

The legal education community is now well acquainted with this case and the proposed Final Judgment.

#### *D. Law Schools Not Approved by the ABA*

The Department received three comments from law schools not approved by the ABA.<sup>18</sup> They are generally critical of the limited scope of the Final Judgment.

##### 1. University of La Verne (Exhibit 18)

The University of La Verne ("La Verne") is a law school accredited by the State of California but not approved by the ABA. While the California state court will admit graduates of California-accredited schools to its bar, most state bar admission rules require graduation from an ABA-approved school. First, La Verne believes that the consent decree does not restrain the ABA's support of bar admission or employer requirements that applicants graduate from ABA-approved law schools. Second, La Verne is concerned about the decree provisions relating to the physical facilities Standards and Interpretations. La Verne thinks that the ABA has required costly facilities in the past and is particularly worried that ABA Interpretations will continue to prohibit the leasing of law school facilities. Third, La Verne is opposed to the ABA's requirements about law library seating. Fourth, La Verne wants the Justice Department and Court to carefully review the Special Commission's proposals regarding calculating the faculty component of student-faculty ratios. Fifth, La Verne fears that ABA inspection teams will use salary data available for other sources. Finally, La Verne believes that the ABA should ascertain the quality of law schools by measuring such outcomes as bar passage rates.

Preliminarily, we note that the consent decree is tailored to remedy the antitrust violations alleged in the Complaint: The ABA's acting as a guild for legal educators, and the resulting competitive distortion of the accreditation process. In addition, the decree is designed to remedy the four ABA accreditation practices that were alleged in the Complaint as Sherman Act violations. This is the purpose of a consent decree: to provide relief appropriate for the allegations in the Complaint. *Microsoft*, 56 F.3d at 1448, 1459.

La Verne's first concern, whether the ABA has encouraged States to require graduation from an ABA-approved

school for bar membership, is outside the scope of charges in the Complaint and, consequently, is not addressed in the proposed Final Judgment. Moreover, in general, an organization's lobbying of state agencies is immune from antitrust liability under *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), and its progeny. The fact that individual employers may require graduation from an ABA-approved law school is not itself an antitrust violation and is outside the scope of the Complaint and relief in this case.

Second, La Verne is concerned about the ABA's rules on facilities. As we alleged in the Complaint, while adequate physical facilities is a relevant factor in assessing an educational program's quality, the facilities standards may have been applied inappropriately to enhance working conditions for law faculty. The ABA's facilities standards and practices, like others addressed in Section IV(D) of the Complaint, raise what are, in essence, educational policy issues. Hence, under the decree, they have been initially referred for re-evaluation to the Special Commission.

Third, the issue of library seating is not raised in the Complaint and is, thus, not a part of this proceeding.

Fourth, with regard to the student-faculty ration issue, the Department has required that this question of educational policy be reconsidered through a process not infected by capture. The Department will carefully review the Special Commission's report.

Fifth, the consent decree expressly forbids the ABA from taking any actions that impose salary requirements or using law school compensation data in connection with the accreditation or review of any law school. Consequently, ABA inspection teams cannot use any such data, regardless of its source, without the defendant risking contempt sanctions.

Finally, outcomes, like bar review passage rates, may be a useful measure of educational quality. This is, however, an issue of educational policy, not an antitrust issue and is outside the matters alleged in the Complaint.

##### 2. Reynaldo G. Garza School of Law (Exhibit 19)

Reynaldo G. Garza School of Law ("Garza") is a Texas law school that is not approved by the ABA. The Texas Supreme Court mandates that bar applicants be graduates of ABA-approved law schools. Garza complains that the proposed consent decree does not deal with the requirement that bar applicants be graduates of ABA-

approved law schools and the effect of this Standard on graduates of unapproved law schools. Second, Garza alleges that the consent decree does not address the ABA requirement of a core library collection. Third, the decree does not address the ABA's requirement that law schools have a full time law librarian.

We respond by noting, first, that the decree was tailored to address the antitrust violations alleged in the Complaint. The Complaint does not challenge state requirements that bar applicants must graduate from ABA-approved schools. The actions of States are exempt from the antitrust laws under the "state action" doctrine announced in *Parker v. Brown*, *supra*.

The ABA Standards on core library collection and full-time librarian administrators are not challenged in the Complaint as antitrust violations and appear to involve solely questions of educational policy.

#### *E. Graduates of Unapproved Law Schools*

The United States received 13 comments from students and graduates of law schools that are not accredited by the ABA. Among the schools represented are Texas Wesleyan School of Law, the Commonwealth School of Law in Massachusetts, an unnamed state-accredited law school in Alabama, and five California schools: Western State University in San Diego; West Los Angeles School of Law; Glendale University College of Law; People's College of Law; and an unnamed law school. The majority of these comments describe the consequences of ABA accreditation for graduates of law schools not approved by the ABA.

Ten graduates and students criticized the rules in various States that require bar applicants to graduate from ABA-approved law schools only. They suggested that the consent decree abolish or weaken these rules. These graduates were: Deborah Davy (Western State University) (Exhibit 20); Joel Hauser (People's College of Law) (Exhibit 21); Wendell Lochbiler (West Los Angeles School of Law) (Exhibit 22); Larry Stern (Glendale College of Law) (Exhibit 23); Julie Ann Giantassio (Western State University) (Exhibit 24); Robert Ted Pritchard (enrolled in unnamed non-ABA approved law school) (Exhibit 25); Donald H. Brandt, Jr. (Texas Wesleyan University) (Exhibit 26); David White (Western State University) (Exhibit 27); Bill Newman (an unnamed unaccredited California law school) (Exhibit 28); and Russell R. Mirabile (school not named) (Exhibit 29).

<sup>18</sup>MSL's comment is responded to in Section IV.H.