action is not widely known to the public and that has injured consumers. The proceedings to date are largely insider proceedings where once again, whenever ABA interests are at stake, the public interest i.e., consumers are ignored. The investigation must be opened to public hearings for the reasons given herein.

Sincerely yours,

Rober W. Hall,

President and Director.

RH/bh

Enclosure: The Ethics of Educational and Employment Aptitude Testing

July 18, 1995.

Mr. John F. Greaney,

Chief, Computers and Finance Section, U.S. Department of Justice Antitrust Division, 555 4th Street, N.W., Room 9903, Washington, DC 20001

Re: United States of America vs. American Bar Association, Cv. No. 95–1211, Request for modification of proposed final judgment.

Dear Mr. Greaney: The complaint in this action states that it is the view of the United States that during the past 20 years, the law school accreditation process has been captured by legal educators who have a direct interest in the outcome of the process. The government also noted in its Competitive Impact Statement that it has learned more about the ABA's practices and their competitive effects as the investigation proceeded. Unfortunately, the government's action and order have concentrated on issues far less important to the public than other ABA anticompetitive practices that severely impact the public. The issues listed in the proposed Final Judgment are essentially insider issues.

Far more serious is the ABA's role in anticompetitive admissions processes required by the ABA in the accreditation process. Listed below and attached hereto are major anticompetitive issues left out of the final judgment that will be impacted by the ten year term of the judgment if they are not reviewed, investigated and included now. In the alternative, the following issues must be specifically excluded from the settlement prescribed by the proposed Final Judgment.

The public is concerned about the preclusion and res judicata effect of the proposed Final Judgment, Clayton Act disclaimers not withstanding. For the reasons given, the proposed judgment is deficient and potentially harmful to the public interest. Despite the statement in Section XI, (c), ''Entry of this Final Judgment is in the public interest.'' the proposed Final Judgment is not in the public interest.

Major issues not dealt with include but are not limited to:

1. The Law School Admission Council (LSAC) is an association of 191 law schools in the United States and Canada founded in 1947 to coordinate, facilitate and enhance the admissions process. During 1992, the Law School Admission Council administered 150,000 LSAT's, supported 477,000 law school applications, and processed 198,000 transcripts. As owners of the LSAC, the same legal educators that control the accreditation office control the LSAC.

2. All law schools accredited by the American Bar Association (ABA) are LSAC members.

3. With ABA knowledge, sanction and support, one of the many ''services'' provided by Law Services includes the LSAT.

4. LSAC members and many non-member law schools in the United States require applicants to (1) subscribe to the Law School Data Assembly Service (LSDAS) service and (2) take the LSAT as a part of the application process.

5. The LSAT is an entry barrier to a law school education and in addition, the practice of law.

6. The issues raised in the attached white paper support the allegation that LSAT's are a fraud having no validity at all, and certainly less predictability than the toss of a coin.

7. By ABA knowledge, sanction and requirement, ABA accreditation requirements and reviews involve minimum median LSAT scores along with pressure to keep median scores high. This pressure essentially makes the LSAT a gateway requirement to the legal profession in this country.

8. By ABA knowledge, sanction and requirement, the accreditation process reinforces the stranglehold the ABA has over law education in this country regardless of whether an applicant intends to use his/her law education in the licensed practice of law or not. As but one example, the government appears to be unaware that in Hawaii and other states, an officer and sole owner of a closely held corporation cannot lawfully represent the corporation before *federal* courts including bankruptcy courts regardless of competence since federal courts follow state licensing rules requiring an ABA approved law school education. In many cases, ABA lawyers file actions unopposed as corporate officers who cannot afford attorneys are told to sit down while licensed attorneys proceed. This issue starts with accreditation and admissions requirements required by ABA accreditation.

The above anticompetitive practices have evolved without any real public view, participation, scrutiny or oversight. Proposed Interpretations of Standards, Rules, and Policies to the admissions process which are very much a part of the accreditation process have been hidden from the public and will continue to be hidden from the public if they are published only in the ABA Journal and the Review of Legal Education in the United States. The ''public comment'' requirements of the proposed Final Judgment are for insiders, not the public. It is this absence of public oversight that has caused the ABA anticompetitive guild to flourish.

ABA facilities requirements essentially rule out for-profit law schools in Hawaii since Hawaii is the only state where commercial land is largely leasehold; land and buildings are extremely expensive since government and large estates own most of the land. If current accreditation practices continue to be used and a Hawaii for-profit corporation leases land and buildings, mainland accreditation teams who are unfamiliar with Hawaii's special problems will continue to use that fact to deny accreditation.

From the public's point-of-view, a Special Commission consisting of largely the same actors who created the anticompetitive guild described in the government's complaint does not constitute relief. The situation is one where the fox remains in charge of the chicken house.

Law school applicants have no escape from the ABA's monopoly and anti competitive practices described herein. The above issues are a very important part of the accreditation process. Admissions requirements are also a part of the accreditation process that have been captured by those with a direct interest in the outcome of admissions requirements.

It is critical that the government not limit its ABA investigation to the issues list in the proposed Final Judgment. It should also be understood that the entire action was not one widely known to the public and that has injured the interest the public has in this proceeding. The proceedings to date are largely insider proceedings where once again, whenever ABA interests are at stake, the public interest is ignored.

Sincerely yours,

Robert W. Hall,

President and Director.

RH/bh

Enclosure: The Ethics of Educational and Employment Aptitude Testing

The Ethics of Educational and Employment Aptitude Testing

Robert W. Hall, Hawaii Institute for Biosocial Research, Honolulu, Hawaii, Revised, July 18, 1995

Abstract

The author presents a case against the continued use of graduate or undergraduate educational or employment aptitude or predictive tests. The author argues that educational aptitude or predictive tests have no proven or provable validity, that there is no justification to continue to require educational or employment aptitude or predictive tests from the moral, ethical or legal points of view. The author raises the issues that (1) applicants required to take aptitude or predictive tests are forced to participate in psychological research without their informed consent, (2) applicants must pay for forced participation benefiting private, for-profit corporations, (3) nationwide cheating is distorting normative standards, (4) there is no known statistical method for validating aptitude or predictive tests since in actual use, random statistical selection is routinely ignored, and (5) validity correlations reported by the test makers prove the tests do not do what they purport to do. This paper is a call for multi-discipline reflection with regard to the moral, ethical and legal issues presented.

The Ethics of Educational and Employment Aptitude Testing

Introduction

Secondary, undergraduate, and graduate level educational and employment aptitude or predictive testing has had a profound impact upon the educational, social and political fabric of this country. Entry into key professions such as medicine, law, education