Special Committee on Racial Discrimination

Association of American Law Schools

INTERIM REPORT FOR 1954

FINAL REPORT FOR 1954

Interim Report for 1954 of the Special Committee on Racial Discrimination to the Association of American Law Schools.

In the 1953 Report of the Special Committee on Racial Discrimination, which was adopted at the annual meeting, it was recommended that the new committee be charged with the duties "(a) of doing all that it can toward effectuating the Association's objective of eliminating racial discrimination in member law schools, (b) reporting to the Association at least ten weeks in advance of each annual meeting concerning the extent of non-compliance with the Association's anti-discrimination objective, and (c) recommending to each annual meeting such action in the matter as it deems desirable and appropriate." The Committee is not ready to report, as of this time, as to recommendations for future action that should be taken by the Association or by next year's Committee on Racial Discrimination but will do so at the annual meeting.

It seems to your Committee that a school must be regarded as non-complying with the anti-discrimination objective until it has either admitted qualified Negro applicants or announced a plan to do so. Hence, a letter went out from the Committee as of the beginning of the 1954-55 school year to the dean of each law school theretofore listed as non-complying, seeking information as to (1) applications received from Negroes and the disposition thereof, (2) specific factors that prevented immediate compliance, and (3) whether a plan for admission irrespective of race or color had been announced.

We are pleased to report some progress. Last year when the Committee reported to the annual meeting, there were eighteen non-complying schools. During the course of this year two schools, George Washington University and the University of Missouri, have announced readiness to comply with the A.A.L.S. objective. This means that we now have sixteen so-called non-complying schools, these schools being confined, however, to only nine jurisdictions. There is at least one law school in compliance with the objective in all jurisdictions but five, these five being Alabama, Florida, Georgia, Mississippi, and South Carolina. In seven jurisdictions where the problem of compliance with the objective has been raised at one time in the past, all A.A.L.S. schools are now in compliance. These are Arkansas, District of Columbia, Kentucky, Maryland, Missouri, Oklahoma, and Texas. The table below indicates the jurisdictions where there are existing non-complying schools.

Non-Complying Schools by Jurisdictions

Alabama	1	(state)
Florida	3	(1 state, 2 endowed)
Georgia	3	(1 state, 2 endowed)
Louisiana	1	(endowed)
Mississippi	1	(state)
North Carolina	2	(endowed)
South Carolina	1	(state)
Tennessee	2	(endowed)
Virginia	2	(endowed)

In addition to the progress just reported, the Committee has reasonable grounds to believe that at least three and perhaps four schools will terminate their existing discrimination policy prior to the beginning of the 1955-56 school year. Actually, one school now regarded as non-complying by the Committee

should probably be regarded as in compliance in the sense that it would admit a qualified Negro applicant, but a public announcement of this policy is not deemed to be desirable.

It appears that in several state schools the governing board has elected to wait for the formulation of a policy regarding admission of Negroes to any school or college, including the law school, until the Supreme Court of the United States has formulated a decree in the pending school cases. In some of the endowed schools receiving support from a church denomination, the governing board's policy is fixed by the denominational Convention for the area, and it is, therefore, unlikely that the course of action followed by the A.A.L.S., whatever it may be, will have any effect on the timing of the termination of the discriminatory practices. This should not be understood to be universally true. It is believed that the dean and the faculty of all but a very few schools are presently in favor of complying with the Association's objective and would welcome a non-segregation policy if it were in their power to make it possible.

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Final Report for 1954 of the Special Committee on Racial Discrimination to the Association of American Law Schools.

In the Interim Report of the Special Committee on Racial Discrimination, which appears in the printed program on pages 141-143, an effort was made to inform the Association regarding (a) what had been done by the Committee during the course of the past year toward effectuating the Association's objective of eliminating racial discrimination, and (b) the extent of non-compliance with this objective, the progress that had been made during the course of the year, and the Committee's opinion as to the progress that was reasonably foreseeable during the ensuing year. Since that time and in accordance with the mandate from the Association, the Committee has given careful attention to the more difficult problem regarding the recommendation it should make at this annual meeting as to the course of action that the Association should follow in the immediate future.

Heretofore, the Special Committee has through oral and written communications with the deans and members of the faculties of non-complying schools endeavored to be helpful in securing compliance. As would be expected, consideration has been given to various proposals made by different members of the Committee looking toward an amendment of the Articles of the Association reinforcing the existing antidiscrimination objective. On the basis of the information obtained as a result of the Committee's efforts this past year, we are of the opinion that substantial progress is likely to be made during the ensuing year. Moreover, the Supreme Court decision with respect to segregation in the public schools has introduced elements of uncertainty. A majority of the Committee concluded, therefore, that it was unwise to propose this year an amendment to the articles that would require compliance. However, we doubt that complete compliance will soon be obtained if the Association engages only in exhortation and watchful waiting, and the need for action of a more positive character by the Association in the future will therefore have to be considered.

