does not skew the outcome to promote guild interests.

MSL also criticizes the ABA's use of the vague facilities accreditation standards to micromanage law schools and to require the construction of what it terms ''Taj Mahal'' law school facilities. The use of this standard to enhance unnecessarily full-time faculty working conditions is an appropriate concern. Since adequate facilities can be clearly related to educational quality, but the construction of unnecessary facilities imposes costs on universities and state governments, the Special Commission should have the opportunity to recommend a standard and practice that will consist wholly of legitimate educational concerns.

4. ''Procedural'' Matters

MSL believes that the proposed relief is inadequate to eliminate the capture problem. MSL anticipates that the ABA will claim that it was not ''feasible'' to include practitioners to staff 6–7 person inspection teams and staff them with insiders.[27] The proposed consent decree does require that the composition of site teams be made public. This will make it easier for the public, and the Government, to see if the defendant is living up to its obligations under the decree. MSL raises the specter of other possible abuses by a Legal Consultant intent on evading, at a minimum, the spirit of the consent decree. The decree cannot address all possible outcomes but a systematic evasion of its mandate is cause for a contempt hearing. On balance, the decree makes a reasonable effort to eliminate capture of the accreditation process while preserving the ABA's ability to perform legitimate and important accreditation work. This case has also captured the attention of the ABA's leadership, which has personal and economic incentives to avoid a repetition of the conduct that caused the United States to bring this suit.

5. Reliance on ABA Leadership

MSL doubts that the ABA's leadership can be trusted to effect changes in the accreditation process, relying, in particular, on the ABA's outgoing president's statement denying antitrust liability. A value of the consent decree process is that it permits the Government to obtain effective and immediate relief that the defendant may accept in part because it does not require an admission that can be used collaterally. Whether the defendant believes it has violated the antitrust laws is not as important as whether it intends to comply with the decree. Further, unlike defendants in most antitrust cases, the ABA's leadership did not economically benefit from the conduct alleged in the Complaint, nor, perhaps, did the ABA itself. Benefit accrued to legal academics in the Section of Legal Education, not ABA leaders who have an economic incentive to avoid conduct that may be costly to their organization. The leadership adopted changes and entered this decree over the apparent opposition of the leadership of the Section of Legal Education.[28] MSL's recitation of ABA antitrust ''insensitivity,'' involving far different subjects several decades ago, is of little relevance.

6. ABA Antitrust Compliance Officer

MSL also objects to the provision of Section VIII of the proposed Final Judgment that requires an antitrust compliance program, including the appointment of an antitrust compliance officer. Compliance programs have been a fairly standard provision in civil antitrust cases brought by the Government and settled by consent decrees since the *Folding Carton* case in the late 1970s.[29] The compliance program is, if anything, somewhat more rigorous than in other consent decrees.

We expect that the ABA's General Counsel will be named as the compliance officer. This, too, typically occurs in Government antitrust consent decree proceedings. We know of no case in which the ''identity, professional background and views of the Compliance Officer'' was an issue in an APPA proceeding. Clearly, since the compliance officer may be required to provide advice to the defendant's officials, one cannot expect the compliance officer to be one chosen by MSL.

MSL claims that it is ''an incomprehensible lacuna'' for the proposed consent decree not to give the antitrust compliance officer ''supervisory responsibilities'' with respect to the Special Commission. But, we see no there, there. The Special Commission's charge is to reconcile the educational policy questions in the six subjects it is to report on. While it may be seeking antitrust advice, there is no reason why its work, which also includes a comprehensive review of law school accreditation, must be supervised by the antitrust compliance officer or why that should be required by the Court.

MSL also claims that the Department of Education's review of ABA accreditation ''has been wholly ineffective to date in assessing quality.'' It believes that Section VI(L) of the proposed consent decree may be related to that claimed failure by the Department of Education.[30] MSL concludes that ''it is perplexing that the Antitrust Division would now rely on the DOE as a vehicle for assuring quality or for precluding self-interested conduct.'' Comment, p. 58. The Justice Department disagrees with MSL's statement about the Department of Education and has no doubt that the Department of Education has carried out its mandate under the Higher Education Act. MSL's claims does not relate to whether entry of the proposed Final Judgment is within the reaches of the public interest, the issue now before the Court.

7. MSL Discovery Requests

MSL's comment restates the arguments made in its September 26 Intervention Motion for discovery of the Government's investigative files. As its first ground, MSL contends that it is entitled to discovery of a ''wide spectrum of documents, evidence, memoranda and other evidence that can be determinative'' under § 16(b) of the APPA. The APPA calls for the Government to file ''materials and documents *which the United States considered determinative in formulating* [the proposed consent decree]'' (emphasis added). Usually, there are no such documents and there were none in this proceeding.[31]

MSL again heavily relies on *United States v. Central Contracting Co.*, 537 F. Supp. 571 (E.D. Va. 1982). since *Central Contracting* was decided, however, two courts in this District have rejected requests for documents not identified by the United States as ''determinative.'' *United States v.* LTV Corp., 1984–2 Trade Cas. (CCH) ¶66,133 at 66,335 n.3, *appeal dismissed*, 746 F.2d 51, 52 (D.C. Cir. 1984); *United States v.* Airline

[27] There is no requirement that the size of inspection teams be that great. ABA inspection teams have doubled in size over the past 20 years.

[28] Within a month of the filing of the consent decree, the chairpersons of the Council and Accreditation Committee had resigned, sharply criticizing the settlement.

[29] *U.S. v. Alton Box Board Co.*, 1979–2 Trade Cas. (CCH) ¶62,992 (N.D. Ill. 1979). The then-Assistant Attorney General of the Antitrust Division described the antitrust compliance program as ''innovative provisions that add a new dimension to . . . [a] recent emphasis on preventive antitrust.'' P. 1, *Legal Times of Washington*, July 9, 1979.

[30] MSL's venturing into unrelated subjects and gratuitous attacks on a Cabinet agency is further reason why it should not have party or *amicus curiae* standing in this proceeding.

[31] The Government attached three documents as exhibits to its Memorandum Opposing Intervention that, while not ''determinative,'' were relevant to the proposed consent decree since they showed the ABA was reforming its accreditation of law schools before settling this case.