Decree does little to change or challenge existing standards and practices which enhance the power of academics at the expense of the needs of students and their future clients. For example, the existing standards mandate that legal academics be granted tenure, but do not provide this protection to many clinical teachers who are involved in preparing students to practice law. Standard 405(d), (e). The standards also require law schools to permit legal academics to participate in the governance of the law school, but have not been interpreted to mandate that clinical teachers be allowed to partake in governance. Standard 304. This differential treatment serves to preserve the status quo in which the research and other needs of academics are given priority over the needs of students and their future clients. That is because clinical teachers and adjuncts, who often are the only members of law faculties with substantial interest in how law is practiced, are often denied a voice in governance.

7. As set forth in the Complaint (¶ 21), the current accreditation standards specify student-faculty ratios. Standard 402. However, under this standard, many clinical teachers and adjunct faculty primarily engaged in preparing students for the competent and ethical practice of law are not included in the faculty component of the ratios. (Complaint, ¶ 21). This omission discourages law schools from employing many persons whose primary role in the law school is to prepare students to practice law. CLEA supports the provision in the proposed consent decree which requires the ABA to reconsider its standards concerning faculty-student ratios. (Decree, p. 8)

8. The proposed Consent Decree also does nothing to change the fact that the current accreditation standards do not even require law schools to provide students with any experience in the practice of the law. Indeed, the self-interested nature of the standards is demonstrated by the fact that they are virtually silent concerning curriculum. This silence permits academics to pursue their own teaching interests without concern for the effect on students or their future clients. Thus, while the superiority of clinical methodology for preparing professionals is well documented (see, for example, D. Schon, *The Reflective Practitioner* (1983)), the accreditation standards do not require law schools to provide any clinical experience for students and many law schools do not so provide. The Consent Decree should prohibit the ABA accreditation process from being used to protest the interests of academics by mandating standards that, at a minimum, treat the obligation of law schools to prepare students to practice law as being of equal importance to their obligation to conduct research.

9. CLEA supports the continued role of the American Bar Association in accreditation. However, the current process has failed, not because the standards are too vigorously enforced, but because they are misdirected. Given the interests of legal academics and