Therefore we recommend that the incoming Special Committee:

(1) Continue its endeavors by assistance and persuasion to obtain voluntary compliance with the Association's anti-discrimination objective. To this end, members of the Committee or other persons designated by the Committee should, in so far as may be helpful and practicable, consult in person with the administrations and governing boards of universities and colleges whose law schools are not in compliance.

(2) Consider, in the light of developments during 1955, including the growth of voluntary compliance with the Association's anti-discrimination objective and the character and effects of the Supreme Court's decrees in the public school cases, the need, if any, for amendments to the Association's Articles or Standards to implement and carry out the Association's anti-discrimination objective. To this end, the Committee should hold conferences and consultations either in Washington in May in connection with the meeting of the American Law Institute, or in Philadelphia in August in connection with the meeting of the American Bar Association, or in both.

(3) a. To make it possible for member schools to give full consideration to specific proposals for amendments before the Special Committee finally concludes whether to propose an amendment for action by the Association, prepare one or more draft proposals to amend the Articles or Standards of the Association, circulate the draft proposal or proposals, with or without recommendation, by not later than September 1, 1955, and invite comments thereon from the deans and other faculty members of member schools; and

b. File its findings and recommendations, including its proposals for amendments to the Articles and Standards, if any, with the Secretary of the Association, not later than October 25, 1955, for prompt distribution to the member schools.

(4) Transmit, during January, 1955, copies of the Interim Report appearing at page 141 of the Program and of this the Final Report for 1954 with recommendations, and the action of the Association thereon to the deans of the member schools not in compliance with the Association's anti-discrimination objective and to the administrations and governing boards of the universities and colleges with which those schools are connected.

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I. THE COMPETENCE OF THE ASSOCIATION

At the outset objection to the competence of the Association to deal with the subject was raised by many persons, including some who are strongly opposed to racial discrimination. In smaller part, the objection was directed to the legal competence of the Association, given its purpose as now declared in its Articles; in larger part, it was directed to the propriety and wisdom of an educational association made up of law schools concerning itself with what those objecting conceived to be a social issue, particularly as a requirement of membership in the Association. It is impossible to separate completely the two aspects of the objection, for views as to the nature and gravity of the effects of racial discrimination in law schools will inevitably affect both the interpretation of its broadly stated purpose and also judgments as to the wisdom and propriety of Association action. There is, however, a difference in emphasis in the two parts of the objection, and the difference is reflected in this report. In the present part, dealing with "Competence," the emphasis is on the interpretation of the present Articles of Association; in the next part of the report, dealing with "Policy," the stress is on the wisdom of Association action in this field.

In opposing Association action it was urged that, especially as to requirements for membership in it, the Association should confine itself to its traditional function of the promulgation, the encouragement and the attainment of academic standards of legal education. And it was stated that the segregation or exclusion of students on racial grounds does not retard or affect the quality of work of a law school, at least of a law school admitting only white persons.

On the other side, it was argued by some few persons that the Association may concern itself with any aspect of American life if its action would forward those democratic ideals which it is the purpose of our laws and legal education to foster.

It is not necessary to pass on the controversy in such broad terms. The specific issue is whether, without enlargement of its declared purposes, the Association may consider and deal with segregation or discrimination in admission on racial grounds by its members.

The purpose of the Association, as stated in its first Article, is: "The improvement of the legal profession through legal education." The committee believes that this purpose comprehends the specific matter before it, that is, the condemnation of segregation or discrimination in legal education on racial grounds. The stated purpose of the Association, it will be observed, is not merely the advancement of legal education, but is broadly stated as the improvement of the legal profession through legal education.

It does not require argument to show that the admission of Negroes to the white law schools will improve their legal education and so improve them as members of the legal profession. It is almost certain that the separate law schools for Negroes are not so good as the white schools, and, also, as the Supreme Court of the United States has indicated, that when the Negroes are cut off from association in law school with that segment of the population which has enjoyed superior advantages, they can scarcely be thought to have an equally good legal education or be equally well prepared for membership in the legal profession. Even where Negroes may be admitted to state university

law schools, denial of admission to private schools sets up a substantial economic barrier to legal education for those who must live and work at home in communities adjacent to the private schools.

That admission of Negroes to a white law school will also have helpful effects on the white students is at least sufficiently likely to make action to this end within the competence of the Association. Three of these effects will be mentioned. First, it will enable the white students to meet with able and intellectual Negroes and thus acquaint them with a group with whom they will have to deal in a professional way. Second, when matters involving racial issues are discussed in the classroom, particularly in constitutional law and criminal law, the discussion will be rendered more responsible and informed by the participation, indeed the very presence, of Negro students. Third, with the ending of segregation and discrimination in legal education as a part of an accepted pattern, white law school graduates will be less likely to tolerate racial discrimination in law and its administration. Moreover, many will have achieved a breadth of attitude that will make them wiser counselors and leaders in their generation.

