

June 16, 2009

Hulett H. Askew  
Consultant on Legal Education to the  
American Bar Association  
321 North Clark Street  
Chicago, IL 60610-4714

Re: DePaul College of Law Accreditation

Dear Bucky,

I write to apprise the Accreditation Committee that it currently has information about the law school's Retention Margin that is inaccurate. This matter has been central to the law school's accreditation since the 2001 inspection.

Paragraphs (71) through (76) regarding "Finances" of the July 22, 2008 Decision of the Accreditation Committee are no longer accurate. Consistent with our exchange of e-mails, I believe I have an obligation to promptly advise the Accreditation Committee of any statements in its June 22, 2008 Report that are not accurate. Also, our May 1, 2009 submission to the Committee did not address the pertinent issues, and as such, it communicates the erroneous proposition that the University administration and the College of Law have reached an agreement on the matter of the "Margin Agreement." In fact, we have not. Again, I believe I have a duty to correct this misinformation as soon as it is recognized.

The inaccuracy of the previously submitted material came to light during the law school's recent effort to understand the Provost's statements concerning the Margin Agreement. At that time it became apparent that the Provost was not accurately describing the Margin Agreement that has been in place since the last ABA inspection. Unfortunately, the Margin Agreement has never been subject to a mutually understood process for implementation, and it frequently has been disregarded by the University. See paragraph (75) of the July 22, 2008 Report.

An explanation of the issues are fully explained in the attached two memoranda recently sent to the Provost. The Provost has not responded to these memoranda.

The absence of a clearly defined process surrounding the distribution of the margin funds, and the uncertainty of receiving these funds, seriously impair the law school's ability to further its mission and maintain the quality of its program. The

amount of funds at issue is substantial. These funds would be used to advance several goals identified in our Strategic Plan. As stated in the Site Inspection Report of May 6, 2008 at page 47: "...the College of Law's ability to engage in critical long-range planning may have been retarded due to the inability to project university policies on retention..."

I would appreciate your bringing this correspondence and attachments to the attention of the Accreditation Committee. I would also appreciate advice as to how we should proceed.

Sincerely yours,

Glen Weissenberger  
Dean

Cc: Father Holtschneider  
Provost Helmut Epp

Att.



# DEPAUL UNIVERSITY

## COLLEGE OF LAW

To: Helmut Epp, Provost  
From: Glen Weissenberger and Brian Havel  
Date: June 10, 2009  
Cc: Alyssa Kupka, Father Mark Pranaitis, Professor Bruce Ottley  
Re: Margin Agreement

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We are still struggling to understand the implementation of the Margin Agreement. After your explanation at our meeting on the Friday before the submission of our response to the ABA, we have reviewed financial statements and budgets, and much remains unclear. The following are our concerns:

1. The 2004 statement of the Margin Agreement, which was affirmed by the President for application during his term in office, does not appear to comport with the statement on "Finances" submitted by the University to the ABA. The 2004 agreement guarantees the law school would receive 75% of net tuition in any given fiscal year. According to the 2004 statement of the agreement, the margin is to be monitored on a quarterly basis and interventions are to be made in the fiscal year in order to adjust the budget to any positive variance. There is no reference to indirect costs as part of the calculation.
2. If we understand the University's statement on "Finances" submitted to the ABA on May 1, 2009, the law school will not be able to receive surplus funds under the Margin Agreement except under extraordinary circumstances. The literal language appears to require a calculation of "actual operating income" by deducting "indirect costs." Surpluses would be subject to transfer to the College of Law in the subsequent year. If we understand this language correctly, and if we followed your explanation during our last meeting, there will never be a surplus except under extraordinary circumstances. We reach this conclusion because indirect costs have consistently exceeded 9 million dollars and a deficit will almost always result. This interpretation, if correct, would render the Margin Agreement of little value to the law school. Our understanding from the inception of the Margin Agreement, dating back to Glen's initial appointment letter, has been that the Margin Agreement is based on direct costs. Otherwise, the 25%/75% division makes no sense. A "fully loaded" margin has never been part of the calculation.

3. Finally, we remain unclear as to how we should submit a budget request for the use of funds should we receive funds under the Margin Agreement.

We would appreciate a clarification of these concerns.

Thanks.



# DEPAUL UNIVERSITY

## COLLEGE OF LAW

To: Helmut Epp  
From: Glen Weissenberger  
Date: June 12, 2009  
Cc: Alyssa Kupka, Dean Brian Havel, Father Mark Pranaitis, Professor Bruce Ottley  
Re: Margin Agreement

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I have spent the better part of the last two days carefully reviewing all the documentation pertinent to the Margin Agreement. This review has included documents which resulted from the 2001 ABA inspection and documents your office has prepared explaining the operation of the Margin Agreement. After a very careful review of this material, I have reached the following conclusions:

1. We have mutually failed to communicate effectively about the Margin Agreement. This results from a number of distinct and disparate facts upon which each of us has relied.
2. As a consequence, we do not have a mutual understanding of the Margin Agreement, and therefore we do not have an agreement on this matter.

