

Bellacosa, the immediate past Chairman of the Council, and Robert Stein, who preceded Bellacosa in that position and now is Executive Director of the ABA. There are 15 Commission members, at least eight of whom are part of the heart and soul of, or are closely tied to, the capturing inside group. A ninth member belonged to a closely cooperating group, the Special Accreditation Committee of the Association of American Law Schools, and the Commission has worked closely with two other leaders of the controlling inside group.

Confining ourselves to listing only one or two of the accreditation credentials for each of these persons, the relevant members of the Special Commission are: Commission Chairperson Rosalie Wahl, a former Chair of the Council, which oversees the Accreditation Committee; Henry Ramsey, Jr., a recent former Chair of the Council and Chair of the committee which produced a 1990 report seeking broader funding for insiders; Pauline Schneider, a recent chair of the Accreditation Committee; Diane Yu, recently a member simultaneously of both the Accreditation Committee and the Council; Talbot D'Alemberte, a former Chairman of the Council; Joseph Harbaugh, a Section activist and former head of the Section committee on diversity; Nancy Neuman, a member of the Accreditation Committee and recently the president of the AALS, which cooperates closely with the ABA in accreditation; and Thomas Sullivan, who has been a member of the Accreditation Committee of the cooperating AALS.

In addition, the Special Commission worked closely with the ABA's Consultant, James White, who has headed the controlling group for nearly 22 years. And, of the two "reporters" who helped write the Commission's report, one was Frank Read, a long time Section activist and former president of the cooperating Law School Admission Council, who was serving as James White's Deputy Consultant during the period of the Special Commission's work.

Thus, review of anticompetitive accreditation practices has initially been placed largely in the hands of persons who have vigorously implemented and thoroughly approve of those anticompetitive practices, who resisted the Consent Decree and continue to resist it, and who, in the words of Dean Cass, regard the Decree as the product of a Department of Justice that is "out of control" and of an ABA leadership

that "sold out by settling." ¹⁴ (P. 7, and pp. 7-8, N. 5, *supra*.)

C. It would be unrealistic to expect a 15 person Commission with so many members and associated persons who are leaders of the controlling inside group to vigorously recommend changes in accreditation practices, or not to minimize any changes that intense opposition to their practices cause the group to feel compelled to recommend notwithstanding their predilections. Thus, it is not surprising that the Commission's initial Report (Exhibit 9), delivered August 3, 1995, did in fact minimize recommended changes in the subjects of interest to the DOJ. And although their own views were published for 61 single spaced pages, members of the Commission (successfully) requested Commission member Ronald Cass to suppress publication of a "lengthy separate statement" of views which differ from ones the majority had put forth.

¹⁴ From the Complaint and the CIS, it is not clear whether and the extent to which the DOJ, when negotiating the Decree, had been informed by the ABA as to the heavily insider nature of the Special Commission, the length of time it had been sitting (over one year), or that its work was due to be completed at the beginning of August, 1995. The Consent Decree contains some language which, because expressed in the future tense (the "ABA shall: establish a Special Commission") (Consent Decree, P. 7 (emphasis added)), would indicate that the Government did not know, when negotiating the Decree, that the already long-existing Wahl Commission would be the *Special Commission*. On the other hand, the CIS, filed approximately three weeks after the Decree, contains language which, because expressed in the past tense, indicates that the Government had possessed at least some relevant knowledge about the Wahl Commission when negotiations were in progress. (The CIS says, for example, that the DOJ had "considered" that the Commission "had progressed" in the work doing. (CIS, p. 27).)

The question of the extent of the Government's knowledge when negotiating the Decree is an important one. Prior to agreeing that the insider-packed Wahl Commission, which was due to finish its work shortly, would be the Special Commission, the DOJ had proposed that the Special Commission should be "separately constituted as an antitrust review committee." (CIS, p. 17.) If the DOJ was apprised, when it agreed that the Wahl Commission rather than a separate antitrust committee should be the Special Commission, that the Wahl Commission was an insider-packed group that had been sitting for a long period and was about to finish its work, then one might disagree with the Government's decision that the Wahl group should be the Special Commission, but the decision was nonetheless an informed one. But if the Government had not been told of the heavily insider nature of the Wahl Commission and that the Commission had been sitting for over a year and its work was nearly completed—if the DOJ had not been informed that the Commission was heavily comprised of persons who, the Government correctly charged, had captured the accreditation process and used it for anticompetitive purposes and who were about to submit their report—then it would appear that the ABA leaders with whom the Government was negotiating withheld crucial information even though the Government is heavily depending on them to make the Consent Decree efficacious.

In a brief, 1¼ page "Separate Statement" appended to the Commission Report, Dean Cass said he had prepared a "lengthy separate statement" of his views because he disagrees both with the Commission's views on accreditation and with its treatment of specific issues. (Exhibit 9, p. 62). The specific issues include two which the DOJ agreed to have reviewed by the Special Commission, student/faculty ratios and the allocations of funds between law school and university. They also include other specified issues plus unspecified ones as to which Cass says there is "a basis for skepticism" about existing accreditation practices or the changes proposed by the Commission. (Exhibit 9, p. 62.) However, "[a]t the request of a number of Commission members" Dean Cass withheld his lengthy separate statement from publication "until the Commission completes its work." (Exhibit 9, p. 62.) Until then, his separate statement will be available only members of the Council and the Board of Governors. (Exhibit 9, p. 62.)

Dean Cass' timing of the publication of his views is a reference to the fact that, because the DOJ has agreed to have the Commission review anticompetitive practices listed above, the Commission has said it will meet again in September and issue a supplementary Report sometime in October. It is Dean Cass' hope that the withholding of his lengthy statement of dissenting views will contribute to the Commission changing its mind, and accepting recommendations *that he says it already has rejected*, when it meets again this fall. (Exhibit 9, pp. 62-63.) It is his further hope that, if the Commission does not accept recommendations it has already rejected, the ABA will nonetheless take further steps to remedy the problems. (Exhibit 9, p. 63.)

Thus, it is impossible at this time to know Dean Cass' views regarding weaknesses in the majority's current recommendations. Also, it is possible that neither additional changes recommended in the majority's supplementary Report due in October, nor Dean Cass' views, will be available early enough to be known to the Division or the Court if the latter assesses in October, 1995 whether the Decree's provisions for review of anticompetitive practices by the Special Commission are within the reaches of the public interest. Additionally, it is certain that, if the Court considers the issue this October, neither the Division nor the Court will know what if any corrective action the ABA will take should the Commission's Supplementary Report continue to reject