. . . One nation under God, indivisible,

WITH LIBERTY AND JUSTICE FOR ALL

An abridgment of

The Report
of the
UNITED STATES
COMMISSION ON CIVIL RIGHTS
1959

MEMBERS OF THE COMMISSION

JOHN A. HANNAH, *Chairman*
ROBERT G. STOREY, *Vice Chairman*
JOHN S. BATTLE
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*Succeeding J. Ernest Wilkins (*Deceased*).

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Letter of Transmittal

THE UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C.

SEPTEMBER 9, 1959.

To: THE PRESIDENT OF THE UNITED STATES
THE CONGRESS

The Commission on Civil Rights submits to you its report pursuant to Public Law 85–315, Eighty-fifth Congress.

We believe that this report, along with the separately printed record of hearings held by the Commission, will provide information of permanent value to the executive and legislative branches of the Government. This work could not have been done without the wholehearted cooperation of many individuals, organizations, and Government agencies. The assistance of a faithful and dedicated staff also was invaluable.

Respectfully yours,

JOHN A. HANNAH, *Chairman.*
ROBERT G. STOREY, *Vice Chairman.*
JOHN S. BATTLE.
DOYLE E. CARLTON.
REV. THEODORE M. HESBURGH, C.S.C.
GEORGE M. JOHNSON.

GORDON M. TIFFANY, *Staff Director.*

Acknowledgments

The Commission wishes to express to Dwight D. Eisenhower, President of the United States, its appreciation of his unfailing personal support and of his efforts in securing for the Commission the necessary cooperation of the many government departments and agencies that aided in the performance of its task.

Acknowledgment is also made to former President Harry S. Truman and to the staff of the Truman Library in Independence, Mo., for their courtesy and diligence in making available the working papers of the President's Committee on Civil Rights (1947).

Generous assistance was given the Commission by many Governors, Attorneys General, Mayors, and other State and local officials who were consulted in accordance with Section 105(c) of the Civil Rights Act of 1957, authorizing such consultation.

The Commission's thanks are also due to many official State and local organizations operating in the fields of civil rights, human relations, and fair employment practices; to numerous private organizations concerned with these endeavors; and to many religious and welfare groups, universities, statistical and research organizations, members of the press and other communications media. All gave full cooperation when requested.

The Commission feels a particular debt of gratitude to the hundreds of men and women who served on its State Advisory Committees and aided in its hearings and conferences, thus providing information of great value to this report.

Finally, the Commission wishes to acknowledge that this report could not have been made without the able and devoted assistance of Gordon M. Tiffany, Staff Director, other members of its staff, and consultants who have furnished part-time assistance and advice. All who have served on the Commission staff or as consultants at one time or other are listed below in alphabetical order.

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NOTES ON DOCUMENTATION AND ON STATEMENTS OF COMMISSIONERS

Documentation of the facts in this abridgment may be found in the full *Report of the United States Commission on Civil Rights, 1959*, obtainable from the Superintendent of Documents, Washington 25, D.C.

Statements by the Commissioners should, in general, be read in the light of the full *Report*.

INTRODUCTION

THE COMMISSION ON CIVIL RIGHTS: ITS ASSIGNMENT AND ACTIVITIES

In 1957, the Congress of the United States was disturbed by allegations that some American citizens were being denied the right to vote, or otherwise deprived of the equal protection of the laws, because of their race, color, religion, or national origin.

In Congressional committee hearings and later floor debate, there were wide differences of opinion about the truth of these reports. From these differences arose strong bipartisan agreement that an objective, bipartisan commission should be created to conduct a comprehensive investigation.

In presenting President Eisenhower's request for a "full-scale public study," Attorney General Herbert Brownell, Jr., declared that it should be objective and free from partisanship, broad and at the same time thorough. The Attorney General further testified that such a study, fairly conducted, "will tend to unite responsible people . . . in common effort to solve these problems." He continued:

> Investigation and hearings will bring into sharper focus the area of responsibility of the Federal Government and of the States under our constitutional system. Through greater public understanding, therefore, the Commission may chart a course of progress to guide us in the years ahead.

The House Judiciary Committee reported that the need for a commission was "to be found in the very nature of the problem involved; the complexity of the subject matter demands greater knowledge and understanding of every facet of the problem."

In the Senate, Majority Leader Lyndon Johnson observed that the proposed commission "can be a useful instrument. It can gather facts instead of charges; it can sift out the truth from the fancies; and it can return with recommendations which will be of assistance to reasonable men."

On September 9, 1957, in its first civil rights bill since 1875, Congress provided for the establishment of such a commission as an independent agency within the executive branch.

It was to be a Commission *on* Civil Rights, empowered only to investigate, to study, to appraise, and to make findings and recommendations. It was *not* to be a Commission for the enforcement of civil rights. It would have no connection with the Department of

Justice and no enforcing powers other than to issue subpoenas and seek court enforcement thereof in connection with its factfinding investigations.

Specifically, the Civil Rights Act of 1957 directed the Commission to—

> (1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;
>
> (2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and
>
> (3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

The Commission was instructed to submit to the President and Congress a comprehensive report of its activities, findings, and recommendations not later than two years from the September 9 enactment.

APPOINTMENT AND CONFIRMATION OF MEMBERS AND STAFF DIRECTOR

For reasons beyond its control, the Commission was unable to begin full-scale operations during the first eight months of the two-year period provided by the Act.

On November 7, 1957, the President nominated these members: Stanley Reed, retired Supreme Court Justice (chairman); John A. Hannah, President of Michigan State University; John S. Battle, former Governor of Virginia; the Rev. Theodore M. Hesburgh, President of the University of Notre Dame; Robert G. Storey, Dean of the Southern Methodist University Law School; Assistant Secretary of Labor J. Ernest Wilkins.

On December 2, 1957, Mr. Justice Reed resigned. The President nominated Dr. Hannah to be chairman, and Doyle E. Carlton, former Governor of Florida, to be the sixth member. The President also endorsed the Commission's choice of Dean Storey to be Vice Chairman. Hearings on these nominations were held February 24, 1958, by the Senate Judiciary Committee. The Senate confirmed the nominations on March 4, 1958. The President's nominee for Staff Director was Gordon M. Tiffany, former Attorney General of New Hampshire, whose nomination was sent to the Senate on February 18, 1958. Hearings were held by the Subcommittee on Constitutional Rights of the Senate Judiciary Committee on April 2, and not until May 14 did the Senate confirm the nomination. Only then could the Commission

and its Staff Director proceed with the authority provided in the Act. Thus only 16 months remained to conduct and report the investigations, studies, and appraisals prescribed by Congress.

ORGANIZATION OF STAFF

The nucleus of a staff had been assembled pending the confirmation of the Staff Director. An Executive Secretary, Mrs. Carol Arth, was loaned by the State Department to take charge of office personnel and public liaison. The Commission had decided early that each Commissioner could recommend one lawyer for appointment as his legal assistant, who would also serve on the regular staff of the Commission under the Staff Director. Three of these lawyers were available to study the legislative history of the Act and contribute to the initial planning.

George M. Johnson resigned as Dean of the Howard University Law School to join the staff as director of planning and research. A. H. Rosenfeld, an attorney and former Army colonel, became chief of the Complaints and Field Survey Division. Francis P. Brassor, a veteran civil servant who had been Executive Director of both Hoover Commissions, served as consultant on organization during the initial period.

On July 1, 1958, the Commission delegated to the Staff Director authority in all matters of staff organization. Subsequently three main offices were established within the Commission: a Secretariat and Liaison Office supervised by Mrs. Arth; an Office of Complaints, Information, and Survey headed by Col. Rosenfeld, and an Office of Laws, Plans, and Research directed by Dean Johnson.

STATE ADVISORY COMMITTEES

One of the early decisions of the Commission was to organize a State Advisory Committee of five to nine members within every State and Territory, as authorized by Section 105(c) of the Act.

Serving without pay, the committees were invited to study whatever civil rights problems seemed to them important within their States and to report their findings and recommendations to the Commission.

To organize the advisory committees and to coordinate their work, the Commission obtained the consulting service of Frank Bane, former secretary of the Council of State Governments, and Henry M. Shine, Jr., a Dallas, Texas, attorney who had served as assistant to Dean Storey on the Hoover Commission. Later Mr. Shine became Assistant Staff Director, principally concerned with the State Advisory Committees Section of the staff.

In order to maintain direct contact between the Commissioners and the State committees, each Commissioner was assigned eight States for his general supervision. The States assigned to each Commissioner were not within any single region. Rather, to familiarize the Commissioners with the different regional aspects of their problem, each was assigned States in the North, South, West, and East. The legal assistants to the Commissioners prepared handbooks including the laws, cases, and factual background of each State for use by the Commissioners, the staff, and the State Advisory Committees. As an alternative to expensive field offices and a large investigating staff, the Commission subscribed to newspapers in every State. Thus, the staff kept abreast of civil rights news in every State at small expense.

Among the first advisory committees organized were those in Texas, Indiana, Virginia, Michigan, and Florida, home States of five of the Commissioners. By August 1959, there were committees in all of the 50 States except Mississippi and South Carolina.

LIBRARY OF CONGRESS REPORTS

Another early decision of the Commission was to ask the Legislative Reference Service of the Library of Congress to assemble some of the voluminous legal materials necessary for the Commission's studies, including Federal and State constitutional provisions and statutes involving civil rights, and the interpretations of these laws by courts and administrative bodies.

The first of these compilations was delivered to the Commission late in August, 1958. They were sent to the members of the staff studying assigned geographical areas and to the respective State Advisory Committees. Eventually there were some 8,000 pages of legal compilations, believed to comprise the most comprehensive collection of legal information on civil rights ever assembled. Copies will be deposited in the Library of Congress and State libraries.

SCOPE OF COMMISSION STUDIES

As noted earlier, Congress specified that the Commission must investigate alleged denials of the right to vote by reason of color, race, religion, or national origin. Under its further mandate to study, collect information on, and appraise legal developments and Federal laws and policies affecting the equal protection of the laws, the Commission clearly lacked time to study all fields so affected. After considering public education, housing, administration of justice, employment, public accommodations, government facilities, and transportation, the Commission decided for reasons made clear in this report to concentrate on public education, housing, and voting. However, to

the extent that it had time, the Legislative Reference Service of the Library of Congress included within the scope of its compilations all eight fields, and State Advisory Committees were invited to select any of these or other subjects that seemed urgent in their States.

Three staff study-teams of attorneys and political scientists, working in the Commission's Office of Laws, Plans, and Research, were assigned to the areas of education, housing, and voting. The voting team necessarily worked closely with the Office of Complaints, Information, and Survey, which received voting complaints and conducted preliminary surveys. All three study groups prepared detailed questionnaires which were sent to each State Advisory Committee requesting information on the situation in each State. All three groups conducted field inquiries and surveys, with the cooperation of the Office of Complaints, Information, and Survey.

VOTING INVESTIGATIONS

Beginning with a modest staff, the Commission was careful to expand only as circumstances required. No sworn voting complaints were received until August 14, 1958. A few days later the Commission authorized a field investigation into these first complaints. Eventually, field investigations of voting complaints were made in Florida, Alabama, Mississippi, Louisiana, and Tennessee.

HEARINGS AND CONFERENCES

The Commission's first public hearing was held in Montgomery, Alabama, December 8 and 9, 1958, in connection with the investigation of voting complaints from several Alabama counties. A public hearing on Louisiana voting complaints, scheduled to be held in Shreveport on July 13, 1959, was postponed at the last moment when the State's Attorney General obtained a restraining order from a Federal district judge. Other hearings and conferences were held on housing and education. On March 5 and 6, 1959, by Commission invitation, officials of school systems that had undergone partial or complete desegregation convened in Nashville, Tenn., to compare their thoughts and experiences. During 1959, the Commission held housing hearings in New York City (Feb. 2 and 3), Atlanta (April 10), Chicago (May 5 and 6), and met in Washington, D.C., on June 10 with the heads of Federal housing agencies.

The transcripts of the above hearings have been printed separately as supplements to this report and may be obtained on application to the Commission on Civil Rights, Washington 25, D.C.

On June 9 and 10, 1959, the Commission held a conference in Washington, D.C., with a group that included the chairman and

representatives of each State Advisory Committee. A supplementary volume of State Advisory Committee reports and discussions is in preparation.

COOPERATION OF FEDERAL AGENCIES

Pursuant to the provision of section 105(e) of the Act that "all Federal agencies shall cooperate fully with the Commission," the Staff Director—with full White House backing—submitted to a number of Federal departments and agencies questionnaires dealing with matters of voting rights and equal protection within the scope of the respective departments and agencies. Staff members also consulted frequently with Federal officials. Much of the resulting information has been incorporated in this report.

MEETINGS AND MEMBERSHIP

Following its first meeting on January 3, 1958, the Commissioners met on an average of once a month. On January 19, 1959, J. Ernest Wilkins died, a great loss to the Commission and to the country. On April 21, 1959, the President nominated Dean George M. Johnson, director of the staff Office of Laws, Plans, and Research, to replace Mr. Wilkins as a member of the Commission. The Senate confirmed Dean Johnson's nomination on June 4, 1959. Rufus Kuykendall, Indianapolis attorney, member of the Commission's Indiana Advissory Committee and former member of the U.S. National Commission on UNESCO, replaced Dean Johnson as director of the Office of Laws, Plans, and Research.

AGREEMENTS AND DISSENTS

In asking men of different backgrounds and of different regions of the country to serve on the Commission, the President could not have expected unanimity on some of the nation's difficult problems of civil rights. Very substantial agreement has been reached on most of the fundamental facts and problems. The disagreement is about how best to remedy the denials of the right to vote and of the equal protection of the laws under the Constitution which the Commission has found to exist.

The differences are not surprising. Problems of racial injustice have been present in varying forms since the birth of the nation, and for nearly a century the Constitution has explicitly guaranteed the equal protection of the laws to all persons, and provided that the right to vote shall not be denied because of race or color. But no way has yet been found, although many measures have been tried, to protect and secure these rights for all Americans. The Civil War

and Reconstruction did not accomplish the task, nor was it achieved in the atmosphere of indifference that followed. Litigation has not sufficed, nor has the Civil Rights Act of 1957.

So it is still necessary for men to reason together about these questions and to continue the search for answers. This, the Commission has tried to do. Because reasonable men differ on the best remedial measures, it was agreed that the Commissioners should express these disagreements wherever deemed important, either in footnotes or in supplementary statements.

The "Recommendations" which conclude the sections on Voting, Education, and Housing in this Report were made by unanimous or majority Commission action. These are followed by "Proposals," which are recommendations made by fewer than a majority of the Commission, and these in turn are followed by "Separate Statements" or "Supplementary Statements" of disagreement, of explanation, or of additional views, signed by one or more Commissioners. It was further agreed that each Commissioner would be free to express dissent or additional proposals by means of footnotes throughout the Report, and that individual "General Statements" would appear at the end of the Report.

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PART ONE

CONSTITUTIONAL BACKGROUND OF CIVIL RIGHTS

CHAPTER I. THE SPIRIT OF OUR LAWS

I confess that in America I saw more than America; I sought there the image of democracy itself. . . . —ALEXIS DE TOCQUEVILLE.

The first question before the United States Commission on Civil Rights is: What are civil rights in the United States?

They are, by definition, the rights of citizens, though under the Constitution many of them extend to all persons. A study of civil rights should center around the question: What does it mean to be a citizen of the United States?

In the assignment of this Commission, Congress indicated that its first concern is with the right of citizens to vote and the right of all persons to equal protection of the laws. These rights are the very foundation of this Republic. They did not arise suddenly in current civil rights controversies or in the so-called Civil Rights Amendments added to the Constitution after 1865 or even in the Bill of Rights of 1791. They are implied in the original Constitution itself, in its very first words and in its provisions for representative government and the rule of law.* Therefore, the Commission, in order to understand the fundamental principles involved in securing these rights, had to review more than the opinions of the Supreme Court. The best commentary on the Constitution is the whole history of the Republic.

The Declaration of 1776 recognized as the first principle of our independence that all men are created equal.

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*EXCEPTION TO THE STATEMENT OF THE CONSTITUTIONAL BACKGROUND OF CIVIL RIGHTS

BY VICE CHAIRMAN STOREY AND COMMISSIONERS BATTLE AND CARLTON

We take exception to this and all succeeding passages to the effect that a provision on the equal protection of the laws properly may be implied in the original Constitution itself. Such assertions ignore historical fact and disregard the development of Constitutional law pertinent to recognition of the human dignity of the individual in our democratic society.

