To Whom It May Concern:

The leaders of CLEA have sent a note through the listserv asking for signatures of clinical people agreeing with their position against changing the law school externship non-compensation rule.

I have made my position known that I favor the proposed change to permit law students to earn credit even if they are receiving compensation. A number of individuals approached me at Externships 7 in Denver indicating they agree that the non-compensation rule should be changed. I invite any of you who agree with this ABA proposal to send me your names so I can send in a document listing individuals who are in favor of backing this student-pushed amendment to the current ABA accreditation standards. There are a number of reasons to agree with this proposed change. I dealt with the topic in an article Backman, James, Law School Externships: Reevaluating Compensation Policies to Permit Paid Externships (November 11, 2010) available at SSRN: http://ssrn.com/abstract=1707617. A summary of some of the arguments in favor of compensation for externship students follows:

First, even if the ABA approves the provision, no individual school needs to. The decision should be based on whether allowing compensation will fit the structure and objectives of the program.

Second, schools do not need to (nor should they) grant credit for any legal opportunity students secure. Just as we do in most programs now, there should be a level of diligence to determine if the externship placement is entering into the program because of interest in training and mentoring students. Each school needs to have some standards for approving externship placements. At a minimum, there should be an obligation to give the student a breadth and depth of experience and to encourage them to observe where appropriate.

Third, programs can and should continue to use agreements that specify the types of things that the students will do and observe in the placement. The agreements should specify the obligations for supervision. The agreements can also lay out what students should not regularly do in the placement such as routine, repetitive work.

Fourth, schools can and should have procedures to insure that placements cannot advertise positions for credit until the placement has been approved.

The position of the non-compensation advocates seems to be based on a fear that we will lose control of the placements, but there's no reason to believe that will be the case. We still have the obligation to insure that a placement is educational and thus credit worthy. We will still be involved with the reflection and supplementary educational expectations.

Undoubtedly, there will be challenges if this proposal is passed. Schools will continue to need to adequately staff their programs. In fact, a standard permitting compensation for the externship
student might make our role as gatekeepers to educationally worthy placements, even more important.

The upside is that students in placements with pay will be able to work on more things. We now have told our for-profit placements not to bill student time and it appears that many have gone further and told the placements to refrain from having students involved with anything that could generate a fee. Thus the restriction makes it difficult in many fields for students to be involved with the higher levels of work. Is it better that they merely "observe" and only do these things where the firm is not making money.

The Fair Labor Standards Act is an issue now for any for-profit placements. While we can undoubtedly place students without running afoul of the requirements, we have lost a limited number of good placements because of the recent Department of Labor letter, and we have a variety of potential placements which have said they cannot take a student unless they can pay a minimum wage.

It seems unfair that many of our students who are concerned with high tuition and high levels of student debt are unable to take an educationally valuable placement because of the ABA rule.

Perhaps the harder issue is that there will not be enough paying places so that most students will still be in places without the chance of receiving compensation and others will still be facing labor law issues. However, over time the standard will likely increase the number of offices providing a wage in both the for-profit and the non-profit or government placements. That result would be great for our students, and the criteria we use for the placements would not need to change.

A secondary upside is that some students will make some money. This should be seen as a positive overall.

Please respond offline to me if I can add your name to the attached letter supporting the proposed ABA rule change by sending an e-mail to backmanj@law.byu.edu. Please include your full name, title and organization.

Professor Jim Backman
The Stephen L. Richards Professor of Law
Brigham Young University Law School

The following professors have sent me consent to add their names as signatures to the above letter:

Courtney Q. Brooks
Director of Legal Residencies
Associate Professor
UNH Law
Jeffrey C. Brooks  
Preis & Roy Director of Advocacy & Professional Practice  
Director of Externship Programs  
Assistant Professor of Professional Practice  
Louisiana State University Law Center

Jeffry W. White, Professor  
Semester in Practice Program  
Vermont Law School

Natalie Wolfe  
Field Placement Program Director  
DePaul University College of Law

Ellen Musinsky  
Visiting Professor Emeritus

Adrienne Smith  
Associate Director of Clinical Programs  
Boston University School of Law