to the academic administrators' dominance of the accreditation process.

Second, non-law school university administrators will also likely defer to their law school colleagues' educational judgments, except in one area of special concern to central university administrations. University administrators will undoubtedly challenge legal academics' use of accreditation to limit the percent of law school revenues a central administration can divert for its own discretionary use. There is a serious public policy question as to whether the important cause of general higher education justifies a university's confiscation of the high law school revenues that are made possible by legal education's current relatively low cost and high tuitions. Although the public ultimately pays for such high tuitions through higher legal costs, universities' appropriation of much of that tuition deprives the public of the benefit such tuition would otherwise derive through improved legal education. However these conflicting interests can be best accommodated, there is no question that elevating the role of university administrators in the accreditation process is likely to decrease the quality of legal education without any corresponding increase in competitiveness.

The personnel changes contemplated by the proposed Judgment will, thus, not significantly diminish legal educators' dominance of the accreditation process. There is, in sum, nothing in the Judgment that would cause the law school deans who have dominated, and will continue to dominate, ABA accreditation, to change their priorities so that the preparation of law students for competent, ethical practice would become accreditations' primary mission. As indicated by the ABA's much heralded Wahl Commission Report's affirmation of the basic elements of the present accreditation process and its explicit rejection of proposals that would make preparation for practice a far more significant goal of accreditation, the ABA appears incapable of generating by itself any systemic alteration of the existing priorities of law school accreditation.

The Wahl Commission Report did make some largely hortatory concessions to the recent concerns expressed in the MacCrate Task Force Report and in the ABA House of Delegates for greater attention to the preparation of students for practice. Far more significant, however, was the Commission's ringing endorsement of an accreditation process that has reinforced a system of legal education in which scholarship production is the most rewarded faculty activity and teaching for practice competence the least rewarded. Concrete curricular reforms that would make available to all students the opportunity to become professionally competent through supervised practical learning experiences taught by skilled teachers would impose unacceptable economic burdens on law schools, according to the Wahl Commission. The Commission would, thus, do virtually nothing to change the priorities of an educational system in which students' limited opportunities for experiential learning would continue to be relegated to a so-called special interest group of second-class citizens—mainly non-faculty adjuncts, legal writing instructors and, very often, clinical teachers.

The language I propose for addition to the Final Judgment would not run afoul of the Wahl Commission's strictures against imposing on law schools either uniform programs or prohibitive expenditures. What such a mandate would do, however, would be to assure that whatever cost barriers to entry into the legal education market the ABA decides to impose would have a clear relation to promoting the public interest in the adequate preparation of law graduates for practice.

Such a mandate will, of course, not be a panacea and will undoubtedly be vigorously opposed by most legal academics who will see it as an intrusion on their prerogative to determine ''quality'' legal education. This objection should be rejected. As noted above, most legal academics presume that the highest quality legal education takes place in law schools with the most prestigious legal scholars, regardless of those scholars' interest in or aptitude for preparing students for practice. It is legal academia's inverse correlation between ''quality'' education and the attention a faculty pays to preparing students for practice that has resulted in the Government's present accusations of antitrust conspiracy. ABA accreditation will not be reformed if the proposed Judgment allows this mentality to continue to hold sway.

Furthermore, the academics' warning against using ABA accreditation to suppress educational diversity sounds a false alarm. An accreditation process narrowly tailored to achieve its public protection purposes will not prevent legal academics from implementing their own visions of a ''quality'' or scholarly legal education in their own schools and through their own membership organizations. It will, however, prevent them from using the quasi-governmental power of ABA accreditation to deny market entry to those who do not share or cannot afford the more prestigious academics' vision of whatever they think a ''quality'' legal education should be.

In sum, enforceable restrictions on entry to the legal education market are necessary, but they can be justified only to the extent they protect the public interest in assuring that law students are receiving the education necessary for initial readiness to practice law both competently and ethically. Failure to incorporate this insight as an explicit mandate in the Final Judgment would forfeit a unique opportunity to develop an accreditation process that will fairly and effectively protect the public interest in adequately prepared law graduates without denying market entry to those who can satisfy that public interest.

Sincerely,

John S. Elson,

Professor of Law.

University of Florida, College of Law, Offices of the Faculty

PO Box 117625, Gainesville, FL 32611–7625, (904) 392–2211, Fax (904) 392–3005

August 29, 1995.

Dear Mr. Greaney: Please excuse all the confusion. The comment I mailed on the 24th had many typographical errors. Yesterday, the 28th, I mailed a corrected copy by first class mail. After sleeping on it, though, I realized I would feel more comfortable sending the corrected copy by express mail so that you will have it tomorrow. Please regard the enclosed comment as my ''official'' comment.

Thank You,

Jeffrey L. Harrison

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August 29, 1995.

Mr. John Greaney,

Chief, Computers and Finance Section, Antitrust Division, Department of Justice, Room 9901, JCB Building, 555 4th St. N.W., Washington D.C. 20001

Re: United States of America v. American Bar Association

Dear Mr. Greaney: I am writing to comment on the pending consent degree with respect to the above referenced case. Although I oppose certain elements of the proposed consent decree, my more pressing hope is that the Antitrust Division will devote further study to the issue of the proper market definition, competitive harms and the appropriate remedy. This is all in the context of whether the changes in the accreditation process will further the public interest in having low cost and high quality legal services available to all Americans.

Let me begin by noting that there appear to be three possible markets involved here. One market is the market for post graduate study. Law schools operate as sellers in this market and concerns in this market would be on the buyers. Another market is for individuals selling services as law teachers (full time or adjuncts) or administrators. The antitrust concern would be that law schools may have market power as buyers of the services of these individuals (monopsony power). Please note that monopsony power is used by buyers to force prices below competitive levels Antitrust Law and Economics (1993).

The third market is the market for legal services. Obviously, law schools provide the educational opportunities that are combined with other inputs by individuals who want to become attorneys. If the input is too expensive, legal services would become scarce and expensive. My view and, I am confident, the view of the great majority of Americans is that this is the only relevant market. Any intermediate market—like the sale of legal training by laws schools—is only relevant to the extent it bears on the primary market. In this regard it is important to note that the most costly aspect of attending law school is probably not tuition. Whether the student can afford to give up the income forgone while in law school is likely to be a more critical factor. My point is that one