These effects are particularly important in states where there is a large Negro population. In considering these effects we must also keep in mind that we are not training our men for the past half century but for the vastly different world of the next half century, and that those we train in the 1950's will be the leaders of the bar in the 1990's

Finally, the maintenance of different law schools for the two races in a state will inevitably be a substantial burden on the educational budgets of universities which cannot well stand the burden, and it will thus tend to hold back legal education and preparation for the legal profession throughout a state.

The committee believes, therefore, that the subject referred to it does come within the scope of the stated purpose of the Association.

II. THE POLICY TO BE SUPPORTED BY THE ASSOCIATION

The committee has considered whether, as construed, the Association's statement of purpose is unduly broad and, if not, whether the subject is one as to which it would be wise for the Association to declare a policy and to take affirmative action. The committee is convinced that the Association should support the policy stated in last year's resolution. It is opposition to discrimination or segregation on racial grounds.

The right to equal opportunity for education regardless of race or color is of particular importance to law schools, which are dedicated to the ideal of equal justice under law and whose graduates furnish so large a proportion of the public and political leadership in our nation. To this basic proposition all or nearly all in the Association will subscribe. The fundamental character of this right has been affirmed by the Supreme Court of the United States, and, although its decisions have not been extended to law schools that are not publicly operated, the principles the Court has declared are not irrelevant to the problem before the committee. The Association confers substantial benefits on the private law schools among its members. By a policy of continued indifference to their practice of racial discrimination, the Association would contribute to the maintenance of that practice and so implicate its non-discriminating members in a practice to which, as the Association's resolution creating this committee indicates, they are clearly opposed.

In the preceding section of the report, reference was made to the improvement in legal education of Negroes and whites through the ending of discrimination, and to the reduction of costs entailed by a dual system of law schools. These matters do not need elaboration.

Although the committee believes the foregoing considerations alone would suffice to sustain the inclusion of non-discrimination in admission among the Association's Objectives, there is one further aspect which should be stressed here because it is often overlooked and because of its bearing on the need for the early ending of the practice. It is the effect of racial discrimination on our nation's influence in world affairs. We are now in a deadly struggle with an avowed and unscrupulous enemy. In the contest for men's minds, we have pitched our case on the issue, democracy versus tyranny. Our treatment of the Negro has been seized upon and exploited by our adversary. The question is pressed: How can you claim to be according the Negro minority in the nation their legal rights when you even deny Negroes access to your schools of law? Most of the world is colored. Most of the world which is not colored condemns our policy of racial discrimination. The committee members have discussed the matter with many persons, - with foreigners and with Americans acquainted with foreign affairs, - and the opinions are unanimous that this is a grievous handicap to our country's influence in world affairs. The point is strongly made in the most thorough study of the situation of the Negro in the United States, published during the Second World War:

> "...It is commonly observed that the mistrust of, or open hostility against, the white man by colored people everywhere in the world has greatly increased the difficulties for the United Nations to win this War....It seems more definitely certain that it will be impossible to make and preserve a good peace without having built up the fullest trust and goodwill among the colored peoples....America can demonstrate that justice, equality and cooperation are possible between white and colored people. In the present phase of history this is what the world needs to believe. Mankind is sick of fear and disbelief, of pessimism and synicism. It needs the youthful moralistic optimism of America. But empty declarations only deepen cynicism. Deeds are called for. If America in actual practice could show the world a progressive trend by which the Negro became finally integrated into modern democracy, all mankind would be given faith again - it would have reason to believe that peace, progress and order are feasible. And America would have a spiritual power many times stronger than all her financial and military resources - the power of the trust and support of all good people on earth. America is free to choose whether the Negro shall remain her liability or become her opportunity." (Myrdal, An American Dilemma, pp. 1016-1022.)

Lawyers, who have traditionally been leaders in public affairs and who have done so much to give direction to our foreign policy, must be particularly sensitive over the situation in their own field of the training of lawyers and the administration of justice.

It may be asked whether declaration or action by the Association will have any effect. We think it will. The rest of the world does not ask perfection in this matter. The Association's action in raising and dealing with this matter is the proof that we are getting ahead with the task of democracy. In most countries, the law schools have a position of great influence. In speaking on this subject as the representative of American law schools and professors of law, the Association can reach a large proportion of the influential persons in other countries.

III. OTHER FORMS OF DISCRIMINATION IN ADMISSION

The suggestion has been urged upon the committee that if the Association condemns discrimination in admission on ground of race, then it should go further and condemn discrimination on grounds of sex or religion. The committee does not believe this is so.

Discrimination against women is now not a serious enough problem in fact to be worth Association action. Where it exists, it carries no invidious implications.

The preference given by denominational schools to members of their own faith has a wholly different background from discrimination and exclusion on the ground of race. Denominational schools have been an affirmative good in the history of American education. If such a school finds it necessary or advisable to grant a preference in admission to those of its own denomination, the incidental discrimination against all others is wholly without the invidious implications of racial exclusion and segregation.

