

allocating inadequate resources to their law school program.

Some of the Standards, Interpretations, and other factors described in paragraphs 4 through 9 may reflect relevant considerations in assessing the quality of a law school's educational program. At times, however, they too have been applied inappropriately to restrict competition in the law school labor market.

III

Explanation of the Proposed Final Judgment

Prohibited Conduct. The proposed Final Judgment prohibits the recurrence of conduct that is plainly anticompetitive. Specifically, the Final Judgment will eliminate the adoption or enforcement of any Standard, Interpretation or Rule, or the taking of any action that imposes requirements as to the base salary, stipends, fringe benefits, or other compensation paid to law school faculty, administrators or other law school employees. The Final Judgment also will eliminate the collection or dissemination of compensation data for deans, administrators, faculty, librarians, or other employees, and the use of compensation data in connection with the accreditation of any law school. In addition, the Final Judgment eliminates any Standard, Interpretation or Rule prohibiting the enrollment of a member of a bar or a graduate of a state-accredited law school in a post-J.D. program, or the acceptance of any transfer credits from state-accredited law schools. The ABA is also prohibited from accrediting only law schools organized as not-for-profit institutions.

Additional Relief. The proposed Final Judgment also contains structural provisions to ensure that the law school accreditation process is governed by persons other than those with a direct economic interest in its outcome and that the process is brought more into public view. As the Complaint states, it is the view of the United States that during the past 20 years, the law school accreditation process has been captured by legal educators who have a direct interest in the outcome of the process. Most of the process, as it applied to individual law schools, was carried out by the Accreditation Committee and the Consultant's office and was kept from public view and the supervision of the ABA's Board of Governors and House of Delegates. In addition, the individuals who serve on the Accreditation Committee and in the Consultant's office had been in these positions for many years. Finally, the Interpretations

of the accreditation Standards were in some cases more plainly anticompetitive than the Standards themselves, yet their adoption was not subject to the same public comment and hearings requirements as amendments to the Standards.

Accreditation matters for individual law schools often remained before the Accreditation Committee because it required repeated reports from law schools under review, thereby lengthening the accreditation process. At one point in 1994, 56% of ABA-approved law schools were under continuing Accreditation Committee review and 16% more were undergoing sabbatical reinspections that school year.

As remedies, the proposed Final Judgment provides:

1. Proposed Interpretations will be subject to the same public comment and hearings requirements as proposed Standards. All proposed Interpretations, Standards, Rules, and Policies must be published annually in the ABA Journal and the Review of Legal Education in the United States.

2. Law schools may take immediate appeals to the Council from adverse Accreditation Committee Action Letters. The Accreditation Committee must also report to the Council following each meeting all accreditation actions that it took during the meeting.

3. Elections to the Council will be subject to the Board of Governors' approval, no more than 50% of the Council membership may be law school deans or faculty, and members will be subject to a two-term limit. Only 40% of the members of the Nominating Committee may be law school deans or faculty.

4. Appointments to the Accreditation Committee will be subject to Board approval. No more than 50% of the Accreditation Committee may be law school deans or faculty, and members will be subject to a two-term limit. The same requirements apply to the Standards Review Committee, except that its members are limited to one term.

5. To the extent reasonably feasible, accreditation site inspection teams will include at least one practicing lawyer, judge or public member, and one non-law school university administrator. The ABA will annually publish the names of those who participated in domestic and foreign site inspections and the schools they inspected.

6. The Council must annual report to the Board on its accreditation activities, including identifying all schools under accreditation review and the reasons the law schools are under review.

7. The Council must approve, and the Board review, all annual and site inspection questionnaires sent to law schools.

8. By October 31, 1995, the ABA will hire an outside independent consultant, who is not a legal educator, to assist in evaluating the ABA's accreditation Standards and Interpretations and develop a plan for their validation by December 31, 1995.

Special Commission. The ABA has established a Special Commission To Review The Substance And Process Of The ABA's Accreditation Of American Law Schools. A number of subjects of the accreditation process raise legitimate educational policy issues, but were applied at times to achieve anticompetitive, guild objectives, as discussed in Section II above. These subjects are: Faculty teaching-hour requirements; compensated and other required leaves of absence for faculty and other staff; the manner in which the ABA calculated the faculty component in calculating student-faculty ratios; physical facilities; the allocation of resources to the law school, and bar preparation courses. The Special Commission will review these subjects and report to the Board of Governors no later than February 29, 1996. Upon completing its review, the Board will file its report with the United States and the Court. The United States may challenge any proposal in the report within 90 days of the Commission's report. Any such challenge will be decided by the Court applying an antitrust analysis. This is novel relief in a government antitrust case, resulting from a recognition that some accreditation practices implicate both antitrust and educational policy concerns. Since the ABA had initiated the Special Commission in response to academic criticism of its accreditation process and its perception of possible antitrust problems, the United States has agreed that the ABA may first attempt to reconcile antitrust and educational concerns through its Special Commission.

IV

Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of