1. The Declaration of Independence explicitly stated the principle "that all men are created equal" in justification for the revolutionary overthrow of the existing general government of the American colonies.

2. The first document of the new general government as independence was achieved was the Articles of Confederation of March 1, 1781. In the sole refer-

For our Founding Fathers the principles of the Declaration were established by "the Laws of Nature and of Nature's God." That all men are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness; that

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*EXCEPTION TO THE STATEMENT OF THE CONSTITUTIONAL BACKGROUND OF CIVIL RIGHTS—continued

ence to legal recognition of individual rights in this document, the fact of inequality of man was acknowledged: ". . . the *free* inhabitants of each of these States, *paupers, vagabonds, and fugitives from Justice excepted,* shall be entitled to all privileges and immunities of free citizenship in the several States . . ." [Emphasis supplied.]

3. At the time the Constitution was drafted, the discussion of development of the suffrage which appears elsewhere in this Report, and the compromise on slavery demonstrated that the principle of equality was not made part of our fundamental law.

4. There is no provision requiring "equal protection of the laws" anywhere in the original Constitution, nor in the first ten Amendments, which safeguard certain rights of the individual against encroachment by the Federal Government alone.

5. A proposed Amendment which used the word "equal," was refused by the Senate and never submitted for ratification by the States. It read: "The equal rights of conscience, the freedom of speech or of the press, and the right of trial by jury in criminal cases, shall not be infringed by any State." (The Constitution of the United States of America, Senate Document No. 170, 82d Congress, Second Session, at p. 750.)

6. "Equal protection of the law" became part of our fundamental law in 1868 upon ratification of the Fourteenth Amendment. It is a limitation upon State action and, also unlike the rights guaranteed by the first ten Amendments, "the Congress shall have power to enforce, by appropriate legislation, the provisions of this article." We are prompted to make this exception out of concern that the object-lesson to be gained from study of an accurate account not go unnoticed in a text which, in our opinion, so overemphasizes the statement of the principle of equality that actual practice is submerged.

Parallel patterns teaching the same object lesson are noted: the development of the suffrage in America, discussed elsewhere in this Report; the fact that 82 years elapsed between enactment of the last civil rights legislation and the Act of 1957 by which this Commission was created. The object lesson is this: Declaration of the principle of the equality of all men under law was revolutionary, but its realization in practice and experience has been evolutionary.

7. Finally, an explanation of the terms "civil liberties" and "civil rights" may be helpful. While we recognize these expressions—"civil rights" and "civil liberties" are used interchangeably, there are historical and legal differences.

"Civil liberties" are those rights derived from the United States Constitution which may be asserted by citizens against both the State and Federal governments. These include freedom of religion, press, speech, and assembly which are set out in the First Amendment and a part of the Bill of Rights. They are wholly free of government action.

After the adoption of the Fourteenth Amendment in 1868, the other individual rights, protected against State action with supplementary enforcement powers granted to the Federal government, are "civil rights." The right of the ballot is the best illustration.

to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed—these "truths" were, in Jefferson's earlier draft, declared to be "sacred and undeniable." Benjamin Franklin amended the draft to read simply "We hold these truths to be self-evident."

Insofar as was deemed practicable, the Constitution embodied these truths in the first principle of our self-government, that We the People rule. But to achieve the more perfect union of 1787 the framers of the Constitution found it necessary to accept human slavery. For purposes of apportioning representation in Congress a slave was considered three-fifths of a person, and Congress was not to have the power to prohibit the importation of slaves until 1808. This contradiction between the sacred and self-evident truths of 1776 and the compromise of 1787 so shocked Virginia's delegate George Mason that he refused to sign the Constitution and, with Patrick Henry, led the fight in Virginia against its ratification.

The gap between the great American promise of equal opportunity and equal justice under the law and its at times startingly inadequate fulfillment in practice has thus been a major—and probably a creative—factor in American history from the beginning of the nation. The conflict between those who would extend the republican principle to all men and those who would limit it to some men or who would delay its application has produced a tension in the minds and hearts of Americans and in American laws that is with us still.

The grand design of the Constitution was to provide machinery through which such conflicts could be resolved by reflection and choice, with the consent of the governed. Because Madison, an opponent of slavery, decided that the Constitution provided adequate machinery to do this, he became one of its foremost champions in writing many of *The Federalist* papers. He urged the people of Virginia and other States to ratify the Constitution and to seek to perfect it through constitutional amendment.

Many Americans, including Jefferson and Mason, were unhappy that no specific bill of rights had been included in the Constitution. But the framers were aware that eight of the thirteen States had already adopted bills of rights and that all of them had a republican form of government. Because the Federal Government was itself to be republican in form and limited in its powers and because its constituent parts were assumed to be republican, the majority of framers saw no necessity for an additional Federal bill of rights.

This assumption of the republican nature of State constitutions and of the equal justice provided by the common law was to a large extent justified. As James Bryce reminds us, the framers of the Constitution were fitting a keystone in an almost completed structure.

The federating States were not only little republics in themselves, but inside most of them were free cities and townships already operating on democratic lines. These principles were embodied in the covenant on the *Mayflower* in 1620, in other social contracts of the early colonists, and in the New England town meetings that gave birth on this continent to the idea of universal suffrage. The historical roots of our civil rights go even deeper. The town system of local self-government, like most of our rights and liberties, stems from the evolution of Anglo-Saxon common law and from early English revolutions. With the American Revolution, says De Tocqueville, "the doctrine of the sovereignty of the people came out of the townships and took possession of the state."

Recognition of the right to equal protection of the laws or equal justice under law is at least as old as the right to vote. In Magna Carta the cities, boroughs, and towns were not only promised their liberties, but King John promised that "to none will we sell, deny, or delay right or justice."

The assumption that State and local governments would secure and protect the civil rights of citizens of the United States, including the right to vote and the right to equal justice, is reflected in a number of provisions of the Constitution. When the Founding Fathers provided that the Federal House of Representatives "shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature," it was understood that each State had such an elected legislature and that, with certain property and other restrictions, the People were in each State the Electors.

To make sure that all States would follow the principle of government by the consent of the governed, the Founding Fathers provided that "The United States shall guarantee to every State in this Union a Republican Form of Government. . . ."

And as an additional safeguard they provided that:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations. . . .

This is not to suggest that the right to vote has ever been unqualified or that the Constitution intended to make popular suffrage in free elections the only principle of our government. On the contrary, the President was to be selected indirectly by an Electoral College, the Senate was selected by State legislatures, and the members of the Supreme Court were not to be elected at all but appointed by the President. It was understood then as now that States could establish reasonable restrictions on the right to vote. But the People, so de-

fined and duly limited, do by the terms of Constitution have a right to vote.

Similarly, implicit in the concept of republican government and the rule of law is the principle of equal protection of the laws. Since this was embodied in the common law in effect in the States, and since even the King had been held to be subject to the common law, it was assumed to be secured in States that had just won their independence in the name of the principles championed by Lord Coke and John Locke. Thus, the Founding Fathers were further establishing the civil right to equal justice when they provided in article IV, section 2 that: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Despite these constitutional provisions the demand for an explicit bill of rights continued. Several States ratified only after General Washington suggested that the desired guarantees be added by amendment. Strong southern pressure, led by Jefferson, resulted in the approval of the first ten civil rights amendments by the first Congress and their prompt ratification in 1791.

Even with the Bill of Rights the gap between the words of the Declaration of Independence and their political realization remained very wide. The Bill of Rights was construed to limit only the actions of the Federal Government—not the governments of the States. Not only were Negroes excluded from the franchise in most States but the machinery for registering the consent of the governed also excluded approximately half of those governed—all women. So established were these disqualifications by reason of race, color, or sex that an observer as sensitive as De Tocqueville could write in 1835 that "the principle of the sovereignty of the people has acquired in the United States all the practical development that the imagination can conceive."

De Tocqueville's imagination here fell short of his own logic. After noting the extension of republican principles throughout the American body politic in the first half century of constitutional rule, largely through State action in lowering or ending property qualifications for voting, De Tocqueville had concluded that "the further electoral rights are extended, the greater is the need of extending them; for after each concession the strength of the democracy increases, and its demands increase with its strength . . . and no stop can be made short of universal suffrage."

However, there were many halts along the way. To the end of his life the author of the Declaration was deeply concerned about the distance between the nation's practice and its solemnly declared goal. Of the nation he loved and the slavery that he hated, Jefferson wrote: "And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people

that these liberties are of the gift of God? That they are not to be violated but with his wrath? Indeed I tremble for my country when I reflect that God is just; that his justice cannot sleep forever." He was not satisfied with the scope of the Bill of Rights but approved it on the ground that "Half a loaf is better than no bread."

The bread of full freedom, human dignity, universal suffrage and equality of opportunity has always been the American dream. It has stirred each generation of Americans to work for its fullfillment. Knowing of this dream, great waves of immigrants sailed to these shores, speaking foreign languages, following different customs, practicing different religions. Under the Constitution they became part of the American electorate, part of the sovereign people. Often in the face of discrimination, they advanced to first-class citizenship under the equal protection of the laws.

In this sense the Constitution and the laws of the land have played a large part in the making of Americans. The founding fathers believed that self-government would teach men how to be free. America, the world was told, is producing a new man. And these new men, with their civil rights under the Constitution, have in turn made America.

Only once has the American constitutional process failed, at least for a time. Human slavery proved too severe a test for the peaceful process of persuasion. The Dred Scott decision, in which a divided Supreme Court said that Negroes were not "people of the United States" and could not claim or be granted the privileges and immunities of citizens of the United States, drew the lines of civil war. On the one hand slavery was so repugnant to the religious and political principles of many Americans that the abolitionists refused to obey the fugitive slave laws upholding it. On the other hand, many people in the slave States chose to defend with force their States' rights to decide the matter without Federal interference.

Civil war shortcircuited any further attempt to resolve the issue by Congressional or Executive action or by Constitutional amendment. Persuasion takes place through the ordeal of war, but with agony and bitterness. More Americans lost their lives in this conflict between Americans than in all of the nation's other major wars put together, including World War I, World War II, and the Korean conflict. The emancipation of the slaves and the occupation and reconstruction of the South created problems—problems of civil rights—that are still unsolved.

This Commission has reviewed the history of America and the spirit of its laws in order to trace, and try to illuminate, the fundamental constitutional principles involved in civil rights. Denial of those rights and principles necessarily involves the nation as a whole. For if the idea of government by the consent of the governed is the

essence of this Republic, then for the sake of the American experiment in self-government, and not just for the vindication of the claims of certain persons or groups, the right to vote and the equal protection of the laws must be secured and protected throughout the land. Above all it is the Republic that requires a free and self-respecting electorate—at least a Republic conceived in liberty and dedicated to the proposition that all men are created equal.

By returning to these fundamental principles of the Founding Fathers we can perhaps disentangle ourselves from much of the current disputation about recent decisions of the Supreme Court. Over the years the Court has given differing interpretations of the Constitution, and men may honestly differ about the wisdom of these interpretations. But the principles remain steadfast.

The authors and signers of the Declaration of Independence "intended to include *all* men," Lincoln reminds us. "They did not mean to say all were equal in color, size, intellect, moral development, or social capacity". But they did consider all men equal in their God-given and hence "unalienable" civil rights. They so declared, Lincoln urged, in order that enforcement "might follow as fast as circumstances should permit." He added:

> They meant to set up a standard maxim for free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for, and even though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence and augmenting the happiness and value of life to all people of all colors everywhere.

In a world where colored people constitute a majority of the human race, where many new free governments are being formed, where self-government is everywhere being tested, where the basic human dignity of the individual person is being denied by totalitarian systems, it is more than ever essential that American principles and historic purposes be understood. These standards—these ideas and ideals—are what America is all about.

CHAPTER II. THE REQUIREMENTS OF THE CONSTITUTION

The Thirteenth, Fourteenth and Fifteen Amendments gave new definitions of what it means to be a citizen of the United States. The interpretation of these new constitutional requirements by the organ of the Federal Government established to interpret the laws of the land has necessarily provided the frame of reference for most post-Civil War problems of civil rights.

The Thirteenth Amendment abolished slavery, the Fourteenth Amendment made the freed Negroes citizens of the United States and of the States wherein they resided and promised them the equal protection of the laws, and the Fifteenth Amendment provided that the right to vote shall not be denied or abridged on account of race, color, or previous condition of servitude.

But this only meant that some four million human beings whose ancestors had been torn from their roots in Africa and brought to this country in chains, who had known nothing but slavery, who had almost no education or training for citizenship, suddenly were turned into the mainstream of American life as free men and women.

The general unreadiness for this revolution has shaped our history. The gap in the standards of life between a majority of Negro Americans at the bottom of the economic and social ladder and a majority of more fortunate white Americans has not yet been closed. Nor has the reluctance of many white people to grant Negro Americans their full rights of citizenship been overcome.

In each of the post-war amendments Congress was empowered to enforce the provisions by appropriate legislation. In 1866, 1870, and 1875 civil rights bills were enacted. In some of these acts, for example in provisions prohibiting racial discrimination in inns, public conveyances, and places of amusement, Congress undoubtedly assumed that it had plenary legislative power to enforce the rights established by the Fourteenth Amendment. However, in 1883, the Supreme Court held these sections of the Civil Rights Act of 1875 unconstitutional. Construing the amendment more narrowly than Congress did, the Court held that it prohibited only official State action, not individual private violation of civil rights, and that Congress could enact only corrective and remedial, not positive and general legislation.

The Court had already in 1873, in a case dealing not with Negroes at all but with the power of a State to regulate business, construed the

privileges and immunities clause of the Fourteenth Amendment to protect only those privileges and immunities which derived from the status of citizenship of the United States, not from that of State citizenship, and defined these national rights so narrowly that the protection of most civil rights was left to State action. Thus the privileges and immunities clause was early divested of its constitutional vitality and has never once been applied to protect a civil right.

Finally, as the high water mark in this judicial restriction of the Fourteenth Amendment, the Court approved the doctrine of "separate but equal." It did so in upholding a Louisiana statute requiring separate facilities for white and colored persons on railroads in the State. The Court's disapproval of the civil rights amendments and statutes is clearly indicated by Justice Brown's majority opinion. The object of the Fourteenth Amendment was "undoubtedly to enforce the absolute equality of the two races before the law," he conceded. But he added:

> Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.

In no case were these decisions unanimous. In vigorous dissent Justice Harlan argued that:

> The substance and spirit of the recent amendments of the Constitution have been sacrificed by a subtle and ingenious verbal criticism. . . . Constitutional provisions, adopted in the interest of liberty and for the purpose of securing, through national legislation, if need be, rights inhering in a state of freedom, and belonging to American citizenship, have been so construed as to defeat the ends the people desired to accomplish, which they attempted to accomplish, and which they supposed they had accomplished by changes in their fundamental law.

Harlan rejected the notion that the fifth section of the Fourteenth Amendment gives Congress the power to legislate only for the purpose of carrying into effect the prohibition on State action. The first clause of the Amendment, he pointed out, is positive, creating and granting to Negroes citizenship in the United States and in the States wherein they reside. This grant of State citizenship, argued Harlan, secured at least exemption from race discrimination with respect to those rights enjoyed by white citizens in the same State. Therefore, he declared the Amendment confers upon Congress the power to legislate for the enforcement of all its sections.

Harlan's dissent in *Plessy v. Ferguson* is even more noteworthy since its reasoning has been substantially adopted by the present Court. "Our Constitution is color-blind, and neither knows nor tol-

erates classes among citizens," he wrote. "It is, therefore, to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a State to regulate the enjoyment by citizens of their civil rights solely upon the basis of race." He added that "the thin disguise of equal accommodations will not mislead anyone, nor atone for the wrong this day done."

Whatever the merits of the argument, the country was preoccupied with the new problems of national industrial development and ready to put aside old controversies. Federal troops had been withdrawn from the South in 1877 in the compromise negotiated over the election of Hayes. Meanwhile, with the free rein given by the Supreme Court, the Southern States proceeded to enact and to enforce strict segregation laws.