The origins of this miscommunication and the resulting misunderstanding are traceable to the fact that each party initially approached the matter from different premises. While I cannot be certain of your premises, I can be certain of those of the College of Law.

The College of Law approached the matter of the Margin Agreement based on two unambiguous premises:

1. The Margin Agreement as articulated in conjunction with the 2001 ABA Site Inspection was, and is, the Margin Agreement we are now seeking to implement.
2. The promise of Father Holtschneider can be relied upon in determining the operation of the Margin Agreement. When Father Holtschneider became President, he stated on more than one occasion that while he could not be responsible for breaches of the Margin Agreement before he became President, he was committed to the implementation of the Margin Agreement for the remainder of his term as President.

Obviously, the pivotal element in our understanding of the Margin Agreement is the articulation of the Agreement itself. Interestingly, the Margin Agreement itself was not clarified until the ABA made repeated attempts to compel the University to articulate the Margin Agreement and its operation as a result of the 2001 ABA inspection. In language drafted by Dr. Kozak, the following was submitted to the ABA in a letter sent by me dated November 15, 2003:

**Dear Mr. Sebert:**

**I write on behalf of Reverend John P. Minogue, President of DePaul University, John Kozak, Executive Vice President for Academic Affairs, and Scott Scarborough, Executive Vice President for Operations. Very recently, Father Minogue has announced that he will be stepping down from the Presidency of the University at the conclusion of this academic year, and the office of the President is currently functioning under the direction of Reverend Minogue, Dr. Kozak, and Dr. Scarborough.**

**Pursuant to your letter of January 7, 2003, I am providing a response to your request to provide you with a report by November 15, 2003 which provides, “a description of the nature of the 25% contribution agreement, and the manner in which the allocation of resources pursuant to the contribution agreement is determined.” Also pursuant to your request, we are providing a list of expenses that are included in the line item “Departmental Expenses” on the attachment which was submitted with the College of Law’s September 13, 2002 response to your previous correspondence.**

**In regard to the 25% contribution margin agreement, this agreement was memorialized in a Memorandum of Understanding accompanying my appointment as Dean of the College of Law in a letter and document dated March 21, 2002. It was most recently reaffirmed in my annual review, dated June 20, 2003. Of course, it was also reported to you in correspondence dated September 13, 2002 from me and subsequently affirmed by Reverend Minogue, President of DePaul University.**

**The nature of this agreement is a commitment on the part of DePaul University to achieve and maintain a contribution margin whereby the College of Law has access to the college-based and university resources that is 75% of the net tuition revenue realized by the College of Law. As the annual review referenced above stated:**

**“Over the past five years, the University has invested funds in the College of Law in order for it to reposition itself nationally and to reduce the contribution margin from 34% to 25%. We are now at that margin. It is critical that the College manages its finances and its**

**enrollments to maintain that margin. The College is now in control of its University support, that is through enrollment increases it has the opportunity to recover 75% of the new tuition generated, through decisions to decrease its enrollment it will have to reduce expenses by 75% of the decreased revenue.”**

**In the spirit of that agreement, the University is committed to making available to the College of Law, either through permanent adjustments to its operational budgets or in making one-time infusions of the university resources in order to maintain the 75-25 ratio of net revenue to operational expenses. The agreement is particularly important because the College of Law experienced an extremely high, and unanticipated, yield in acceptances for both the full-time JD program and the part-time evening program.**

**Obviously, any agreement between the University and an academic unit is contingent upon the University’s overall financial vitality. However, pursuant to the retention margin agreement, the College of Law is entitled to sufficient resources to accommodate the needs of this large class. In response, the University approved the hiring of additional legal writing instructors to support the offering of additional sections for the first year program. The University will continue to monitor, on a quarterly basis, the expenditures resulting from the large class and will make interventions to maintain the 25% contribution margin. The University has also authorized the College of Law to recruit two new full time, tenure track faculty members for the 2004-2005 academic year in order to improve the faculty to student ratio. The precise amount of permanent increases to the College of Law’s operational budget will not be determined until the University calculates the amount of discount for the additional students which were enrolled this year. However, the University is committed to supporting this large class through the duration of its anticipated life cycle of three years.**

**I am writing to you at this time in order to comply with the deadline in the report which accompanies your January 7, 2003 correspondence. I am certain that the Office of the President will also respond to your shortly.**

The Accreditation Committee, in reliance on this letter, as well the attached list of departmental expenses, issued a final report with a cover letter addressed to President Minogue and to me. The report is as follows:

**ACTION OF THE ACCREDITATION COMMITTEE  
January 2004**

**At its meeting on January 22-24, 2004, the Accreditation Committee considered the status of DePaul University College of Law. The Committee had before it the Action Letter from its October/November 2002 meeting and the response to that letter submitted by Dean Glen Weissenberger, dated**

November 15, 2003. The Committee also had before it the history of actions taken with respect to the School since its last regular site evaluation; that history is attached to this document as an appendix.

