questionnaire, our understanding is that average salaries cannot be calculated, except in the most gross fashion, and that individual salaries cannot be calculated in any fashion from the data being collected. Moreover, the aggregated salary expense data the ABA collects is not given to the Accreditation Committee, the Council or members of site teams, and is not used in connection with law school accreditation. The Justice Department does not object to the collection of this data as long as it cannot be disaggregated.

2. Secrecy

MSL points out that the ABA's accreditation Standards and Interpretations are often quite general. Their content has been supplied by the enforcement process and by the policies followed by enforcement officials. MSL believes that a simple cure for monitoring the ABA's actual accreditation practices would be to require that all documents created during the accreditation process be made public.

The proposed Final Judgment does require the defendant to publish annually the names of those who participate in domestic and foreign site inspections and the schools inspected. Additionally, the Council must report to the Board all schools under accreditation review and the reason the law schools are still under review. The Council must also approve and the Board review all annual and site inspection data questionnaires sent to law schools. Our interviews indicated that some individuals thought that schools and site inspectors might be inhibited in some respects if their free exchange of views during the accreditation process were made public. Since this appears to be a matter implicating legitimate accreditation process concerns, the Government was reluctant to include total disclosure as required antitrust relief.

3. The Special Commission

MSL attacks the composition of the Special Commission, claiming that they were appointed by the two immediate past Chairmen of the Council and that at least 8 of the 15 commissioners ''are part of the heart and soul * * * or are closely tied to the capturing inside groups.'' [23] Comment, p. 20. While many of the members of the Special Commission have had close ties to the ABA and its accreditation activities, its membership is six legal academics (including one well-known critic of ABA accreditation), two judges, one university president (a past ABA president and Council Chair), five practitioners (including one critic of ABA accreditation), and one public member (the president of the League of Women Voters). The Special Commission had been established by the ABA, prior to settlement negotiations with the Government, to make a comprehensive review of the ABA's accreditation of law schools. The Government will closely examine its report. The proposed decree leaves matters that have legal educational policy implications to the Special Commission. The ABA had initiated the Special Commission in response to criticisms prior to the filing of the Department's case and it is reasonable to give the first opportunity to address these policy interests to the Commission. The Special Commission's recommendations are subject to the approval of the ABA's Board. The Government may challenge any proposal with respect to the six subjects enumerated in the proposed consent decree.[24] The Government expects that it and the defendant will resolve any differences that may develop so that court involvement in the process will be unnecessary.

MSL claims that this process involves lengthy delays, possibly 15–18 months, and requests that either the Court delay entry of the decree until the Special Commission's report is adopted and approved by the Board and Justice Department, or that the Court should allow third parties the opportunity to comment.

While we do not expect anything so lengthy as a 15–18-month delay, entry of the decree should occur now.[25] The decree has established a reasonable, defensible remedy to treating the allegations in the Complaint. Specific practices that clearly violate the antitrust laws and cannot be justified on educational policy ground have been immediately enjoined. The process that produced these and other accreditation rules is in the process of reformation, with the initial work being done by the ongoing Special Commission, subject to later approval by the ABA Board and Justice Department.

The public has had the opportunity to comment on the subject areas referred to the Special Commission and some, including MSL, have. Certainly, if third parties have comments or complaints about the Special Commission's report, which will be made public, the Justice Department welcomes and will consider those comments.[26] We have often initiated judgment enforcement proceedings based on information from third parties. Public comments will be valuable in forming our response and in our discussions with the defendant after the Special Commission's report.

MSL claims that use of the Special Commission circumvents the Tunney Act. The consent decree establishes a process rectifying the conduct alleged in the Complaint. The public has had the opportunity to comment on the process as well. The Department will welcome comments when the Special Commission's report is public. In the unlikely event the two parties cannot reconcile differences on the Special Commission's report, the proposed consent decree provides that the Court will resolve the Government's challenge, applying a Rule of Reason analysis.

MSL believes that such a challenge should be decided under a ''quick look'' analysis. In a recently decided case, however, the Third Circuit remanded for a Rule of Reason analysis a district court decision that had applied a ''quick look'' analysis where elite Northeastern universities fixed the *price* charged to commonly-admitted students who also received financial aid. *United States* v. *Brown University, et al.*, 5 F.3d 658 (3rd Cir. 1993). The subjects referred to the Special Commission do not directly restrain price and do not seem as appropriate for a ''quick look'' analysis.

MSL also comments on some of the topics on which the Special Commission will report. It notes that the student-faculty ratio standard has been applied by the ABA against law schools to require the employment of the capturing group—full-time legal theorists—and discourages the use of judges and practitioners.

The proposed consent decree left the initial recommendation regarding the correct use of student-faculty ratios to the Special Commission for several reasons. Student-faculty ratios are generally regarded as a useful legitimate accreditation tools, as is the requirement of a core full-time faculty. The Government expects that the Special Commission and the ABA Board will suitably assess the continuing utility of student-faculty ratios in a manner that

public member. The term of the individual mentioned by MSL expired last summer.

[23] Only two of the Commissioners are listed in MSL's enumeration of the 79 ''insiders'' and ''helpers'' group. Comment, p. 6 n.4.

[24] The six subjects are a small part of the Special Commission's entire report.

[25] The decree can be entered once the comments and the Response have been published in the Federal Register and the Government has certified to the Court compliance with the APPA.

[26] Only a few of the 41 comments discuss the Special Commission.