

19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of \$12.75 (25 cents per page reproduction costs), payable to the Consent Decree Library. Joel M. Gross,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

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BILLING CODE 4410-01-M

Antitrust Division

United States v. American Bar Association, Civ. No. 95-1211 (CR) (D.D.C.); Supplemental Response of the United States to Two Additional Public Comments Concerning the Proposed Final Judgment

Pursuant to Section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), the United States publishes below two additional written comments received on the proposed Final Judgment in *United States v. American Bar Association*, Civil Action No. 95-1211 (CR), United States District Court for the District of Columbia, together with its response thereto.

Copies of the written comments and the response are available for inspection and copying in Room 3235 of the Antitrust Division, United States Department of Justice, Tenth Street and Constitution Avenue, N.W., Washington, D.C. 20530 (telephone 202/514-2481) and the inspection at the Office of the Clerk of the United States District Court for the District of Columbia, Room 1825A, United States Courthouse, Third Street & Constitution Avenue, N.W., Washington, D.C. 20001. Rebecca P. Dick,
Deputy Director of Operations.

United States' Supplemental Response to Two Additional Public Comments

The United States is filing this Supplemental Response to respond to letters from law professors Marina Angel and Leslie Espinoza to the Attorney General about the proposed Final Judgment. The Antitrust Division's notice under the Antitrust Procedures and Penalties Act ("APPA") directed that public comments be sent to John F. Greaney, Chief, Computers and Finance Section, Department of Justice, Antitrust Division. Because

Professors Angel and Espinoza sent their letters to the Attorney General instead of Mr. Greaney, we had not received those letters when we filed our "Response To Public Comments" on October 27. Since the Government's Response states that it will treat as timely all comments received up to the time of filing that response, we provide this Supplemental Response to these two letters from law faculty.¹

The Government has carefully reviewed the letters from Professors Angel and Espinoza. Entry of the proposed Final Judgment remains in the public interest.

1. Professor Marina Angel (Exhibit 1)

Professor Angel is under the impression that the Antitrust Division seeks to eliminate enforcement of the American Bar Association's ("ABA") antidiscrimination accreditation standards. ABA Accreditation standards 211-213, dealing with discrimination, are not affected by the proposed Final Judgment. Nor is the enforcement of those standards. Law schools will continue to maintain faculty salary records. Accreditation inspection teams may review these records to investigate discrimination complaints. The proposed Final Judgment prevents the ABA, but not other organizations, from collecting and disseminating salary data. Additionally, site inspection teams may not compare salary levels at one law school with those at another, since the Complaint alleges that this had been done to raise salaries illegally, but may review the records of the inspected school to resolve discrimination allegations.

2. Professor Leslie G. Espinoza (Exhibit 2)

Professor Espinoza is concerned that the consent decree would prevent the Society of American Law Teachers from collecting salary data from law schools that may be used to determine if salary levels are discriminatory. The consent decree is not intended to relax the ABA's antidiscrimination accreditation standards, and it will not have that effect. The Society of American Law Teachers procures salary data from law school deans that may be used to ascertain whether salary levels are discriminatory. While the ABA will no longer be permitted to collect and disseminate faculty salary data and to use it in the accreditation process to increase faculty salaries, law schools will continue to maintain salary data

¹ As the deadline for public comments has expired, any future letters received by the Justice Department will be treated as citizen letters and will not be filed with the Court.

and other organizations may collect it. In this regard, we realize that organizations, such as the American Association of University Professors, have collected and published faculty salary data for many years. While the ABA may not collect and use salary data to raise general salary levels, accreditation inspection teams may fully investigate allegations of discrimination at a law school, including allegations of discriminatory salaries, and may review salary records at that law school to resolve the discrimination allegations.

Conclusion

The ABA used the accreditation process to fix and raise faculty salaries. They collected extensive salary data and used it to pressure schools to raise their salaries to an artificial level. The consent decree is narrowly tailored to prevent such illegal collusion in the future. It does not affect the ABA's enforcement of antidiscrimination accreditation standards.

Dated: November 3, 1995.

