

The Justice Department agrees that some of the ABA's accreditation practices had little to do with quality. The decree is designed to remedy these problems. In terms of Mr. Bushnell's comment, a defendant is not required to admit to the charges in the Complaint as part of a settlement. This is one of the incentives to enter a decree instead of proceeding to trial. Finally, the Department expects that the contempt sanction will be sufficient to ensure that the ABA will abide by the decree.

2. Four Concerned Lawyers (Exhibit 34)

The Justice Department received an anonymous comment from "4 Concerned Lawyers." They congratulate the Department on the consent decree. They are concerned about having the ABA's Consultant on Legal Education, Jim White, reporting to the ABA's Executive Director, Bob Stein. They fear that friendship between White and Stein will prevent the latter from effectively supervising the former. Second, the four wish that the Justice Department would investigate the relationship between Consultant White and Indiana University, where he teaches, and examine the payment arrangements between them.

In response, we note, preliminarily, that the decree does not require the Consultant to report to the Executive Director. Moreover, there are strong incentives to ensure that the terms of the decree are carried out. Violations of the consent decree are punishable by contempt sanctions. In fact, the Consultant and Executive Director must sign annual certificates acknowledging this. In addition, the decree opens up the ABA's accreditation operations to more scrutiny. The Accreditation Committee, Council, and Standards Review Committee will have many members who are not affiliated with law schools. The payment antitrust concern or relate to the antitrust violations alleged in the Complaint.

3. Frederick L. Judd (Exhibit 35)

Frederick L. Judd is an attorney, certified public accountant, and a graduate of Brigham Young University ("BYU") law school. He fears that the ABA's requiring law schools to set schedules that limit the amount of time students can work excludes students who need to work to pay for law school. Mr. Judd wished to work as a C.P.A. while a full-time BYU student, but was prevented from setting up a class schedule that would enable him to work during the day.

The ABA's Standard limiting full-time students to 20 hours of work per week does not raise antitrust concerns or

relate to the violations alleged in the Complaint. There may be strong educational policy reasons to limit students' work so they may devote more time to their studies.

4. Michael L. Coyne (Exhibit 36)

Michael L. Coyne is an attorney in private practice in North Andover, Massachusetts, and is also associate dean of MSL. In his comment, Dean Coyne complains about deposition testimony of former Accreditation Committee Vice Chairman Claude Sowle and ABA Consultant on Legal Education James White, taken by MSL in its private action against the ABA. Dean Coyne believes that their testimony about salaries is at odds with Paragraphs 15 and 16 of the United States' Complaint, in which we allege that the ABA collected salary data for peer schools and found that schools which paid salaries below the median were non-compliant. Dean Coyne says that Mr. Sowle testified in the private action that the ABA has not paid attention to geographic or competitive salary information for some time. He asks the Department to clarify whether this testimony contradicts documentary evidence held by the Justice Department.

Dean Coyne also seeks disclosure of materials that were obtained under the Antitrust Civil Process Act, 15 U.S.C. §§ 1311-1314. The Act imposes strict disclosure limits on the Government (15 U.S.C. 1313 (c) and (d), and the Government must comply with them.

The "Government's Opposition To MSL's Motion For Intervenor Status and For Determinative Documents And Materials," filed on October 10, 1995, addresses MSL's request for documents in more detail. Were the Court to order production of the documents, there would be a substantial chilling effect on the Department's work. Defendants would be less willing to enter consent decree because they would fear it would lead to the production of their documents. MSL has a private action against the ABA and has sought discovery in that action. That is the proper forum for MSL's discovery requests.

Dean Coyne also attached pages 207-08 of Mr. Sowle's testimony to his comment. On those pages, Mr. Sowle admitted that the Accreditation Committee considered how salaries paid by a school compared to those paid by its peers. Dean Coyne's concern as to the substance of the deposition testimony regarding the use of salary information does not seem directly relevant to the issue in this APPA proceeding. That issue is whether entry of the proposed

consent decree is in the public interest. Regardless of the testimony, the relief proposed adequately deters the defendant from using the accreditation process to fix salaries.

5. Jackson Leeds (Exhibit 37)

Mr. Leeds believes that the consent decree will allow state courts to violate antitrust laws in regulating admissions to the bar.²⁰ Mr. Leeds believes that the New York Court of Appeals wrongly requires law schools to be approved by the ABA, American Association of Law Schools, or the New York State Department of Education. Moreover, Mr. Leeds apparently requested from the City University of New York Law School at Queens College ("CUNY") a copy of the ABA's site inspection report for CUNY. CUNY apparently refused because distribution of the report is limited to those authorized to receive it by the ABA's Council of the Section of Legal Education. Mr. Leeds also is upset that CUNY admits students with low traditional indicators (test scores and GPAs), and claims that CUNY does not enforce class attendance policies.

In response, the Justice Department notes that, under *Parker v. Brown*, *supra*, and its progeny, the actions of the state courts in determining bar admissions or in approving law schools are immune from antitrust prosecution. CUNY's apparent refusal to give Mr. Leeds the inspection report, CUNY's admissions standards, and its class attendance policies do not raise antitrust issues and are not related to the subject matter of the Justice Department's Complaint in this action.

G. Members of the General Public

The Justice Department received comments from three individuals whom we cannot identify as being in any of the preceding categories.

1. Robert Reilly (Exhibit 38)

Robert Reilly is concerned about practicing lawyers who are graduates of unapproved law schools but who are unable to practice in many States because those States require graduation from ABA-accredited law schools. Mr. Reilly believes that the States impose this requirement to limit competition and to deny graduates of unapproved law schools the ability to practice law in the place they wish to live.

State bar admission requirements restricting bar membership to graduates of ABA-approved schools may limit competition, but they cannot be

²⁰ It is not entirely clear that Mr. Leeds is a practicing attorney. His letter indicates legal training and, hence, we have classified him here as such.