Interestingly the adoption of so-called "Jim Crow" laws did not occur on a large scale until some years after the Reconstruction had ended, and blossomed in full force only after the Supreme Court's approval of segregation. An eminent southern historian, C. Vann Woodward, observes in *The Strange Career of Jim Crow* that—

> Things have not always been the same in the South. In a time when the Negroes formed a much larger proportion of the population than they did later, when slavery was a live memory in the minds of both races, and when the memory of the hardships and bitterness of Reconstruction was still fresh, the race policies accepted and pursued in the South were sometimes milder than they became later. The policies of proscription, segregation, and disfranchisement that are often described as the immutable "folkways" of the South, impervious alike to legislative reform and armed intervention, are of a more recent origin. The effort to justify them as a consequence of Reconstruction and a necessity of the times is embarrassed by the fact that they did not originate in those times. And the belief that they are immutable and unchangeable is not supported by history.

No one can say what might have happened had not the Supreme Court cleared the way for the enactment of these laws requiring segregation. What did happen was widespread disfranchisement of the Negro, and a tightening pattern of segregation as Southern States around the turn of the century began to expand their public school systems. Whether in response to this or to the new opportunities in expanding northern industrial centers, the migration of Negroes to the North grew, especially during and after World War I. With this, racial problems truly became nationwide, for the Negro, along with the right to vote and perhaps a better-paying job, found discrimination and segregation in housing awaiting him in the North.

Meanwhile as the twentieth century progressed the Supreme Court took a broader view of the Constitution. The commerce clause was expanded until the Court could say that it is as wide as the needs of the nation. Oddly it was the commerce clause and not the Fourteenth Amendment that was first successfully invoked against segregation in

transportation. In 1946 the Court held invalid a Virginia statute which required segregation on all buses in interstate as well as intrastate commerce, holding the law to be an undue burden on interstate commerce in matters where uniformity is necessary.

But during these years the Court also began to give new vitality to the civil rights amendments. In 1915 the Court struck down as a violation of the Fifteenth Amendment the Oklahoma "grandfather clause" by which Negroes were deprived of their right to vote. When Oklahoma later devised a scheme to give permanent registration to voters who had voted in a previous election but require others (including most Negroes) to register within a twelve-day period or be permanently disfranchised, the Court struck this, too, saying that "The Amendment nullifies sophisticated as well as simple-minded modes of discrimination." In the same spirit the Court has stricken the white primary and various schemes to accomplish the same thing, holding finally that "It may now be taken as a postulate that the right to vote in . . . a primary . . . without discriminaton by the State . . . is a right secured by the Constitution."

Similarly, in the field of public education after a number of cases holding that facilities for Negroes were not in fact equal, the Court finally held that "separate educational facilities are inherently unequal" and that segregated Negro plaintiffs had been deprived of the equal protection of the laws.

And in the field of housing, where the doctrine of separate but equal has never been applied, the Court has gone on from holding racial zoning ordinances unconstitutional to holding that judicial enforcement of racially restrictive private covenants is governmental action constituting a denial of equal protection.

These cases have caused great controversy. The authority of the Supreme Court to require an end to segregation in public education, even its authority to overturn a doctrine that it had sanctioned for several decades, is being challenged. But this is not new for the Court. Only the unanimity of the Court in the school decisions and some of the other racial decisions mentioned above is new.

It can be observed that the Court has not assumed power over education as such. It simply applied a constitutional limitation on the States which applies to education in the same measure that it applies to State conduct of any other activity. Education is granted no immunity from the requirements of the Fourteenth Amendment.

Whether the Court in 1954 or the Court of 1896 was correct in its interpretation of the Fourteenth Amendment, the fact remains that to interpret is the established function of the Court. As Chief Justice Marshall declared in 1819, it is "a constitution intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." Mr. Justice Field remarked in 1894, in response

to a contention that the position of the Court was in conflict with two of his own previous opinions, "It is more important that the Court should be right upon later and more elaborate consideration of the cases than consistent with previous declarations. Those doctrines only will eventually stand which bear the strictest examination and the test of experience." Indeed there have been scores of prior decisions which the Court has directly overruled and many more in which previously enunciated doctrines have been substantially modified.

This is not to say that everyone must agree with the Court. A decision may be characterized as wrong, improper, or unwise. Many so characterized the decision in *Plessy v. Ferguson* that interpreted the Fourteenth Amendment to permit segregation. Lincoln so characterized the Dred Scott decision. But, painful as it may be, those who disagree with the Court must, if they are to uphold the Constitution of the United States, accept the decision of the Court as the authoritative interpretation of the law of the land.

Solely out of "obedience to, and respect for, the judicial department of government", Lincoln opposed acts of interposition or resistance to the Dred Scott decision. "But we think the Dred Scott decision is erroneous," he said. "We know the Court that made it has often overruled its own decisions, and we shall do what we can to have it overrule this." However, until the Court changed its decision or the country changed the Constitution, Lincoln called on the people to do their constitutional duty:

> We think its decision on constitutional questions, when fully settled, should control not only the particular cases decided, but the general policy of the country, subject to be disturbed only by amendments of the Constitution as provided in that instrument itself. More than this would be revolution.
>
> * * *

In the light of this history, these fundamental principles, and the present requirements of the Constitution, the Commission conducted its studies and appraisal soberly but full of hope.

It is sobering to know that a substantial number of the people and of the public officials in one region do not yet accept the mandate to end racial discrimination in public education with all deliberate speed, and to know that there are a considerable number of counties where Negroes are denied the right to vote. Standing in the way of reasonable solutions to the difficulties involved in ending discrimination in all walks of our public life is the great stubborn fact that many people have not yet accepted the principles, purposes, or authority of the Fourteenth and Fifteenth Amendments. The legal dispute over the validity of these amendments has been settled by history—and by the Supreme Court, the only organ of our Government that can decide such questions. But the human response to these

national rules is not settled. There remains the enduring American problem of obtaining the consent of the governed.

Moreover, this problem is not now limited to one region. The degree of racial discrimination in the field of housing that exists throughout the country, and is particularly critical in the great metropolitan centers of the North and West, suggests unwillingness to follow the rule of equal rights among a substantial portion of all white Americans. Concentration of colored Americans in restricted areas of most major cities produces a high degree of school segregation even in communities accepting the Supreme Court's decision. With the migration of Negroes and Puerto Ricans to the North and West, and an influx of Mexicans into the West and Southwest, the whole country is now sharing the problem and the responsibilities. This is historically just, for the South alone was not responsible for slavery. Yankee slave traders, sailing from New England ports, purchased and carried to these shores the uprooted men and women of Africa, and sold them here, pocketing great profits.

What is also sobering is the magnitude of the injury inflicted upon Negro Americans by the events recorded in this historical review. It is reflected in the poor education, low income, inferior housing and social demoralization of a considerable part of the Negro population. What compounds the problem is that these unfortunate results of slavery, discrimination, and second-class citizenship are in turn used by some more fortunate Americans to justify the perpetuation of the conditions that caused the injury.

Yet the Commission is hopeful because it has faith in the Constitution and in the American people. Other great problems have been successfully resolved through the process of persuasion ordained by the Constitution. The frictions, the tensions, the checks and balances, the division of power, the divergent views on great issues by the different levels and organs of government and by the people are all part of the American process of education and peaceful change. Out of it all, with deliberate speed, our republican federal system is generating the consent of the governed.

Already this has worked in the field of racial discrimination in many parts of our national life. Southern States themselves took the initiative in outlawing the hooded violence of the Ku Klux Klan. Several Northern States have recently enacted far-reaching laws against discrimination in housing. The right to vote is established in most of the country, including many areas in the South. Segregation has ended in interstate transportation everywhere and in buses and streetcars in a number of Southern cities. Along with the voices of frustration, disobedience, and violence there have always been and are today the other voices advising, as Robert E. Lee advised his countrymen,

that it "should be the object of all . . . to allay passion" and "give full scope to reason and every kindly feeling."

Moreover, in but a few generations of freedom Negro Americans have made progress in nearly every field of endeavor and in increasing numbers have reached high levels of educational, professional, artistic, political, and economic achievement.

Finally, the Commission is full of hope because as Lincoln said, "Intelligence, patriotism, Christianity, and a firm reliance on Him who has never yet forsaken this favored land, are still competent to adjust in the best way all our present difficulty." The "mystic chords of memory" remind us that dissent, even to the great propositions established in the Constitution, is in the American tradition, and that the white people of the South have behind them the tradition of Jefferson, Madison, and Jackson and the other great southerners who drafted or fought for this country's original declarations of human equality and bills of rights. The Commission shares Lincoln's faith that the whole American people will be "again touched . . . by the better angels of our nature."

PART TWO

VOTING

CHAPTER I. THE AMERICAN RIGHT TO VOTE: A HISTORY

The right to vote is the cornerstone of the Republic, and the key to all other civil rights. Upon this American fundamental, in the course of enacting the Civil Rights Act of 1957, there was agreement between Democrat and Republican, North and South, Executive and Legislative branches.

Said Attorney General Herbert Brownell, Jr.:

> . . . The right to vote is really the cornerstone of our representative form of government. I would say that it is the one right, perhaps more than any other, upon which all other constitutional rights depend for their effective protection, and accordingly it must be zealously safeguarded.

Said Senate Majority Leader Lyndon Johnson, Democrat of Texas:

> I voted for the civil rights bill because I believe that the right to vote is the most important instrument for securing justice. I was convinced that steps were needed to safeguard that right.

Said Senator Leverett Saltonstall, Republican of Massachusetts:

> No one can deny that the right to vote is a fundamental, inalienable right of all people in a democracy. Every other constitutional right depends upon it. Without this, we have only an illusion of true democracy; history has shown us that when this basic right is abrogated, democracy and freedom fail.

Said Senator Paul Douglas, Democrat of Illinois:

> . . . If we can help to restore and maintain this right to vote, many of the other present discriminations practiced against Negroes, Indians, and Mexican-Americans will be self-correcting.

The history of democracy in the United States is essentially the story of a great ideal of the dignity and rights of every human being, a cautious constitutional beginning of self-government, and then a long, still unfinished growth toward realization of the ideal. No feature of that growth has been more significant than the evolution which has occurred in the American concept of voting. The new nation began with a prevailing attitude that the right to vote should be limited to the few who prove themselves *qualified*, usually by ownership of property. Gradually the nation shifted to the modern concept that voting is a right which belongs to every citizen except the few who are specifically *disqualified* by the qualification requirements of their States.

THE CAUTIOUS BEGINNING

The winning of the American Revolution, it is often supposed, made Americans free and self-governing overnight. But of the estimated 3,250,000 people (not counting Indians) in the country at war's end, more than a million were still not free. According to William Miller

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in *A New History of the United States*, they included 600,000 Negro slaves, 300,000 indentured servants, 50,000 convicts dumped by the mother country, and assorted debtors and vagrants sold into involuntary labor. And of the approximately 2,000,000 Americans who were free, perhaps no more than 120,000 could meet the voting qualifications of their States.

The delegates who met at Philadelphia in 1787 to write the U.S. Constitution were in general agreed on the great principle of the Declaration of Independence, that governments derive their just powers from the consent of the governed, and hence that sovereign power resides in the people as a whole. But they were far from agreed as to just *which* people should be allowed to exercise that power through the election of representatives.

Some of the delegates feared, some favored, a strong central government. Some saw self-government as an essential means toward the development of individual character, and hence believed that most citizens should at once assume the responsibilities of voting. Others, more concerned with the stability of the new government, feared "mob rule" and thought that extension of the franchise should await mass education. Hence it was left to each State to determine which of its citizens could vote.

All of the delegates at Philadelphia were products of a colonial background in which, according to one estimate, "not more than 10 to 15 percent of the . . . population could qualify for the franchise." Over the years, their colonies had devised numerous restrictive voting qualifications. At various times and in various colonies, any or all of the following considerations might determine whether a person could have a voice in his government:

Sex	Amount of property held
Age	Religion
Residence	Status of freedom
Morality or character	Race

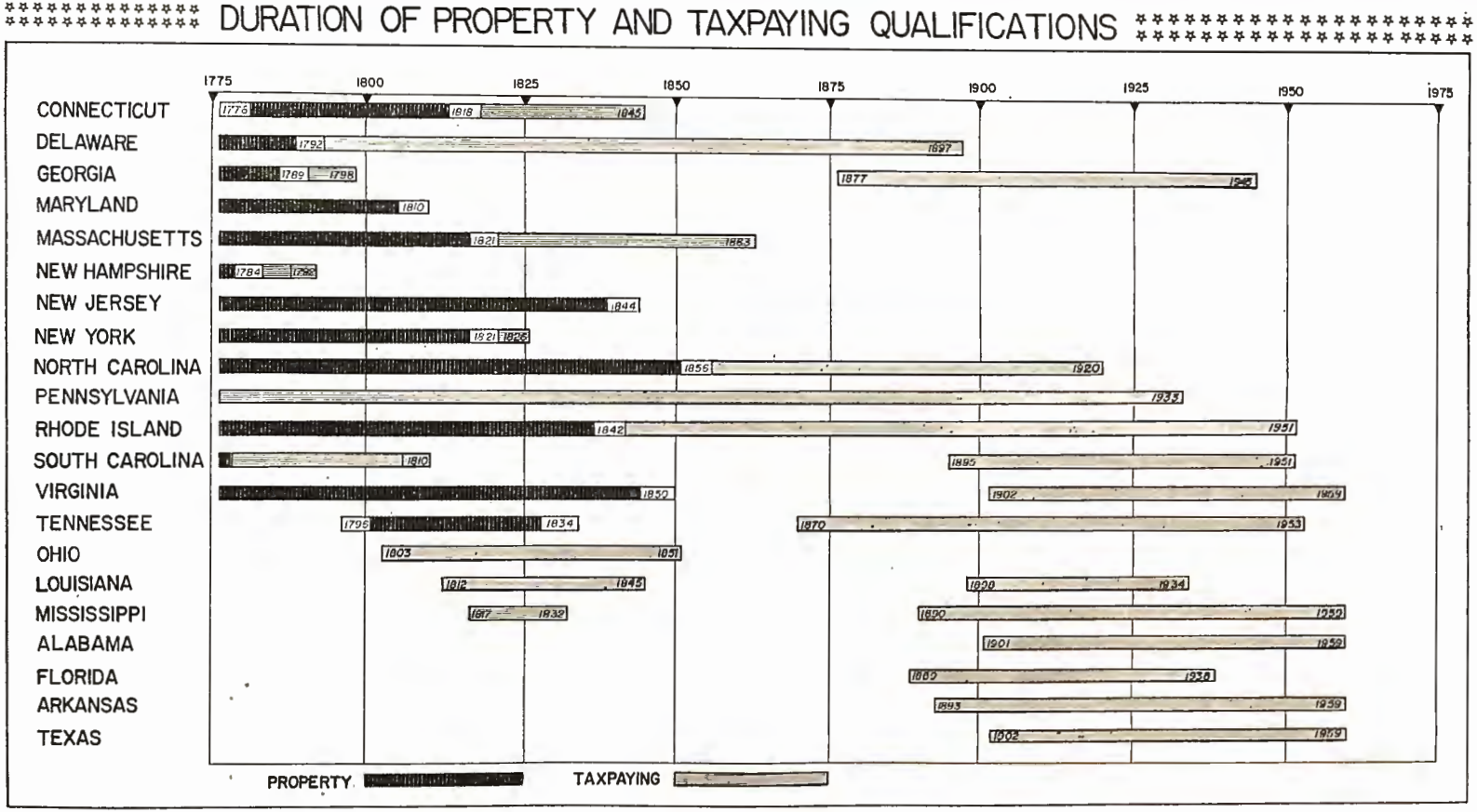
This, then, was the concept of the voting privilege with which the draftsmen of the Constitution were familiar as they began to erect the structure of the American Republic. In the first election under the new Constitution, only about 1 American in 30 voted.

THE WIDENING FRANCHISE

Since 1789, the catalog of voting requirements in the United States has been undergoing continuous revision. Many of the old restrictions have been removed. Some, with long genealogies, still exist. And some new ones have been added.

Between the end of the Revolution and 1800, eight States revised their constitutions and three new States came into the Union. In the 1780's Georgia and New Hampshire abandoned their property qualifications in favor of simple taxpaying requirements. New constitu-

Chart I. Duration of Property and Taxpaying Qualifications for Voting



Note that later restoration of taxpaying qualifications occurred, without exception, only in the former slave-holding States.

tions were adopted soon after in Pennsylvania and South Carolina, but without change in property or taxpaying qualifications. Vermont was admitted to the Union in 1791 with a ready-made constitution containing voting qualifications that caused it to be described as "the most liberal of all the country." Kentucky joined the Union in 1792 with a constitution almost as liberal: all free males who had lived in the State 2 years and in the county 1 year were allowed to vote.