Respectfully submitted,

Anne K. Bingaman,
Assistant Attorney General, Antitrust Division.

John F. Greaney,
D. Bruce Pearson,
Jessica N. Cohen,
James J. Tierney,
Molly L. DeBusschere,
U.S. Department of Justice, Antitrust Division, Computers and Finance Section, Judiciary Center Building, 555 Fourth Street, N.W., Washington, DC 20001, 202/307-6122.

Temple University, School of Law
1719 N. Broad Street (055-00), A
Commonwealth University, Philadelphia,
Pennsylvania 19122, (215) 204-7861, Fax:
(215) 204-1185

October 16, 1995.

The Honorable Janet Reno,
Attorney General, Department of Justice, R. 4400, Tenth and Constitution Avenue, N.W., Washington, DC 20530, FAX 202-514-4371

Dear Attorney General Reno: I was shocked to learn that the Justice Department is seeking to eliminate enforcement of the antidiscrimination Accreditation Standards of the ABA.

I didn't substantially financially support the election of President Clinton to have you destroy what limited antidiscrimination protection law school faculty, staff and students currently enjoy.

I suggest you explain your antidiscrimination position to your Antitrust Division.

Sincerely,
Marina Angel,
Professor of Law.

MA/teb
Enclosure

Boston College

885 Centre Street, Newton, MA 02159-1163,
Law School, (617) 552-8550, FAX (617) 552-
2615

By Facsimile: 202-514-4371

October 17, 1995.

The Honorable Janet Reno,
Attorney General, Department of Justice, R.
4400, Tenth and Constitution Avenue,
N.W., Washington, D.C. 20530

Dear Attorney General Reno: I am very disturbed that the consent judgment proposed in the matter involving the ABA Accreditation Standards and your antitrust division would eliminate the most important antidiscrimination provision of the ABA standards: review of salary and/or fringe benefits by race and gender.

The ability of the ABA Standards to put teeth in antidiscrimination policy is important. The ability of review teams to have access and to force disclosure of actual data is crucial. Last January, I testified before the ABA Special Commission to review accreditation standards. I have enclosed a copy of my testimony. I hope that it will help illuminate what an important role accreditation plays in the integration of law schools, and ultimately the profession.

I also am a member of the Board of Directors of the Society of American Law Teachers (SALT). SALT has long been concerned about the systematic salary discrimination against women and minorities. Indeed, SALT publishes an annual nationwide salary survey. That survey has been used by many women and minorities to address salary inequity in their own law school. SALT obtains the data from law school deans. The deans are generally willing to release it because it is released in any event in the ABA accreditation process. The deans also are unable to claim they do not have it—because the ABA process requires them to keep it.

I hope that the Clinton administration will take a second look at the proposed consent judgment. As so often happens, those who are most affected by certain provisions are outsiders to the power process that negotiated the proposed judgment. Please do not hesitate to call with any questions.

Sincerely,
Leslie G. Espinoza,
Professor of Law.

AALS Section on Minority Groups
Newsletter

May 1995.

Testimony Before the Special Commission To
Review the Substance and Process of the
American Bar Association's Accreditation of
American Law Schools

Professor Leslie G. Espinoza, Chair, AALS
Section on Minority Groups, January 6, 1995

Good Afternoon, I would like to thank the
Commission for affording the AALS Section

on Minority Groups this opportunity to
comment on the ABA/AALS Accreditation
process. Within the time frame permitted by
these hearings, I will make two points.

First, in addressing issues of accreditation
the legal community, particularly those of us
in the academy, should be mindful of the
monopoly power we exercise. Our monopoly
control is profound. Indeed, it is protected
and perpetuated by us. Persons who engage
in the unauthorized practice of law can be
prosecuted—under the law.

And the ability to determine who is
authorized to practice law is primarily
controlled by the law school community. We
are the gatekeepers to the profession. For
admission to practice, nearly all state bars
require graduation from an ABA accredited
law school. Admission to law school is
controlled by individual law schools through
their admissions offices. Admission is also
controlled nationally through the consortium
of laws schools that forms the Law School
Admissions Council. The LSAC is the
organization that designs and administers the
LSAT. At the other end of the process, law
school curriculum largely drives the content
of bar examinations—increasingly so since
the universalization of the Multistate Bar
Examination.

