Professor Elson, therefore, proposes adding the following injunctive provision to Section IV of the proposed consent decree:

> The ABA is enjoined and restrained from:
> * * *
> (E) adopting or enforcing any standard, interpretation, rule or policy that is not needed in order to prepare law students to participate effectively in the legal profession.

Professor Elson is also concerned that the proposed consent decree will leave law school academics in control of the process. They will continue to emphasize the production of scholarship as a priority and relegate clinical training to a lesser role. Professor Elson also expresses his dissatisfaction with the Special Commission's initial report, which he believes affirms the priority given to legal scholarships and its explicit rejection of proposals emphasizing practical training. Professor Elson believes that his proposed modification will fairly and effectively protect the public interest in having adequately prepared law graduates without denying market entry to those who can satisfy that public interest.

While criticizing the provision of the proposed Final Judgment that seeks to open participation in the accreditation process, Professor Elson does not specifically address what procedures he would prefer. We agree that, in law school accreditation, just as in accreditation in other areas, participation in the process is more apt to come from people within the discipline and who have a stake in the effect of accreditation. The proposed consent decree makes reasonable efforts to include more outsiders. For example, no more than 50% of the membership of the Council, Accreditation Committee or Standards Review Committee may be law school deans or faculty. The term limitation will also produce greater turnover among those participating in the process.

Professor Elson plainly thinks that legal education should give a higher priority to practical training. This is a matter of educational, not antitrust, policy and it is outside the limits of the Complaint and proposed consent decree.

4. Jeffrey L. Harrison (Exhibit 10)

Mr. Harrison is the Chesterfield Smith Professor of Law at the University of Florida College of Law. His principal hope is that the Antitrust Division will devote further study to the issues of the proposed market definition, competitive harm, and the appropriate remedy. Other than the prohibition against price fixing in Section IV(A) of the proposed consent decree, Professor Harrison recommends abandoning all of the other prohibitions in the decree, at least until there is data showing that the ABA's accreditation process has unreasonably restricted entry. In the alternative, Professor Harrison believes the decree should be modified to permit the collection and dissemination of ''past'' compensation data because it ''can be critical'' in diagnosing the problems of a law school. Professor Harrison also recommends dropping the 50% membership limitation of legal academics on the Council, its Accreditition Committee, and the Standards Review Committee, describing them as ''counter-productive.''

While perhaps useful as an academic exercise, Professor Harrison's objections to the alleged theoretical weaknesses of the Government's case are not appropriate for a review of whether entry of the proposed Final Judgment is within the reaches of the public interest. The Court should assume that there is some basis to the allegations in the Complaint and determine whether the proposed consent decree sufficiently remedies the alleged violations. A value of the consent decree process is that it releases the Court and the parties from the time and expense of a Rule of Reason inquiry into all of the issues raised in the Complaint.[14]

The Government strongly disagrees with Professor Harrison's suggestion that ''past'' compensation data can be used as a surrogate for measuring quality. Observations of outputs are a more reliable measure of quality.

5. Gary H. Palm (Exhibit 11)

Mr. Palm is Clinical Professor of Law at the University of Chicago Law School. Professor Palm currently serves on the Council of the Section of Legal Education, was a member of the Accreditation Committee from 1987 to 1994, is a past member of the Clinical Education and Skills Training Committee, and served on 14 ABA site inspections from 1984 to 1994, nine of which were in Europe. Professor Palm believes that the proposed consent decree does not recognize that ''the real conspiracy'' involved just law school deans and academics, not other faculty, and that the proposed consent decree ''will likely result in a lessening of vigorous enforcement of accreditation standards.'' Professor Palm makes a number of proposals in his comprehensive comment. He recommends that another section of the ABA or some other entity should perform law school accrediting, claiming that the ABA has been a ''paper tiger'' with respect to ensuring adequate training in legal skills and values.

Finding a substitute for the Section of Legal Education would not be easy since a new agency will have to obtain Department of Education and state certifications. Additionally, the ABA initiated accreditation reforms before the consent decree discussions started. The Justice Department seldom, if ever, seeks to eliminate an entrant as antitrust relief and, unlike monopoly or merger cases, partial divestiture here is not a realistic remedy.

Professor Palm's comment, and those of other clinicians, are critical of the ABA accreditation requirement with respect to skills training. This is essentially a question of education, not antitrust, policy. Professor Palm believes that there is a need for substantial, additional diversification in the accreditation process, particularly the continued or greater involvement of clinicians on site inspection teams or as part of the law faculty representation on the Council and committees. Again, whether clinicians should be included among faculty appointments to site inspection teams and governing committees is not an antitrust issue.

Professor Palm also criticizes procedural difficulties with respect to the report of the Special Commission. He urges either that the public be given a chance to comment on the report or that the consent decree not be entered until after the Special Commission makes its report.

Professor Palm also makes specific comments with respect to several of the subjects on which the Special Commission will report. He criticizes the current computation of student-faculty ratios for excluding as ''faculty,'' adjuncts and part- and full-time skills teachers who have short-term employment contracts.

He defends the current application of the facilities standards. The precise contours of the facilities standard are not challenged by the Department nor are they before the Court. The Department does not intend to constrain the setting of legitimate educational

[14] We do not wish to ''try'' the issue of output restriction but do question the manner in which Professor Harrison uses statistics. Rather than the 30-year comparison in his comment (p. 3), a more appropriate period would be from when the current Standards were made applicable (1975) and when the Consultant's office regularized the ABA's current accreditation regulatory regime (late 1970s). Roughly halving the 30-year period used by Dr. Harrison, comparing 1980–81 statistics with those of 1994–95, the number of ABA-approved law schools increased only from 171 to 177 (+3.4%) and total J.D. enrollment in ABA-approved schools increased only from 119,501 to 128,989 (+7.9%).