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NORTHWESTERN
UNIVERSITY

April 14, 2009

Mr. Hulett H. Askew
Consultant
Office of the Consultant on Legal Education
Section of Legal Education and Admissions to the Bar
American Bar Association
321 N. Clark Street, 21st floor
Chicago, IL 60610

Re: *Statement of Certain University Presidents to the ABA Council on Legal Education*

Dear Mr. Askew:

I enclose a statement, which has been approved and signed by 14 university presidents and chancellors, on the regulation by the American Bar Association's Council on Legal Education and Admission to the Bar (the "Council") of the terms and conditions of employment of our faculty and other employees in our respective law schools (the "Statement"). Each of our universities has an American Bar Association accredited law school. I ask that you forward the Statement to each member of the Council for his or her consideration.

I understand that the Statement has already caused some discussion within the law school community. In preparing the Statement, I approached a small number of university presidents and chancellors (approximately 25), contrary to published reports that I "sent a letter 130 college presidents" (as reported by Douglas Lederman on Inside Higher Education on March 2, 2009). My letter and proposed Statement to those leaders (and to their law school deans) was a private communication. It was not sent by me to any other university leaders, the press, or any others.

On behalf of the other signatories and myself, I urge the Council to consider the Statement carefully, and make the changes proposed to its Standards for the Approval of Law Schools. I would welcome a chance to discuss this issue further with you or the Council.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Bienen". The signature is written in a cursive style with a large, stylized initial "H" and a long, sweeping tail.

Henry S. Bienen

cc: Statement signatories
H. Thomas Wells, President, ABA
Hank White, Executive Director, ABA
Thomas Howell, General Counsel, ABA

**Statement to the
ABA Council on Legal Education and Admission to the Bar
on
Standards Requiring Specific Terms and Conditions of Employment**

April 14, 2009

To: American Bar Association's Council on Legal Education and Admission to the Bar (the "ABA Council")

We the undersigned are chancellors, presidents, and provosts of our respective universities. Each of our universities includes as one of its constituent schools a law school accredited by the ABA Council. Each of us is ultimately responsible to our governing boards and to our students who attend them for the quality of the legal education provided by our law schools.

We understand that the ABA Council has been considering whether to continue to regulate the terms and conditions of employment of faculty and others within law schools accredited by the ABA Council.

We urge the ABA Council to remove from its Standards for Approval of Law Schools all Standards and Interpretations that require that a law school must provide specified terms and conditions of employment to its faculty and others. In particular, we urge the Council to remove the Standards and related Interpretations listed on Schedule A attached to this Statement.

Such requirements are unrelated to the quality of the education that our law schools provide and for which we are responsible. To our knowledge, no other accrediting agency authorized by the Department of Education requires specific terms and conditions of employment. While the accrediting standards of other agencies do vary in approach and content, none of them to our knowledge specifies the employment arrangements that the accredited educational program must have with its faculty and employees. Instead, they all focus solely on the resulting quality of the educational program, which is the purpose for accreditation in the first place.

We adhere to the following principles:

- (1) The terms and conditions of employment offered to our faculty are within the exclusive province of our individual institutions. The ability of each of our universities to make those judgments and determinations is fundamental to our being able to offer flexible, responsive, and innovative educational programs.
- (2) As a corollary to the preceding, each of our respective institutions is free to offer its faculty, law library directors, deans, and others tenure or tenure-like security if we make the individual determination that doing so will help us attract and retain the best personnel. We recognize that tenure is a

venerable institution and affords one way to advance our respective missions. This is not an assault on the system of tenure, only a rejection of the premise that it is the only way to provide an excellent educational product in our law schools.

- (3) Each of us individually - and each of our universities - has adopted and strongly endorses and enforces the principles of academic freedom as stated in the 1940 Declaration of the American Association of University Professors. We do not believe that the academic freedom of our faculty or of our institutions requires the imposition of uniform terms and conditions of employment.

We urge the Council to remove immediately from its Standards for the Approval of Law School those Standards and Interpretations that purport to require that our law schools provide specific terms and conditions of employment. We would welcome their replacement with reasonable standards that require our law schools to retain competent and dedicated faculty and that protect the academic freedom of all faculty regardless of the terms and conditions of their employment.

There may be serious internal obstacles within the ABA Council to taking this action, but those obstacles must not be allowed to preserve the status quo so that the ABA Council continues to impose these inappropriate requirements on our law schools.

Signed by the following:

Michael Adams, President, University of Georgia
Charles Bantz, Chancellor, Indiana University-Purdue University Indianapolis
Henry S. Bienen, President, Northwestern University
Lawrence Biondi, Saint Louis University
Mary Sue Coleman, University of Michigan
John Hennessy, Stanford University
Robert Khayat, Chancellor, University of Mississippi
Alan Merten, President, George Mason University
Mark Nordenberg, University of Pittsburgh
Steven Sample, President, University of Southern California
David Skorton, President, Cornell University
Graham Spanier, President, Penn State University
Thomas Wetherell, President, Florida State University
Robert Zimmer, University of Chicago

Schedule A

Standards Related to Terms and Conditions of Employment

The following Standards should be removed or modified to eliminate the requirement that law schools provide certain and terms and conditions of employment:

- Dean (Standard 206(c)): “Except in extraordinary circumstances, a dean shall also hold appointment as a member of the faculty with tenure.”
- Student-Faculty Ratio (Interpretation 402-1(1)(A)): For the purposes of the published student-faculty ratio a law school must differentiate among faculty and instructors based on the terms and conditions of their employment by counting certain faculty who are “not on tenure track or its equivalent who teach a full load” as 0.7, and “adjuncts, emeriti faculty, non-tenure track administrators who teach, librarians who teach, and teachers from other units of the university” as 0.2. This provision creates perverse incentives that may limit hiring of non-tenure track faculty.
- Faculty (Standard 405(b) and Interpretation 405-1): “A law school shall have an established and announced policy with respect to academic freedom ~~and~~ tenure....” (to the extent that it is interpreted to require a system of tenure or tenure-like job security).
- Clinical Faculty (Standard 405(c) and Interpretations 405-6, 405-7, and 405-8): “A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided to other full-time faculty members.”
- Legal Writing Faculty (Standard 405(d)): “A law school shall afford legal writing teachers such security of position and other rights and privileges of faculty membership as may be necessary to (1) attract and retain a faculty that is well qualified to provide legal writing instruction as required by Standard 302(a)(2) and (2) safeguard academic freedom.”
- Law Librarian (Standard 603(d) and Interpretation 603-3): “Except in extraordinary circumstances, a law library director shall hold a law faculty appointment with security of faculty positions.”