showing.[11] Indeed, in the Department of Education's ''Staff Analysis of the ABA's Section of Legal Education's Interim Report on its Standards to DOE and Massachusetts School of Law's Compliant,'' the staff noted:

One aspect of MSL's complaint against the Council that is totally outside of the Department's purview is the charge that the Council has violated federal antitrust laws for the economic benefit of law professors, law deans, and law librarians but to the detriment of students. That matter is currently before the Justice Department.[12]

Amending the proposed consent decree in the manner requested by the Four Agencies is unnecessary. While the comment claims that the Government and the ABA are asking the Court to approve ''a broad, in-depth intrustion of the Sherman Act * * * that will have a chilling effect on the entire accreditation process * * *'' (comment, p. 5), the proposed Final Judgment addresses three specific practices (it prevents the ABA from fixing salaries and engaging in a boycott). The decree does not interfere with the day-to-day accreditation process that determines whether law schools offer quality educations. The decree simply ensures that the process rests on legitimate educational principles. Nor does it conflict with controlling precedent in this Circuit or the doctrine of ''implied immunity.'' The decree binds only the parties to it. The Four Agencies fail to show how it will prevent the defendant from carrying out its accrediting obligations under the Higher Education Act or how it will prevent other accrediting agencies from doing so.

B. Law School Faculty

The Justice Department received nine comments from administrators and faculty at ABA-approved law schools.[13] The substance of these comments vary enormously, but all recommend some modification of the proposed Final Judgment.

1, Clinical Legal Education Association (''CLEA'') (Exhibit 7)

CLEA maintains that, because the accreditation process has been dominated by legal academics (i.e., research scholars) and deans, it has not served the function of insuring that law school graduates are adequately prepared to practice law. CLEA claims that the proposed consent decree will further entrench the power of legal academics and will interfere with the ability of accreditation to improve the quality of lawyers. CLEA further believes that requiring a university administrator not affiliated with a law school on each site inspection team will entrench legal academics since university administrators are concerned that law schools are not sufficiently ''academic,'' i.e., research-oriented. Additionally, according to CLEA, the proposed consent decree will not change the ABA standards that favor legal academics over clinicians with respect to tenure and law school governance. CLEA also believes that the proposed Final Judgment is not ''final'' because of the pendency of the report of the Special Commission and because the Government retains authority to review changes in the accreditation process.

Whether legal education is better served by emphasizing legal scholarship or practical clinical instruction is neither an antitrust issue nor an issue addressed in the Complaint. CLEA raiss an issue of educational policy, not antitrust policy, that should not be governed by the consent decree. Furthermore, to the extent that these comments raise issues not alleged in the Complaint, they are outside the scope of a Tunney Act review. *Mircosoft,* 56 F.3d at 1448, 1459. The inclusion of non-law school university administrators on site inspection teams is intended to reduce the likelihood that accreditation will be used to advance the narrow economic interests of law school faculty and administrators.

CLEA supports the provision in the proposed consent decree requiring the ABA to reconsider its standards regarding student-faculty ratios, but is concerned that the Special Commission is scheduled to make its report after entry of the consent decree. The Special Commission's August 3, 1995 preliminary report noted the wide-spread dissatisfaction with the past manner in which student-faculty ratios were computed for accreditation purposes and will report on this issue. CLEA also claims that the proposed consent decree gives the Government authority to review all changes in the ABA's accreditation process. This seems to be an unduly expansive reading of the Government's rights under Section VIII(D) and Section X of the proposed Final Judgment.

2. Howard B. Eisenberg (Exhibit 8)

Mr. Eisenberg is dean of Marquette Law School and a former dean at the Arkansas-Little Rock Law school. Dean Eisenberg expresses concern that the Government's law suit was ''commenced and settled without input from legal educators or consumers of legal education.'' He is also dissatisfied that Section VII of the proposed consent decree ''leaves open for future determination five issues of extraordinary importance to legal education.'' Dean Eisenberg believes that leaving these matters to the Special Commission strikes him ''as a guarantee that the Court will be involved in protracted and difficult litigation in the future over these matters.'' Consequently, Dean Eisenberg urges that entry of the proposed consent decree now is premature and not in the public interest, or that Section VII should be deleted entirely.

We believe that Dean Eisenberg has vastly overstated the likelihood of protracted and difficult litigation, or the possibility of any litigation at all, and also has exaggerated the breadth of the Government's involvement in the remaining five issues. The decree simply sets in place procedures to ensure that the accreditation requirement of paid sabbaticals, the computation of student-faculty ratios, and other standards should not be manipulated by a control group to further its own interests. The Special Commission may make recommendations that, as difficult questions of educational policy, cna be fairly disputed, but the Government does not anticipate that the Special Commission and the Board will fail to resolve our antitrust policy concerns or that the Special Commission's analysis will spark litigation.

3. John S. Elson (Exhibit 9)

Mr. Elson is a professor at Northwestern Law School. He has been on the Section of Legal Education Accreditation Committee, is a former chair of the Section's Skills Training Committee, and has served on about 15 site inspection teams since 1986. Professor Elson sees the proposed Final Judgment as offering a ''unique opportunity'' to return ABA accreditation to its only proper purpose, ''the adequate preparation of law students for competent and ethical legal practice.''

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[11] In an advisory opinion, the Federal Trade Commission informed another accrediting agency, the Accrediting Commission on Career Schools and Colleges of Technology, that the 1992 Higher Education Act Amendments, specifically, 20 U.S.C. § 1099b(a)(5), relied upon by the Four Agencies, conveyed no implied repeal of the antitrust laws, finding no broad or inherent conflict between the antitrust laws and the Department of Education's regulatory regime. January 19, 1995 FTC Advisory Opinion, File No. P94 4015; *see* 5 Trade Reg. Rep. (CCH) ¶ 23,755.

[12] December 5–6, 1994 Staff Analysis appended as Exhibit 43.

[13] One of these comments is from the Clinical Legal Education Association, an organization of more than 400 clinical teachers who ''have a dual identity as law teachers and practicing lawyers.'' Comment, p. 1. Four of the nine faculty comments were from clinical instructors.