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Memo to Task Force: Law Faculty Forum with Jerry Shuman

Commission for Blacks

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July 30, 1973

Memo to Task Force

Re: Law Faculty Forum with Jerry Shuman

This summer the Law College has a visiting professor named Jerry Shuman, who is teaching legal accounting. Mr. Shuman, a black, has taught at the law colleges of Howard and Georgetown, and is presently on leave from Georgetown to head up the equal employment division of the U.S. Dept. of Agric. He spoke to our faculty at a forum held on 7-27-73, and discussed problems of equal employment and student motivation.

I.

I asked him about the legality of openly advertising or looking for "black-only" personnel in universities, and he said that this practice would not be permissible under present laws. Nor may one legally conduct an employment search based on an announced "blacks-preferred" policy, he said.

On the other hand, the federal government is much concerned about civil-rights-covered employers (such as the University of Tennessee) which have large blocs or departments that are substantially or entirely "lily-white" in makeup. Where this situation exists, there may be a presumption of discriminatory hiring practices. Such discrimination, whether intentional or unintentional, is ~~not~~ acceptable.

How, then, does a "lily-white" university or department rid itself of the onus of past or present discrimination^{ing} hiring, if it cannot engage in an open policy of "compensatory hiring"? To do this, said Mr. Shuman, an employer must cast its nets more widely. As he so ^aptly put it, it is a waste of time to look for orange orchards in Alaska. It is equally a waste, one might add, to look perfunctorily.

Assuming a bona fide willingness of a department to hire a qualified black if they can find one, is the department justified in choosing a black as opposed to an equally or better qualified white? Mr. Shuman said the answer to the question, asked in that form, is No.

The question is more complicated than that, however. Qualification criteria are at least in part subjective, and frequently these subjective factors are sufficient to swing the balance of decision. Moreover, candidates are comparable only in a very rough and inexact manner. Within the flexible

and subjective interstices of the judgmental process there is ample room for the consideration of race as a negative, a neutral, or a very positive factor. Which view the employer takes depends on his conception of affirmative action.

Jerry Phillips