Discrimination on religious grounds other than that incident to the preference mentioned is a different matter. In the opinion of the committee it is a violation of the democratic principle of equality of opportunity. In its history, dimensions and discovery, however, it presents other factors than discrimination on racial grounds. The subject was not referred to the committee, and the committee has confined its study to exclusion and segregation on the ground of race.

IV. THE MEASURES TO BE ADOPTED BY THE ASSOCIATION IN FURTHERANCE OF ITS POLICY

The report so far has submitted the committee's conclusions that the Association has competence to deal with the subject before it; that its policy should be one of opposition to segregation or discrimination in legal education on racial grounds; and that it should not at this time concern itself with other forms of discrimination. The report now considers the two interlocked questions: Is it wise for the Association to take any affirmative measures beyond a resolution declaring a policy against racial discrimination; and, if so, what measures by the Association should be taken?

The situation to be dealt with is complex and is rapidly changing. The elements involved are numerous and often subtle, and there may be no agreement by the Association members on the weight to be given each element or even on its bearing on the problem. Yet there must be an effort to ascertain and to consider and to appraise the elements involved, unless action by the Association is to be based on hunch or emotionalism. Our task is to reach a decision which takes into account the various factors and which will give actual aid in dealing with the situation.

The report will, first, state briefly the question which has guided the committee in its consideration of the subject. It will then list some of the major elements in the situation. Finally it will indicate why the committee reached its conclusion.

The question which has guided the committee in its consideration of the subject is: What measures adopted now by the Association will be of the greatest aid in bringing to an end discrimination or segregation on racial grounds in member schools, with the largest benefit to race relations both in the schools and generally, and with the least injury to other values for which the Association stands?

The elements in the situation may be placed in two groups, one favoring swift and strong action by the Association, the other calling for moderation in what is done at this time.

All of the reasons in favor of any Association action are, in greater or less degree, reasons in favor of swift and strong action. In addition to those already discussed, as, equal opportunity for education, the improvement of the legal education of both races by ending segregation, the saving of expense of dual systems of law schools, and the effect of discrimination on the nation's influence abroad, five more should be mentioned.

1. It has been thirteen years since the Supreme Court held in the Gaines case that a state must admit Negroes to the state university law school, or else the state must establish within its borders a law school for them which is the equal in every respect of the law school for the whites; yet a number of states have ignored this plain duty, and others, having made no domestic provision for Negro legal education, are now complying with their legal obligation only after subjecting Negroes asserting this basic right to the expense and delay of litigation. Moreover, the Association's tolerance of segregation has been used as a legal argument for its continuance.

2. It is almost certain that all state university law schools will shortly be compelled to admit Negroes. When this is so, it will be unwise to have different kinds of legal education in the same state, one kind without and the other with discrimination. This will lead to continued agitation, with the claim that the schools denying admission to Negroes are in a position to make an unfair appeal to prospective students who may prefer racial segregation. Efforts will doubtless be made to extend the area of constitutional compulsion. The situation will be a recurrent cause of dissension in the Association itself and result in diversion from its other functions.

3. Based on the situation and the views of 1880-1930, the opportunities for the Negro have greatly increased in the past decade. But this progress is not so fast as the rising demands by and for the Negroes in the United States and the colored peoples everywhere.

4. Where there is a minority and disadvantaged group, as in the case of the Negro, outside aid and pressure in behalf of that group are normal and are to be expected. This discrimination against Negroes is a matter of national concern, on which a national organization like the Association may rightfully use its influence.

5. The experience of the Southern law schools which have recently admitted Negroes has been uniformly free of the difficulties forecast. There has been no detriment to legal education through ill will and friction in the student bodies. The admission of Negro students has taken place in law schools of various kinds, including the state university and the private university, in the small town as well as in the city. An indication of the experiences and attitudes is found in the first appendix.

The elements on the other side have not yet been discussed. The committee believes they make against early drastic action and call for moderation in whatever is done by the Association at this time. They include the following:

1. The present matter, unlike curriculum and related matters ordinarily dealt with by the Association, is not within the control of the law faculties. It rests with the governing boards of the universities, who are themselves responsive in large measure to the people of their communities. If the Association is to make effective its policy, it must convince and carry along not merely the law faculties but these larger groups who will have the determining voice. In the case of state schools admitting Negro residents in response to court mandate, it remains necessary to convince their governing boards of the wisdom of not discriminating against out-of-state Negroes.

2. The Association is not a legislative body which can compel adherence to its desires. Its disapproval will not embarrass the graduates of disapproved schools in seeking admission to the bar since that vital accrediting function is performed by the American Bar Association. All the Association of American Law Schools can do is to persuade, and to express approval or disapproval - disapproval in the extreme form of ostracism or in some milder form. Its action should be in a form which will make persuasion and approval most effective. If the action is reasoned and temperate, it will probably have the greatest effect. If it takes the extreme form of ouster, it will stir up anger and opposition toward the course which the Association seeks to aid.

