

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CASE NUMBER 1:95CV01211

JUDGE: Charles R. Richey

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMERICAN BAR ASSOCIATION,
750 North Lake Shore Drive
Chicago, Illinois 60611
Tel: 312/988-5000

Defendant.

DECK TYPE: Antitrust

DATE STAMP: 06/27/95

COMPLAINT FOR EQUITABLE
RELIEF FOR VIOLATION
OF 15 U.S.C § 1,
SHERMAN ANTITRUST ACT

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendant American Bar Association ("ABA"), and complains as follows:

I.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction under Section 4 of the Sherman Act (15 U.S.C. § 4) to prevent and restrain violations by the ABA of Section 1 of the Sherman Act (15 U.S.C. § 1).

2. The ABA transacts business and is found within the District of Columbia.

II.

DEFENDANT AND CONSPIRATORS

3. The ABA is the national association for lawyers and is the world's largest professional association. It is organized as an Illinois not-for-profit corporation with its principal place of business in Chicago.

4. Whenever this Complaint refers to any act, deed, or transaction of the ABA, it means that the ABA engaged in the act, deed, or transaction by or through its officers, directors, employees, agents, or other representatives while they actively were engaged in the management, direction, control, or transaction of its business or affairs.

5. Various others, not named as defendants, have participated as conspirators with the ABA in the violations alleged in this Complaint, and have performed acts and made statements to further the conspiracy.

III.

TRADE AND COMMERCE

6. The ABA conducts the national accrediting process for law schools located throughout the United States. Legal education is a service industry that, in 1994, involved approximately \$2 billion revenue. The ABA's accrediting activities and operations involve or affect the interstate flow of, and have a substantial effect on, interstate commerce.

IV.

BACKGROUND

A. The ABA's Role In Law School Accreditation

7. ABA approval is critical to the operation of a law school. The bar admission rules in most, but not all, States require graduation from an ABA-approved law school to satisfy the legal education requirement for taking the bar examination. In addition, the United States Department of Education recognizes the ABA as the only accrediting agency for law schools. Accreditation by an agency recognized by the Department enables students to obtain federal loans and other aid to pay for their education.

8. The ABA House of Delegates (the "House") is vested with the authority to adopt and amend law school accreditation standards, grant accreditation to those law schools that comply with the standards, and withdraw or modify the accreditation status of a law school that fails to continue in compliance with the standards. In 1973, the House adopted the Standards for the Approval of Law Schools ("Standards"), setting forth the minimum requirements for legal education that must be met to obtain and maintain ABA approval, and Rules of Procedure ("Rules") to implement the Standards. The Standards and their interpretations relate to many aspects of the operation of a law school, including staff compensation, student to faculty ratios, faculty sabbaticals, faculty workloads, and physical facilities.

B. Legal Educators Have Captured The ABA's
Law School Accreditation Process

9. Legal educators, including current and former law school faculty, administrators, and librarians, control and dominate the law school accreditation standard-setting and enforcement process.

10. The House has delegated authority to administer law school accreditation to the ABA's Section of Legal Education and Admissions to the Bar ("Section"). The Section assumed the role of an accrediting agency in 1921 with the adoption of its first set of minimum standards for legal education.

11. Approximately 90% of the Section's members are legal educators. The faculties of approximately 145 of the 177 ABA-approved schools hold membership through the Section's Faculty Group Membership Program. Under this Program, a law school pays ABA and Section dues for its faculty.

12. Under the Rules, the Section is governed by its Council, which has authority and responsibility to act on all accreditation matters. The Council has established the Accreditation Committee to recommend provisional or full approval of a new law school and to oversee the inspection of new law schools and the sabbatical reinspections of approved law schools. A majority of the current members of the Accreditation Committee are legal educators. The Accreditation Committee enforces the Standards through extensive on-site inspections of law schools. Provisionally-approved law schools are inspected every year until receiving full approval, and fully-approved law schools are

inspected every seven years, except for an initial visit three years after first gaining full approval. The typical site inspection team has 5-7 members, all or nearly all of whom are legal educators.

13. The site inspection team prepares a detailed report for the Accreditation Committee. The Accreditation Committee may continue the accreditation of an approved law school; require additional information from a law school in actual or apparent non-compliance with the Standards or about whom the Accreditation Committee has "concerns;" or require a show cause hearing. The Accreditation Committee has very seldom recommended a change in an approved law school's status to the Council, but very often has prolonged the accreditation process by requiring a law school to file additional reports and make changes in its operation until the law school is no longer in actual or apparent non-compliance or has met the Accreditation Committee's "concerns."

