

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

LINCOLN MEMORIAL UNIVERSITY,
DUNCAN SCHOOL OF LAW,

Plaintiff,

v.

THE AMERICAN BAR ASSOCIATION,

Defendant.

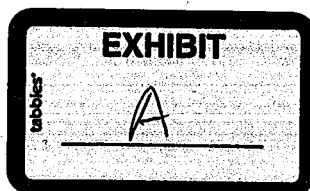
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) Case No. 3:11-CV-608
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) Judge Varlan
) Magistrate Judge Shirley
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DECLARATION OF DR. CLAYTON HESS

I, Clayton Hess, state as follows:

1. I am and have been for 2 years Vice President of Academic Affairs (“VPAA”) of Lincoln Memorial University (“LMU”). I have personal knowledge of the facts set forth herein.

2. Before assuming my current position with LMU, I worked in the field of post-secondary education for 28 years. I worked with LMU from 2008 until 2009 as Assistant VPAA for Planning and Accreditation; from 1998 until 2008 as Director of Institutional Research, Effectiveness and Accreditation; and from 1996 until 1998 as Director of Institutional Advancement. From 1981 until 1996 I served in various academic and student affairs roles at LMU. Therefore I have a total of 30 years of knowledge and experience in education. I am



familiar with the administration of universities. I am also familiar with the creation, administration and funding of professional schools including law schools.

3. I offer this Declaration to this Court in support of Duncan School of Law's ("DSOL") Motion for Temporary Restraining Order to document the manner in which the decision of the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association ("Council") of December 20, 2011 ("Decision Letter") denying provisional approval to the DSOL and the public announcement of this decision results and will result in irreparable harm to DSOL of an imminent, immediate and ongoing nature. The Council found the DSOL was not in substantial compliance with three American Bar Association Standards of Procedure for Approval of Law Schools ("Standards") – Standards 203, 303, and 501. This decision by the ABA is arbitrary and capricious and violated due process.

4. DSOL is a division of LMU. LMU has been in existence since 1888 and was chartered by the State of Tennessee in 1897. LMU is a Level V institution accredited by Southern Association of Colleges and Schools-Commission on Colleges ("SACS-COC"). SACS-COC has approved LMU to award associate, baccalaureate, master's, educational specialist, and doctoral degrees. LMU was founded upon the principles of Abraham Lincoln and holds as its mission a dedication to individual liberty and responsibility, an improvement of self, as well as a respect for citizenship, high moral and ethical standards. LMU seeks to provide educational opportunities and develop community leaders, while promoting economic and social progress within southern Appalachia.

5. LMU began planning to offer degrees in professional and graduate education in the 1990's that would further foster its mission to aid the economic and educational challenges of

southern Appalachia. In doing so, LMU now offers professional degree programs that have developed regional and even national reputations for academic excellence.

6. The decision of the ABA found the DSOL was not in substantial compliance with three American Bar Association Standards of Procedure for Approval of Law Schools (“Standards”) – Standards 203, 303, and 501. Many ABA Standards are in substance the same as the standards of SACS-COC and the Tennessee Board of Law Examiners (“TBLE”), two accrediting institutions that positively evaluated DSOL and granted their approval to DSOL. The SACS-COC is recognized as an accrediting agency of law schools by the Department of Education and the TBLE is an arm of the Supreme Court of Tennessee that similarly accredits law schools. Many of the standards with which the TBLE accredits law schools and SACS-COC accredits colleges and universities, including those with a law school, are substantially the same as the Standards of the ABA. In fact, the standards in question mirror one another for the different accreditation associations (ABA and SACS-COC) and are derived from educational standards promulgated by the United States Department of Education. Given the fact that these standards derive from the same source, they are essentially and for all practical purposes the same. This fact is especially true with respect to ABA Standards 203, 303, and 501. The Council’s interpretation and application of these parallel standards to DSOL directly contradicts that of both SACS-COC and TBLE and reaches a finding that is arbitrary and capricious and in violation of due process.

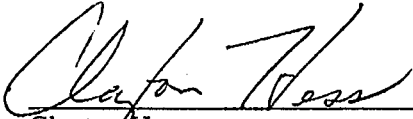
7. The Council’s decision also contradicts factual findings made by the ABA’s Site Evaluation Team (“ABA Site Team”). The ABA Site Team positively evaluated DSOL’s performance with respect to the three Standards -- 203, 303 and 501 -- with which the Council found DSOL not in substantial compliance.

8. Based on my experience and knowledge, as a result of the ABA's denial of provisional approval to DSOL and public announcement of this denial, DSOL suffers and will suffer immediate, imminent and ongoing and irreparable harm to its ability to secure contributions from potential donors. The effect of the arbitrary and capricious decision of the ABA to deny accreditation to DSOL upon DSOL's reputation and goodwill has an obvious chilling effect on donors and will detrimentally impact the Law School's ability to secure anticipated gifts through the University's Planned Giving process.

9. The action by the ABA, in effect, denies DSOL the ability to compete with other law schools in the area of legal education.

10. DSOL requests that this Court grant a Temporary Restraining Order requiring the ABA to withdraw the public announcement of its decision of December 20, 2011 and to issue a substitute announcement indicating that this Court has ordered it to hold its decision denying DSOL provisional approval in abeyance until further court order. Without such an order by this Court, DSOL will suffer irreparable imminent, immediate and ongoing harm. The unavoidable negative impact of the ABA's decision and public announcement upon DSOL's standing in both the academic and legal communities as well as with the public at large imposes difficulty upon the ability of LMU to maintain the financial existence of DSOL. This irreparable harm will continue without intervention by this Court.

I make this Declaration pursuant to 28 U.S.C. § 1746. I declare under penalty of perjury that the foregoing is true and correct. Executed on December 29, 2011.


Clayton Hess

CERTIFICATE OF SERVICE

I hereby certify that on Friday, December 30, 2011, a copy of the foregoing Declaration of Dr. Clayton Hess was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by certified U.S. mail, return receipt requested. Parties may access this filing through the Court's electronic filing system:

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Dated December 30, 2011.

/s/Robert H. Watson, Jr., BPR No. 1702

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