Dear Mr. Greaney: The purpose of this letter is to provide the Department of Justice with written comments with respect to the proposed final judgment in the USA v. American Bar Association, Civil Action No. 95–1211 (CR).

While the final judgment appears to deal with some issues, I strongly believe that the Final Judgment does not adequately resolve certain other practices that result in very anticompetitive and discriminatory consequences. I do not know if these issues have been reviewed by the Department, but the final judgment should take them into account.

I refer primarily to the accreditation standards of the ABA which appear to require that law schools set schedules in such a way as to minimize the amount of time that all students can work while attending law school, and even more, nearly make impossible outside work during a student's first year. I do not understand any rational basis for this practice, and believe its primary effect is to minimize the entrance into the profession of those who would have to or choose to ''work their way through'' their legal education.

While testimonial evidence is not necessarily as relevant as would be statistical verification of my claims, I will tell you that in 1982, BYU Law School refused to allow me to work into a schedule that would allow me, a CPA, a reasonable (i.e. three hour or greater) block of time during every school day in which I could complete outside work for clients. I remember discussing the situation with the Assistant Dean, who admitted that such a schedule could have been completed, but that the American Bar Association would consider it a negative factor in BYU's accreditation process if they were to accommodate my schedule.

I understood the reason for the scheduling difficulty was an ABA proclamation that first-year students needed to concentrate on studies, and not on outside work, and that scheduling classes at 8:00 am, 11:00 am, 2:00 pm and a study group at 6:00 pm would cause students to focus on the law, avoiding the certain distractions inherent in earning a living. However, the groups that congregated around study carrels seldom (until ''finals'' weeks) discussed the recent contracts, torts or property law concepts, but instead, their conversations inevitably rotated toward movies, television, sports, BYU policies, and the national championship football team.

The effect of the ABA policy was obvious: I could not learn because carrel conversations were usually not about the law, and I could not earn because I could not find appreciable blocks of time in which to make money. Ironically, my grades probably suffered because I would miss a class when I felt it financially necessary to service a client, or when I would work late at night, which some expert at the ABA would probably admit was not helpful for my class attentiveness during the daytime sessions.

I was able to make it through law school, but I believe the effect of the baseless ABA regulation is to exclude others without the right combination of sufficient means, earning capacity or desire to get through law school, and I am sure that the practice arbitrarily reduces entrance into the profession, of students generally (anticompetitive) and especially economically disadvantaged classes (discriminatory).

I believe the number of hours of outside work had little to do with my ability to study or learn. Law schools should be able to determine compliance with assignments and deadlines, and to appropriately measure class learning if they administer fair and comprehensive examinations. In my case, I worked more than the allowed number of hours, but still graduated in the top 10% of my class, while presumably those who knew the names and achievements of the football players did not. I did not lose the opportunity for the quality education BYU Law School offered.

The Department of Justice's lawsuit discusses the effects of the ''capture'' of the accreditation process by the accredited. In my situation, I thought it very unfair that by following the ABA accreditation standards, BYU actually reduced my ability to pay my own way through law school, and I was required to borrow, and the primary source of those funds was the BYU Student Loan Program. This appears to me to be a highly anticompetitive process, and those who are not selected by that process (although admittedly I was) find themselves at another distinct disadvantage where the opportunity for unfair discrimination can arise, especially where a law school may have additional criteria for the availability of those loans (i.e. compliance with church regulations or other goals).

I hope that the Justice Department will not simply stop its review of the accreditation policies of the ABA with the final judgment, and will not enter into the final judgment prior to examining this practice. The rules relating to barring students from working more than 20 hours a week or scheduling classes to prohibit outside work during the first year and minimized work in years two and three need to be examined and then discarded as what they are: Rationally baseless policies designed to prevent entrance into the profession which operate to discriminate against those who need the protections of antitrust and antidiscrimination laws the most.

I hope this material is helpful. If you wish more information about the matters in this letter, please feel free to call me.

Sincerely,

Frederick Judd.

Coyne and Condurelli, Attorneys at Law,

Professional Center, 198 Massachusetts Avenue, North Andover, Massachusetts 01845 (508) 794–1906

October 2, 1995.

Mr. John F. Greaney, Esq.,
Computers and Finance Section, U.S. Department of Justice, Antitrust Division, 555 4th Street N.W., Room 9903, Washington, DC 20001

Dear Mr. Greaney: I am writing this letter of public comments not on behalf of the Massachusetts School of Law but as an attorney and officer of the court. For some time, I have been very concerned about the American Bar Association and its agents confusing effective advocacy with a reckless disregard for the truth in their efforts to continue to control law school accreditation at all costs.

Various pages from the depositions of the ABA Consultant, James P. White, and ABA Section of Legal Education officer, Claude Sowle, conducted during the preliminary discovery phase of Massachusetts School of Law's antitrust suit are enclosed. As you can see, Mr. Sowle's deposition (page 206, lines 22–25 and page 207, lines 1–2) and Mr. White's deposition (page 58, lines 23–25 and Page 59, lines 1–24) are at odds with paragraphs 15 and 16 of the Government's complaint. They are likewise at odds with the enclosed April, 1995 exchange of correspondence between counsel for the ABA and its Consultant.

In view of statements in the government's complaint, Mr. Sowle's testimony that the salary standard was not applied to MSL in June, 1993 because the ABA's ''actual practice for some time was not to pay attention to the geographical or competitive comparability of salary levels in its evaluation,'' is necessarily contrary to the information that the Justice Department must have in its possession. If Sowle's testimony is contrary to documentary information possessed by the Division, the testimony is plainly false and as officers of the Court must be exposed as such.

Additional pages from these two depositions are enclosed which show that when MSL attempted to impeach this testimony with contrary evidence from various schools, its efforts were blocked by the ABA. It is incumbent on the Government to clarify this matter since counsel for the ABA has yet to bring this false testimony to the Court's attention. Canon 7 of the Canons of Ethics and the relevant Disciplinary rules, specifically DR 7–102(B)(2), and District of Columbia Model Rule 3.3 require the Government's action at this time. I appreciate your efforts to improve American legal education and concomitantly the American justice system.

Sincerely,

Michael L. Coyne

MLC:cm

cc:

D. Bruce Pearson, Esq.

Darryl L. DePriest, General Counsel

Privileged and Confidential

April 27, 1995.

Dean James P. White,
Consultant on Legal Education, American Bar Association, 550 W. North St., Indianapolis, IN 46202

Dear Jim: Reflecting upon our conversation yesterday, I though that it might be useful to you and the Accreditation Committee if I put in writing my recommendations concerning the Committee's meeting this weekend.

As we discussed, there are a number of schools that are scheduled to appear on Friday and Saturday. I understand that some of the schools that are appearing are responding to concerns raised about faculty and staff compensation. In that respect, I propose that the Committee Chair make the