

MR. VAN ZANDT: I could read quickly.

20 MS. SCHNEIDER: I think we have a little
21 flexibility here.

22 MR. VAN ZANDT: Let me start out by saying
23 the following is a statement of the Board of
24 Directors of the American Law Deans Association.

25 The Board of Directors, in addition to the

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1 people I've already introduced, are composed of Saul
2 Levmore, who is the past president from the
3 University of Chicago; Evan Caminker, the Dean at
4 the University of Michigan; Michael Fitts, Dean at
5 the University of Pennsylvania; Elena Kagan, Dean of
6 Harvard University of Law School; Joe Knight, Dean
7 at the University of Washington's Law School; Karen
8 Rothenberg from the University of Maryland; Stewart
9 Schwab from Cornell University; and, last, Joan
10 Wexler from Brooklyn Law School.

11 And this statement's been approved by that
12 group. It is not, however, a statement of the
13 overall American Law Deans Association, nor does it
14 represent the view of every last member of that
15 association. In fact, I think it's safe to say that

16 all members do not share some of the views expressed
17 in this statement. So with that caveat, let me
18 proceed.

19 ALDA represents approximately 130 of the
20 deans of the American Bar Association accredited law
21 schools. ALDA, throughout its history, has sought
22 to address various aspects of accreditation that it
23 believes could be improved. Over the last few
24 years, ALDA believes that there have been
25 improvements in the accreditation process and thanks

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1 members of the council and its accreditation
2 committee and standards review committee for these
3 efforts. There is still more to be done.

4 ALDA applauds and welcomes the formation of
5 the Accreditation Task Force by Chair William R.
6 Rakes and thanks Mr. Rakes and Chair Pauline
7 Schneider for their leadership on this important
8 matter. As ALDA told the National Advisory
9 Committee on Institutional Quality and Integrity of
10 the Department of Education, we see this as a very
11 positive step that we hope will result in

12 substantial improvements in the accreditation
13 process. As we also testified, we currently support
14 the principle of voluntary accreditation by the ABA
15 and simply wish to see it improved. The purpose of
16 the Task Force to examine the goals and methods of
17 accreditation at a more abstract level is precisely
18 what ALDA believes should be done.

19 Over the last few years, ALDA believes that
20 there have been improvements in the accreditation
21 process and thanks members of the Standards Review
22 Committee and the Council for the effort of
23 reviewing the standards line by line. Those
24 improvements have come, however, without the type of
25 overarching review that the Task Force is

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1 undertaking and, thus, in ALDA's view have been
2 fairly ad hoc and unsystematic.

3 Guiding principles. The initial statement
4 of the Task Force as expressed in the memorandum
5 from the Task Force dated December 12, 2006,
6 identifies, quote, The general goals and principles
7 of a sound and appropriate system of accreditation,
8 end quote, which are expressed in the preamble to

9 the Standards for Approval of Law Schools, and
10 takes, quote, these generally accepted principles as
11 a starting point for analysis, end quote.

12 ALDA fully agrees with and supports this
13 approach of the Task Force. ALDA urges the Task
14 Force to recommend that the standards and the
15 approach to setting and applying the standards be
16 thoroughly revised so that they further only these
17 principles and not a range of other interests and
18 purposes extraneous to these principles.

19 ALDA sees the following principles as
20 central to the accreditation standards and
21 processes:

22 Minimum standards. The standards should
23 require a law school to provide a sound legal
24 education. In doing so, the standards should set
25 only the minimum requirements necessary to provide

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1 such a sound legal education so that a law school
2 can comply with the standards in a manner that is
3 not unnecessarily wasteful of the law school's or
4 its students' resources. In evaluating whether a

5 law school provides a sound legal education, the
6 standards should be based chiefly on an evaluation
7 of the resulting legal education that a law school
8 produces and not on the specific inputs into the
9 educational process.

10 Second, consumer protection. The standards
11 should protect consumers, principally the public and
12 applicants to law schools and law students.

13 Third, supporting innovation. The
14 standards should permit a law school to pursue its
15 own mission in any way that it deems appropriate so
16 long as it meets the minimum requirements of
17 providing a sound legal education. ALDA does not
18 believe that the standards should dictate that a law
19 school have a particular mission or provide a legal
20 education in a specified way as long as the legal
21 education that the law school provides is a sound
22 legal education.

23 Some general considerations. The substance
24 of the current standards and the process and
25 procedures by which they are enforced are not

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1 completely consistent with the above principles.

2 Over the years, ALDA has expressed multiple concerns
3 about both the substance and procedures of the
4 standards. Certainly there are many different
5 opinions among deans as there are among other
6 persons of good faith who are interested in legal
7 education about which standards and which specific
8 procedures are more or less in need of improvement.
9 ALDA does not intend to express a view on each of
10 the specific standards and procedures. Instead, the
11 ALDA board has agreed to collect from its member
12 deans for the Task Force individual information on
13 specific standards and procedures that raise
14 concern.