Delaware moved from a property requirement to mere payment of a State or county tax, and New Hampshire abandoned even its taxpaying requirement. Tennessee was the last State to enter the Union with a real-property requirement, in 1796.

The rise of vote-hungry political parties, the growth of popular interest in political battles, economic clashes between seaboard businessmen and inland farmers, reform movements, demand for "internal improvements" in the opening West—all these and other developments helped make more and more Americans want and get the right to vote. State by State the struggle for wider suffrage went on, and the next quarter century saw the admission of nine more States, none of which set up a property qualification. Three—Ohio, Louisiana and Mississippi—did adopt a taxpaying qualification. But after 1817 no new State admitted to the Union demanded that its voters have either form of "material interest" in the community.

NEW BARRIERS

As property and taxpaying requirements were being lowered and eliminated, various groups of "undesirables," hitherto denied the ballot by these tests, became otherwise eligible to vote. Most States, however, continued to forestall them by specific exclusions. In Ohio in 1803, persons with mental impairment and those convicted of certain crimes were denied suffrage; and soldiers, sailors, and marines were disfranchised by residence requirements. Louisiana in 1812 limited suffrage to United States citizens. Maine in 1819 excluded paupers and persons under guardianship, and in 1818 Connecticut adopted a new constitution reviving an old requirement that voters must be of good moral character.

Thirty-six years later, in 1855, an amendment to the Connecticut constitution, obviously aimed at the mounting flood of immigrants, required that prospective voters be able to read the constitution or statutes. In 1857, the Massachusetts constitution was amended to provide that all voters must be able both to read the constitution and to write their names. Exception was made for men over 60 and anyone who had already voted.

Exclusion from the polls on specifically racial grounds did not become general until there began to be appreciable numbers of Negroes who had gained their freedom. The Revolutionary constitutions of only two of the original States—Georgia and South Carolina—con-

tained explicit provisions limiting suffrage to "white males." During the last few years of the eighteenth century and the early years of the nineteenth, however, the situation changed rapidly. Between the years 1792 and 1838 Delaware, Kentucky, Maryland, Connecticut, New Jersey, Virginia, Tennessee, North Carolina, and Pennsylvania altered their constitutions to exclude Negroes. Furthermore, Negroes were denied the ballot by the constitution of every State except Maine that came into the Union from 1800 to the eve of the Civil War. Only in New England and New York, where they were few, was there no exclusion of Negroes on racial grounds; and in New York the Negro's right to vote was limited by a property-owning and taxpaying qualification not applicable to whites.

WAR BREAKS THE PATTERN

Until 1861 the extension of the franchise thus followed a course of gradual evolution; civil war shattered the pattern. By Presidential proclamation, act of Congress, and finally by constitutional amendment, some 4 million Negro slaves were suddenly set free, made citizens, and given the citizen's voting right.

For former Confederates, the cup of bitterness overflowed. In the wake of defeat and this revolution in their social order (which also involved an uncompensated loss of some $4 billion worth of slave property) came the "enemy occupation" and military rule of Reconstruction.

President Andrew Johnson sought to reorganize the former Confederate states in the conciliatory manner planned by Abraham Lincoln. But Johnson's mild measures were resisted in both North and South.

In the North, leaders of the Republican Party's "Radical" wing—notably Senator Charles Sumner, Representative Thaddeus Stevens, and Chief Justice Salmon P. Chase—were committed to Negro enfranchisement.

In the South, defeated but unyielding whites were determined to preserve as much as possible of their way of life.

In 1865–66 10 of the 11 former Confederate States completed their governmental reorganization. Not 1 of the 10 extended suffrage to Negroes. Instead, several of them enacted "Black Codes" again subjecting Negroes to humiliating discrimination. As summarized by J. D. Hicks in *The American Nation*, the codes provided among other things that—

> "Persons of color" . . . might not carry arms unless licensed to do so; they might not testify in court except involving their own race; they must make annual written contracts for their labor, and if they ran away from their "masters" they must forfeit a year's wage; they must be apprenticed, if minors, to some white person, who might discipline them by means of such corporal punishment as a father might inflict upon a child; they might, if con-

victed of vagrancy, be assessed heavy fines, which, if unpaid, could be collected by selling the service of the vagrant for a period long enough to satisfy the claim.

To the Radical Republicans, these actions were proof enough that the South could not be treated with President Johnson's brand of benevolence. It was their view, not Johnson's, which finally prevailed.

Although President Johnson issued a proclamation declaring the Rebellion at an end on April 2, 1866, the Radical-dominated Congress still refused to recognize the credentials of southern representatives. On April 9, it passed the first Civil Rights Act, which anticipated the Fourteenth Amendment in declaring all persons born in the United States, excluding Indians not taxed, to be citizens of the United States.

On June 13, 1866, Congress proposed the Fourteenth Amendment:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(The second section provided for reduction of representation in Congress in event of the abridgement of the right to vote in Federal elections, and the fifth authorizes enforcement legislaton.)

Tennessee promptly ratified the amendment and was readmitted to the Union on July 24, 1866. The other 10 Southern States refused to ratify.

RECONSTRUCTION

In March 1867, Congress struck back with an Act designed to "provide for a more efficient government of the Rebel States." Overturning the governments set up under the Johnson administration plan, the Act divided the South into five military divisions and required of each State as the price of representation in Congress (1) that Negroes be allowed to vote for delegates to new State constitutional conventions; (2) that the new constitutions provide permanently for Negro voting, and (3) that the Fourteenth Amendment be ratified.

Reconstruction, conducted under military rule, was now begun. In the South, Negroes and Radical Republicans were soon in command of the ballot box; Radical governors were in command of Negro militia; and carpetbaggers were in command of State treasuries.

The Southern white man's first answer was the Ku Klux Klan. Although always ready with the whip and the bucket of tar and feathers, the Klan was most active at election time. In some desperation, Congress passed enforcement acts that included a prohibition against wearing masks on a public highway for the purpose of preventing citizens from voting. The Klan movement declined, less as a

result of the new laws than of the withdrawal of moderate men of influence who could not stomach its bloody violence.

Meanwhile, the Fourteenth Amendment was ratified on July 28, 1868. The Fifteenth Amendment, ratified on February 3, 1870, declared: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." Having adopted constitutions in accord with this provision, the former Confederate States undergoing reconstruction were all readmitted to the Union by 1870.

In 1877, after the compromise of the Hayes-Tilden Presidential contest, Reconstruction ended with the withdrawal of Federal troops, and control of the South was returned to its own white leaders.

RECONCILIATION

The South's new leadership was moderate and conservative. Its aim was not reform but rebuilding. Eager to industrialize, it was hungry for northern capital.

Northerners in turn, weary of the "bloody shirt," were eager for conciliation. Amid the booming business expansion of the period, financiers and industrialists were gratified by the soundness of leading Southern opinion. *Harper's Weekly*, for decades violently anti-Southern, now observed that southern Democracy "is wonderfully like the best northern Republicanism."

The New York *Tribune*, once a major voice of Abolition, said that the Negroes had been given "ample opportunity to develop their own latent capacities," but instead had proved that "as a race they are idle, ignorant, and vicious." It was a sentiment shared by much of the northern press.

The courts, too, seemed generally agreed that the battle flags should be stored away. In decision after decision, they took pains to give the most limited interpretation possible to the Fourteenth and Fifteenth Amendments. In 1883, the Supreme Court declared parts of the existing Civil Rights Act unconstitutional.

For some 15 years the legal sanctions that had given the vote to the southern Negro remained on the books, but on election day, the Negro generally remained at home. K. H. Porter in *A History of Suffrage in the United States* has succinctly cataloged the practices employed to keep Negroes from the polls:

> The activities of the Ku-Klux have been immortalized in book and play. Less dramatic were the practices of brute violence and intimidation, clever manipulation of ballots and ballot boxes, false counting of votes, repeating, the use of "tissue" ballots, illegal arrests the day before election, and the sudden removing of the polls.

These methods were eminently successful. It is true that some Negroes did vote, and in rare instances, some even held office. But

their vote was in general closely controlled, used only when a white faction needed it to assure victory. The period was marked by violence, and by frequent charges of corruption and fraud.

Fraud, accomplished in part with controlled Negro votes, prompted moves toward systematic disfranchisement of Negroes. But probably the greatest motivating force was the threat posed to the solidarity and dominance of the Democratic Party by the Southern Farmers Alliance. This agrarian protest movement, which sprang up to challenge the business-minded conservatives during the farm depression of the 1870's and 1880's, was everywhere identified with and in many places merged with the Populist Party.

Beginning with the campaigns of 1888, both the conservatives and the Populist-Alliance used Negro voters in great numbers. In *The Negro and Southern Politics*, Hugh D. Price observed:

> In the bitter disputes of the 1890's, sometimes fought out within the Democratic party (as by Ben Tillman in South Carolina), sometimes involving a third party challenge (as by Tom Watson in Georgia), sometimes involving fusion movements (as by Republicans, Negroes, and Populists in North Carolina), the Negro played a key role. Either as a voter or an issue the Negro was a major factor in the politics of the period.

In North Carolina, where the future of the Democratic party was threatened by a fusion of Republicans and Populists, over 1,000 Negroes held office at one time in the mid-1890's.

THE SOUTH UNITES

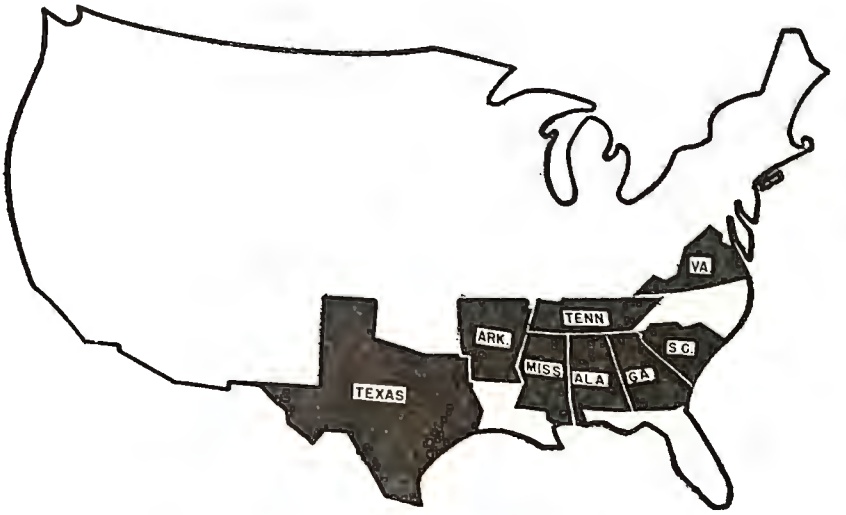
The Negro, it appeared, might soon hold the balance of power in Southern politics. White factions, though bitterly at odds with each other, began to close ranks against him. According to C. Vann Woodward in *The Strange Career of Jim Crow*, it was not Emancipation or Reconstruction but this move to preserve white political dominance that also brought the beginnings of the mass compulsory segregation called Jim Crow.

Between 1889 and 1908, the former Confederate States passed laws or amended their constitutions to erect new barriers around the ballot box. The most popular were: (1) the poll tax; (2) the literacy test; (3) the "grandfather clause," which provided an alternative to passing a literacy test for those who had voted in 1867 (or some other year when Negroes could not vote) and to their descendants. Other measures included stricter residence requirements, new criminal disqualifications, and property qualifications as an alternative to the literacy test.

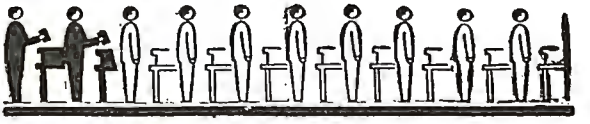
These barriers often kept poor whites from voting—and were sometimes openly so intended. But their sponsors made little or no attempt to disguise their chief objective, which was to disfranchise Negroes in flat defiance of the Fifteenth Amendment. The chairman of the suffrage subcommittee in the 1902 Virginia constitutional convention declared of the new literacy test:

Chart II.

SUFFRAGE IN POLL TAX STATES—1944



Potential and Actual Voters in the 1944 Presidential Elections



In the 8 Poll Tax States,* 18.31 Percent Voted

In the 40 Non-Poll Tax States, 68.74 percent voted

*Since 1944 Georgia, South Carolina, and Tennessee have abandoned the poll tax.

Adapted from *To Secure These Rights*, p. 38.

I expect the examination with which the black man will be confronted to be inspired by the same spirit that inspires every man upon this floor and in this convention. I do not expect an impartial administration of this clause.

The president of the 1898 Louisiana constitutional convention, which adopted the first "grandfather clause," summed up as follows:

We have not drafted the exact Constitution that we should like to have drafted; otherwise we should have inscribed in it, if I know the popular sentiment of this State, universal white manhood suffrage, and the exclusion from the suffrage of every man with a trace of African blood in his veins. . . . What care I whether the test we have put be a new one or an old one? What care I whether it be more or less ridiculous or not? Doesn't it meet the case? Doesn't it let the white man vote, and doesn't it stop the Negro from voting, and isn't that what we came here for?

Some of these voting qualifications—which aroused strong southern opposition from the start because they also disfranchised many whites—have subsequently been abandoned or declared unconstitutional. The "grandfather clause" was outlawed by the Supreme Court in 1915. Only five States still maintain the poll tax. But meantime a more effective means of sifting black voters from white had appeared with the advent of the direct primary and the emergence of the South as a virtually one-party region in which the Democratic nomination is almost always equivalent to election.

THE "WHITE PRIMARY"

The one-party device for disfranchising Negroes was simple: require the primary voter to be a party member, then bar Negroes from membership in the Democratic Party. Thus the South's "white primary" was born.

A quarter century of repeated trips up and down the judicial ladder was necessary before the white primary was finally laid to rest in 1953. There was steady progress from 1927 for the Southern Negro who wished to vote, but it was a slow progress, marked in the case of *Grovey* v. *Townsend* by a notable setback. Each time the courts invalidated a device of the white primary used to exclude Negroes from participation, new ways would be found which would require further tests in the courts.

The following summary of court decisions chronicles the progress made by the Negro in his attempts to break the white primary barrier:

Nixon v. *Herndon*, 273 U.S. 536 (1927): The U.S. Supreme Court invalidated a Texas law that specifically barred Negroes from the Democratic primary.

Nixon v. *Condon*, 286 U.S. 73 (1932): The Supreme Court held that the attempt to vest the power to discriminate in the Texas Central Committee of the Democratic Party could not be sustained because the committee received its authority to act from the legislature and hence was a State agent.

Grovey v. *Townsend*, 295 U.S. 45 (1935): The Supreme Court held that Democratic State conventions could lawfully restrict party membership to whites, the party being considered a private organization.

U.S. v. *Classic*, 313 U.S. 299 (1941): The Supreme Court held that the Federal Government can regulate a State primary which is part of the machinery of electing Federal officeholders.

Smith v. *Allwright*, 321 U.S. 649 (1944) : The Supreme Court specifically overruled its decision in *Grovey* v. *Townsend*, holding that a primary conducted under State authority is a State election, and therefore, a political party cannot ban Negroes from voting.

Rice v. *Elmore*, 333 U.S. 875 (1948) : The Supreme Court declined to review a lower court decision which had held that, despite repeal of all traces of State control over the Democratic Party, the party and the primary were still used as instruments of the State in the electoral process.

Baskin v. *Brown*, 174 F. 2d 391 (4th Cir. 1949) : The Court of Appeals, on the strength of the principle laid down in the *Elmore* case, rejected a device by Democratic Party officials in South Carolina which vested control of primaries in clubs from which Negroes were barred.

Terry v. *Adams*, 345 U.S. 461 (1953) : The Supreme Court held that a purely private organization in Texas, which held a "preprimary" election to qualify candidates for the Democratic Party's direct primary, acted in such close association with the Democratic Party as to deny the petitioners their right to vote as guaranteed by the Fifteenth Amendment.

The decline of the white primary led Alabama to turn to revision of her registration laws. The "Boswell amendment" to the State constitution, adopted in 1946, gave members of boards of registrars broad discretion to pick and choose among would-be voters. The boards would determine whether applicants for registration were of "good character"; whether they could "read and write, understand and explain any article of the constitution of the United States," and whether they understood "the duties and obligations of good citizenship. . . ."

