micromanagement level in this regard that, as the Dean of the Temple University Law School recently pointed out, they will put a school ''on report'' if it allegedly does not provide adequate office space for every one of dozens of not-for-credit student organizations. (Exhibit 15, Testimony of Robert Reinstein, Dean of Temple University Law School, before the Wahl Commission.)

The Special Commission's present recommendation regarding physical facilities will make little or no change in this situation. For the Commission, while recommending that the current Standards be replaced by a new one, simultaneously recommends that the current Standards be retained as Interpretations, i.e., that they be retained in a different guise. (Exhibit 9, p. 31.) And the Commission's recommendation does not even begin to reach what has been the *real* problem: the way in which the rules, be they Standards or Interpretations, are enforced in practice by the accreditors. It is the method of enforcement which here, and often elsewhere too, has caused inappropriate application of rules to further anticompetitive guild interests.

In these circumstances, it is difficult to comprehend why continuation of a failure to recommend drastic changes in practices that inevitably require unnecessarily huge inputs of resources—that inevitably require $20, $40 or $60 million dollar buildings to satisfy the accreditors when far less expensive facilities would be completely serviceable—should be given anything more than ''quick-look'' Rule of Reason treatment.

A(iv). It is not difficult to cure the problem arising because the Decree may bind the Court to use a full blown Rule of Reason analysis in deciding a governmental challenge to recommendations of the Special Commission. Cure requires only that the provision in question be removed from the Decree. That would leave the Court free to use a full blown or ''quick-look'' Rule of Reason analysis, as appropriate, or even a *per se* analysis if and when appropriate.

B. Second, the Decree unnecessarily and improperly allows only the Government to challenge the Special Commission's recommendations. (CIS, p. 17.) Unlike the Tunney Act, which allows third parties to file documents explaining why they believe the provisions of a decree are too weak to cure the violations identified in the Government's Complaint, there is no provision here for other parties to file comments explaining why they believe Special Commission recommendations which the Government should accept in whole or in major part are insufficient.

In the normal consent decree the relief is stated, and private parties can comment on it under the Tunney Act. Here, realistically speaking, the provisions for review by the Special Commission are not themselves relief, but only a method of obtaining possible future relief. Yet, there is no provision for private parties to comment on that future relief when it becomes known—why may not occur for a considerable period of time, as discussed above. Hence, the Tunney Act's provisions allowing third parties to comment on relief stated in a consent decree have been circumvented. This will be of particular importance if the Special Commission issues minimalist recommendations, as thus far seems likely, the Board of Governors does not strengthen them considerably, and the Government either does not challenge them at all or challenges them only in minor or minimal ways.

To cure this problem, third parties should specifically be given the right to comment on the Commission's recommendations in order to ensure that their Tunney Act right to comment on relief is preserved. Alternatively, as discussed earlier, the Court should postpone its Tunney Act hearing until a specified date (such as December 31, 1995) by which time the Commission's recommendations shall have been submitted, any changes shall have been made by the Board of Governors, and the DOJ shall have decided which recommendations it accepts and which it will challenge.

*6. There are Important ''Procedural'' Matters Which Have not Been Addressed Effectively in the Consent Decree or Have not Been Addressed at all*

Contributing to the violations of law charged in the Complaint are several ''procedural'' points which, when directly addressed in the Consent Decree, have been addressed in a way that may not remedy the problems, or which have not been addressed at all in the Decree.

A. First is the composition of inspection teams. These have been stacked by the Consultant and his colleagues to insure the anticompetitive results they desire at a school. Thus, even the insider-dominated Special Commission has had to concede that only two percent of the inspectors have participated in 38 percent of the inspections. (Exhibit 9, p. 51.)

MSL's inspection team was illustrative, having been stacked with insiders who previously had anticompetitvely devastated schools, and who would be sure to write a highly adverse report against MSL in order to anticompetitvely stifle its innovations and efforts. The inspectors thus included leading insiders such as Steven Smith, Peter Winograd, Jose Garcia-Pedrosa, and Richard Nahstoll.

The Consent Decree does not effectively remedy the problem. All that it does is require (i) that ''to the extent *reasonably feasible*'' (Consent Decree, p. 6 (emphasis added)), each inspection team shall include one non-law school university administrator and one practicing lawyer, judge or public member, and (ii) that there be publication of the names of those who inspected each school (Consent Decree, pp. 6–7). These remedies could easily prove useless, for several reasons:

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A(i). Given publicly acknowledged difficulties in finding six or seven persons whose schedules simultaneously allow them to inspect during a given week, it often may *not* prove ''reasonably feasible,'' and it usually will be easy for the Consultant to *claim* it is not ''reasonably feasible,'' to find a knowledgeable non-law school administrator and a knowledgeable practicing lawyer, judge or public member to be on an inspection team.

A(ii). The Consultant can continue to appoint anticompetitively oriented insiders to inspection teams for schools for which the insider group desires highly critical reports that preclude or cause threatened withdrawal of accreditation. Publishing the list of inspectors will not cure this. For all that the Consultant will need to do is save anticompetitive insiders for inspections of schools the insiders privately desire to be injured by adverse reports.

A(iii). Even when the Consultant appoints non-law school administrators, practicing lawyers, judges or public members to an inspection team, if the insiders desire to injure a school, the appointees can be persons who will support the goals of the insider group. This was done to MSL.

B. A second problem, not addressed anywhere in the Decree, is that inspection teams regularly write deeply one-sided, even outright false, inspection reports designed to castigate schools and thereby force them to adhere to the insiders' wishes regardless of how anticompetitive those wishes may be. MSL was a victim of this practice [24] and, notwithstanding the

[24] Instead of reporting the favorable views expressed about MSL by Massachusetts judges and