3. The situation and the problem rest on deep-seated social factors. Loyalty and pride, prejudice and inertia are involved, and all will be played upon by demagogues. These factors can change only slowly. There is opposition by any group to "outside interference," with the consequent likelihood that swift and drastic action will embitter relations, evoke defensive measures detrimental to legal education, and actually slow down fundamental changes on which good relations must rest. The opportunities for Negroes have greatly improved in the last decade. The improvement has been particularly marked in the field of legal education. Unless something arises to halt it, the improvement will continue at the same gratifyingly swift pace.

4. The Association's action can reach directly only a very small segment of a great problem which is in one aspect sectional, in another aspect national, and in its largest aspect international, - the rise of the Negroes in the United States and of the colored peoples everywhere, after centuries of domination by the whites. It is, of course, in the implications for the larger matter that the greatest significance and importance of the Association's action lie. Like all social problems, this one changes its dimensions with time. It is now in swift motion. Its changes affect the specific problem confronting the Association. What is wise today may not have been practicable yesterday, and it will not be enough tomorrow. A wise recommendation must be made for its own year, with the full realization that something else may well be called for later.

In determining upon its course of action, the Association should consider what form of condemnation by it will have the greatest effect in bringing racial discrimination in law schools to an end. In the light of the elements above outlined, the committee does not recommend the immediate adoption of non-discrimination as a "requirement" of Association membership, carrying with it the sanction of ouster of a school which practices discrimination, even though the provision may call for delayed application. To adopt such a requirement would be to take the line of greatest resistance, and to delay instead of

to hasten the end of segregation. Such a provision, the most extreme effort at coercion of which the Association is capable, would have all the harmful effects of efforts to coerce conduct, and yet be less effective at this time than moderate measures. The persons in whom the power rests to admit Negroes to law school are not the law faculty members, but the university trustees and their constituencies who are much less concerned over the prospect of loss of Association membership, especially in view of the Association's inability to affect admission to the bar. Practically all faculty members interviewed from the schools affected and some trustees and lawyers stated to the committee that drastic action by the Association at this time would be harmful rather than helpful to the cause of equality, and would be more apt to retard than to hasten adherence to the Association's policy. The committee believes this is true. An effort at coercion is most harmful in creating animosity to what is sought to be achieved when the effort is made by those who are not directly exposed to the problem into which the coercive action is injected. Actual compulsion may be less resented when those who exert it are armed with legal authority.

The foundation of the Association's position last December in opposing "the continued maintenance of segregation or discrimination in legal education" is the abiding conviction that the dignity of human personality is a basic value in a democratic society. A policy of discrimination in admissions is itself a fundamental contradiction and rejection of this value. But another value basic to our kind of society is found in the principle that people be permitted and encouraged to make up their own minds freely, even to make them up wrong. It is the principle of decision by persuasion and consent rather than by authority. Both values are at stake in the issue now before this Committee. As far as may be possible, it is vital that both be preserved. Where, as here, they seem to conflict, it is traditional in a democratic society for the majority to postpone recourse to compulsion in order to permit time for the orderly processes of discussion to bring about, if possible, a solution acceptable to minority opinion. It is the opinion of this Committee that a period of time sufficient for these processes has not yet elapsed.

Social change that is accepted through understanding and consent is more lasting, it invites and procures more cooperation, and it leads more effectively to sincere embodiment in policy and in action. This is accepted as the wise course in other areas, and the Committee believes it is so here. It is the long-run education of students of all colors and races that is at stake here, not merely the matter of their formal admission. Already, among the faculties of law schools that today admit only white students, there is substantial support for the admission of Negroes. This fund of understanding and good will must be fostered by leaving in their hands for the time being the responsibility for working out voluntarily a solution consistent with American and education tradition. Thus they will retain the burden and gain the credit for accomplishment of social change.

The other values which the Association still seeks to advance, beside the ending of racial discrimination, must not be ignored. To drive a considerable body of schools out of the Association might be a substantial blow to their work and to the purposes of the Association. It is not wise to adopt now the extreme measure of ouster, with the harm it would probably bring, particularly when there has been no substantial opportunity to test the voluntary response of universities now practicing racial discrimination in admissions to a positive statement of Association policy afforded by the inclusion of non-discrimination among the Association's Objectives.

Opposition to any action by the Association was urged by some, including deans who desired the ending of segregation in their schools. It was said that the Association should leave the matter entirely to the members to work out, particularly since swift changes are under way. The committee believes, however, that in a matter of this moment it would be unwise not to proceed further with the policy proclaimed in last year's resolution. The committee believes that the inclusion of equality of opportunity in legal education without discrimination or segregation on the ground of race or color as one of the Association's Objectives for member schools is the best way to make clear to the university authorities the Association's strong belief that each university should take measures to bring about early compliance with that policy.