This device, too, was struck down by a Federal district court in 1949. The court held that the standards offered no guide to registration officials, and that there was no objective or uniform test to determine whether a person could or could not understand the Constitution. The Supreme Court refused to overrule this decision.

But as will appear in the following chapters, Southern resistance to the Fifteenth Amendment was by no means ended.

CHAPTER II. A STATISTICAL VIEW OF NEGRO VOTING

The primary concern of Congress in passing the Civil Rights Act of 1957, and the single specific field of study and investigation that it made mandatory for this Commission, was alleged denials of the right to vote. But for nearly a year after the passage of the Act and for over 5 months after the Commissioners were confirmed by the Senate, no sworn voting complaints were submitted to the Commission making the allegations required to invoke the Commission's duty "to investigate." During this period and thereafter the Commission carried out its second statutory duty, "to study and collect information" concerning, first of all, the problem of denials of the right to vote.

The Commission began by collecting all available statistical information on voting. These statistics, though containing many serious gaps, are informative.

In no Northern or Western State are racial, religious, or national origin statistics on registration or voting issued, even where they are kept. From all accounts, including the reports of this Commission's State Advisory Committees and the compilation of State laws made for the Commission by the Legislative Reference Service of the Library of Congress, problems of discriminatory denials of the right to vote in these States are relatively minor, both statistically and as a matter of law. In several States, Indians face certain limitations, and the Constitution of Idaho provides that "Chinese, or persons of Mongolian descent, not born in the United States" shall not vote, a holdover from the era of Oriental exclusion. In New York there is the language barrier to voting by citizens of Puerto Rican origin, discussed below. And there are *de facto* denials of the right to vote in northern areas that exclude or discourage Negro residence altogether. For example, the report of the Committee on the Right to Vote of the Indiana State Advisory Committee stated that in 1946 it was found that there were no Negro residents in 30 of the State's 92 counties. The Indiana report added that—

> in a number of the county seats and small communities in the counties signs are visible advising "Niggers don't let the sun go down on you here!" . . . Obviously, if one cannot establish residence in one-third of the State, he cannot meet the qualifications for voting.

The Indiana committee concluded that in these areas "the Negro in Indiana is being deprived of his right to vote by indirection."

In the South, according to the best estimates available, Negro registration has climbed from 595,000 in 1947 to over 1 million in 1952, to 1.2 million in 1956. But this represents only about 25 percent of the nearly 5 million Negroes of voting age in the region in 1950. By contrast, about 60 percent of voting-age southern whites are registered. But generalizations are misleading because the picture varies from State to State and from county to county within each State.

The following summaries of the available statistical information on voting in the respective Southern States all use the 1950 Census figures, the latest ones available, for voting-age and total population breakdowns by race. Estimates of the percentage of Negroes registered to vote are derived from these 1950 Census figures and the latest available registration figures. These registration or voter-qualification figures are released officially by the State governments in Arkansas, Florida, Georgia, Louisiana, South Carolina, and Virginia. In North Carolina, county boards of elections submitted figures to the Commission's State Advisory Committee. The secondary sources used in the other States are described in each of the following summaries. No racial registration statistics by counties were available for Tennessee.

The available statistical breakdown for each county or parish in the preceding States is printed in the appendix of the Commission's unabridged report. There it will be seen that Negroes are registered in relatively large numbers and proportions in large Southern cities such as Atlanta (Fulton County, 28,414 or 29 percent of 1950 Negro voting-age population), Miami (Dade County, 20,785 or 49 percent), and New Orleans (Orleans Parish, 31,563 or 28 percent). Also Negroes are generally registered in fairly high proportions where they constitute a low percentage of the population. Most of the counties where fewer than 5 percent of the Negroes or no Negroes at all are registered are in rural areas where Negroes constitute a large proportion of the population. Though some of the counties have no Negro residents, most are among the 158 counties in 11 Southern States where the 1950 Census found nonwhites in the majority. See Chart III on page 48.

But this only raises the question as to the cause of the racial disparity. Why are so few Negroes in some areas registered?

TABLE 1

ARKANSAS

Source: 1950 census; 1958 registration figures from State Auditor: Arkansas has no "registration" as such. Payment of poll tax is equivalent of registration. The following figures are official poll tax payments.

The total 1950 voting-age population of Arkansas was 1,108,366. Of this total, 880,675 were white and 227,691 were nonwhite. Thus nonwhites were 20.5 percent of the total voting-age population.

In 1958 the total number of registered voters in Arkansas was 563,978. Of this total, 499,955 were white and 64,023 were nonwhite. Thus nonwhites were 11.4 percent of all registered voters.

The number of nonwhites registered in 1958 represented 28.1 percent of the total 1950 population of voting-age nonwhites.

Arkansas has 75 counties. In six counties, nonwhites were a majority of the 1950 voting-age population. In all of these counties some nonwhites were registered to vote in 1958.

Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered	*14
Some, but fewer than 5 percent	1
5 to 25 percent	28
25.1 to 50 percent	28
More than 50 percent	4

*Nonwhite population of voting age in these 14 counties in 1950 was 83.

TABLE 2

FLORIDA

Source: 1950 census; 1958 registration figures from Florida Secretary of State, published regularly.

The total 1950 voting-age population of Florida was 1,825,513. Of this total, 1,458,716 were white and 366,797 were nonwhite. Thus nonwhites were 20.1 percent of the total voting-age population.

In 1958 the total number of registered voters in Florida was 1,593,453. Of this total, 1,448,643 were white and 144,810 were nonwhite. Thus nonwhites were 9.1 percent of all registered voters.

The number of nonwhites registered in 1958 represented 39.5 percent of the total 1950 population of voting-age nonwhites.

Florida has 67 counties. In one county, nonwhites were a majority of the 1950 voting-age population. In this county, 13.2 percent of the 1950 voting-age nonwhites were registered to vote in 1958.

Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number o counties
No nonwhites registered	*3
Some, but fewer than 5 percent	3
5 to 25 percent	12
25.1 to 50 percent	30
More than 50 percent	19

*Nonwhite population of voting age in these 3 counties in 1950 was 2,944

TABLE 3

GEORGIA

Source: 1950 census; 1958 registration figures from official county reports released by Secretary of State of Georgia, published in *Atlanta Constitution*, September 29, 1958

The total 1950 voting-age population of Georgia was 2,178,242. Of this total, 1,554,784 were white and 623,458 were nonwhite. Thus nonwhites were 28.6 percent of the total voting-age population.

In 1958 the known total of registered voters in Georgia was 1,291,597. Of this total, 1,130,515 were white and 161,082 were nonwhite. Thus nonwhites were 12.5 percent of all registered voters.

The number of nonwhites registered in 1958 represented 25.8 percent of the total 1950 population of voting-age nonwhites. Georgia has 159 counties. In 29 counties, nonwhites were a majority of the 1950 voting-age population. In two of these counties, no nonwhite was registered to vote in 1958. In 11 of the other 27 counties, the number of nonwhites registered in 1958 was fewer than 5 percent of the county's 1950 voting-age nonwhite population.

Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered	*6
Some, but fewer than 5 percent	22
5 to 25 percent	53
25.1 to 50 percent	50
More than 50 percent	28

*Nonwhite population of voting age in these 6 counties in 1950 was 3,141.

TABLE 4

LOUISIANA

Source: 1950 census; 1959 Registration figures from Louisiana Secretary of State, published regularly

The total 1950 voting-age population of Louisiana was 1,587,145. Of this total, 1,105,861 were white and 481,284 were nonwhite. Thus nonwhites were 30.3 percent of the total voting-age population.

In 1959 the total number of registered voters in Louisiana was 961,192. Of this total, 828,686 were white and 132,506 were nonwhite. Thus nonwhites were 13.8 percent of all registered voters.

The number of nonwhites registered in 1959 represented 27.5 percent of the total 1950 population of voting-age nonwhites.

Louisiana has 64 parishes (i.e., counties). In 8 parishes, nonwhites were a majority of the 1950 voting-age population. In 4 of these no nonwhite was registered to vote in 1959.

Nonwhite Registration by Parishes

Percentage of Nonwhites Registered in 1959 (based on 1950 voting-age population figures):	Number of parishes
No nonwhites registered	*4
Some, but fewer than 5 percent	9
5 to 25 percent	18
25.1 to 50 percent	14
More than 50 percent	19

*Nonwhite population of voting age in these 4 counties in 1950 was 20,330.

517893—59——4

TABLE 5

NORTH CAROLINA

Source: 1950 Census; 1958 registration figures from replies of official county boards of elections in 79 of North Carolina's 100 counties to questionnaire of Commission's State Advisory Committee

The total 1950 voting-age population of North Carolina was 2,311,081. Of this total, 1,761,330 were white and 549,751 were nonwhite. Thus nonwhites were 23.8 percent of the total voting-age population.

In 1958 the total registered voters in the 79 counties reporting was 1,547,822. Of this total, 1,389,831 were white and 157,991 were nonwhite. Thus nonwhites were 10.2 percent of all registered voters in these counties.

The number of nonwhites registered in 1958 in these 79 counties represented 28.7 percent of the State's total 1950 population of voting-age nonwhites.

North Carolina has 100 counties. In the 21 counties not reporting there were 111,475 voting-age nonwhites in 1950.

In six counties, nonwhites were a majority of the 1950 voting-age population. In at least four of these, some nonwhites were registered to vote in 1958. In two, the number of nonwhites registered was fewer than 5 percent of the county's 1950 voting-age nonwhite population. Two counties did not report.

Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered	0
Some, but fewer than 5 percent	3
5 to 25 percent	29
25.1 to 50 percent	18
More than 50 percent	29

TABLE 6

SOUTH CAROLINA

Source: 1950 census; 1958 registration figures released by Secretary of State of South Carolina as of May 10, 1958, published in *Columbia State,* May 25, 1958

The total 1950 voting-age population of South Carolina was 1,150,787. Of this total, 760,763 were white and 390,024 were nonwhite. Thus nonwhites were 33.9 percent of the total voting-age population.

In 1958 the total number of registered voters in South Carolina was 537,689. Of this total, 479,711 were white and 57,978 were nonwhite. Thus nonwhites were 10.8 percent of all registered voters.

The number of nonwhites registered in 1958 represented 14.9 percent of the total 1950 population of voting-age nonwhites.

South Carolina has 47 counties. In 15 counties, nonwhites were a majority of the 1950 voting-age population. In one of these counties, no nonwhite was registered to vote in 1958. In four of the other 14 counties, the number of nonwhites registered in 1958 was fewer than 5 percent of the county's 1950 voting-age nonwhite population.

Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered	*1
Some, but fewer than 5 percent	6
5 to 25 percent	40
25.1 to 50 percent	0
More than 50 percent	0

*Nonwhite population of voting age in this county in 1950 was 2,625

TABLE 7

VIRGINIA

Source: 1950 census; 1958 registration figures obtained from Virginia Secretary of State by the Commission's State Advisory Committee

The total 1950 voting-age population of Virginia was 2,036,468. Of this total, 1,606,669 were white and 429,799 were nonwhite. Thus nonwhites were 21.1 percent of the total voting-age population.

In 1958 the total number of registered voters in Virginia was 958,342. Of this total, 864,863 were white and 93,479 were nonwhite. Thus nonwhites were 9.8 percent of all registered voters.

The number of nonwhites registered in 1958 represented 21.7 percent of the total 1950 population of voting-age nonwhites.

Virginia has 100 counties.† In 8 counties, nonwhites were a majority of the 1950 voting-age population. In all of these counties some nonwhites were registered to vote in 1958.

Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered	*3
Some, but fewer than 5 percent	1
5 to 25 percent	67
25.1 to 50 percent	27
More than 50 percent	2

*Nonwhite population of voting age in these three counties in 1950 was 910.
†There are in addition 32 "independent cities", figures on which are included in the Appendix of the full Report.

Unofficial Figures

TABLE 8

ALABAMA

Source: 1950 census; 1958 registration figures from survey by *The Birmingham News,* published February 17, 1959: "Some were official estimates, but most represent actual counts"

The total 1950 voting-age population of Alabama was 1,747,759. Of this total, 1,231,514 were white and 516,245 were nonwhite. Thus nonwhites were 29.5 percent of the total voting-age population.

In 1958 the known total of registered voters in Alabama was 902,218. Of this total, 828,946 were white and 73,272 were nonwhite. Thus nonwhites were 8.1 percent of all registered voters.

The number of nonwhites registered in 1958 represented 14.2 percent of the total 1950 population of voting-age nonwhites.

Alabama has 67 counties. In 12 counties, nonwhites were a majority of the 1950 voting-age population. In 2 of these counties, no nonwhite was registered to vote in 1958. In 7 of the other 10 counties, the number of nonwhites registered in 1958 was fewer than 5 percent of the county's 1950 voting-age nonwhite population.

Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered	*2
Some, but fewer than 5 percent	12
5 to 25 percent	34
25.1 to 50 percent	9
More than 50 percent	10

*Nonwhite population of voting age in these two counties in 1950 was 14,730.

Unofficial Figures

TABLE 9

MISSISSIPPI

Source: 1950 census; and (1) Statewide figures from 1954 survey made by then Attorney General (now Governor) James P. Coleman, Hearings House Judiciary Subcommittee, 85th Congress, 1st sess., 1957, pp. 736–739; (2) county figures from master's thesis, *Negro Voting in Mississippi,* by James Barnes, graduate student, University of Mississippi, 1955, based on interviews with officials and/or examination of county records. See also 103 *Congressional Record* 8602–03, June 10, 1957, pp. 7676–77, 85th Congress, 1st sess.; *State Times of Jackson* survey of Negro registration in 13 counties in fall of 1956, published Oct. 29–Nov. 1, 1956.

The total 1950 voting-age population of Mississippi was 1,208,063. Of this total, 710,709 were white and 497,354 were nonwhite. Thus nonwhites were 41 percent of the total voting-age population.

In 1954 the total of nonwhite registered voters in Mississippi was 22,000. White registration figures were unavailable.

The number of nonwhites registered in 1954 represented 3.89 percent of the total 1950 population of voting-age nonwhites.

Mississippi has 82 counties. In 26 counties, nonwhites were a majority of the 1950 voting-age population. In 6 of these counties, no nonwhite was registered to vote in 1955. In 18 of the other 20 counties, the number of nonwhites registered in 1955 was fewer than 5 percent of the county's 1950 voting-age nonwhite population.

Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1955 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered	*14
Some, but fewer than 5 percent	49
5 to 25 percent	17
25.1 to 50 percent	2
More than 50 percent	0

*Nonwhite population of voting age in these 14 counties in 1950 was 51,947.

Unofficial Figures

TABLE 10

TEXAS

Source: 1950 census; registration figures from the Long News Service of Austin, which made actual counts on poll tax and exemption lists (equivalent of registration) in 165 of State's 254 counties, and for the remaining counties gave various kinds of estimates based on interviews with officials or on sampling.

The total 1950 voting-age population of Texas was 4,737,734. Of this total, 4,154,790 were white and 582,944 were nonwhite. Thus nonwhites were 12.3 percent of the total voting-age population.

In 1956–58 the known total registered voters in Texas was 1,716,336. Of this total, 1,489,841 were white (1956) and 226,495 were nonwhite (1958). Thus nonwhites were 13.5 percent of all registered voters.

The number of nonwhites registered in 1958 represented 38.8 percent of the total 1950 population of voting-age nonwhites.

Texas has 254 counties. In no counties were nonwhites a majority of the 1950 voting-age population.

Nonwhite Registration by Counties

Percentage of Nonwhites Registered in 1958 (based on 1950 voting-age population figures):	Number of counties
No nonwhites registered	*14
Some, but fewer than 5 percent	1
5 to 25 percent	59
25.1 to 50 percent	134
More than 50 percent	46

*Nonwhite population of voting age in these counties in 1950 was 42.

Apathy is part of the answer. In Atlanta, from all accounts, Negroes can register freely and 29 percent have done so, but 44 percent of the eligible whites have registered. Similiarly, in Louisiana's Orleans Parish, some 28 percent of the Negroes are registered, compared with 60 percent of the whites. It may be that a lesser proportion of Negroes than of whites are registered in Northern and Western States. Gallup polls indicate that outside the South the voting turnout of Negroes is less than that of whites; according to the Gallup surveys an average of 53 percent of Negroes voted in the four national elections from 1948 to 1954, compared with a white average of 61 percent. Such apathy may stem from lack of economic, educational, or other opportunities, but it does not constitute a denial of the right to vote.