14. The day-to-day operation of the ABA's accreditation process is directed by the ABA's Consultant on Legal Education. The Consultant's position has traditionally been held by a legal educator.

C. Anticompetitive Standards And Practices

15. Law School Salaries The ABA has required that an accredited law school pay its faculty, administrators, librarians, and other professional staff compensation comparable to the compensation paid to other professional staff at other ABA-approved law schools. The ABA has used national, regional,

and "peer group" median salaries, collected in its questionnaires to law schools, in applying its salary standards. Prior to each site inspection, the Consultant has provided the site team with national, regional or peer group salary data to be compared to the law school's salary structure. The Accreditation Committee has used the site team's comparative analysis to determine whether a law school is in compliance with the salary Standards. Law schools with salaries below national, regional or "peer" group medians have been found non-compliant.

16. The faculty salary Standard indicated only that compensation is relevant in evaluating a law school's ability to attract and retain competent faculty. In practice, however, the ABA has relied on salary data nearly exclusively to determine compliance. The ABA's salary Standards and their application have unreasonably restricted competition in the law school labor market and have had the effect of ratcheting up law school salaries.

17. Proprietary Law Schools The ABA has required that an accredited law school must be organized as a non-profit educational institution. The ABA has never accredited a proprietary law school.

18. The Standard erects an unnecessary entry barrier against proprietary law schools, and prevents these schools, some of which provide their professional staff with lower salaries and fewer amenities, from providing competition to professional law school staffs at ABA-approved schools.

19. Students and Graduates of Non-ABA-Approved Schools The ABA prohibits ABA-approved law schools from enrolling graduates of a law school accredited by a State, but not by the ABA, in an LL.M. or other post-J.D. program. However, the ABA permits law schools to register a candidate for an advanced degree who graduated from a law school approved by a foreign country. In 1979, the ABA rejected a proposed amendment that would have made all members of the bar eligible for admission to graduate school at the discretion of the law school. The interpretations to the Standards prevent some members of the bar who have practiced with distinction from furthering their professional careers by obtaining an advanced degree.

20. The ABA also prohibits an ABA-approved law school from offering transfer credits for any course successfully completed at a law school accredited by a State, but not by the ABA. Again, the ABA permits transfer credits for studies at foreign law schools. The ABA's bans against students and graduates of state-accredited law schools are unreasonable restraints of trade aimed at deterring effective competition from law schools that are likely to pay less in salaries and benefits to their professional staffs.

D. Other Accreditation Standards and Practices

21. Student to Faculty Ratios A student to faculty ratio of 20:1 is required for a law school to be presumptively in compliance with ABA Standards and Interpretations. A law school with a ratio that exceeds 30:1 is presumptively non-compliant.

In computing the faculty component of the ratio, the ABA counts only "full-time faculty," which it defines as those faculty members who are employed full-time on tenure track and who do not have any outside office, business or administrative activities.

The ABA excludes from the computation of faculty:

(i) administrators who teach; (ii) emeritus or senior faculty who teach; (iii) some visiting professors who teach; (iv) joint-appointed faculty who teach; (v) adjunct professors; and (vi) clinical and other instructors holding short-term appointments who teach. Although the stated rationale for the student to faculty ratio is to ensure smaller classes and more student-faculty contact, the ABA does not consider actual student-faculty contact or actual class size in enforcing the Standard. Law schools widely recognized for their outstanding quality are now on report for alleged high student to faculty ratios.

22. Teaching Loads The ABA sets the maximum number of classroom hours that a law school can require its faculty to teach at eight hours per week, or if a course is duplicated, ten hours. The ABA defines an "hour" as 50 minutes.

23. Compensated Leaves of Absence The ABA Standard related to faculty leaves of absence has provided that a law school should afford its faculty reasonable opportunities for leaves of absence and for scholarly research. In practice, the ABA has required that law schools provide their faculty with paid leaves of absence.

24. Bar Preparation The ABA requires law schools to maintain an educational program designed to qualify its graduates for admission to the bar, but forbids the offering of a bar examination preparation course for credit or as a condition for graduation. A bar preparation course is the only course specifically banned by the ABA. This prohibition applies even when a law school imposes minimum credit requirements for graduation that, even after subtracting the credits for the bar preparation course, satisfy the ABA's minimum credit requirement. The ABA occasionally criticizes a law school with low bar passage rates, but prohibits bar preparation course, even for students the school has identified as being at risk of not passing the bar.

