January 31, 2014

STATEMENT TO ABA SECTION ON LEGAL EDUCATION
AND ADMISSIONS TO THE BAR

I urge the Council of the Section on Legal Education and Admissions to the Bar to reject the proposals to change Accreditation Standard 405 and thereby retain current Standard 405(c) and its interpretations

My experience in clinical education shows the vital importance of retaining 405(c). I was in the group of clinical teachers who met with the ABA leadership in the 1970’s and early 1980’s to negotiate a standard on the status of clinical teachers. I have served on the Accreditation Committee for seven (7) years and the Council for six (6) years and realized that without Standard 405(c) clinical education would not have expanded and improved with a wide variety of clinical methods taught by well-qualified clinical teachers.

I believe that the ABA and this Section deserve credit in great part for strengthening clinical education by assuring that there are outstanding clinical teachers. The ABA should celebrate its success rather than risk the future with the elimination of Section 405(c). There has been no showing made of why this action is justified except that a group of free market advocates, mostly deans, have captured the standards making process. They would have the
ABA and the Council abandon its regulatory role and not even require that schools exercise good judgment. The market forces did not work before Standard 405(c) and there has been no showing that they will not work now.

When I began as Director of the University of Chicago Law School in 1970, I held the position of Assistant Professor of Law but the other six (6) clinical teachers were called staff attorneys and not considered faculty for any purpose. They were not even invited to law school functions, let alone to participate in faculty meetings or in faculty committees. The Law School required that I, as a professor, must do all the teaching in the classroom component so that I had to devote fourteen (14) hours per week in class. Each of the other clinical teachers were on one-year contracts or “at will” appointments.

Our clinical teachers could not plan for any stability in their careers. Without long-term contracts, significant projects including complex litigation, legislative advocacy, important appellate work and representation of community organizations. Few projects could be completed in one year. Commitments must be made to funders, advocacy partners, clients and the community for planning and execution over several years. Turnover of clinical teachers was high. I have seen all this at many schools which did not have some form of security of position.

**TENURE IS NOT REQUIRED BY THE ACCREDITATION STANDARDS FOR ANY CLINICAL TEACHERS AT ABA APPROVED SCHOOLS.**

Because of the uncertainty of funding in the 1970’s and 1980’s, those of us who negotiated 405(e) wanted flexibility but with the assurance that a core of clinical teachers would hold positions reasonably similar to tenure. But there never was and nor is there now a requirement of tenure. Section 405(c) requirements are satisfied if fifty-one percent (51%) of the
clinical teachers have long-term contracts. The Standard provides that the remainder (forty-nine percent (49%)) of the clinical program can be on fixed, short-term contracts. Beyond that, Standard 405(c) allows for other short-term faculty in an experimental program of limited duration. The flexibility was especially important as more schools began clinics for the first time with federal grants and foundation grants from the Council on Legal Education for Professional Responsibility, Inc. (CLEPR) and other sources.

Section 405(c) has been more successful than we ever anticipated. Live client clinical instruction has been expanded to all but a few law schools, with the primary model of the in-house clinic the overwhelming choice. Every year the AALS sponsored Clinical Teachers Workshops and Conferences are the best attended of any produced by the AALS. Each year the number of clinicians attending increases. In discussions there, the general sentiment is that 405(c) should provide greater protections with more long-term contracts, no “at will” contracts and greater participation in all aspects of faculty governance, including especially hiring and promotions of all faculty.

I OPPOSE NOT GIVING CLINICAL TEACHERS FULL AND COMPLETE EQUALITY IN GOVERNANCE WITH WHAT IS GIVEN TO TENURED FACULTY IN APPOINTMENTS AND PROMOTIONS OF ALL FACULTY, CURRICULAR ISSUES AND LAW SCHOOL AND UNIVERSITY FACULTY COMMITTEES.

The language of Interpretation 405-8 requires that fifty-one (51%) of full-time clinical faculty members shall be allowed to participate in “law school governance in a manner reasonably similar to other full-time faculty members” could not be clearer. But the
Accreditation Committee does not find violations from most schools’ refusal to allow fifty-one percent (51%) of the Clinical faculty to vote on non-clinical faculty hiring, renewals and promotions. The Accreditation Committee has embarrassed the ABA by blatantly and without any rational basis refusing to obey Interpretation 405-8 as adopted by the Council and the House of Delegates. Such disregard for its duties needs to be addressed by the Council but not by revamping the requirement.

Without the vote on faculty appointments, clinical faculty are too often treated as third-class faculty and their views not taken seriously. At many schools, the trend is to have the full faculty only make decisions on appointments with the rest of the decisions made by the Dean or Faculty Committee. The vote on the appointments would assure clinical teachers the opportunity to try to increase the hiring of more faculty with practical backgrounds and interest in practice-oriented courses.

I OPPOSE NOT IMPROVING THE CONDITIONS FOR LEGAL WRITING FACULTY INCLUDING REQUIRING SCHOOLS TO HAVE MORE LEGAL WRITING INSTRUCTORS BE ELIGIBLE FOR LONG-TERM CONTRACTS.

The quality of legal writing instruction at the University of Chicago has been hit and miss with about half the first year students receiving sound instruction and half receive disappointing experiences. For nearly thirty (30) years the Law School’s Bigelow Fellows, mostly recent graduates from law school, have had non-renewable one-year contracts. There is no Director of the legal writing program. There has been no continuity so that each group started fresh each year and had no training or supervision. Fellows like Chicago’s need long-term contracts to assure some continuity and learning on the job.