However, some of the statistics on their face do suggest something more than apathy. The figures show 16 counties where nonwhites constituted a majority of the voting-age population in 1950 but where not a single Negro was registered at last report. They show 49 other Negro-majority counties with some but fewer than 5 percent of voting-age Negroes registered. These figures indicate something more than the lower status and level of achievement of the rural Southern Negro. In the six States with officially released racial registration statistics—Arkansas, Florida, Georgia, Louisiana, South Carolina, and Virginia—nonwhites were a majority of the population in 97 counties. Of these counties, 75 had fewer than the State's average proportion of Negroes registered. Of the 31 nonwhite-majority counties in Mississippi, 27 were below the State's average of Negroes registered according to the unofficial statistics. All of the 14 nonwhite-majority counties in Alabama were reportedly below the State's average. But statistics cannot tell the crucial part of the story.

To get the authentic facts about the allegations that Negroes are being denied their right to vote, Congress wanted this Commission to conduct first-hand investigations and hearings based on sworn complaints. After August 14, 1958, when the first such complaint was received, the Commission proceeded to do just this.

CHAPTER III. DENIALS OF THE RIGHT TO VOTE

After its five-month wait, the Commission received its first sworn voting complaint, alleging "that through threats of bodily harm and losing of jobs, and other means, Negro residents of Gadsden County are being deprived of their right to vote."

After the Commission promptly undertook a field investigation of this complaint, additional complaints began to come in from other States. Between August 1958 and August 1959 voting complaints were received from 29 counties in 8 States.

The Commission unanimously decided upon full investigation of all these complaints. The situations disclosed by these investigations, by the public hearing in Alabama described in the next chapter and by the full preparations for a hearing in Louisiana described in the chapter after that, suggest some of the reasons that complaints were slow in coming to the Commission.

The same factors that discourage or prevent Negroes from registering to vote, including in some places the fear of bodily harm and loss of jobs, work against the filing of sworn complaints by those same Negroes. A few summary facts about the counties from which complaints did come will indicate that Negroes in these areas generally lack the economic and social status to be truly independent of community pressure.

It has been asserted that the "typical county in which Negroes are disfranchised is a rural county in the old plantation belt where large landholdings and farming are the major way of life, where there is little or no industry, farm tenancy is high, years of educational achievement low, and per capita income low. The percentage of Negroes in the population is high, 50 percent or more."

For 15 of the first 25 Southern counties from which complaints were received, including 5 of those involved in the Alabama hearing, that description is accurate. Statistical data concerning these counties will be found in the appendix of the unabridged version of this report.

Complaints were received from only two counties whose percentage of nonwhite population was less than the statewide percentage. In the others, the median family income was generally lower than in the State as a whole. In all cases, income was conspicuously below the national median of $3,073 per year. The percentage of urban concentration was below the national average of 64 percent in all but four counties.

CHART III. Distribution of Non-white Population in Counties From Which Voting Complaints Have Been Received.

ALABAMA
① Barbour
② Bullock
③ Dallas
④ Macon
⑤ Montgomery
⑥ Wilcox

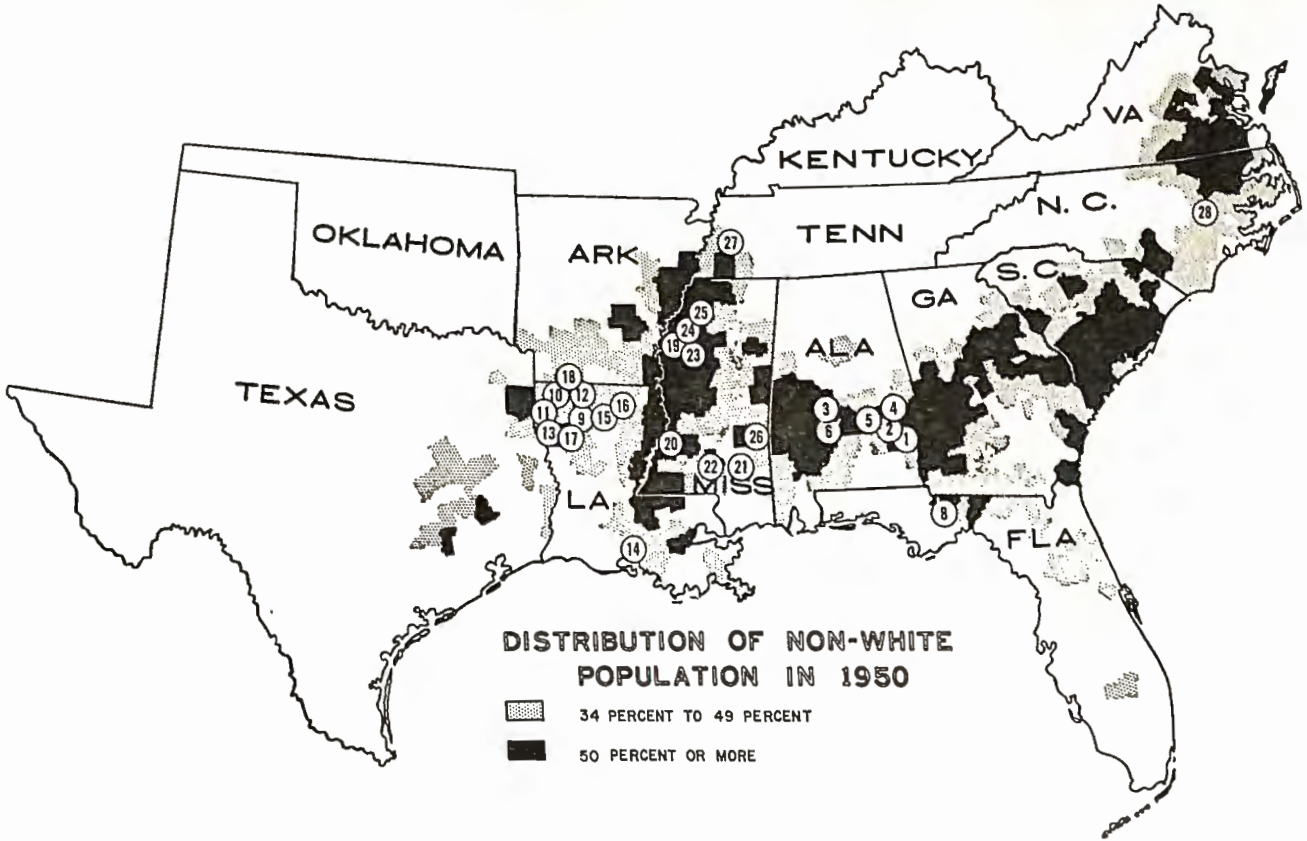
FLORIDA
⑧ Gadsden

LOUISIANA
⑨ Bienville
⑩ Bosier
⑪ Caddo
⑫ Claiborne
⑬ De Soto
⑭ Iberia
⑮ Jackson
⑯ Ouachita
⑰ Red River
⑱ Webster

MISSISSIPPI
⑲ Bolivar
⑳ Claiborne
㉑ Forrest
㉒ Jefferson Davis
㉓ Leflore
㉔ Sunflower
㉕ Tallahatchie
㉖ Clarke

TENNESSEE
㉗ Haywood

NORTH CAROLINA
㉘ Greene



In all but three of the counties the number of school years completed by persons aged 25 or over was at or below the national median of 9.3. Uniformly, the complaints came from counties in which the percentage of dwellings with more than 1.01 persons per room exceeded the national average of 15.7 percent. The minimum excess over the national average was in Forrest County, Miss. (18.6 percent). The maximum differential was found in Bolivar County, Miss., where 60.6 percent of dwellings fell within this rough measure of overcrowding.

Significantly, the largest number of complaints from any single county, 44, came from Macon County, Ala., where many Negroes have achieved greater independence because of a considerably higher level of education and income. The relatively few complaints from counties where Negroes constitute a majority but where none is registered may be some measure of the lack of independence as well as the apathy of the Negroes in those areas.

A report follows on the results of the main voting investigations conducted by the Commission and the pertinent facts collected in States other than Alabama and Louisiana (which are discussed in later chapters).

FLORIDA

The first sworn complaint asserted that Negroes in Gadsden County, particularly Negro "ministers and teachers" had "great fear" and that some of them had been "warned against voting."

Gadsden County, in northern Florida on the Georgia border, is 1 of only 5 out of the State's 67 counties, in which, according to official 1958 State statistics, fewer than 5 percent of the voting-age Negroes were registered. In the State at large approximately 40 percent of Negroes over 21 were registered, and in 19 counties more than 50 percent of such Negroes were registered. Dade and Duval counties, where Miami and Jacksonville are located, with about 50 percent of voting-age Negroes registered, together accounted for nearly 50,000 of Florida's nearly 150,000 registered Negroes. But in three other rural counties near Gadsden—Lafayette, Liberty, and Union—no Negro was registered.

In Gadsden, according to the official figures, only 7 Negroes were registered in 1958, although 10,930 adult Negroes lived there in 1950.

Official State statistics also show that a significant increase in Negro registrants occurred in Gadsden County from 1946 when the total was 32 to the years 1948 and 1950 when it rose to 137 and 140. Then in 1952 it dropped down to 6, at which level it has remained with only slight fluctuations.

Field investigations revealed that the persons responsible for the registration drive in 1948–50 are no longer in Gadsden County. One

of the leaders, who was fired from a good job and allegedly threatened with physical violence, left the State.

On the basis of staff interviews, the following additional information can be reported.

There are about 300 Negro teachers in the county, many of whom have expressed a desire to vote, but virtually none of whom is registered. They are unwilling to attempt to register because of the fear of losing jobs or of other economic reprisals.

Affidavits and other statements from Gadsden County residents cited instances of what they believe to be economic reprisal. One Negro minister was allegedly denied a $100 loan at a bank, despite the fact that he had a highly solvent cosigner. He had previously suggested from the pulpit that Negroes should register and vote.

A teacher was denied renewal of a teaching contract in the county schools. The alleged reason was the teacher's generously liberal attitude toward voting rights and other constitutional matters discussed in her course in social studies.

One elderly Negro who was interviewed said that he had registered about 3 years before but had decided not to vote. When asked why he did not go to the polls, he said, "I am too old to be beaten up."

A businessman refused to be interviewed because he said, "They would bomb my [business] out of existence if I even talked with you."

It is significant that fears of reprisal are so widespread—even if they be groundless. Whether the reprisals would be carried out or not, if prospective registrants *believe* they would be, the fear is a real deterrent to registration.

MISSISSIPPI

In 1950 the Negro population of some 990,000 comprised about 45 percent of the population of the State. According to a survey Governor James P. Coleman made when he was the State's Attorney General, some 22,000 Negroes were registered to vote in 1954, or about 4 percent of the 1950 voting-age Negroes. Governor Coleman added that only 8,000 of these paid their poll tax and were eligible to vote in 1955.

Racial disparities in voting appear to to be wider in Mississippi than in any other State. According to the county-by-county survey by a University of Mississippi graduate student referred to in the preceding chapter, there were 14 Mississippi counties with a total 1950 population of about 230,000, of whom 109,000 were Negroes, where not a single Negro was registered in 1955. In six of these counties Negroes constituted a majority of the population in 1950. In exactly half of the State's 82 counties fewer than 1 percent of voting-age Negroes

were registered; in 63 counties fewer than 5 percent; in 73 counties fewer than 10 percent.

In the survey of 13 counties conducted in the fall of 1956 by the *State Times* of Jackson, Miss., a leading white newspaper, 4 counties were found to have the same number of registered Negroes as found the year before by the university investigator; in 7 the number was slightly greater, in 2 it was smaller.

In view of these statistics, of the serious allegations made about denials of the right to vote in Mississippi in congressional hearings in recent years, and of the complaints received by this Commission from eight Mississippi counties, it is particularly unfortunate that the State's racial voting figures are fragmentary and unofficial. The Commission's firsthand investigations in eight counties demonstrated the need for the full facts on voting throughout the State.

Six of the eight counties from which complaints were received had more than 50 percent Negro population in 1950. Commission investigators interviewed all complainants and numerous other Mississippi citizens. The following summaries were derived from those interviews and from submitted affidavits, along with 1950 census figures and 1955 registration estimates.

Bolivar County (69 percent Negro; 21,805 voting-age Negroes; 511 registered)

Negroes testified that they were given application blanks by the registrar, and that they were directed to write a section of the constitution of Mississippi. Further, they were directed to write "a reasonable interpretation" of the section which they had written. Uniformly, the applicants were refused registration because they were advised, "Your replies won't do."

Sunflower County (68 percent Negro; 18,949 voting-age Negroes; 114 registered)

Negro citizens stated that when they tried to register, they were turned away. Some were told to come back because registrations were being "held up" while the legislature was "considering something." This "something" was presumably a proposed uniform policy of registration of Negroes which the Mississippi Legislature considered in early 1958.

Tallahatchie County (64 percent Negro; 9,235 voting-age Negroes; no Negro registered)

Negro residents said that the sheriff's office refused to accept poll taxes from them. They expressed fear of reprisals, and were reluctant to testify at all.

A public school principal in Charleston, Miss., was discharged after attempting to register and became a farmer.

Leflore County (68 percent Negro; 17,893 voting-age Negroes; 297 registered)

One witness, an Army veteran discharged as a technical sergeant, reported that he went to the courthouse and was asked by a female clerk what he wanted. "I want to register," he said. "To register for the Army?" she asked. When he assured her he wanted to register to vote, she told him she didn't have time because the court was meeting. She did, however, have him write his name and address on a slip of paper. Less than half an hour after his return home, two white men came to his door and asked him why he had tried to register. He replied that it was his duty. They told him that he was just trying to stir up trouble and advised him not to go back. He did return a week later, and again was told by the same clerk that she was busy. Fearful of reprisals, he stopped trying.

Claiborne County (74 percent Negro; 4,728 voting-age Negroes; 111 registered)

Negroes in sworn affidavits stated that they had been registered voters until 1957 when their names were removed from the registration books. Their efforts to re-register had been unsuccessful.

Jefferson Davis County (55 percent Negro; 3,923 voting-age Negroes; 1,038 registered)

Most of the sworn complaints were filed by Negroes who had been registered voters until 1956 when their names were removed from the registration books. Their efforts to re-register had been unsuccessful.

Forrest County (29 percent Negro; 7,406 voting-age Negroes; 16 registered)

Forrest County, which has produced numerous voting complaints, has a relatively low Negro concentration, conspicuously high educational level, and significantly high average income level. The registrar who served for many years until his recent death was a staunch advocate of white supremacy and steadfastly refused to register Negroes.

One witness tried 16 times to register—twice a year for 8 years. Each time the registrar simply told him that he could not register. On the last occasion the witness asked if there was any reason for this refusal. The registrar replied that there was no reason.

Another witness, a minister with two degrees from Columbia University, and a former registered voter in Lauderdale County, Miss. (1952–57) and in New York City (1945–48), attempted twice to register in Forrest County. The second time the witness admitted he was a member of the National Association for the Advancement of Colored People. The clerk insisted that this was a communistic organization

and said that the witness was "probably one of them." "That means you are not going to register me," said the witness. "You are correct," replied the clerk.

Several years ago a group of 15 Negro residents of Forrest County sought an injunction against the registrar on the ground that he had "misconstrued" section 244 of the Mississippi constitution. This section provides that a voter shall "be able to read any section of the constitution of this State; *or* he shall be able to understand the same when read to him or give a reasonable interpretation thereof." [Italic added.] The registrar was charged with applying this section rigidly against Negro applicants but ignoring it as to white applicants.

A lower court dismissed the action without prejudice, but the court of appeals reversed with instruction to retain jurisdiction for a reasonable time until petitioners had exhausted their administrative remedies.

Clarke County (41 percent Negro; 3,849 voting-age Negroes; no Negro registered)

Virtually everyone interviewed here told how the registrar had refused to register them by saying that they should "watch the papers and see how the mess in Little Rock and the mess in Washington worked out."

TENNESSEE

While no county-by-county racial voting statistics were available, a 1957 study by the Southern Regional Council reported that some 90,000 or about 28 percent of the Negroes were registered in 1956. This study concluded that in only three counties in west Tennessee—Haywood, Fayette, and Hardeman—does intimidation pose a serious threat to Negro registration and that in most of the State, Negroes can register freely.

