to solicit comments. Because of the number of comments, the Government has organized its Response based on the categories of those who submitted comments.

A. Other Accreditation Agencies

The Department received five comments from other accrediting agencies and one from an individual who has headed an accrediting agency since 1973. These comments are generally critical of the severity of the proposed Final Judgment and are concerned with its possible effect on the practices of other accrediting agencies.

1–2. The Association of Specialized and Professional Accreditors (''ASPA'') (Exhibit 1), and National Office for Arts Accreditation in Higher Education (Exhibit 2)

ASPA is an umbrella organization with a membership of 40 specialized accrediting agencies (one of which is itself an umbrella agency for 17 allied organizations). The National Office for Arts Accreditation in Higher Education consists of four separate accrediting agencies for schools of art and design, music, theater, and dance. ASPA believes that the consent decree could produce ''unintended consequences'' for other accrediting agencies by equating the presence of expertise in an accreditation area with its automatic capture by a vested interest and criticizes the data collection and other limitations imposed by the consent decree as unnecessarily restrictive or unnecessarily prescriptive. ASPA fears that the requirements of the consent decree will create a climate in which fraudulent institutions may use ''antitrust terrorism'' against accrediting agencies.

We share ASPA's concern that this action should not be used to diminish accreditation's legitimate role as a guarantee of quality and a source of information to the public. The requirements of the proposed Final Judgment apply only to the defendant and only for the duration of the decree. The terms of the decree are designed to remedy the defendant's anticompetitive practices. They are not meant to be a generalized prescription for other accrediting agencies.

The limitations in the decree on the collection and use of certain data are directed only to remedy the defendant's conduct. The ABA required by law schools to respond to detailed annual and site inspection questionnaires that included providing extensive salary data. The defendant used the data to raise the salaries of law school deans, full-time faculty, and professional librarians during the accreditation process. Because of this abuse, the proposed consent decree prohibits the defendant from conditioning accreditation on the compensation paid professional personnel or collecting salary data that could be used to determine individual salaries.

Nor does the Government seek to discourage the participation of individuals with ''professional expertise'' in the accreditation process and the consent decree will not have that effect. The defendant permitted its accreditation activities, however, to be captured by legal educators who used it to advance their own personal interests. The proposed consent decree remedies the defendant's abuses. The Government is not suggesting it apply to other accrediting agencies whose accreditation processes promote quality rather than the self-interest of a group that controls the process.[6]

ASPA's concern that the proposed consent decree may promote ''antitrust terrorism'' against accrediting agencies by institutions seeking accreditation is unwarranted. This is the first Justice Department antitrust case brought against an accrediting agency in the 105-year history of the Sherman Act. The Government cannot prevent the filing of meritless or harassing actions by private institutions, but does note that such actions are costly to the plaintiff, and meritless actions are subject to court sanctions.

Finally, ASPA points out that some of the requirements of the proposed Final Judgment may conflict with the requirements of the Higher Education Act. The Justice Department consulted with the Department of Education concerning this objection. Sections VI (C)(1), (D)(1) and E(1) of the decree require that elections and appointments to the Council, the Accreditation Committee, and the Standards Review Committee of the Section of Legal Education and Admission to the Bar (''Section of Legal Education'') must be subject to the approval of the ABA's Board of Governors (''Board'') for a period of five years. This provision appears to conflict with 20 U.S.C. 1099b, requiring agencies to be ''separate and independent'' of related trade associations. The Department of Education recognizes the Section of Legal Education as a specialized accrediting agency for law schools and has determined that the ABA is a related trade association from which the Section must be ''separate and independent.'' Giving the ABA's Board power to ''approve'' elections and appointments to the Section's Council and Committees thus may breach the ''separate and independent'' requirement of § 1099b. Consequently, the United States and the ABA have proposed to modify the decree by substituting a notification requirement in Section VI for the approval requirement.[7] The parties intended that these and other requirements in the proposed consent decree would assist in the ABA's oversight of the Section of Legal Education's accreditation activities. Changing the approval requirements should not impair the ABA's oversight while simultaneously ensuring that the requirement of 20 U.S.C. 1099b is not offended.

The National Office for Arts Accreditation joins in ABA's comments. The National Office is particularly concerned that the Justice Department may be setting an inappropriate precedent or providing loopholes that may prevent accrediting bodies from working effectively with problem institutions. While we are sympathetic to the National Office's concern, the Justice Department believes that the remedies in the proposed consent decree are directed just to the facts in this case, not to the activities of other accrediting agencies. The Department does not believe that effective antitrust enforcement—which requires entry of the relief in this case—is at all incompatible with quality accreditation.

3. Association of Collegiate Business Schools and Programs (''ACBSP'') (Exhibit 3)

ACBSP has 500 business school members and is one of two accrediting agencies in the business school area. ACBSP commented that a number of States require that their state business schools must obtain accreditation from the other business school accrediting agency, thereby locking out ACBSP. The actions of States are exempt from the antitrust laws under the ''state action'' doctrine announced in *Parker* v. *Brown*, 317 U.S. 341 (1943), and its progeny. Consequently, the activities ACBSP complains of are beyond the reach of antitrust enforcement and outside of the matters in the Complaint.

4. American Library Association (''ALA'') (Exhibit 4)

The ALA commented on two points: the size and composition of

[6] ASPA questions other specific consent decree provisions, not because they are unwarranted in this proceeding, but because their application to other accrediting agencies would produce bad results. The provisions of the proposed Final Judgment, of course, apply to the ABA.

[7] The proposed modification is attached as Exhibit 42.