

find with the production of documents by the Massachusetts School of Law, we can take that up at an appropriate time.

Mr. Pritikin. No, I have a problem with your pulling out documents that haven't been produced; I do have a problem with that.

Mr. Hart. All right, well, let's proceed.

Mr. Pritikin. If you want the witness to identify the document, he can do that. But if you're going to ask substantive questions on a document that has not previously been produced—

Mr. Hart. I know of no such rule in litigation.

Mr. Pritikin. What's the pending question? (Whereupon, the record was read by the court reporter.)

Mr. Pritikin. Can you answer that question?

The Witness. This appears to be an action letter went by me to, in 1984 to the president and dean of Antioch University and its School of Law.

By Mr. Hart.

Q. And it sets forth, does it not, conclusions by the Accreditation Committee with respect to the Antioch School of Law?

Mr. Pritikin. I'm going to instruct the witness not to answer any further questions about the document.

It does not pertain to the Massachusetts School of Law. Apparently it pertains to Antioch University. It says—I don't know where you got the document, it says "Strictly Confidential" on it, and the witness is not going to answer questions about this.

Mr. Hart. Let, will you please cite me some provision of the Federal Rules or some order or whatever that forecloses me to ask this witness questions about some document.

Mr. Pritikin. Judge Ditter has already ruled that matters pertaining to other law schools are not relevant to these proceedings. This has nothing to do with this case.

Mr. Hart. Well, this witness has already testified that the act, the actions and practices by the Accreditation Committee with respect to salaries are, are not in accordance with the literal letters of the second sentence of 405(a) of the Standards and they have followed a different practice over the years. And I need, bases that as far as a decision with respect to the Massachusetts School of Law, and think I'm entitled to get into what, in fact, the practice of the American Bar Association's Accreditation Committee has been with respect to faculty salaries.

There's an old legal saying that you can't have your cake and eat it too.

Mr. Pritikin. We disagree. In fact, any salaries are not part of this case. The Antioch University School of Law is not part of the case. This is not going to—

Mr. Hart. We've made allegations in this case about a conspiracy. We've alleged a conspiracy relating to salaries, and I think that I'm entitled to get into that. I don't know of any rule that forecloses me from getting facts from this witness.

And this document is chockablock full of references to the salary levels of the Antioch School of, of Law and how low they are, and is a basis for the decisions that are made with respect to that school.

Mr. Pritikin. The witness—

Mr. Hart. It's totally inconsistent with this witness's testimony and Claude Sowle's

testimony with respect to the practice of the Council with respect to faculty salaries.

Mr. Pritikin. Well, my instruction stands. You might as well move on.

By Mr. Hart.

Q. If I had asked 15 other questions with respect to this document, Dean White, would you have refused to answer those?

A. I would.

Q. If I had asked 25 questions with respect to this document, would you have refused to answer those questions?

Mr. Pritikin. Based on the description of relevance that you have given us, the instruction will be the same, and I'll stipulate to that.

The Witness. Yes.

By Mr. Hart.

Q. And if I had 15 other action letters with respect to 15 other schools that contained information with respect to the practice of the Council with respect to, under 405(a) concerning salaries, you would have refused to answer those questions too.

A. Based upon—

Mr. Pritikin. I would give him that instruction, and I assume he would follow it.

The Witness. Based upon relevance to this case, I would not answer the questions.

Mr. Hart. Well, I guess we won't use these, Mike, today.

I have no further questions at this time.

Mr. Pritikin. I, why don't we take a—

Mr. Hart. Could I just say one other thing?

Mr. Pritikin. Sure.

Ms. Paxton. On the record?

Mr. Pritikin. On the record?

Mr. Hart. Yes.

Mr. Pritikin. Sure, absolutely.

Mr. Hart. We are going to pursue, and with bulldog tenacity, our efforts to obtain from the American Bar Association action reports relating to other schools, and we would be hopeful to obtain those. And we would also obtain discovery of documents relating to faculty salaries.

And to the extent that that might be helpful in my examination of this witness or with Mr. Sowle concerning their testimony on what the practice of the Accreditation Committee and the Council was under, in applying 405(a), I surely would want to continue that with Dean White and other witnesses.

Mr. Pritikin. Well, that doesn't surprise me, since you file another motion to reconsider that point every three or four weeks with some regularity.

Mr. Hart. Never give up.

Mr. Pritikin. Our positions have been made clear on that point and it will be for the Court to resolve.

Let's go off the record.

Mr. Cullen. Off the video record at 11:49:23.

(Whereupon, the noon recess was taken.)

Afternoon Session, 1:00 p.m.

Mr. Cullen. Back on the video record at 13:22:45.

Mr. Hart. I'd like to try to respond to an inquiry that Mr. Pritikin went to, asked with respect to White Deposition Exhibit Number 37 which I tried to use to question Dean White with before the break, break for lunch. And I was unable to ascertain whether or not we had produced that document in discovery

because the people who would handle that were not available.

I also was unable to check on whether or not it was responsive, the document was responsive to any Discovery Requests. However, I'd be very surprised if it was because it relates to, "A," another law school, and "B," to salaries and I didn't think the ABA was interested in such documents.

And furthermore, I would guess the Judge's Order with respect to discovery relating to other law schools and also salaries suggests that that was not the proper subject of discovery. However, in view of the witness's testimony about the practice under 405(a) and Mr. Sowle's testimony in the same regard, I do think, it is relevant for cross-examination of those purposes. That's all I can say about the document at this time, Mr. Pritikin.

United States District Court for the Eastern District of Pennsylvania

Massachusetts School of Law at Andover, Inc., Plaintiff, vs. American Bar Association, et al., Defendants. Civil Action No. 93-CV-6202.

Deposition Under Oral Examination of Claude R. Sowle, Volume II

Transcript of the deposition of Claude R. Sowle, called for Oral Examination in the above-captioned matter, said deposition being taken pursuant to the Federal Rules of Civil Procedure, by and before Suzanne Boulos, a Certified Shorthand Reporter and Notary Public, at the offices of Spencer & Klein, 801 Brickell Avenue, Suite 1901, Miami, Florida, on Wednesday, September 15, 1994, commencing at 10:00 o'clock a.m.

Joseph Albanese & Associates, Certified Shorthand Reporters, 218 Main Street, Toms River, New Jersey 08753, Telephone (908) 244-6100.

Mr. Stewart. Object to form.

A. Did I personally?

Q. That's the question, yes.

A. That thought never entered my mind.

Q. Prior to this time did the American Bar Association seek legal advice on whether Standard 405A might present problems under the antitrust laws?

A. I don't know the answer to that.

Q. Prior to this time had the American Bar Association sought legal advice as to whether the gathering and distribution of salary levels among law schools might present problems under the antitrust laws?

A. If that occurred, I'm not aware of it.

Q. Referring to some of the testimony you gave yesterday, Professor Sowle, you testified as I recall that in preparing the action letter on the Massachusetts School of Law application for accreditation you did not apply the letter of 405A with respect to the requirement that, quote, the compensation paid faculty members at a school seeking approval should be comparable with that paid faculty members at similar approved schools in the same general geographical area, end quote. The reason you gave for not so applying the letter 405A was that the American Bar Association's actual practice for sometime was not to pay attention to the geographical or competitive comparability of salary levels in its evaluations; is that correct?