The Commission received complaints from two of the above counties, as reported below. It also investigated a complaint that Negroes were being denied the right to register and vote in Lauderdale County. The investigation revealed that the Lauderdale charge was without foundation. Local officials gave courteous cooperation and assistance to staff representatives who examined the Lauderdale County records and found that Negroes apparently register and vote as freely as whites.

Haywood County (61 percent Negro; 7,921 voting-age Negroes; no Negroes registered)

In early 1959 a resident of Haywood County filed an affidavit with the Commission stating that the county election commission

had refused to register him because he is a Negro. He had a master's degree and had taught school in the county.

He stated that in June 1958 he attempted to register but was told by an employee in the registration office that the proper person to see was out and the time of her return uncertain. When the affiant returned several days later he was referred to the sheriff or county clerk. When the affiant presented a registration card from Decatur County (where he had lived the year before), the county clerk told him to go back to Decatur because "we have never registered any here." The affiant understood this to mean that no Negroes were registered in Haywood County.

The chairman of the Haywood County Election Commission made an appointment with the affiant but failed to keep it. Later, when the affiant did see him, it was too late to register and vote at the next election. The affiant was unable to discover when the registration book would be open.

When a representative of the Civil Rights Commission made inquiries, he was advised not to go to the home of the affiant because it might get the man in trouble. Therefore, the representative met with the affiant and five other Negroes in Brownsville, Tenn.

It appears that Negroes have not been permitted to register and vote in Haywood County for approximately 50 years. Representatives of this Commission were told that Negroes in the county own more land and pay more taxes than white persons but that their rights are sharply limited: They must observe a strict curfew. They are not permitted to dance or to drink beer. They are not allowed near the courthouse unless on business.

Commission representatives interviewed several public officials in Haywood County. They discovered that of the three members of the county election commission, one had died, one had resigned, and the certificate of appointment of the member who was still serving had expired approximately 3 weeks previously. The registration clerk had resigned in October 1958 and had not been replaced. Consequently, there was no one legally authorized to register voters.

Some white persons interviewed said that Negroes had never registered and were satisfied with the *status quo*. A few officials denied that there would be any obstacles to Negroes registering but that the Negroes did not want to vote. Some said they were not sure what would happen if Negroes attempted to register.

On July 27, 1959, a delegation of Negroes protested to the State Election Commission that "No Negro has voted in Haywood County since Reconstruction." The chairman of the Commission said he would look into the complaint and "do something about it."

Fayette County (70 percent Negro; 8,990 voting-age Negroes; 58 registered)

Here, adjoining Haywood County, a few Negroes have registered. But the experience of 12 Negro war veterans who registered in Fayette in the fall of 1958 further discouraged Negroes in Haywood.

Some of these Negro veterans were interviewed by Commission representatives. They stated that they had been subject to so much intimidation that only 1 of the 12 actually voted and he doubted that his ballot was counted for he thought he had handed it to someone instead of dropping it in the box. Two others who went to the polls were said to have been frightened away when two sheriff's deputies approached them. One was told by his banker that something might happen to him if he tried to vote. One of the 12 who was in the hauling business lost all of his customers and the police threatened to arrest any of his drivers found on the highway in his trucks.

According to men interviewed, when a Negro registers the sheriff is quickly informed and he, in turn, informs the Negro's landlord and employer. Those who register are soon discharged from their positions and ordered to move from their homes. The police arrest them and impose severe fines—as much as $65 on minor charges, it was alleged. They are unable to get credit. Their wages are garnisheed. Applications for GI loans to buy land are turned down by local lenders.

Most of these allegations have not been verified as yet. An examination of the county voting records revealed that 58 Negroes had registered; that 20 of these had registered in 1958, and 11 in 1959. Voting records found for 46 of the 58 Negro registrants showed that only 1 of them had voted in 1958, 12 in 1956, 1 in 1953, and 3 in 1952. Of the 46, 13 had never voted and 16 had registered after the 1958 election so had had no opportunity to vote.

Under Tennessee law, any registered voter who fails to vote during 4 consecutive calendar years has his registration cancelled and must reregister. If, because of fear of reprisals, most of the Negroes who had registered fail to vote, as appears to be happening, after 4 years their registration is invalid.

NORTH CAROLINA

No county-by-county racial voting statistics were available for North Carolina until the Commission's North Carolina Advisory Committee sent a questionnaire to the county board of elections in each of the State's 100 counties. Replies were received from 79 counties, and the figures have been summarized in the preceding

chapter. The chairman of the Advisory Committee, McNeill Smith, says that publication of these registration statistics "is going to do a great deal to encourage Negroes to register who may have assumed falsely from national publicity that they couldn't."

The problem in North Carolina appears to be largely that of varying practices in administering the state's literacy requirement. Would-be voters must be able to "read and write" any section of the Constitution to the satisfaction of the registrar, who may have the applicant copy indicated sections or may dictate any section he chooses. The Southern Regional Council study reports that under this broad discretion, in which a Negro's ability to vote depends on the individual registrar's sense of justice, "Negroes may find it almost impossible to qualify in one county and comparatively easy in the next."

The chairman of the North Carolina State Advisory Committee notes that some persons feel that the literacy test "is applied unfairly in some of the eastern counties," although the committee had no evidence of this. The State committee has since then received one voting complaint from an eastern county (Greene) making this allegation, and forwarded it for Commission processing.

GEORGIA

County-by-county racial registration statistics, supplied by Georgia's Secretary of State, show that, as the Commission's Georgia State Advisory Committee reported, "the range of voting conditions and the degree of minority participation in elections varies widely." According to these official statistics, some 161,082 Negroes were registered in 1958, or about 26 percent of the State's Negroes over 18, the voting age in Georgia. The State Advisory Committee reports that this is an increase from some 125,000 Negroes registered in 1947, and that the increase is largely in urban areas where Negro voting is heaviest.

In 27 of the State's 159 counties more than 50 percent of the voting-age Negroes were registered in 1958. But in Baker County, with some 1,800 Negroes of voting age, none was registered; in Lincoln County, only 3 out of more than 1,500; in Miller, 6 out of more than 1,300; in Terrell, 48 out of 5,000. In 22 counties with sizable Negro populations, fewer than 5 percent were registered.

The Commission received no sworn complaints from Georgia, but in its Atlanta housing hearing it heard testimony about the relative success, noted above, of the drive to register Negro voters in Atlanta, about the correlation between this Negro vote and better housing conditions there, and about the contrasting voting and housing situation in rural Georgia counties. It received in evidence

studies made of the degree of Negro voting in six such counties. These are printed in the Atlanta section of the published volume of the Commission's regional housing hearings.

The Commission's Georgia State Advisory Committee, while noting that "in few counties, the Negro votes with the same ease and freedom as the white citizen," stated that it "had access to reports on conditions in 15 or 20 counties where undoubtedly the Negro wishing to register or vote has met difficulties." It listed some forms of discrimination faced by would-be Negro voters:

> In a few places, there is neither separation of voting boxes nor voting lines; however, in most places the white and Negro ballot boxes are readily identifiable.
>
> * * *
>
> The 1958 session of the General Assembly passed a bill frankly designed to discourage Negro registrants. It poses 30 questions to the "illiterate voter," 20 of which must be answered correctly. Considerable discretion remains with the registrar in deciding who shall have to answer questions and whether the answers are correct. . . .
>
> Laws requiring purging the names of voters who have failed to vote in the past 2 years are being applied throughout the State now. Those who fail to vote must seek reinstatement or must go through the entire registration procedure afresh. Here again there is room for the practice of local discrimination.

The Georgia committee gave an example of a registrar's discretion. In Terrell County the chairman of the county board of registrars gave as grounds for denying registration to four Negro school teachers that in their reading test they "pronounced 'equity as "eequity,' and all had trouble with the word 'original.'" The chairman of the registrars "said that he interpreted Georgia law to mean that applicants must 'read so I can understand.'"

The Georgia Advisory Committee concluded that, "While continued chipping away at discrimination may be expected in urban areas, subtle and sometimes not-so-subtle campaigns to reduce or discourage Negro voting in those counties with heavy colored populations may be expected."

NEW YORK

It is estimated that 600,000 American citizens who have migrated from the island Commonwealth of Puerto Rico live in New York City. About 190,000 of these people have lived there long enough to satisfy the State's residence requirements for voting. But many of them are not permitted to vote because they cannot pass the New York State literacy test which provides that "* * * no person shall become entitled to vote * * * unless such person is also able, except for physical disability, to read and write English."

Approximately 59 percent of the Puerto Rican residents of New York read and write only Spanish; they are served by three Spanish-

language newspapers having a combined daily circulation of 82,000. One such person, Jose Camacho, a resident of Bronx County, N.Y., filed a suit against the election officials in his home county seeking registration to vote; he also filed a formal complaint with the Commission on Civil Rights. Camacho's petition was denied by the Supreme Court of Bronx County, and at this writing was pending before the New York Court of Appeals.

Camacho's contention is that denial of the right to vote because he and others similarly situated are not literate in the English language constitutes a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment. Fundamentally, his case rests upon provisions of the Treaty of Paris, by which war with Spain was concluded and Puerto Rico ceded to the United States. This treaty provided that the civil rights of the native inhabitants should be fixed by the Congress, but left to the inhabitants the choice of adopting English or retaining Spanish as their official language. The Congress gave all inhabitants of Puerto Rico full American citizenship in 1917. The people chose Spanish as their language. But the United States Supreme Court has ruled that, "The protection of the Constitution extends to all, to those who speak other languages as well as those born with English on the tongue."

Unlike the other voting complaints, that of Mr. Camacho raises legal rather than factual issues, and Mr. Camacho has filed a counterpart case in the courts. This Commission regards the courts as the proper tribunals for determination of legal issues. However, this Commission has found that Puerto Rican American citizens are being denied the right to vote, and that these denials exist in substantial numbers in the State of New York.

CHAPTER IV. THE ALABAMA HEARING

On September 8, 1958, the Commission on Civil Rights received its first sworn complaints from American citizens who alleged that they had themselves been denied the right to vote because of color and race. The 14 affidavits were contained in a letter from William P. Mitchell, of Tuskegee, Ala., secretary of the Tuskegee Civic Association and chairman of its Voter Franchise Committee.

The complainants were Negro residents of Macon County and its chief town, Tuskegee, site of the famous college for Negroes founded by Booker T. Washington in 1881. They included teachers, housewives, students, farmers, and U.S. Civil Service employes at the Veterans' Administration hospital near Tuskegee.

Mr. Mitchell, though a Negro, was not among the complainants, for he himself was a registered elector of Macon County. But before becoming a voter, he had been required to make three visits to the Macon County Board of Registrars, two appearances before a Federal trial court, two appeals to the Fifth Circuit Court, and one petition to the Supreme Court of the United States. His efforts extended over 3 years.

The original affidavits, found to be in proper form, were presented to the members of the Commission on September 9. The Commission unanimously decided that an investigation should be made in Alabama.

At this point the Commission established a basic policy to govern the conduct of its field investigations. The presence of Commission investigators in a State, and the nature of the investigation, would be made known to high State officials—if possible, the Governor and the Attorney General. Agents of the Commission would not seek out representatives of the public information media, but neither would they move about *sub rosa*. And under no circumstances would the names of complainants or any identifying details of the complaints be revealed.

The preliminary survey was conducted between September 25 and September 28, 1958, by the Director of the Commission's Office of Complaints, Information and Survey, who called at the offices of Attorney General John Patterson, the Democratic nominee for Governor of Alabama and so, in effect, the Governor-elect. McDonald Gallion, the Democratic nominee for attorney general, also was informed that the investigation had begun.

At no time have Commission representatives solicited voting complaints, in Alabama or elsewhere. However, during the preliminary survey in Alabama, 13 persons—all Negroes—sought out the Commission's agent and asked that they be allowed to tell of the failure of their efforts to register. All firmly believed that they had been denied registration because of their race and color. These Macon County Negroes subsequently mailed voting complaints to the Commission's offices in Washington.

In Tuskegee, the Commission's Director of Complaints, Information and Survey made arrangements with the chairman of the Macon County Board of Registrars for Commission agents to examine the county's voter registration records. The examination was set for Monday, October 20, 1958.

But when the Commission agents arrived at the courthouse on the appointed date, the Registrar chairman informed them that, by order of Attorney General Patterson, the Commission on Civil Rights would be denied access to the records.

The Commission thus encountered the first official resistance to its attempt to carry out the task assigned to it by the Congress of the United States.

At its monthly meeting on October 22, the Commission voted unanimously to hold a hearing on the Alabama complaints. The hearing, in Montgomery, Ala., was set to begin December 8.

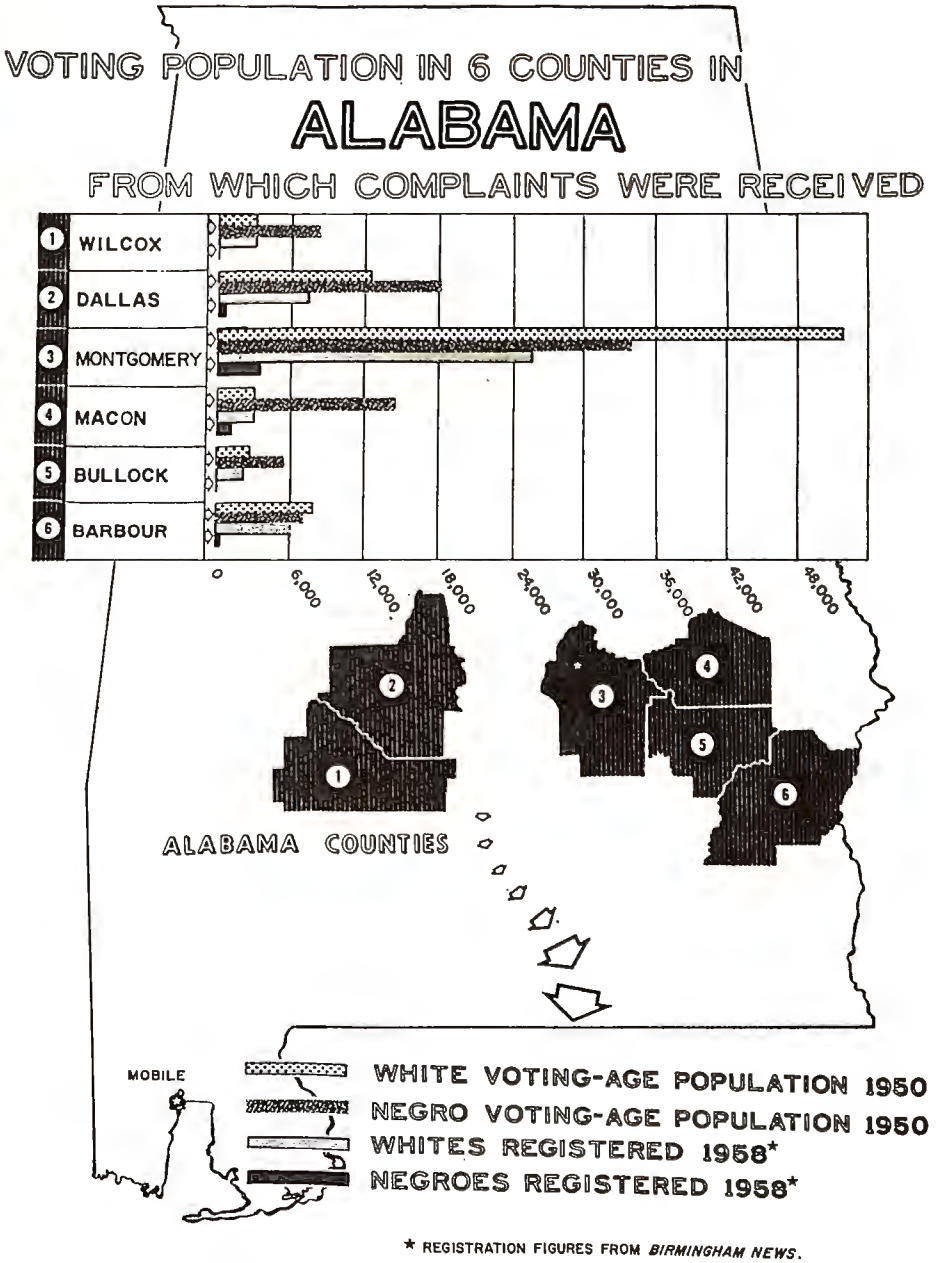
JUDGE WALLACE INTERVENES

Meanwhile, additional voting complaints—eventually totaling 97—were being received by the Commission from Negroes in six Alabama counties. The decision to file such an affidavit was seldom an easy one. Outside Macon County, which has a long history of Negro militancy, fear of possible discovery and resulting reprisals was frequently expressed. Because of mistrust of white notaries in Bullock County, for example, the formal complaints from that county were notarized in Macon County.

