challenged under the antitrust laws because of the ''state action'' immunity doctrine announced by the Supreme Court in *Parker* v. *Brown, supra.* Consequently, such requirements are beyond our enforcement jurisdiction.

2. Robert W. Hall (Exhibit 39)

Robert Hall, President and Director, Hawaii Institute for Biosocial Research, expressed dissatisfaction with the proposed Final Judgment, primarily because he believes that it does not remedy the ABA's role in ''anticompetitive admissions processes required by the ABA in the accreditation process.'' In particular, he criticized the control of the Law School Admissions Council (''LSAC'') by ABA-approved law schools. He does not believe that law schools should use the LSAC's aptitude test (the ''LSAT'') in the admissions process.

While the ABA's Accreditation Standards require that law schools use the LSAT, or a comparable aptitude test, we do not know that the ABA requires law schools to maintain median LSAT scores. The ABA's requirement appears consistent with Department of Education regulations mandating that accrediting agencies require that accredited schools employ a suitable aptitude test to screen applicants. Whether the LSAT, or any other test, is a reliable indication of an aptitude for a field of study seems to involve educational, not antitrust, policy questions. This issue is also not raised in the Complaint.

Mr. Hall also criticized the domination of the law school accreditation process by insiders and the lack of public involvement in the accreditation process. We recognize this problem and the consent decree remedies it by introducing more people outside of legal education into the accreditation process and by setting term limits for members of the committees that oversee law school accreditation. Mr. Hall further believes that the insider status of some members of the Special Commission may have the effect of putting the fox in charge of the chicken house. The proposed consent decree answers this, too, by requiring that the ABA's Board of Governors review the Special Commission's findings. Additionally, the Justice Department may challenge the Special Commission's recommendations in this case.

Mr. Hall further believes that the ABA has boycotted any law school that does not have small classes for at least some part of its total instructional program. He believes it will be costly for a proprietary school to offer small classes. In response, we note that the size of classes usually raises issues of educational policy. An accrediting agency may require some small classes so students benefit from greater teacher contact.

Finally, Mr. Hall criticizes the ABA Interpretation requiring law schools to have facilities that are owned rather than leased. He points out that this may be a problem in areas where land and buildings are extremely expensive. In response, the Justice Department notes that the decree is tailored to the antitrust violations alleged in the Complaint. The ABA is not charged with violating the antitrust laws by virtue of all of its facilities standards, including its rules regarding leased facilities or their implementation.

3. Amrit Lal (Exhibit 40)

Amrit Lal wrote to congratulate the Justice Department on the consent decree. Dr. Lal believes that state bar examiners allegedly manipulate bar exam results to limit bar admissions. The Supreme Court, in *Hoover* v. *Ronwin,* 466 U.S. 558 (1984), held that the state action immunity doctrine protected one state supreme court's bar admissions restrictions from an antitrust claim that made similar allegations. Dr. Lal also alleges that the Pennsylvania Board of Law Examiners discriminate on the basis of age, ethnic identity, and national origin. These concerns do not relate to the matters alleged in the Complaint.

H. Massachusetts School of Law (Exhibit 41)

MSL has filed a massive 83-page comment with an Appendix and about 400 pages of Exhibits. MSL previously filed an Intervention Motion that both parties oppose. MSL was denied accreditation by the ABA in 1994 and has filed an antitrust case against the ABA in the Eastern District of Pennsylvania. Last month, MSL filed a second action against the ABA in a Massachusetts state court, alleging unfair competition, fraud, and other matters. MSL's comment recommends numerous changes in the proposed Final Judgment, the delay of its entry, and the vast production of documents and materials from the Justice Department's investigatory files. The Government opposes the requested modifications and recommends no delay in the entry of the Final Judgment. We also oppose MSL's ''discovery'' request, believing that it is particularly inappropriate to grant discovery collaterally in an APPA proceeding to a party whose discovery requests have been denied in its own litigation.

1. Capture

MSL does not believe that the proposed consent decree adequately remedies the ''capture'' of the ABA accreditation process by the group that benefited from it. MSL suggests, as more effective remedies, requiring the ABA to choose ''procompetitive'' nominees for the Council and Committee (MSL provides the names of 21 possible nominees), and banning any members of the ''insider'' group (MSL lists about 47 ''insiders'' and about 32 of their ''helpers'') from further participation in accreditation. It urges that the decree should ban ''the ABA from violating the Sherman Act through use of its other accreditation criteria to achieve anticompetitive purposes.'' Comment, p. 11. The Government believes that it is inappropriate for it or the Court to micromanage the defendant's accreditation activities to require that certain people be designated to participate in accreditation and others prohibited. Such relief would be extraordinary and unique among consent decrees. Enjoining the ABA from violating the Sherman Act in its application of its remaining accreditation criteria is at the other extreme—so vague as to add little effective relief. This is because such a provision requires a Rule of Reason trial just to enforce a contempt action. The consent decree's limits on law school faculty participation on governing committees, the required involvement of ''outsiders'' on site inspections, and the close involvement of the ABA's Board, itself undoubtedly independent from accreditation ''insider'' control, are reasonable measures to eliminate the capture of the accreditation process.[21]

MSL claims that the ABA has violated the consent decree by adding an extra academic to the Section of Legal Education's Nominating Committee and that the new data questionnaire circulated by the ABA to law schools requests data from which average and, possibly, individual salaries can be calculated is in violation of the decree. Our information, however, is that no additional academics have been added to the Nominating Committee since the decree was filed, and that the event that MSL describes took place last year. The 1995–96 Nominating Committee has one legal educator.[22] As to the data

[21] The ABA's Board, independent of consent decree requirements, has also required the Consultant of the Section of Legal Education to report to the ABA's Executive Director.

[22] The Nominating Committee members are a California practitioner, a law school librarian, a university president (who is a former law school dean), a Nebraska practitioner, and a non-lawyer