

salaries for full-time professors and ever more full-time professors—the results of a recent survey of student bar association personnel,<sup>16</sup> discussed in an article on the use of adjuncts,<sup>17</sup> show that law students regard adjunct professors as equal or preferable to full-time professors. Students are, of course, the consumers who are paying the bills, and consumers, the Supreme Court has said, are the persons to whom the Sherman Act awards choice. *National Society of Professional Engineers versus United States*, 435 U.S. 679, 695 (1978).

Student bar association officials at 29 schools responded to a survey questionnaire which inquired about students' evaluations of adjunct teachers versus their evaluations of tenure track professors, i.e., full-time professors. Sixty-one percent of the respondents found adjuncts as qualified as full-time professors, 32 percent found adjuncts *more* qualified, and only 7 percent found them less qualified. Forty-three percent of the respondents found adjuncts to be as available to meet with students as full-timers, 32 percent found them *more* available, and only 25 percent found them less available. Sixty-four percent said an adjunct had been the professor who contributed most to their education; only 36 percent said that it had been a full-time professor. Sixty-eight percent said that if a particular state law course were on a bar exam, they would prefer to take it from an adjunct professor; only 32 percent preferred a full-time professor. Sixty-eight percent said full-time professors should practice law—which is anathema to the full-time faculty who captured ABA accreditation and dominate the Special Commission—and only 32 percent felt to the contrary. Views favorable to adjuncts were also expressed, by overwhelming percentages, with regard to other important matters.<sup>18</sup> All these results obtained though 93 percent said adjuncts taught not just electives, but core or required courses—which, like

full-time professors practicing law, is anathema to the full-time faculty who captured ABA accreditation and dominate the Special Commission.

This survey of the opinions of the consumers of legal education directly contradicts the unfounded claims made about adjuncts by the accreditation insiders—claims which the consultant had to admit under oath lack any empirical statistical basis. (Exhibit 10.)

The situation has been aptly explicated in letters written to the Special Commission by knowledgeable deans and lawyers, including the Deans of the Touro, University of Pennsylvania, Campbell University, and Case Western Reserve University Law Schools. Their comments, which are appended at the back of this Memorandum, make clear that the failure to include adjuncts when calculating the student-faculty ratio is for many reasons arbitrary and unjustified. The Dean of the Touro College Law Center aptly summed up the matter by saying, "I agree with those who find it insulting to the practicing bar to refuse to recognize the contributions that adjuncts can make to a law school's program. Adjuncts are not included in the calculation of the student-faculty ratio. \* \* \* The leading trial lawyer in the state, who taught trial practice as part of the law school's program, would not be included in that law school's student-faculty ratio." Appendix, *infra*.

The Dean of the University of Pennsylvania Law School summed up the matter by calling the student/faculty ratio arbitrary and by saying its definition of full-time faculty is "arbitrary almost to the point of absurdity." Appendix, *infra*.

D(v). Yet, notwithstanding the deeply anticompetitive nature of the student/faculty ratio and particularly its anticompetitive effect of greatly reducing the number of adjunct professors,<sup>19</sup> the Special Commission made only minimal recommendations for change.<sup>20</sup> And, though obviously

cognizant that intense opposition to current practices regarding the ratio disabled it from declining to recommend any change whatever, the Commission couched its suggestions in language so abstract and general that it is meaningless because it could be met even if there were to be no change whatever in actual results.

Thus, although in one place the Report says the ratio should "take into account" the contributions of adjuncts, in its immediately following "recommendation," the Commission does *not* say adjuncts should be counted on some proportional basis or on any basis at all. Rather, it says only that it is "reasonable to consider the effect of adjuncts on the quality of the academic program in assessing the significance of student/faculty ratios." (Exhibit 9, p. 29.) One who is so minded can take these effects into consideration as the insiders claim to have done for years, but can then decide the effects do not warrant any change in the application of the ratio, as the insiders have also done for years. Furthermore, rather than require adjuncts to be counted on some basis, the insider dominated Wahl Commission accepted the insiders' erroneous assertions regarding alleged problems with adjuncts.<sup>21</sup> (Exhibit 9, pp. 27–28.)

E. The foregoing discussion of the student/faculty ratio demonstrates that, by agreeing to have anticompetitive practices reviewed by the Special Commission comprised largely of insiders who enforced, approved of and created those practices, the Government has agreed to a compliance procedure that may cause the Consent Decree not to rectify the anticompetitive practices

not counted against the percentage limitations on academics who can belong to those committees, the Consent Decree defines "faculty" as all persons who teach *except* for adjuncts. (Consent Decree, p. 2 (emphasis added).) This apparent drafting error could be used to assert that the exclusion of adjuncts from "faculty" need not be reconsidered and changed in *any* way, when in reality its intended meaning is only that adjuncts should not be considered "faculty" when determining whether there is a violation of the percentage limitations applying to the number of faculty on committees. This drafting error should be corrected, perhaps by simply including adjuncts in the Consent Decree's definition of "faculty," but adding that "adjuncts shall not, however, be considered faculty for purposes of determining the number of faculty members on the Accreditation Committee, Council, Standard Review Committee or Nominating Committee."

<sup>21</sup> Given the meaningless nature of the Special Commission's recommendations regarding the ratio, and the Commission's reliance on shop-worn clichés, it is not overly surprising that Commission members did not care to see publication of Dean Cass' views on the ratio.

<sup>16</sup> Exhibit 11.

<sup>17</sup> The article, entitled "The Advance of the Adjunct," is in Exhibit 12.

<sup>18</sup> Seventy-nine percent said with regard to Criminal Procedure—now widely regarded as a core course and often a required one—that they would prefer to take it from an adjunct; only 21 percent preferred a full-time professor. Eighty-six percent found full-time professors more likely to cancel classes than adjuncts, and only 14 percent found adjuncts more likely to cancel. Ninety-three percent found full-timers more likely to arrive late to classes; only seven percent found adjuncts more likely to be late. Ninety-six percent thought that ABA accreditation guidelines should be the same with regard to use of adjuncts as with regard to full-timers, and only four percent felt to the contrary.

<sup>19</sup> At a recent meeting of the American Association of Law Libraries, Donald Dunn, who is the Library Director of the Western New England College School of Law and has been on many site inspection teams, stated publicly that the "action letter" recently received by his law school placed it under a show cause order to decrease the number of its adjunct professors. (Exhibit 13.)

<sup>20</sup> The Government has indicated a need for reconsideration of the exclusion of adjuncts from the student/faculty ratio. There appears to have been a drafting mistake that could nullify this, however. Apparently in an effort to insure that adjunct faculty members who belong to the Accreditation Committee, Council, Standards Review Committee or Nominating Committee are