15 ALDA does believe, however, that it would
16 help the Task Force to hear its more general views
17 on the issues that should be addressed.

18 First, vision of the standards. In ALDA's
19 view, the current standards, which include many
20 input requirements that are more than the minimum
21 requirements necessary to provide a sound legal
22 education, tend to enforce a, quote,
23 one-size-fits-all, end quote, model of legal
24 education. The standards often seem to reflect the
25 good-intentioned effort of the rule makers to

1 articulate the ideal content of a sound legal
2 education and insist that all law schools approach
3 that model. Certainly the standards might require a
4 carefully thought through set of basic subject
5 matter coverage requirements, but a law school
6 should be allowed to satisfy the minimum
7 requirements of a sound legal education in the way
8 it best sees fit.

9 Unfortunately, insisting on a common model
10 has the effect of requiring a range of matters that
11 are not the minimum necessary to a sound legal
12 education. Moreover, this approach encourages
13 individual groups within legal education to press
14 the council to put into the standards specific
15 requirements that reflect their own particular
16 visions of legal education.

17 This dampens the ability of law schools to
18 be innovative. A constant complaint about law
19 schools is that they have changed little since the
20 days of Langdell. Legal education could benefit
21 from an influx of law schools that are attempting to
22 provide a sound legal education innovatively.

23 In addition to restricting how the legal
24 educators in each law school pursue their mission,
25 the requirements raise the cost of legal education

1 to our students overall, a matter of great public
2 concern. The standards should not instantiate a
3 particular or even a limited set of missions or
4 organizational structures for law schools.

5 Second general consideration, decision
6 making. Decisions about the substance of standards
7 should reflect the best judgment of a
8 decision-making body whose sole concern is ensuring
9 that the principles articulated above are
10 implemented as well as possible.

11 ALDA has been concerned that the decision
12 making on the standards and related matters has too
13 often sought to reflect a consensus among a whole
14 range of groups, many of whom have specific visions
15 of legal education that they would like to see be
16 the required model for legal education. A simple
17 example of this has been the composition of the site
18 evaluation teams with the unstated requirement that
19 each include a law librarian and a clinician.

20 While receiving a diverse set of views on
21 important issues is necessary, no one particular
22 group should be able to have its view of legal

23 education imposed on law schools through specific
24 standards.

25 Third, the evaluation process. The current

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1 process of evaluating individual schools every seven
2 years through multiday visits by full site
3 evaluation teams is not the most effective means of
4 ensuring that the standards have been met. If the
5 goal is determining whether each law school is
6 providing sound legal education, it is clear that
7 the investigation needed will vary from school to
8 school.

9 Moreover, more use could be made of the
10 data that law schools are required to provide in the
11 annual questionnaire to identify areas of concern
12 for more careful investigation. Putting to the side
13 the burden on each school of the process, the
14 current process is wasteful of the valuable time of
15 the volunteers who selflessly serve on site
16 evaluation teams. Because of that, the consultant's
17 office does find it difficult to find volunteers and
18 there is a tendency for people with a particular
19 interest in an area of legal education to volunteer

20 at a higher rate.

21 Fourth general consideration, purpose of
22 site evaluation process. The site evaluation
23 process also suffers from a diffusion of purposes.
24 ALDA believes that the only required purpose should
25 be to gather information to allow the accreditation

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1 committee to determine whether the law school
2 provides a sound legal education by complying with
3 the requirements of the standards.

4 Currently, site evaluation teams and their
5 reports evaluate all aspects of a law school and
6 often attempt to determine if a law school's
7 aspirations are being met, and there is little
8 direct reference in the report to specific standards
9 and the evidence gathered to determine whether a
10 school is in compliance with a particular standard.
11 Certainly, an individual law school should be free
12 to ask members of the site team for assistance in
13 how the law school, although already in compliance
14 with the minimum standards might improve its legal
15 education, but that assistance should be completely

16 independent of the compliance determination.

17 To many of our member deans, the two
18 purposes are often conflated with the aspirational
19 help appearing to be a matter of compliance. ALDA
20 takes no position on whether site evaluation teams
21 should be expressly limited in its investigation to
22 compliance with the minimum requirements or only
23 clearly distinguish between the two purposes.

24 Interpretation of the standards. ALDA
25 urges the Task Force to recommend measures that

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1 would make the interpretations and practices of the
2 accreditation committee in evaluating law school's
3 compliance more transparent. For example, ALDA
4 applauds the recent announcement by the consultant
5 at the Consultant of the Department of the
6 Investigation Hearing that the committee would
7 publish its standards for evaluating the bar passage
8 rates of law schools.

9 Clearly, however, there remain many areas
10 where there is an unannounced common law that the
11 committee follows. For example, Standard 405(c) was
12 applied to schools according to an unstated

13 interpretation that seemed to vary over time and
14 across schools. Likewise, the interpretation of
15 Standard 606 apparently includes an unstated range
16 of the minimum number of volumes that a new law
17 school must have to obtain accreditation.

