

man of the Section of Individual Rights and Responsibilities, presented the joint resolution concerning legislation to prohibit discrimination on the sale and rental of housing on the basis of race or national origin. He indicated that although the Association has policy not to discriminate against any person because of race, color, creed, or national origin, such a formal position has not been taken with respect to the sale or rental of housing. He indicated that the Board of Governors had recommended an amendment incorporating the words "in principle," which the Section accepts. By a voice vote, the House approved the joint resolution as amended upon recommendation of the Board of Governors. As approved the recommendation reads:

Be It Resolved, That the American Bar Association continues to support in principle appropriate legislation which prohibits discrimination in the sale and rental of housing on the basis of race, color, creed, sex or national origin.

Young Lawyers Division.³⁹ William H. Neukom of Seattle, Delegate of the Young Lawyers Division, presented the recommendation concerning legislation to provide for peremptory disqualification of a district court or bankruptcy court judge. He advised the House that the Young Lawyers Division had amended the original recommendation to insert the words "district court" before the word "judge" and "in civil cases" at the end of that line. He reminded the House that it had adopted a recommendation of the Section of Criminal Justice on enactment of a statute permitting the peremptory challenge of a federal judge in certain criminal cases. At this meeting, the Young Lawyers Division, with the cosponsorship of the Section of Litigation, was requesting support for a recommendation extending that policy to include a peremptory challenge of federal judges in civil cases. He indicated that there were twenty states presently permitting a peremptory challenge in civil cases, and experience in those states has uniformly been positive, giving parties a better opportunity for a day in court and only requiring modest administrative or financial problems.

Walter H. Beckham, Jr., indicated the support of the Section of Insurance Negligence and Compensation Law for the recommendation.

Frederick U. Conard, Jr., Delegate of the Connecticut Bar Association, strongly urged the defeat of the recommendation. He indicated that Connecticut only had two bankruptcy judges. It would cause extreme difficulty in bankruptcy matters if such a peremptory challenge was used.

Leon M. Despres of Chicago, Illinois, advised the House that he practiced in one of the twenty states which permits a peremptory challenge of a judge. He indicated that it was very valuable and was exercised with care. The statute had to be complied with promptly and precisely.

Edward B. McConnell, Delegate of the Judicial Administration Division, stressed the support of the Division for the recommendation, and Adrian M. Foley, Jr., Newark, New Jersey, expressed the support of the Section of Litigation for the proposal.

Harry A. Spencer, Lincoln, Nebraska, the Delegate for the Appellate

³⁹The full report of the Division appears at page 570.

REPORT OF THE SECTION OF
INDIVIDUAL RIGHTS AND RESPONSIBILITIES
AND THE SPECIAL COMMITTEE ON
HOUSING AND URBAN DEVELOPMENT LAW

RECOMMENDATION*

~~*Be It Resolved*, That the American Bar Association supports legislation which prohibits discrimination in the sale and rental of housing on the basis of race or national origin.~~

REPORT

This proposed resolution is consistent with existing policy of the Association, and would extend Association policy against such discrimination explicitly to the area of housing. It would thus fill a gap in Association policy with respect to housing and thereby enable the Association to speak out against such discrimination.

The proposed resolution follows in line with the two policies of the Association set forth below:

"Whereas, the policy of the ABA is not to discriminate against any person because of race, color, creed or national origin, it is the sense of this Assembly that officers and sections of the Association should endeavor to use all reasonable means to effectuate this policy." (August 1965)

"ABA supports legislation which prohibits discrimination in the sale and rental of housing on the basis of sex." (August 1974)

There are several reasons for adoption of the proposed resolution. First, the resolution simply fills a gap in existing ABA policy statements, which appears to exist more as a matter of oversight than conscious omission. Second, inquiries have been made by the U.S. Department of Housing and Urban Development and other federal agencies and congressional offices as to the Association's official policy positions regarding race discrimination in housing. As there is a void in ABA policy in this respect, no specific position can be reported to Congress and governmental agencies in response to such inquiries.

It should be noted that the proposed reso-

*The recommendation was amended, then approved. See page 294.

lution intentionally does not address the specifics of enforcement provisions and other aspects of some of the remedial legislation in the area of housing discrimination that has previously been offered in the Congress, such as H.R. 5200 and S. 506, the Fair Housing Amendments of 1979. Such specific legislation requires further study by the Association because of the scope of enforcement and other administrative powers it confers on governmental agencies. At its October 1979 meeting, the Board of Governors of the Association directed that appropriate Association entities review that legislation to help formulate an Association position.

To implement the Board's directive, President Janofsky has requested the Special Committee on Housing and Urban Development Law to study that legislation in conjunction with the Sections of Administrative Law; Individual Rights and Responsibilities; Labor and Employment Law; Litigation; Real Property, Probate and Trust Law; and Urban, State and Local Government Law, and to prepare a report with recommendations on the specific issues raised by the proposed legislation. That study is now under way, and when it is completed, appropriate recommendations will be presented to the House.

Aside from the specifics of any such legislation, however, the overall policy issue of discrimination in housing on the basis of race or national origin remains to be addressed by the Association. That is what the resolution now being proposed by the Section of Individual Rights and Responsibilities would do.

It is an anomaly that on such a fundamen-

tal question, the Association has no explicit policy. The effect of this absence of clear policy is that the Association has no authorization to make its voice heard on the critical issue of discrimination in housing based on race or national origin. It is appropriate at this time that the void in Association policy with respect to housing discrimination based on race or national origin be filled.

The proposed resolution set forth above will also provide a conceptual and policy framework within which the appropriate As-

sociation entities can consider the specifics of various legislative proposals on the subject.

For these reasons, we urge the adoption of the proposed resolution.

E. CARRINGTON BOGGAN

*Chairperson, Section of Individual Rights
and Responsibilities*

LAUGHLIN E. WATERS

*Chairman, Special Committee on Housing
and Urban Development Law*