

**II***Description of the Practices Involved in the Alleged Sherman Act Violation*

At trial, the United States would have proved the following:

**A. Anticompetitive Standards And Practices**

1. **Capture Of The Accreditation Process.** Legal educators, including current and former law school dean, faculty, and librarians, control and dominate the ABA's law school accreditation process. Approximately 90% of the Section of Legal Education's members are legal educators. In substantial part, this is because of the Section of Legal Education's Faculty Group Membership Program, under which ABA-approved law schools may obtain a group discount on dues for their faculty. Many law schools pay their faculty's dues and the faculties of about 145 of the 1774 ABA-approved law schools hold ABA membership through the Faculty Group Membership Program.

All current members of the Standards Review Committee and a majority of the current members of the Accreditation Committee are legal educators. The typical site inspection team has 5-7 members, all or nearly all of whom are legal educators. The Consultant's position has traditionally been held by a legal educator. The incumbent has served as Consultant for over 20 years and is a former dean and a current law school faculty member.

2. **Professional Staff Compensation.** ABA Accreditation Standard 405(a) required that faculty compensation be comparable with that of other ABA-approved schools. In practice, this Standard was extended to cover deans' and professional librarians' salaries. The ABA collected extensive, detailed salary information, among other data collected, in annual questionnaires that ABA-approved law schools were required to complete. Often, the comparable schools consisted of a "peer group" of schools chosen by the professional staff of the inspected school. The "peer group" could be and at times was manipulated to include higher-rated law schools or law schools located in higher-cost areas. Law schools also at times were placed on report under Standard 405(a) by the Accreditation Committee because of unfavorable salary structure comparisons, not because of poor faculty quality.

3. **Boycotts of non-ABA-approved schools.** The ABA prohibited an ABA-approved school from granting any transfer credits for courses successfully completed at state-accredited or

unaccredited law schools, but permitted a law school, under certain conditions, to allow credits for courses taken at a foreign law school (Standard 308 and its Interpretation). The ABA also prohibited ABA-approved law schools from matriculating graduates of state-accredited or unaccredited law schools, but permitted, under certain circumstances, the matriculation of graduates of foreign law schools (Interpretation 3 of Standard 307). The ABA rejected a 1979 amendment that would have allowed law schools the discretion to admit any bar members to their graduate programs. In practice, the ABA permits only the law school, and not the affected individual, to apply for a waiver of the Interpretation, and such applications have been denied. Standard 202 prohibited the accreditation of proprietary law schools. The ABA has never approved a proprietary law school and the Accreditation Committee twice recommended against approval of one proprietary law school.

These Standards, Interpretations, and their application have unreasonably restricted competition in the market for the services of professional law school personnel. The salary Standard and its application had the effect of ratcheting up law school salaries. The Standard relating to proprietary law schools erected an unnecessary barrier to competition from these schools, which often provide their professional staff with lower salaries and fewer amenities than do ABA-approved schools. The restrictions on enrolling graduates of non-ABA-approved schools, and on offering transfer credits for course work completed at those schools, were unreasonable restraints of trade aimed at deterring effective competition from law schools that are likely to pay less in salaries and benefits to their professional staffs.

**B. Other Accreditation Standards And Practices**

4. **Student-To-Faculty Ratios.** In its Interpretations of Standards 201 and 401-405, the ABA declared that a student-to-faculty ratio of 20:1 or less is presumably in compliance with its accreditation standards but that a faculty ratio of 30:1 or more is not. While the Interpretation counts a part-time student as two-thirds the equivalent of a full-time student, the ABA has counted only full-time, tenure-track professors as "faculty," thereby excluding from the count administrators who teach, *emeritus* or senior faculty who teach, some visiting professors, joint-appointed faculty (faculty holding appointments in two departments in a

university) who teach, adjunct professors, clinical and other instructors holding short-term contracts, and tenured faculty teaching part-time because of family responsibilities. Although part of the policy supporting reduced student-faculty ratios is the desirability of smaller classes and increased student-faculty contact, the ABA did not measure actual class size or effectively measure actual student-faculty contacts. The growth of full-time faculty at ABA-approved law schools substantially exceeded the growth of student enrollment at such schools in the past 10 years.

5. **Teaching Loads.** Standard 404 sets a maximum 8-hour-per-week teaching load or, if a course is duplicated, a 10-hour load. In practice, an hour was defined as 50 minutes.

6. **Compensated Leaves Of Absence.** Standard 405(b) required that faculty members be afforded a "reasonable opportunity for leaves of absence and for scholarly research." In some instances, this Standard has been applied in practice to require paid sabbaticals, summer stipends, and other forms of research compensation.

7. **Bar Preparation.** While Standard 301 requires a law school to maintain an educational program designed to qualify its students for admission to the bar, Standard 302(b) prohibits a law school from offering a bar preparation course for credit or requiring one for graduation, even for students identified as being at risk of failing the bar examination. A bar preparation course cannot be offered as a required course, even when a law school meets the ABA minimum credit requirements without counting the bar preparation course.

8. **Facilities.** Standard 701 requires an "adequate" physical plant. Nearly all ABA-approved law schools occupy new facilities or have made substantial renovations to existing facilities since the new Standards were adopted in 1973. Despite this, over one-third of all ABA-approved schools were put on report for "inadequate facilities" by the Accreditation Committee in 1994, including law schools of recognized distinction.

9. **Resources.** Standard 201 requires that a law school have the necessary resources to provide a sound legal education, and Standard 209 requires adequate resources to sustain a sound educational program. These Standards have been applied at times by the Accreditation Committee to place law schools on report for alleged shortcomings. In 1994, about 50 law schools, including many of recognized high quality, were on report for