With the privilege of power comes
responsibility. Access to law is fundamental
for the protection of personal and public
rights. Indeed it is often lawyers who are
responsible for the recognition or creation of
those rights. Lawyers dominate legislatures
as both elected officials and legislative staff.
It is the duty of law schools, encouraged and
enforced through the accreditation process,
to ensure that the future legal community is
responsive to the society as a whole.

The need to be legally relevant and
responsive to the whole community is the
second point I will make today. Historically
exclusion of persons of color from law was
nearly complete. This was particularly true
for women of color. Frankly, this is still
largely the case. Richard Chused's study in
1986 documented the absence of outsiders in
the academy. One third of law schools had
no minority professors, one third had only
one. In 1992, Professors Merrit and Reskin
empirically documented the double standard
in the hiring of minority women in the
academy. The exclusion of persons of color
from the academy continues.

The impact of those outsiders who have
gained entry is significant given our small
numbers. We have worked to increase the
number of and to support minority law
students. We have contributed to the legal
literature, in theory, substance and method.
We have changed the discourse by bringing
our voice to the law. Despite these
contributions, there is much more work to
do.

Accreditation has been the foundation for
our inclusion in the academy. It forces
accountability. Importantly, accreditation
requires law schools to have historic
accountability. Self studies and site team
reports view processes in the law school. The
standards require scrutiny of admissions,
placement, curriculum, hiring of faculty,
tenuring process and results and
administration. Thus the accreditation

process has been the only forum for
addressing issues of inclusion and
discrimination in all aspects of the
institution.

I will end with reference to the letter by
the consortium of fourteen deans that gave
rise to these hearings. The members of the
Section on Minority Groups fear that what
underlines the deans' challenge to
accreditation. The letter questions the need
for law schools to explain, "any departure
from the pattern that has been prescribed for
all schools—why, for instance, the clinical
faculty are treated differently than the
research faculty in some respect, or what
plans exist for increasing square footage in
the library, or how the 'right' composition of
the faculty will be achieved." The members
of the Section on Minorities do not doubt
that this is coded language for an attack on
the "diversity" or "multicultural"
requirements in the ABA standards.

Finally, the letter from the 14 deans
indicates that there are some law schools at
the apex of the pyramid of all law schools—
"schools with unquestionably strong
educational programs [that] are not quickly
given the ABA's seal of approval * * *"
These law schools, the letter implies, should
be beyond the review of accreditation. The
Second on Minority Groups strongly
disagrees. Indeed, the arrogance of many of
the elite schools has too often blinded them
to their own exclusionary practices in hiring
and student composition. The accreditation
process must apply uniformly to all law
schools in order to ensure a diverse and
relevant legal profession for the next century.

[FR Doc. 95-30289 Filed 12-12-95; 8:45 am]

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Notice Pursuant to the National Cooperative Research and Production Act of 1993—Arrayed Primer Extension (APEX) Research Consortium

Notice is hereby given that, on
September 26, 1995, pursuant to Section
6(a) of the National Cooperative
Research and Production Act of 1993,
15 U.S.C. 4301 *et seq.* ("the Act"),
Arrayed Primer Extension (APEX)
Research Consortium, a joint venture
formed as a cooperative research
consortium by the parties set forth in
this notice (the "Joint Venture"), has
filed written notifications
simultaneously with the Attorney
General and the Federal Trade
Commission disclosing (1) the identities
of the parties to the Joint Venture and
(2) the nature and objectives of the Joint
Venture. The notifications were filed for
the purpose of invoking the Act's
provisions limiting the recovery of
antitrust plaintiff to actual damages
under specified circumstances. Pursuant
to Section 6(b) of the Act, the identities
of the parties are: Pharmacia Biotech,
Inc., Piscataway, NJ; Baylor College of
Medicine, Houston, TX; Duke
University, Durham, NC; and