On October 28, another State official took action. Alabama Third Circuit Judge George C. Wallace, of Clayton, Barbour County, where one complaint had originated, impounded the voter registration records of the county.

Commission subpenas calling for the production of records were addressed to officials in Barbour, Bullock, Dallas, Lowndes, Macon, and Wilcox Counties. Between November 28 and December 2, five staff representatives served 66 subpenas on complaining Negro witnesses and on white officials. Voting complaints had originated from all six counties except Lowndes, where the population was 82 percent nonwhite, but where not one Negro was registered to vote.

CHART IV.


VOTING POPULATION IN 6 COUNTIES IN
ALABAMA
FROM WHICH COMPLAINTS WERE RECEIVED
1 WILCOX
2 DALLAS
3 MONTGOMERY
4 MACON
5 BULLOCK
6 BARBOUR
0
6,000
12,000
18,000
24,000
30,000
36,000
42,000
48,000
ALABAMA COUNTIES
MOBILE
WHITE VOTING-AGE POPULATION 1950
NEGRO VOTING-AGE POPULATION 1950
WHITES REGISTERED 1958*
NEGROES REGISTERED 1958*
* REGISTRATION FIGURES FROM BIRMINGHAM NEWS.

Montgomery County, where 20 complaints had originated, was not included. Shortly after it was announced that the Commission would hold hearings in Montgomery, the complainants and other Negroes began to receive certificates notifying them that they had been registered.

On November 21 Judge Wallace impounded the voter registration records of Bullock County, also in the third circuit. When served with a Commission subpena calling for the Barbour and Bullock registration records, the judge replied to the press:

> They are not going to get the records. And if any agent of the Civil Rights Commission comes down here to get them, they will be locked up.

REGISTRATION LAWS AND REGISTRARS

To qualify for registration in Alabama, under the 1951 statute which replaced the invalidated "Boswell amendment" (See chapter I), the applicant must be a citizen of the United States and of the State of Alabama and at least 21 years old. The applicant must be able to read and write any provision of the Constitution of the United States. He must be of "good character" and also must "embrace the duties and obligations of citizenship under the Constitution of the United States and under the constitution of the State of Alabama." He must not be an idiot or insane, or have committed any of some 30 crimes named in the nation's most extensive list of voting disqualifications. The applicant must also complete, without assistance, a lengthy questionnaire.

Members of boards of registrars are "constituted and declared to be judicial officers, to judicially determine if applicants to register have the qualifications" required. Boards of registrars are also authorized to make rules and regulations to expedite the registration process, and such rules and regulations have the force and effect of law.

But Alabama law prescribes no educational qualifications for registrars. To be eligible, it is only necessary that one be a resident and an elector of the county, be "reputable," and not hold an elective public office. There is no continuing supervision of the boards by the State, and each board applies the law according to its own interpretation and judgment without reference to the practices of other boards.

This, plus the allegations in the 91 sworn affidavits thus far received, was the information the Commission had in hand as it met in Montgomery to hear both sides of the voting controversy in Alabama.

THE MONTGOMERY HEARING

The hearing began at 9 a.m. on December 8, 1958, in the crowded Fifth Circuit courtroom in the Federal Building in Montgomery.

Two dozen newsmen sat at the press tables, and four television cameras whirred quietly in the rear. In his opening statement Chairman John A. Hannah explained the Commission's responsibility with respect to the investigation of voting complaints. He then emphasized four points that have been the guidelines of the Commission and its staff since its organization:

The Commission is an independent agency in no manner connected, even administratively, with the Department of Justice.

The Commission is a factfinding body possessing no enforcement powers.

The Commission and its staff at all times stress the necessity for objectivity in their search for the facts in any matter before the Commission.

The Commission is not a protagonist for one view or another.

As Vice Chairman Storey took the chair to conduct the hearing, he sounded a note of national unity. "My father was born in Alabama," he recalled, "reared here and educated before he emigrated to Texas. I have close relatives and many good friends in this State. My grandfathers were Confederate soldiers. So, there are many thoughts and memories going through my mind as we meet in Montgomery, the cradle of the Confederacy; but history moves on. We are one nation now. Hence this bipartisan Commission, composed of two presidents of great universities and four lawyers, has a solemn duty to perform. We are sworn to uphold the Constitution of the United States."

William P. Mitchell, of Macon County, who had forwarded the original complaints, was the first witness. In 1950, Macon County had a population of 30,561. Of these, 4,777 were white persons and 25,784 were nonwhite. But the 1958 voter registration list (presumably after some rise in population) showed 3,102 white voters and only 1,218 Negro voters. Macon County ranks first in the State in the proportion of its Negroes aged 25 or over who have at least a high school education, and in the percentage of Negro residents who hold college degrees.

Not content to hold the line against new Negro voters, the city of Tuskegee recently moved to decrease the number already voting in its elections. On July 15, 1957, the Alabama Legislature passed an act that gerrymandered the boundaries of the city. The city limits, previously forming a rectangle, now became a figure of 28 sides. The new boundaries excluded all but 10 of the 420 Negroes who formerly voted in city elections. Another measure enacted later authorized a similar gerrymander or even total abolition of Macon County itself.

The Macon County board required Negro and white applicants to use separate rooms. Negro complainants testified that, when seeking to register, they had been compelled to wait in line for 3 to 9 hours. Only two applicants at a time were admitted to the Negro room.

They were usually required to copy lengthy provisions of the U.S. Constitution.

A Negro applicant must ordinarily supply a self-addressed envelope for notification of his acceptance, but the 25 unregistered Macon County Negroes who were witnesses at the Montgomery hearing testified unanimously that they had received no notification of either acceptance or rejection. Thus they were denied opportunity for a court appeal, which must be made within 30 days after notice of rejection.

Another effective deterrent to Negro voting found in Macon County was a requirement that an applicant for registration be accompanied by a "voucher" who is a registered voter, and who must testify to the applicant's identity and qualifications. But a voter could vouch for only two applicants per year. In recent years, no white elector has vouched for a Negro applicant in Macon County.

Mr. Mitchell, in a statement submitted for the record, summed up the "tactics employed by the board which, we believe, are designed to keep Negro registration to a minimum":

1. The board's refusal to register Negroes in larger quarters.
2. Its failure to use the room which is assigned for the registration of Negroes to its fullest extent.
3. The board's requirement that only two Negroes can make applications simultaneously.
4. Its policy of registering whites and Negroes in separate rooms and in separate parts of the Macon County courthouse.
5. Its policy of permitting a Negro to vouch for only two applicants per year.
6. Its requirement that Negro applicants must read and copy long articles of the U.S. Constitution.
7. Its failure to take applications from Negroes on several regular registration days.
8. Its failure to issue certificates of registration to Negroes immediately upon proper completion of the application form. . . .

Thirty-three unregistered Negro witnesses from four Alabama counties added further details that morning and the next. A few of them had attempted to register only once; most of them had tried two or three times, some five or six, and one, about 10 times. Their stories were essentially similar.

They would arrive at the courthouse very early on a registration day, often to find other Negroes waiting in line for the registration office to open at 9 o'clock. Usually, the wait was long—up to nine hours—and often the applicant would have to return several times before even being admitted to the small room set aside for Negro applicants.

Mrs. Marie Williams, college-educated and a lifelong resident of Alabama, testified that she had made five attempts to register since

July 3, 1957. On that date, she arrived at the courthouse at 8 a.m., got into the registration room at 2:30 p.m., but had to return the next morning to complete her application. When she again attempted to register in July 1958, she waited from 8 a.m. until about 3 p.m. There were similar delays when she tried to register on two occasions in September 1958 and one time in November 1958. Each time she went through the entire process.

After self-addressing an envelope, the would-be Negro registrant usually faced another long and fruitless wait for an answer that never came. All except 6 of the 33 witnesses had returned after the first attempt and were required to repeat the entire process. And if the Negroes were insistent enough to take their plea to the courts, there was the possibility that the board would simply cease to operate.

The difficulties confronting Negroes who wish to vote in Dallas, Wilcox, and Lowndes counties were described by Mrs. Amelia Platts Boynton, a registered voter, who had lived in Selma, Dallas County, about 30 years. As manager of a life insurance company, she had traveled regularly in Dallas, Lowndes, Macon, Montgomery, Perry, and Wilcox counties for 19 years, and talked with many Negroes about registration and voting problems.

Mrs. Boynton testified that Dallas County had a population of "fifty-some odd thousand," of which "there are around 18,000 Negroes above 21 years of age." Negroes outnumber whites by almost two to one, but some 8,800 whites were registered, against only 125 Negroes. As Commissioner Wilkins noted, this is a ratio of almost 80 to 1. The disparity in Lowndes County was even greater. In 1950 there were 2,154 whites and 8,054 Negroes over 21 in Lowndes County; in 1958 more than 1,500 whites were registered, but not one Negro. Furthermore, Mrs. Boynton said, no Negro had ever sought to be registered in Lowndes County "because of the economic pressure that has been brought already on some whom they thought were perhaps members of the NAACP years ago. . . ."

Mrs. Boynton cited two cases of Negro retail merchants in Lowndes County who were refused service and deliveries by white wholesalers. Obstacles to securing or renewing mortgages, and the use of demand notes, also were cited as examples of "economic pressure" exerted upon Negroes.

Similarly, although she knew of some Negroes who had attempted to register, no Negroes were registered in Wilcox County. She testified that a Negro minister had been turned down by a Wilcox board member thus: "Well, now, you're all right. I could register you, but to register you means that I have to register other Negroes, and for that reason it's better not to register you."

WHY DID THEY WANT TO VOTE?

Among the 33 Negro witnesses who testified that they had not been allowed to register were 10 college graduates, 6 of whom held doctorate degrees. Only 7 of the 33 had not completed high school; all were literate. Most of them were property owners and taxpayers. Some had voted in other States. Among them were war veterans, including two who had been decorated, respectively, with four and five Bronze battle stars.

They expressed no doubt about why they had not been permitted to register. The reason was stated most memorably by a Macon County farmer with only 6 years of schooling:

> Well, I have never been arrested and always has been a law-abiding citizen; to the best of my opinion has no mental deficiency, and my mind couldn't fall on nothing but only, since I come up to these other requirements, that I was just a Negro. That's all.

And why did they want to vote?

Mrs. Bettye F. Henderson, of Tuskegee, who holds a bachelor of science degree, told the Commission:

> I want to vote because it is a right and privilege guaranteed us under the Constitution. It is a duty of citizens, and I have four children to whom I would like to be an example in performing that duty, and I want them to feel that they are growing up in a democracy where they will have the same rights and privileges as other American citizens.

Said the Rev. Kenneth L. Buford, a homeowner and holder of two college degrees:

> I would like to vote because it is a right that should be accorded me as a citizen of the United States. I feel that I cannot be a good citizen unless I do have the right to vote. I am a taxpayer and I feel that if I am denied the right to vote it represents taxation without representation.

The youngest witness, Miss Fidelia JoAnne Adams, a bachelor of science who was working on her master's degree in organic chemistry, declared:

> . . . The Government of the United States is based on the fact that the governed govern, and only as long as the people are able to express their opinion through voting will our country be able to remain the great power that it is.

Charles E. Miller, a veteran of the Korean war who lives in Tuskegee, offered this explanation:

> . . . I have dodged bombs and almost gotten killed, and then come back and being denied to vote—I don't like it. I want to vote and I want to take part in this type of government. I have taken part in it when I was in the service. I think I should take part in it when I am a civilian.

Having heard the Negro complainants, the Commission prepared in the afternoon session of the first day to hear the rejoinders of registration officials and custodians of registration records.

After the noon recess, the records of Macon County Probate Judge William Varner were brought into the courtroom. Judge Varner had agreed, with some hesitation, to appear and permit the Commission to examine his subpenaed records in Montgomery despite a letter he had received from the Attorney General of the State advising him that he had no authority to move the records from Macon County. A probate judge's records include data on numbers of white and Negro voters and on poll tax payments.

When Judge Varner was called as a witness, Attorney General John Patterson, who became Governor of Alabama a month later, addressed the Commission from the front row of seats.

Mr. PATTERSON. There are certain serious constitutional objections that we want to raise in this hearing, and we are somewhat afraid that it might subsequently be considered as a waiver of our objection if we don't raise them at this time. Now, Judge Varner is the probate judge of Macon County. He is a constitutional judicial officer of this State, and he is expressly prohibited by law from taking the records of his office outside of his county except under certain unusual circumstances.

We feel that, in addition to that, this Commission, which is the Civil Rights Commission, which is an arm of the legislative [sic] branch of the Government, has no constitutional right to call a judicial officer in here and question him about the affairs of his court, and we want to raise that objection at this time.

VICE CHAIRMAN STOREY. * * * You have that privilege, but I don't think you will find the Commission transgressing on any constitutional rights; and we will proceed with the examination of Judge Varner.

But Judge Varner's testimony proved to be singularly unproductive. Though he had been judge of probate in Macon County for 21 years, and hence the guardian of its registration certificates and voting lists, he professed himself unable to supply any information about the activities of the boards of registrars.

Following Judge Varner on the stand was Mr. Grady Rogers, a member of the Macon County Board of Registrars. Mr. Rogers answered questions about administrative practices of the board, but balked when Vice Chairman Storey said: "Now, according to the testimony here, the white people go to the grand jury room."

Mr. Rogers' first response was, "At times"; then: "I don't care to answer that question on the advice of counsel."

Vice Chairman Storey inquired: "Why do you refuse to answer it?"

"Because it might tend to incriminate me."

"You do have another room, do you not?"

"The same answer."

"Now, so we will get it in the record, you refuse to answer because it might be self-incrimination; is that correct, sir?" After consultation with Attorney General Patterson, Mr. Rogers finally answered: "And also, in addition to the other answer to the first question that applies to this question, because I am a judicial officer under the State laws of Alabama and my actions cannot be inquired into by this body."

In the course of further questioning, it developed that Mr. Rogers and other registrars who had been subpenaed had not been sworn during a mass oath-taking that morning. At this point, after a consultation with the Attorney General, Mr. Rogers told the Commission that he objected to taking the oath.

Vice Chairman Storey then ordered a roll call of the subpenaed State officials and asked each whether he had been sworn. W. A. Stokes, Sr., and J. W. Spencer, Barbour County registrars; M. T. Evans, Bullock County registrar, and Mr. Livingston and Mr. Rogers of Macon County refused to be sworn.

"WE HAVE NO BLACKS"

The probate judges of Barbour, Wilcox, Lowndes, and Dallas Counties proved little more informative. All appeared without their records, which had been impounded by State court subpenas received—by three of the four—after the Commission subpenas.

When Commissioner Wilkins asked Probate Judge Harrell Hammonds, of Lowndes County, if it were true that there were no Negroes registered in his county, the judge replied, "That's what they say."

"In other words," Commissioner Wilkins continued, "out of a population of 17,000 or 18,000—14,000 or 15,000 Negroes and 3,000 or 4,000 whites—you have approximately 2,200 or 2,300 whites registered and not a single Negro? . . . Don't you think that is a rather unusual and peculiar situation?"

"It might be unusual, peculiar in some places; yes," answered Judge Hammonds.

Mrs. Dorothy Woodruff, one of the three Lowndes County registrars, testified that, except for filling out the application, applicants were not required to demonstrate their literacy, nor were they required to self-address an envelope.

". . . After we meet, we discuss it and if their qualifications are up to par we send them their certificate . . . We have never had any that haven't been up to par," Mrs. Woodruff testified. When Vice Chairman Storey asked, "Is that true as to both the blacks and the whites?" she replied: "We have no blacks."

Neither she nor Clyde A. Day, another Lowndes County registrar, could offer any explanation of why no Negro had applied for registration during their terms of office.

COMMISSIONER BATTLE SPEAKS

Earlier in the afternoon Commissioner Battle, directing a question to Mr. Rogers, had said:

Mr. Livingston, will you listen to this, too, please, sir? This morning we have heard some 20 or 25 people testify that they have been denied the right to register in your county. They each stated that in their opinion it was on account of their race. Would either of you gentlemen care to make any statement as to why any of those would-be registrants were denied the right to register?

Neither Macon County registrar cared to make such a statement.

Now, after the final witness of the day had been heard, