CHAIRMAN'S ANNUAL REPORT ON MINORITY GROUPS ASSOCIATION OF AMERICAN LAW SCHOOLS

Madam President, Members of the Section on Minority Groups, and Men and Women of the Association: I am happy to submit this, my third and final report, as Chairman of the Section on Minority Groups. As a retiring Chairman, it seems appropriate that we review some of the activities and events which have been active in shaping and challenging this Section.

You will recall that it was not until 1964, just ten years ago, that the Association was able to publish, as a matter of firm belief, but not as a matter of fact, that none of its member-schools were denying admission to any applicants on the basis of race, religion, color, national or ethnic origin.[1]

Unfortunately, as history has shown, that mere declaration of a policy of non-discrimination, without further action, did very little to change the traditional profile of the student bodies (and there was certainly no impact among faculties) in the nation's law schools. Although the member-schools stated a fair and equal admission policy in 1964, in that school year, and the academic year 1965-66, minority students made up less than 2% of the students enrolled in American law schools.[2] It was not until the 1967-68 school year that we were able to gather reliable statistics; and the number of minority students was singularly unimpressive.[3]

Black (Negro)	American Indian	Puerto Rican	Chicano- (Mexican-American)	Other Latin American
1254	32	69	180	81

During the 1969-70 academic year, the numbers had increased to the following:[4]

Black American	American Indian	Chicano	Puerto Rican	Other Hispana Americans	Others
2154	71	414	61	75	263

To give a graphic view and a realistic feel for the number and status of minority students as early, or as late, as 1970, I would suggest that we re-read and re-examine:

> The Law Schools and the Minority Group Law Students: A Survey for the AALS Committee on Minority Groups, edited by Kellis E. Parker and Walter J. Leonard.[5]

The following is a quote from the Introduction of that study:[6]

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1. AALS Proceedings 1965.
2. ". . . it appears that there are no more than 700 Negroes among the 65,000 men and women who are studying law in the United States." L.A. Tolpfer, "Harvard Special Summer Program" (1965).
3. AALS Newsletter 68-3, Page 2.
4. AALS Newsletter 70-2, Page 3.
5. Proceedings, Section Two, 1970 Annual Meeting, AALS.
6. *Supra*, Page 10-13.

> The aim of the committee was . . . to provide information that could serve a useful purpose for schools in the process of evaluating existing programs or initiating new ones. Structured interviews based on questionaires were not employed. Instead, a topical guideline was used to secure at each school an analysis and reporting of programs on a common base of compatibility. The objective was to secure accurate descriptions of existing programs, responses to them, and to estimate the likelihood of successful adaptation elsewhere rather than to restrict the inquiry to the confines of any set of questions. This more flexible format allowed the interviewers to take cognizance of the variety of influences that affect the decision of individual law schools, including size, location, and private or public support.
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> One final caution is appropriate before embarking on the report itself. That relates to the name of the committee and thus to the subject matter of the inquiry. The phrase "minority group students" is, we believe, accurately descriptive of the group we deal with. The term includes Blacks, Chicanos, Puerto Ricans, American Indians, Orientals, and all others who are separately identifiable in terms of race or ethnic background.
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> The phrase "disadvantaged students" has often been used in the past to refer to essentially the same group; but we find it ambiguous; and we think it no longer necessary or desirable to employ a euphemism to conceal a reality.

A dramatic, and encouraging, increase in the minority students occurred in the period spanning 1971-1973. Then a noticeable decrease, or "leveling off" became evident. A recent issue of the AALS Section on Minority Groups' Newsletter reported the following:[7]

> *Law School's Minority Enrollment Growth Slows Significantly*
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> In 1973-74 the rate of increase for minority enrollments in law school slowed dramatically as compared to the progress made over the past five years. For example, in the current academic term Black first-year enrollments rose nationally by only thirty-six (36) persons, or by slightly less than two percent over last year. This contrasts with an increase of six hundred and one (601) students over the two year period spanning academic years 1970-72. In that space of time enrollments increased 53% over the 1969-70 base. The first year of significantly slower growth was 1972-73 when there was an approximate 11% increase over the year before. This reduction was followed in 1973-74 by a 1.9% increase.
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> While an examination of overall Black enrollment for the last five years reveals an increase of 126%, the percentage increase this academic year over last, was 9%. Since first-year enrollments accounted for only thirty-six of the three hundred ninety-four person increase, the major gains were made in greater retention of Black law students. It is significant to note that of the four thousand eight hundred seventeen (4,217) enrollees this year nearly one in every five attended a predominately Black law school, either Howard University, North Carolina Central, Southern or Texas Southern University. The remaining four of every five were dispersed over approximately one-hundred forty-five other ABA-approved schools.
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> Though Spanish surname first-year growth rates have generally decreased less drastically, both in absolute and percentage terms, the group desig-

7. Number 74-1, AALS (May, 1974) pp. 4-5. It should be noted that the increasing numbers of minority students have not replaced nor decreased the number of white students. In 1965 when there were 65,000 law students and less than 800 were minority, today there are more than 85,000 law students, of that number 6,750 are minority. This would indicate an increase of more than 15,000 white students. Where is the preferential treatment?

nated "other Hispano-Americans" experienced an actual decrease in the number of new enrollees. Total Spanish surname enrollments increased over the past five years by more than 200%. However, the 1973-74 total was merely seventeen hundred students; this sum is less than 1.6% of all enrollments in ABA-approved schools and represents a 17.5% increase in Spanish-surname enrollments over the preceding year.

The tables set forth below give more complete data on minority students entering law school over the last two years. This data was taken from the "1973 Survey of Minority Group Students in Legal Education" prepared by Professor Millard Ruud, former ABA Consultant to the Section on Legal Education and Admission to the Bar.

Table 1

Minority Students Enrolled in Law School September, 1973

	1st yr	2nd yr	3rd yr	4th yr	Not Stated	Total
Black American	1,943	1,443	1,207	101	123	4,817
Chicano	539	386	271	63	0	1,259
Puerto Rican	96	47	32	5	0	180
Other Hispanos	94	70	59	4	34	261
American Indian	109	65	44	3	1	222
Asian American	327	297	202	19	5	850

Table II

Minority Students Enrolled in Law School September, 1972

	1st yr	2nd yr	3rd yr	4th yr	Not Stated	Total
Black American	1,907	1,324	1,106	74	12	4,423
Chicano	480	337	238	17	0	1,072
Puerto Rican	73	40	25	5	0	143
Other Hispanos	96	72	60	3	0	231
American Indian	79	48	44	2	0	173
Asian American	298	218	144	20	1	681

Shortly after some of the law schools began to increase their minority student enrollment, to a number beyond insignificance, various articles, papers, and reports began to appear, both decrying and defending the presence of these students, and the programs instituted to attract these new members of the legal education community. As the numbers grew, so did the resistance. Indeed, many groups, and individuals, who over the years held themselves out as firm believers in equal access and equal opportunity for racial minorities began to support the absurd notion and racist thesis that the presence of minority students and faculty members, beyond mere tokens, was a clear and present danger to the quality of legal education.

Consequently, in less than three years after real efforts were undertaken to ensure equal access and belated opportunity to minorities, we witnessed an organized effort to derail any positive, or result-oriented, programs. The capstone of this regrettable initiative was manifested in *DeFunis v. Odegaard.*[8]

Stripped of its legal niceties, social theses and obfuscating pronouncements about equality, fairness, objectivity and good-Americanism, *DeFunis* is

8. 507 P.2d 1169 (1973).

basically racist and sexist. It is more racist than sexist because those who support it will permit the admission of a few females—provided they are white.

Illustrative of this fact is the history of admissions and graduation at the Washington state law school, where *De Funis* arose. Between 1902 and 1969 the Washington Law School graduated 3,800 white students and 12 Black students. The record does not show how many white students, with less than spectacular records were admitted when white students with a more attractive record were being denied. The record does not show any protest by white students against the admission of other white students. The record does not show any white student of Western European stock contesting the admission of a white student of Eastern European stock; nor do we see on the record any protest by Catholics against Protestants, Jews against Gentiles, or any white student against any other white student regardless of the academic records involved.

No! It is only when more than an absolutely insignificant number of minority students began to *compete* for spaces, to which white students, and their parents (because they never had to compete with minorities for anything) felt that they *merited* by the accident of their birth and the color of their skin, that we notice the hue and cry. Not being brave enough to admit their stance is racist and sexist, De Funis and his followers concocted an argument over-coated with a transparent layer of constitutional abstraction.

The argument is that various groups are on equal footing within the American complex. There is the assertion that positive steps toward reversing many decades of discrimination which favored privileged groups, is somehow against the American concepts of equal protection and fair-play. There is the contention that the individual, and not the group, race or sex, to which he or she belongs must be the single variable for consideration in matters of admissions, employment and in the allocation of resources.

In response to the charge that the individual, as the basic political unit of democracy, has been superseded by ethnic, religious or other groups, it must be said that discrimination on the basis of race, sex or religious and ethnic affiliation is the most blatant violation of what (many) claim to be the root of Constitutional principle. For a good part of American history, the individual Black person, for instance, has been discriminated against precisely because of his membership in a certain race. The same may be said for women—that individual women have been discriminated against on the basis of their membership in a particular sex is well documented by the records of this Association. It has been likewise for Jews—individual followers of the Jewish religion have been discriminated against precisely because of their group membership or religious beliefs.

The group memberships mentioned above, which so long served as ground for discrimination, must be taken into consideration in order to rectify the discriminatory policies that emerged to surround them. However, as unqualified criteria for admissions, employment, acceptance, etc., such membership is not, and never has been, inherent in programs designed to reverse discrimination. Those who claim the contrary are sadly mistaken and engaging a high-degree of intellectual dishonesty.

It is in this framework that *DeFunis* must be viewed. This most recent revival of the issue of race as a determining factor in school admission policy is not an isolated incident. Quite the contrary, the issue raised by Mr. De Funis is, in the narrow sense, the responsibility of a law school to help erase the scars of these past injustices, and in the broad sense, the obligation of American society to make up for its centuries of assault on the educational opportunities for Black and other minority citizens.

All of this has been considered before from different angles. But the case brought by Marco De Funis has one unique aspect. It marks the first substantive challenge to the integrity of the American college and university admissions processes.

In an article for the Black Law Journal, I dealt with several issues raised by the *De Funis* case, and cited several authorities who had dealt with the question of the expanding number of applicants for a finite number of seats in the Nation's law schools. The following is an excerpt from that article:

"Mr. De Funis' strong dependence on the LSAT should be moderated by the fact that 'just as minority students have been saddled with unnecessary and essentially false labels, so has the American public been saturated with an almost spiritual faith in the value of a high SAT or LSAT score, and in the damnation that must follow (and in too many instances has followed) a low score.' A further tempering fact: if data were made public, it would probably show that minority students are scoring much higher than their professors did 10 or 15 years ago.

"Would one conclude in the face of such data that today's minority students (or majority students for that matter) are brighter and more able than their professors? Or do we conclude that this result is due to greater exposure to the material that the test is intended to measure? How would many of today's law professors, who did not have to face competition from minority students and non-minority women, fare on the basis of their test scores in today's competition? The question calls for a hind-sight conjecture and speculation; but it should focus on the complexity, intricacy and limitations inherent in any attempt to measure human creativity, depth and subtlety.

"Another cautionary note was sounded by Peter A. Winograd, Director of Law Programs of Educational Testing Service. Writing in American Bar Association *Journal*, he warned that numbers alone do not measure potential.

> The list of possible variables can be lengthy, the time consumed in evaluating them will be substantial, and the final decision will be harder to reach than if numerical statistics are given determinate weight. The effort and expertise invested in this process ultimately will produce a vibrant class with a collaborative potential beyond what indexes alone can measure. Since most admissions officers and committees charged with the selection of entering students act with this in mind, class profiles usually show that acceptances are to some extent distributed along a G.P.A./L.S.A.T. continuum rather than appearing only at the top. At some point, of course, it does become essentially impossible for personal factors to compensate for unpromising objective credentials, for the overall correlation of L.S.A.T. scores and undergraduate grades with law school performance can raise questions of academic survival. This aside, if the demand for access to legal education reaches a plateau, as

> now appears likely, then the solution to the supposed admissions crisis may hinge more on improving the spread of applicants among law schools than on simply creating more first-year places.

"Dean Russell A. Simpson, Director of Admissions and Financial Aid at Harvard Law School, has written that whereas many individuals assume that an applicant to a law school is judged purely on the basis of high grades and test scores, there is not a law school admissions committee in America that has ever adhered to this principle. Indeed, if high college grades and test scores were the only qualifications for admission there would be no need whatsoever for admissions committees. The class for any given year could simply be determined by computer. But an enormous amount of thought, discussion, analysis and intuition goes into selecting members for a class, partly because *no* law school considers any one fact about an applicant an exclusive index of his potential for legal study. A combination of factors must be taken into account in determining the *kind* of excellence which qualifies a student for study at Harvard."

The central and negative thrust of *De Funis* is forcefully captured in the conclusion of the Amicus Curiae Brief of the Law School Admissions Council:

> The typical minority applicant who applied to law school with petitioner was born in the year when this Court decided *Shelley v. Kraemer*, 334 U.S. 1 (1948), and grew up in an era of segregated housing. He entered public school the year this Court decided *Brown v. Board of Education*, 347 U.S. 483 (1954), and was entered into a system of segregated education. He was sixteen and ready for the job market when Congress prohibited discrimination in employment with the Civil Rights Act of 1964. It is insisted, however, that the law school was forbidden to take account of these cumulative handicaps because it had not previously been adjudicated guilty of any racial discrimination. The argument leads to the remarkable conclusion that the Constitution compels the innocent to become complicit to the wrongful discrimination by enforcing its consequences and excluding the victim because he has been wronged in the past by others. At each succeeding education level, the victim would be met by further discrimination, produced by handicaps visited upon him in the level below. No remedial action would be permitted to aid the actual victim, since this view of the law would "freeze the status quo of prior discriminatory . . . practices." *Griggs v. Duke Power Co.*, 401 U.S. 424, 430 (1970).
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> The consequences of discrimination are inextricably interwoven with minority status, and their educational impact has not been ignored by this Court, the Congress, or the law schools. The ultimate goal of a society where hard work and ability alone are controlling, and origins, birth, and status are disregarded, can be achieved only when handicaps visited upon origins, birth, and status have first been eliminated. That day has not yet arrived."

The complexion of the AALS, from its central office to the faculties of its member schools, indicates a present need to re-examine its late 1960's pronouncement that all efforts would be directed toward including minorities in all aspects, and every facet of its activities.

Given the present brouhaha, and the attempt to continue the practice of negative quotas in connection with minorities in legal education, I propose the development and appointment of a Commission to study, report and take action in these matters.

Four years ago, when the Survey-team assessed the mood of the law schools toward minority students—there were no minority faculty of any statistical significance—it found: "The common thread of thought seems to suggest that most law school personnel feel that most minority-group students, when measured against the traditional criteria and credentials for and of law school admittees, are at an expected performance level below that established by the combination of LSAT scores and undergraduate grade point averages presented by most of the majority group standards. We found that this has resulted in many patronizing actions being taken on the part of many law schools. Examples of this abound in the initiation of special programs for minority students with the "published" objective of "raising their level of competence" rather than changing any "basic aspect" of the law school. These schools are then "shocked" and "disappointed" when the minority group students did not register immediate and warm acceptance of these programs.

The recruiting, training and graduation of minority group students is clearly and pointedly pressed on the nation's conscience. Many schools seem to be attempting an immediate and complete cure of the many years of extreme segregation. In some quarters the problem and attempted cure are pregnant with political rhetoric—further exacerbating the sensitivity of minority group students, many of whom report that they feel like "pawns," "political footballs," and "conscience salvers." Given the reality of the facts, circumstances and times in which we live, the acceptance, by minority group students, of special programs is nothing more than their acceptance of second class citizenship in the law school community."[9]

In 1974 I asked several minority students to write me their impressions of law school. The following letter from a student at a large "liberal" school on the East Coast is a typical response:

"I must confess that being asked for impressions of my first year raises more questions for me than answers. I am obsessed with discovering all I can about women and minority students in law school. I am very much aware that there is some kind of quota system—perhaps benign—at my school. Each of the four sections had four black students. There were five Asian Americans in the first year class. I was the Asian American representative in my section. So, even though I don't know what the teachers and administration (white male establishment) think of women and minority students, I know they know we're out there.

"I look for every small sign that points to an expression of opinion by the faculty and the administration. For example, there are very few females on the faculty. *There are no minorities on the faculty.* I listen to all the rumors about teachers who are reputed to be anti-women or anti-minority. I am acutely aware of being a non-traditional law student, only I don't quite know what to do about it. For the most part, I watch and listen and spend a fair amount of time talking to other women and minority students. We speculate a lot about our future, especially in the work world.

"During my moot court argument, a male judge commented on my dress. He thought it was too revealing.. I lost a couple of points because I

9. *Supra*, note 4.

wore a v-neck dress. It's hard to imagine that under any other circumstance that that dress would have drawn negative comments. I do feel that women in law have got to be resilient and blessed with an extra dose of humor. It's hard to laugh some days, but most days I can get along by feeling like anyone else in my class. I noticed that one of the five teachers who taught my section seemed to go easy on women. From his go-easy approach, a lot of men and women in the class concluded that the teacher didn't consider women as intelligent or as tough as men. Maybe.

"In any event, the burden is on the school to demonstrate its commitment to us. But in turn, we have some kind of inchoate commitment to those who come after us, and I'd like to define and fulfill that commitment in a sensitive, caring way. That is hard, and that's where I begin to have many questions and too few answers."

Finally, while some gains have been made in student admissions, the problem of miniscule representation at the administrative and faculty levels continues. The number of cases involving disparate and negative treatment of minority faculty must be made a matter of high priority by the AALS.

On December 18, 1972, I wrote to former Executive Director Michael H. Cardozo, calling to his attention the growing number of complaints registered by minority faculty members. Since these complaints have increased, rather than abated, I repeat a portion of that letter for the attention and consideration of the member-schools:

> "As Chairman of the AALS Committee (Section) on Minority Groups, I am receiving an increasing number of calls and complaints, suggesting that Black faculty members in law schools have been, and are now, getting unjust and discriminatory treatment from the administration and faculty in their school. It is my duty to inform you of these allegations. The reports indicate that the discrimination takes several forms:
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> 1) Overloading of coursework, designed to exhaust minority group faculty members,
> 2) *De facto* assignments as counselors for all black and other minority group students, and as sounding boards for *all* matters affecting minority students,
> 3) Designation of courses and seminars on race relations, to the exclusion of courses in the fields for which the faculty members are trained and qualified.
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> These allegations are indicative of policies in many law schools which put undue pressure and responsibility onto the shoulders of Black faculty members (who are usually just *one* in number), cut drastically into academic time and prevent preparation of the truly scholarly work which is *also demanded* of these faculty members. In addition to the personal insults to which minority group faculty members are subjected, their professional standards are undermined and insulted."

I would be incautious enough to remind the members of AALS that all facets of the law schools' programs, curriculum and administration are of interest to, and have an impact upon every student, and for many reasons may be a particular challenge and concern to minority group members of the student body.

Unfortunately, too many people in legal education still perceive the non-traditional student as a "special admit" or a sort of experiment; but seldom as

a person who should be permitted to run the academic race without additional hobbling effects of psychological hurdles. Societal neglect has erected enough barriers to last most minority people a lifetime.

When, in 1974, we consider the continuing paucity of representatives from ethnic-minority groups, in all areas of the legal profession (especially on the faculties and in the administration of the law schools) and the strong urge by some Neanderthals to curtail the recent efforts directed toward deracinating years of racial malignancy, we must remain determined that the AALS will not fall prey to preachments of "go slow," "let's look at other groups" and "benign neglect."

We must stand fast in our commitment to create an equitable legal system based on the belief that the principle of social justice can be implemented if we build a profession that is aware, sensitive and bold enough to use the law as a tool to support and not suppress those who have been virtually powerless in a society where race and other non-sensical factors have been used as measurements.

With deep appreciation for the assistance and encouragement which the Section on Minority Groups, and that I, personally, have received from many, many people who are working diligently to make the AALS all that it could and should be to its several constituencies, I respectfully submit this report.

Walter J. Leonard, Chairman
Section on Minority Groups
Association of American Law Schools

October 7, 1974