The addition of non-segregation to the list of the Association's objectives has been criticized by some on the ground that no sanction is provided for non-compliance with an "objective". Some taking this view have urged that, if making non-segregation a "requirement" of Association were thought too drastic, it should at least be made a "standard". Under the Articles, a standard is a criterion adopted by the Association to give greater specificity to the five basic requirements of membership. Compliance with standards is mandatory, and disregard of a standard is, in effect, disregard of a requirement. Hence, to embody the principle of non-segregation in a standard is to invoke the coercive power of the Association.

It is expressly provided in the Articles, however, that the Executive Committee "in its discretion may relieve a member school from compliance with one or more of the standards...if the Committee finds that in substance the school is meeting the objectives of the Association." It is the existence of this dispensing power that has led the use of the standard to be put forward as a compromise measure. As a precedent, mention has been made of the Association's action in adopting three years of pre-legal college education as a standard rather than as a requirement.

The committee does not believe the analogy to be an apt one. The values and interests involved in the principle of non-segregation are not coordinate with those involved in the Association's present standards. The nature of those standards is such that the Executive Committee may properly set certain deficiencies against certain strong points in a law school's program and emerge with the judgment that on balance the school is or is not "meeting the objectives of the Association." Surely one would not attempt to balance the existence of an above-average library and a high teacher-student ratio against a school's policy of racial discrimination. Moreover, a broad discretion in the Executive Committee to allow or to deny segregation in member schools would put both Association and Executive Committee in an unenviable position; the former could be justly accused of having evaded its responsibility and the latter would be called on to differentiate between schools which were equally in violation of an Association standard. If, therefore, the Association should wish to go beyond the committee's recommendation that non-segregation now be declared an objective, the appropriate next step would, we submit, be to make non-segregation not a standard, but a requirement, of membership.

V.

The committee recommends that the Association adopt the following resolution:

RESOLVED:

1. Equality of opportunity in legal education without discrimination or segregation on the ground of race or color is beneficial to legal education, and will contribute to the improvement of the legal profession. It is in accordance with our democratic creed and would enhance our nation's influence in world affairs.

2. The Articles of Association are hereby amended by adding to Article 6, Sec. 6-1, as one of the Objectives which "the Association shall encourage its members to maintain" the following provision:

1-a. A student body selected without discrimination on the ground of race or color.

3. The Association realizes that the attainment of the new Objective will require further consideration and time for action on the part of some members schools. It notes with gratification the very substantial progress which has been made in the past three years toward equality of opportunity for legal education without regard to race. The Association urges the faculties and the governing bodies of all member schools promptly to take measures in their own way to make possible this equality of opportunity, and it stands ready through its president or his representatives to confer with the university authorities on the subject.

4. The Association will re-examine the matter at its meeting in 1953, in the light of the progress made in the intervening period in achieving equality of opportunity in legal education without segregation or discrimination on the ground of race or color, and it will then consider what further measures may be advisable to implement this Objective.

5. A copy of this resolution and of the committee's report shall be sent by the president of the Association to the president and to the chairman of the governing board of the university of which each member school is a part.

Respectfully submitted,

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SHELDEN D. ELLIOTT, University of Southern California
ALBERT J. HARNO, University of Illinois
CHARLES T. McCORMICK, University of Texas
ELLIOTT E. CHEATHAM, Columbia University, Chairman

FIRST APPENDIX

Racial Discrimination and Segregation in Member Schools

This Appendix deals briefly with the extent of racial discrimination and segregation in member schools. It gives, first, summaries and comments. It then lists the states (including the District of Columbia) in which discrimination and segregation still exist or existed until very recently, and indicates the present policy of the individual schools.... [The summary of the legal situation then existing as to discrimination in legal education is omitted. It appears on pp. 292-294 of the Association's 1951 Proceedings.]

Since 1948, in eight states Negroes have been admitted to some of the law schools which had previously excluded them. The states are Arkansas, Kentucky, Louisiana, Missouri, North Carolina, Oklahoma, Texas and Virginia. The deans of these schools informed the committee that the admission of Negroes had brought no untoward incidents. The experience and attitude in these schools can best be indicated by quotations from letters from six representative schools.

1. "...the admission of Negroes has been accepted without friction by the faculty, students and University community. Although considerable opposition was anticipated, very little came from alumni or other outside sources at the time of the Johnson case and there appears to have been none in the past year and a half."

2. "Our policy of accepting negroes who meet our standards for admission and our policy of treating all students alike, regardless of race, has worked out very well in practice. It has been accepted without friction by all concerned. As will be noted below, we have had but two negro students. Both have been courteously accepted by their student colleagues and have been treated as equals in every respect. The white students of their own volition have seen to it that the negro students were invited to all Law School functions, social and otherwise."