25. Facilities The ABA requires an adequate physical plant. Since the adoption of the new Standards in 1973, nearly all ABA-approved law schools have built new facilities or made substantial renovations to existing facilities. Despite this, over 60 ABA-approved schools were on report for "inadequate facilities" in 1994, including schools of recognized high quality.

26. Resources The ABA requires that a law school have adequate resources to sustain a sound legal educational program. As of June, 1994, nearly one-third of all ABA-approved law schools were on report or in "apparent" non-compliance with the Standards for devoting inadequate resources to their law programs.

27. Student to faculty ratios, teaching load requirements, sabbatical and other faculty leave policies, bar preparation requirements, adequate physical facilities, and adequate resources are relevant factors to consider in assessing the quality of a law school's educational program. However, these factors at times have been applied inappropriately to enhance compensation and working conditions for professional staff.

E. Operation of Law School Accreditation Process

28. The Consultant usually selects site evaluation teams composed of law school faculty, administrators, clinicians, and librarians, and these inspectors have at times been unduly concerned with the salaries, perquisites, and working conditions of their colleagues, among other things. Site inspection teams, on occasion, have incorporated law faculty demands and complaints into their site inspection reports.

29. The Accreditation Committee does not limit its inquiry to determining whether a law school is non-compliant or in apparent non-compliance with the Standards. Although not contemplated by the Rules, the Accreditation Committee also identifies areas of "concern." A "concern" represents an area where the law school complies with a Standard, but the Accreditation Committee demands that the school exceed the Standard's minimum requirements or meet the law school's stated aspirational goals.

30. The Action Letter/university response process continues until Accreditation Committee demands are satisfied. If a law school fails to take steps to address the Accreditation Committee's "concerns," the Accreditation Committee may elevate a "concern" to a finding of non-compliance.

31. Although law school inspections are supposed to occur once every seven years, many universities are subjected to prolonged review and repeated demands to devote more resources to their law schools. As of June, 1994, 100 of the then 176 ABA-approved law schools were on report or under Accreditation Committee review.

32. The ABA's increasingly frequent, and largely unnecessary, inspections of foreign programs also demonstrate that its accreditation program has not been adequately supervised. From 1984 to 1989, the ABA conducted about 35 foreign inspections. From 1990 to 1994, it conducted about 120.

33. Legitimate accrediting activities focus on assuring the quality of the educational program and providing consumers with information regarding the quality of the educational program. But, rather than assess quality exclusively, the ABA accreditation process has also focused on salaries, perquisites and other terms and conditions of employment.

V.

AGREEMENTS IN RESTRAINT OF TRADE

34. The allegations of ¶¶ 1-33 of this Complaint are re-alleged and incorporated by reference.

35. Beginning at least as early as 1973 and continuing until the date of this Complaint, the ABA and its conspirators have engaged in a continuing combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act. The ABA's ongoing anticompetitive conduct is likely to continue unless the relief prayed for is granted. Other anticompetitive conduct, recently discontinued, is likely to recur unless the relief prayed for is granted.

36. The combination and conspiracy consists of an agreement, understanding, and concert of action among those implementing the ABA's accreditation program and other conspirators, the substantial terms of which are to restrain trade and hinder competition among professional law school personnel in delivering legal education services.

37. In furtherance of this combination and conspiracy, the ABA and its conspirators have, among other things, combined and conspired to:

- a. fix, maintain, and stabilize the base salary, stipends, fringe benefits, working conditions, perquisites and other compensation paid to law school faculty, administrators, librarians, and other professional employees;
- b. collect and disseminate law school salary information;

- c. use law school salary data in connection with the accreditation and review of ABA-approved law schools;
- d. prevent ABA-approved law schools from operating as for-profit educational institutions; and
- e. prevent ABA-approved law schools from: enrolling a member of the bar or graduate of a state-accredited law school in an LL.M. program or other post-J.D. program; or offering transfer credits for any course successfully completed at a state-accredited law school.

VI.

EFFECTS

38. The combination and conspiracy has had the following effects, among others:

- a. Salaries, fringe benefits and working conditions for law school faculty, administrators, librarians, and other professional law school staff have been fixed, stabilized, and raised;
- b. State-accredited law schools have been subjected to a group boycott by ABA-approved schools; and
- c. Students and graduates of state-accredited law schools have been subjected to a group boycott by ABA-approved schools.

VII.

REQUESTED RELIEF

The United States requests permanent injunctive relief enjoining the ABA and other conspirators from engaging in further violations of Section 1 of the Sherman Act.

Dated: June 27, 1995

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