**FINDINGS OF FACT:**

(1) At its October/November 2002 meeting, the Committee concluded that it continued to have insufficient information as to whether the financial resources of the College of Law are adequate to sustain a sound program of legal education and accomplish its mission, and whether the resources generated by the College of Law are made available to the College to maintain and enhance its program of legal education.

(2) The Committee requested that the President of DePaul University and the Dean of the College of Law submit a report by November 15, 2003, to enable the Committee to determine whether the College of Law is in compliance with Standards 201 and 209(c); the Committee requested that the College of Law's response should include at least the following information.

(a) A description of the nature of the 25% contribution agreement, and the manner in which the allocation of resources pursuant to the contribution agreement is determined.

(b) A list of the expenses that are included in the line item "departmental expenses" on the attachment submitted with the College of Law's September 13, 2002 response.

(3) The Dean of the College of Law responded to the Committee's October/November 2002 Action Letter with a letter dated November 15, 2003. Attached to the letter was a list of expenses that are included in the College's line item "Departmental Expenses."

(4) In his response, the Dean described the University's commitment to maintaining a contribution margin whereby the College of Law has access to college-based and University resources that total at least 75% of the net tuition revenues realized by the College of Law.

(5) The Dean stated that the University is committed to making available to the College of Law, either through permanent adjustments to its operational budget or through one-time infusions of the University resources, the funding needed to maintain the 75-25 ratio of net revenue to operational expenses. The Dean indicated that the University will continue to monitor on a quarterly basis the College of Law's expenditures, including those resulting from increased student enrollment. The University will make interventions, as necessary, to maintain the 25% contribution margin.

## **CONCLUSIONS:**

**(1) The Accreditation Committee concludes that the information provided in the College of Law's November 15, 2003 letter of response is sufficient to establish that the College is in compliance with Standards 201 and 209 (c).**

**(2) DePaul University College of Law remains on the list of law schools approved by the American Bar Association.**

Consequently, my letter, the attached list of departmental expenses, and the final report of the ABA Accreditation Committee collectively represent the documentation and articulation of the Margin Agreement. This Margin Agreement is central to two historical facts:

(1) In short order, the University breached the Margin Agreement.

(2) When Father Holtschneider assumed the Presidency, it was this Margin Agreement that he committed to uphold during the term of his presidency.

Consequently, in recent discussions, when the College of Law was addressing issues pertaining to the Margin Agreement, we were referring to the Margin Agreement that was the basis for our continued accreditation by the ABA and the basis for the President's commitment of future adherence. There is no other Margin Agreement.

Because of the law school's understanding of the Margin Agreement, the statements that emanated from the Provost's office regarding implementation of this Agreement were, and remain, incomprehensible. Accordingly, we were not able to understand why indirect costs have been injected into the analysis by the Provost's office. The Margin Agreement is based only on direct costs, and the list of direct costs was expressly considered by and identified by the ABA in making its accreditation decision.

Indirect costs are not pertinent to the implementation of the Agreement, and it was for this reason that I repeatedly asked to meet during the 2008-2009 academic year to discuss a clarification of the implementation of the Agreement. The meetings were repeatedly declined. The College of Law was ultimately provided with a cryptic explanation of the implementation of the Agreement. This was received 48 hours before we were asked to sign off on the final report. It was not until my most recent study of the entire record that I came to understand the basis for our miscommunication and misunderstanding about the Margin Agreement.

As I see it, we are now presented with the following matters that require immediate attention:

(1) I have a duty to promptly advise the Consultant on Legal Education of the ABA that our previous submission contains critical and central statements that are not accurate, i.e. that we do not have a mutual understanding on the Margin Agreement. Of course, you can join me in this communication. In any event,

there is no question that I have a duty to report this situation to the ABA immediately.

(2) Within a very small window we could reach an agreement. I would then have no need to report anything to the ABA. I sense, however, that this option is not realistic, and that we should report the situation immediately to the ABA in order to provide us with sufficient time to work out the implementation of the Agreement.

I would appreciate hearing from you.