3. "The new policy of admitting Negro students without segregation has worked out excellently in practice. We did not try to do everything at once ... Since [our school] was the first state educational institution in the South to admit Negroes, and since they were admitted without legal pressure, we felt that at the beginning we might be on treacherous ground. Every action taken was considered carefully and possible consequences were guarded against in advance....I think that today in general the students and faculty of the entire University, and probably a majority of the citizens of the state, are proud of the way in which we handled the matter. Negro students today reside in a section of the men's dormitories assigned for graduate and professional students. They eat at the Student Union cafeteria. They do not mingle extensively in social functions or extra-curricular activities, but limit themselves to those at which they are welcome. The number of these is steadily increasing. No compulsion is employed; such matters are currently handled on the basis of individual and group acceptability."

4. "During [his] stay in the Law School, he was housed in Hatcher Hall, in the section occupied by law students, and was privileged to take his meals in the cafeteria of Hatcher Hall, like all other residents of this dormitory. The student body of the Law School accepted [him] passively, and there were no incidents of any sort following his attendance at law classes, lectures, and other activities of the Law School. There was, of course, a very considerable amount of opposition to [his] presence in this university from large segments of the white population of the state. During [his] stay in this law school, he never attempted to participate in any student social functions."

5. "The Negro students have conducted themselves with courtesy and tact and have apparently been careful to avoid provoking antagonism. Similarly, the white students, whether or not in favor of the new policy of non-segregation, have displayed the same qualities. The result has been that no unpleasant incidents have been reported to the faculty. Negro students are seated alphabetically in class in the ordinary way and have used all of the facilities of the School. At the beginning of

the year, one of the white students seated next to a Negro student in a particular class asked to have his seating assignment changed and this request was granted. The reason for the request was not asked, and the incident did not come to the attention of the Negro student. So far as I know, this has been the only incident which might show any antagonism. None of the Negro students requested University housing or dormitory space, but it is assumed that such requests would be handled by University officials in the normal way. Some of them take their meals regularly at the University cafeteria, but we have heard of no unpleasant incidents arising from this. Few extra-curricular activities are open to first-year students, and the Negro students have shown no disposition to enter them....In general, it can be said that the first year under the policy has been without incident and that the Negro students have been met by a general attitude of tolerance."

6. "While there was opposition to the admission of Negro students by some members of the faculty, a few members of the student body, and some in the university community, generally none of this opposition has been evidenced since the Negro students were admitted. All have worked well together and it is impossible to detect any friction from any source. The Negro students are admitted, generally, to all University facilities and have participated in all extracurricular activities of the Law School. It, at times, has meant some adjustment as to where certain functions of the School shall be held. However, arrangements have been made in every instance to provide for the attendance of the colored students."

[The rest of the Appendix summarizing the facts as to discrimination in legal education as of 1951 is omitted. It appears on pp. 296-299 of the Association's 1951 Proceedings.]

SECOND APPENDIX

The Scope of the Committee's Inquiry

In its inquiry, the committee turned first to the Association schools for aid, and sent a request for information to all member schools. It asked the dean of each school about the policy of his school, and if the policy of equality had been recently adopted how it was working out in practice. It requested the dean to invite the head of the university to give to the committee his opinion on the subject before the committee. Accompanying the request for information, there was a letter to all deans and members of faculties, inviting them to give their views and opinions to the committee, and the deans were asked to transmit the committee's invitation to all members of their faculties.

The majority of the deans, including we believe the deans of all the schools which still have or recently have had a policy of exclusion, gave the information requested. Many of the deans accompanied their replies with helpful statements of their personal views. Only one university president wrote to the committee. Over fifty faculty members expressed their views.

To broaden the scope of its inquiry and to secure the advantage of personal interviews, the committee met in Washington in May at the time of the meeting of the American Law Institute. All of the member schools had been informed of the meeting. The committee's conferences were conducted in a way which it was believed would be conducive to the fullest discussion. For the most part men

who would be apt to have similar views were asked to meet together with the committee. The first meeting gave a cross-section of views, for the persons present ranged from strong supporters to strong opponents of the Yale resolution, and included the deans of two colored law schools. At the next meeting there were present the chief counsel for the National Association for the Advancement of Colored People, a colored lawyer who had been active in anti-segregation litigation, and the secretary of a Southern association opposed to segregation. At the third meeting there were present the deans of several Southern law schools as well as several Southern university trustees and lawyers. For the last meeting Professor John Frank brought together a group supporting the Yale resolution, including psychiatrists, teachers who had taught in segregated Negro law schools, and several other law teachers. The committee conferred also with the chairman of the Section on Legal Education and Admission to the Bar of the American Bar Association.

The members of the committee discussed the subject informally with law teachers who were present in Washington for the meeting of the American Law Institute. They have talked with or written to many other persons whose views might be helpful, including social scientists and men conversant with international relations.

After a tentative draft of the committee's report had been circulated, the members and advisers of the committee met in New York in September, at the time of the meeting of the American Bar Association, and the report was agreed upon in final form by the members of the committee.