18 Understandably, confidentiality about the
19 specific circumstances of individual schools is
20 important to those schools involved. That need --
21 that need for confidentiality, however, does not
22 also require that law schools be kept in the dark
23 about the way the committee has interpreted the
24 standards in the past.

25 My last topic in terms and conditions of

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1 employment. ALDA does have an express view on the
2 standards that require that specific employees of a
3 law school or university have certain terms and
4 conditions of employment. This is the issue on
5 which ALDA testified at the Department of Education
6 hearings, and we attach our various statements to
7 that committee.

8 ALDA urges the Task Force to recommend that

9 the council remove from the standards all references
10 to terms and conditions of employment and urges that
11 the council do so as soon as possible. Such
12 requirements are a prime example of the more general
13 issues cited above.

14 To our knowledge, requiring specific terms
15 and conditions has no precedent in the accreditation
16 standards of other educational institutions and
17 programs and do not for very good reason. They are
18 not necessary to provide a sound educational program
19 and impinge unnecessarily on the institutional
20 autonomy of law schools and universities. As stated
21 above, a law school should be judged on the quality
22 of its educational product.

23 While requiring tenure or tenure-like job
24 security for faculty and other employees certainly
25 might improve the program of legal education of a

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1 particular law school, there may be other means to
2 achieve whatever positive benefits there are. There
3 are also circumstances in which it can harm a
4 program by reducing the flexibility of the program
5 to adjust to changes in the profession. It is

6 certainly the case, for example, that some law
7 schools have limited their provision of clinical
8 education because of their unwillingness to bring on
9 employees with life-time or similar long-term
10 contracts.

11 Finally, such requirements increase the
12 costs of providing legal education to our students.
13 The decision about the terms and conditions on which
14 a law school or university hires its faculty and
15 other employees should remain with the individual
16 law school and its university as long as the law
17 school provides a sound legal education.

18 In particular, ALDA recommends that the
19 following standards be removed or modified to
20 eliminate the requirement that law schools provide
21 certain terms and conditions of employment.

22 One, the dean. Standard 206(c). Except in
23 extraordinary circumstances, a dean shall also hold
24 appointment as a member of the faculty with tenure.

25 Second, student-faculty ratio.

2 published student-faculty ratio, a law school must
3 differentiate among faculty and instructors based on
4 the terms and conditions of their employment by
5 counting certain faculty who are not on tenure track
6 or its equivalent who teach a full load as 0.7, and
7 adjuncts, emeriti faculty, nontenure track
8 administrators who teach, librarians who teach, and
9 teachers from other units of the university as 0.2.
10 This provision creates perverse incentives that may
11 limit hiring of nontenure track faculty.

12 Next, faculty. Standard 405(b) and
13 Interpretation 405-1. A law school shall have an
14 established and announced policy with respect to
15 academic freedom and tenure. To the extent that it
16 is interpreted to require a system of tenure or
17 tenure-like job security.

18 Next, clinical faculty. Standard 405(c)
19 and Interpretations 405-6, 405-7, and 405-8. Quote,
20 A law school shall afford to full-time clinical
21 faculty members a form of security reasonably
22 similar to tenure and noncompensatory perquisites
23 reasonably similar to those provided to other
24 full-time faculty members, end quote.

25 Next, legal writing faculty. Standard

1 405(d). Quote, A law school shall afford legal
2 writing teachers such security of position and other
3 rights and privileges of faculty membership as may
4 be necessary to attract and retain a faculty that is
5 well-qualified to provide legal writing instruction
6 as required by Standard 302(a)(2) and to safeguard
7 academic freedom.

8 And last, law librarian. Standard 603(d)
9 and Interpretation 603-3. Quote, Except in
10 extraordinary circumstances, a law library director
11 shall hold a law faculty appointment with security
12 of faculty positions, end quote.

13 ALDA believes that a legitimate purpose of
14 the terms and conditions of employment standards
15 listed above may be, as mentioned at different
16 points in the standards, academic freedom. ALDA
17 strongly endorses that purpose but believes that
18 protection of academic freedom requires that a law
19 school or its university have in place, quote,
20 arrangements sufficient to ensure academic freedom,
21 end quote, not that it provide various classes of
22 faculty with employment security.

23 ALDA applauds the recent actions of the
24 accreditation committee with respect to at least two
25 of its members, which recognized that Standard

1 405(c)'s requirements are met by having in place a
2 procedure to permit all faculty, regardless of the
3 terms of their individual employment, to challenge
4 adverse actions that allegedly violate the
5 principles of academic freedom.

6 ALDA believes that a legitimate purpose of
7 the standards would be to require that a law school
8 have the teaching resources necessary to provide a
9 sound legal education to its students.

10 In conclusion, ALDA thanks Chair Patricia
11 Schneider and the members of the Task Force for
12 their attention and consideration of the views of
13 most of the deans in our law schools. ALDA stands
14 ready to engage in further discussions with the Task
15 Force, provide whatever information and assistance
16 that it can, and assist the Task Force in
17 formulating its recommendations. Thank you.