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Clinical Legal Education Association

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Hulett H. Askew
Consultant on Legal Education & Admissions to the Bar
American Bar Association
321 N. Clark Street, 21st Floor
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by email and U.S. mail

Re: ABA Accreditation for Law Schools Outside of the United States

Dear Mr. Askew:

I write on behalf of the Clinical Legal Education Association (CLEA) to express our concerns about the July 19, 2010 recommendations of the Special Committee on Foreign Law Schools Seeking Approval under ABA Standards (the "Special Committee"). CLEA is the largest membership organization of law professors in the United States. We work to strengthen legal education by advancing a model of legal education that trains students to be competent, ethical practitioners and responsive to the community's legal needs.

The Special Committee is right to note the important role of accreditation standards in ensuring that students are educated by a qualified faculty and receive a legal education that will ensure they can uphold the high standards of ethics and practice expected of the graduates of all ABA accredited law schools. But the continuation of effective regulation of legal education by the Standards for Accreditation of Law Schools is currently under threat. The ABA should not consider extending the reach of the Standards at the same time as the Standards Review Committee is considering stripping away the very provisions the Special Committee would rely upon to ensure quality legal education.

The globalization of legal practice is inevitable. But, granting U.S. accreditation to foreign law schools is not the way to meet the challenges posed by our shrinking world. The Special Committee reports on the pressures facing state supreme courts when foreign-trained lawyers seek to sit for a bar examination, yet, its proposal does not directly address that problem. Other experts can advise the state judiciary on these issues -- the International Issues Committee is currently

(CLEA is the nation's largest association of law teachers, representing approximately 800 dues-paying faculty at over 160 U.S. law schools. CLEA is committed to legal education that trains law students to be competent, ethical practitioners and to promoting access to legal representation. Its membership consists of law professors who teach students in role as lawyers and who devote their energy and attention to identifying, teaching, and assessing proficiency in the skills and values essential to lawyering.)

looking at the issue of accreditation of LL.M. programs and the Special Committee recommends a data gathering process and a proposed Model Rule for the Admission of Foreign Attorneys. These steps will more effectively assist state courts in determining the merit of applications for graduates of foreign and LL.M. programs for admission and should be undertaken well before any decision is made to accredit law schools outside of the United States.

More importantly, the Special Committee's proposal comes in the midst of a comprehensive review of the ABA accreditation standards. Proposals currently under discussion in the Standards Review Committee are aimed toward a radical reorientation of accreditation, removing "input measures" that direct the content of the law school curriculum and removing provisions that ensure that law school faculty teaching across the curriculum have job security, academic freedom, and meaningful participation in law school governance. While these proposals are not yet final, they have support on the Standards Review Committee. They are based on an underlying principle of deregulation under which a law school's leaders would have full discretion to determine their own mission and to inaugurate a curriculum to fulfill that mission.

One assumption underlying this deregulatory viewpoint is that quality legal education will best be promoted by providing law schools with maximum flexibility to experiment with different approaches to curricular programming and staffing. Another assumption is that law school faculty and administrations need little guidance and have the necessary independence and commitment to make decisions about curriculum and staffing that will best promote the highest quality legal education, enhance the quality of legal services, and protect the public. A third assumption is that the discipline of the market will mitigate the harm of bad ideas and ill-considered experiments in legal education. To the extent that the Council proceeds on this deregulatory course, it relies heavily on the notion that law schools share basic norms of what good legal education requires and can be trusted to resist the temptations of profit and to place the public trust above their own self-interest. It also relies heavily on the background conditions of free, well-informed consumers choosing rationally among a reasonable selection of competitive alternatives.

The Special Committee recognized the need for a set of norms shared by legal education institutions. However, the proposed reforms being debated by the Standards Review Committee would remove many of these shared norms from the purview of the accreditors. As the Committee notes, the substantive content of legal education, the qualifications of faculty, and a grounding in the social and political context of the U.S. legal system are key variables that should be the subject of examination during the accreditation process. We think it is unwise to move toward foreign accreditation while Standards Review considers changes that will strip the ABA of its ability to expect and enforce a set of shared normative commitments amongst law schools.

Like a canary in the coal mine, the proposal to accredit foreign law schools warns of some of the deeper dangers inherent in the ongoing review of accreditation standards. The current conversation in the Standards Review Committee takes little account of the content of

implicit shared norms of quality legal education, nor has it considered how less scrupulous schools motivated by profit might take advantage of the lack of clear guidance in its proposals. The proposals currently before Standards Review include:

- elimination of all forms of security of position for law school faculty, permitting at-will or short-term contract employment as long as such employment arrangements are "adequate to attract and retain a competent full-time faculty," leaving the definition of "competence" to the discretion of the school;
- elimination of the requirement that the dean at a law school be approved by a substantial majority of the faculty;
- elimination of using student-faculty ratios as one indicator of the quality of the educational environment; and
- elimination of the requirements of an admissions tests and a college degree for incoming J.D. students.

Consideration of the impact of this deregulation on foreign law schools brings the challenges of the effective regulation of legal education into sharp focus. Legal education is not a commodity to be sold in the marketplace for domestic or foreign consumption. It is a complex social practice, embedded in culture and deeply connected to social norms.

One danger of adopting the Special Committee's recommendations is that the Council will take on the perhaps insuperable burden of regulating legal education across a range of legal systems and cultures as it deregulates schools on its own soil. If the ABA were to undertake the accreditation of foreign law schools, there will be an accompanying push to accommodate a range of assumptions and practices, already contemplated by the Special Committee's suggested direction to the Standards Review Committee to "remove all barriers to geographic expansion." This proposal exacerbates the problem of "institutional relativism" and further strips the ABA of a constructive role in the delivery of legal education. While foreign trained lawyers could be educated to American standards, we wonder why we would abandon quality legal education at home while simultaneously imposing our own standards abroad.

As clinical teachers, scholars and practitioners, the integration of theory and practice has long been our special concern so we offer a final observation. Recently there has been renewed focus on preparing law students for the practice of law with particular emphasis on reengagement among schools, the bar, the judiciary, and other legal actors. In accordance with the recent reports of the Carnegie Foundation for the Advancement of Teaching and the CLEA Best Practices Steering Committee, law schools in the United States are engaged in a concerted shift to integrate legal practice with doctrinal learning in curricula of engaged clinical legal education. It is very hard to imagine a foreign law school immersed in an American practice community. So, we fear there would be more theory, less practice, and little integration in such foreign schools. If the current process of deregulation within the ABA should alter the expectations set for programs within the United States and encourage or permit such programs abroad, it would set back the current effort to synthesize doctrine and analytical skills with practice and lawyering skills. Both law students and the state of legal practice would suffer as a result of this reversal.

The Special Committee's recommendation to authorize accreditation of law schools outside of the United States and request that the Council advise Standards Review, through its comprehensive review, to remove all barriers to geographic expansion will accelerate the unsound headlong rush to destroy more than 100 years of wise and effective regulation of legal education by the ABA. We believe that this will be profoundly bad for legal education and for the standing of the ABA as an agent of accreditation within higher education.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Kuehn", with a long horizontal flourish extending to the right.

Robert R. Kuehn, President