MATERIALS RELATING TO CERTAIN ACTIONS PRIOR TO 1954 OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS CONCERNING RACIAL DISCRIMINATION

1. Resolution Adopted by the Association of American Law Schools at its 51st Annual Meeting, December 28-30, 1951

2. Report of the Special Committee on Discrimination in Law School Admissions to the Association of American Law Schools, 1951

3. Action Taken by the Association of American Law Schools at its 53rd Annual Meeting, December 28-30, 1953

Special Committee on Racial Discrimination - 1955

Association of American Law Schools

1. Resolution Adopted by the Association of American Law Schools at its 51st Annual Meeting, December 28-30, 1951

RESOLVED:

1. Equality of opportunity in legal education without discrimination or segregation on the ground of race or color is beneficial to legal education and contributes to the improvement of the legal profession. It is required by our democratic creed and its complete achievement would enhance our nation's influence in world affairs.

2. The Articles of Association are hereby amended by adding to Article 6, Sec. 6-1, as one of the Objectives which "the Association shall encourage its members to maintain" the following provision:

1-a. Equality of opportunity in legal education without discrimination or segregation on the ground of race or color.

3. The Association notes the substantial progress made in the past three years toward equality of opportunity in legal education without regard to race or color and urges the faculties and governing bodies of all member schools concerned promptly to take measures in their own way to achieve this equality of opportunity. The President of the Association shall appoint a special committee to aid in effectuating this Objective. The committee shall have the powers appropriate to its function, including the power to confer and cooperate with member schools. The committee shall report at each annual meeting of the Association the extent of progress and the situation at each school which may remain in non-compliance; and it shall recommend not later than the annual Association meeting in 1953 such additional steps as it may deem appropriate to accomplish the purposes set forth in the report which is the basis of this resolution.

4. The President of the Association is directed to convey to the president and the chairman of the governing board of the university of which each member school is a part a copy of this resolution and of the committee's report and to call attention to the responsibility of the member school under the foregoing Objective.

Note: Since paragraph 2 of the above resolution called for an amendment of the Articles of Association, it had to be adopted by a two-thirds vote. The vote on its adoption was 85 schools for, 15 schools against, and 8 schools not voting. The other paragraphs, which were offered as amendments to corresponding paragraphs proposed by the Association's Special Committee on Discrimination in Law School Admissions, were adopted without roll call votes. See Ass'n of Am. Law Schools, 1951 Proceedings, pp. 41-44, 57-61.

2. Report of the Special Committee on Discrimination in Law School Admissions to the Association of American Law Schools, 1951 *

At the Annual Meeting of the Association of American Law Schools in December, 1950, the following resolution was adopted by the Association:

> "BE IT RESOLVED, That the Association of American Law Schools opposes the continued maintenance of segregation or discrimination in legal education on racial grounds, and asserts its belief that it is the professional duty of all member schools to abolish any such practices at the earliest practicable time.
>
> "In the light of the foregoing view, the proposal of the Yale Law School for an amendment to the articles which would require abolition of segregation by member schools as a condition of membership in the Association is referred to a committee of five to be appointed by the President. The committee is instructed to report to the 1951 Annual Meeting with regard to this proposal, and any alternative it may deem worthy of consideration."

The proposal of the Yale Law School referred to in the resolution was:

> "No school which follows a policy of excluding or segregating qualified applicants or students on the basis of race or color shall be qualified to be admitted to or to remain a member of the Association."

The President appointed the special committee called for by the resolution.

Later, at the suggestion of the Executive Committee and of the special committee, the President named Dean Henry P. Brandis [of the University of North Carolina School of Law] and Professor John P. Frank [of the Yale University School of Law] as Committee Advisers. They have shared in the committee's subsequent discussions and have much aided it by their suggestions and criticisms.

The special committee submits its report directed to these matters:

I. The competence of the Association.

II. The policy to be supported by the Association.

III. Other forms of discrimination in admission.

IV. The measures to be adopted by the Association in furtherance of its policy.

V. A proposed resolution, which includes a recommended amendment to the Articles of Association.

In a first appendix there are given an outline of the present situation on racial discrimination in admission to law schools, and developments since the Supreme Court's decision in the Gaines case in 1939; and in a second appendix, an indication of the scope of the committee's inquiry.

* The Report and appendices appear in the Association's 1951 Proceedings at pp. 278-300.

3. Action Taken by the Association of American Law Schools at its 53rd Annual Meeting, December 28-30, 1953

Pursuant to the third paragraph of the resolution adopted by the Association in December, 1951, a Special Committee on Discrimination in Law School Admissions was appointed to effectuate the newly adopted Objective, with directions to report annually to the Association and to "recommend not later than the Annual Association meeting in 1953 such additional steps as it may deem appropriate to accomplish the purposes set forth in the report which is the basis of this resolution."

At the 1953 meeting of the Association, the Special Committee recommended that a new committee having rotating membership be created with substantially the same purposes as its predecessor and with the further direction to report at least ten weeks in advance of each annual meeting. (This period was chosen to permit schools dissatisfied with an annual report a sufficient interval to propose amendments to the Association's Articles of Association.)