Chief, Computers and Finance Section, Department of Justice, 555 Fourth Street, N.W., Room 9903, Washington, D.C. 20001

Re: United States of America v. American Bar Association Civil Action No. 95–1211 (CR), U.S. District Court for D.C.

Dear Mr. Greaney: *My Interest.* I became involved in the national accreditation of law schools in September 1968 when I became the first Consultant on Legal Education to the American Bar Association (ABA). I became the Executive Director of the Association of American Law Schools (AALS) in September 1973 and served in that role for 11 years. AALS accredits law schools by admission to membership—the historic method. After retiring from the AALS in 1987, in 1989 I became a member of the ABA Council's Standards Review Committee. While with the AALS, I was active in the Council on Postsecondary Accreditation Committee on Professional and Specialized Accreditation. In these capacities and as a law teacher, I have inspected many laws schools and long dealt with accreditation issues.

My experience and knowledge of the history of legal education and accreditation compels me to help the court understand what the Department of Justice () has done and the court is asked to do. The proposed Final Judgment manifests a gross misunderstanding of legal education and accreditation. Its understanding is not enlightened by knowledge of the history of legal education.

Legal Educators' Guild and Capture. DOJ uses the pejorative ''guild'' to describe the law teachers and deans involved in the ABA accreditation process. This defames the hundreds of law teachers and deans who have given faithfully of their time to the process without compensation or other reward and in the public interest. It also defames the judges, practitioners, and bar examiners who served the process faithfully, especially those who have for years been the majority members of the Council. The implication of the charge is that these lawyers have been dupes, fools, or co-conspirators.

Before the DOJ issued its command, the 19 officers and members of the 1994–1995 Council were three members of state supreme courts, six practitioners, one bar admission administrator, six law school deans, one law school librarian, and two professors, one of whom is retired and formerly was a college president and law school dean. If the purpose of the conspiracy was to ''ratchet up'' the salaries of law teachers, there was only one individual with a direct interest in the purported conspiracy.

DOJ apparently assumes that the interest of law teachers and deans are identical. If it had a realistic understanding of law school budgeting, it would understand that they are not; while attracting and retaining highly qualified and valued law teachers is obviously an objective of the dean. There are other important objectives of expenditure, such as scholarships, library collection, adequate admissions and placement programs, and student co-curricular activities. Deans of inspected schools certainly do not want unreasonable requirements imposed on them, especially unreasonably high salary requirements for full-time faculty. They want to meet the competition set by market forces but not pay unnecessarily high salaries. DOJ gives as evidence that legal educators dominate the law school accreditation process the fact that 90 percent of the members of the Section are legal educators. It neglects to note that the Section plays little or no role in the accreditation of law schools. The role of Section members is largely to elect the officers and members of the Council. Like many other ABA Sections and nonprofit organizations, the electoral process largely affirms the decisions made by the nominating committee.

ABA ''Monopoly'' of Accreditation. The ABA did not acquire by its action the ''monopoly'' to accredit law schools and have its approval exclusively relied upon by most bar admission authorities. State supreme courts and bar admission authorities gave that authority to the ABA. These authorities have confidence in the Standards defining quality and in the process evaluating adequately the schools.

In *La Bossiere* v. *Florida Board of Bar Examiners,* 279 So. 2d 288 (FL 1973) the Florida Supreme Court observed: ''We were persuaded to follow the American Bar Association Standards relating to accreditation of law schools because we sought to provide an objective method of determining the quality of the educational environment of prospective attorney. * * * (W)e were unequipped to make such a determination ourselves because of financial limitations and press of judicial business. * * * (I)t is * * * patently obvious that judicial bodies are singularly ill-equipped to bring to bear the resources and expertise necessary to conduct a case-by-case evaluation.''

Cognizant of the trust placed upon it by bar admission authorities, the ABA Council has for many years involved members of state supreme courts in its work—as members of the Council, site evaluation teams, and other committees of the Council. It also sends to all supreme courts and other bar admission authorities, among others, all proposed amendments to the Standards. Officers and the Consultant from time to time attended meetings of the National Conference of Chief Justices to discuss the Council's accreditation activities.

The Department of Education (D.Ed.) now recognizes the Council of the ABA Section of Legal Education and Admissions to the Bar as the sole accreditation agency for law schools. While the AALS has been accrediting law schools by admission to membership since 1900, the Department of Education recognizes only one accrediting organization for law. It is the Council.

The United States' recognition of accreditation agencies who admit as members or approve educational institutions assures the federal government that the students who attend the accredited institutions are receiving a quality of postsecondary education that justifies the government student loan and grant programs to those students.

It is these two organizations that grant to the ABA Council what ''monopoly'' the Council has with respect to legal education. It is not any action by the Council of the ABA that gives it activity this monopoly. It is their ''fault'' that the ABA Council plays the critical role.

Basic Characteristics of Accreditation. Historically accreditation of educational institutions served two purposes. First, it informs prospective students and their parents that the education provided by an accredited institution at least meets the basic requirements of quality. Secondly, it informs other educational institutions that the credit or a degree earned by a student at an accredited institution is entitled to be recognized by other educational institutions. Later accreditation has been used to assure professional licensing institutions, such as legal and medical profession admission authorities, that the degree earned at an accredited institution represented an adequate professional education.

Accreditation is a peer review process. Professional educators evaluate educational institutions' conformance to quality standards. It is understandable therefore that legal educators are involved in evaluating programs of legal education.

In 1970 the Council decided that site evaluation teams should contain, in addition to legal educators, practitioners, judges, bar admission administrators and the like. This practice has been followed since then.

In the mid-1970's the Bureau of Competition, Federal Trade Commission questioned the involvement of the American Medical Association in the accreditation of medical schools through its partnership with the Association of American Medical Colleges in the Liaison Committee on Medical Education. The concern was about any role for the practitioners of medicine in professional education for the profession. The concern was that doctors would use accreditation to serve the economic interests of those in the profession. In the mid-1990's DOJ is taking an opposite position concerning the accreditation of law schools. Curious?

On the other hand, it is clear that the profession has not used ABA accreditation to hold down law school enrollment or the increase in the number of approved law schools. Responding to the great growth in demand for legal education and interest in establishing new law schools, the 1971 ABA presidential Commission on Professional Utilization noted the large unserved need for legal services and welcomed this growth.

Relevance of Faculty Compensation. The proposed Final Judgment prohibits the ABA from considering compensation paid full-time faculty in its accreditation of law schools. Whatever is the alleged conduct that forms the basis for the DOJ prohibition, it is beyond dispute that a law school's compensation structure directly affects the quality of those whom it can recruit and retain. Is it mere coincidence that the law schools that compensate its faculty best are also those that have the most highly regarded programs of legal education?

Law schools are not immune from market forces. Other law schools and law firms are a school's principal competitors. Major law firms and law schools compete for the same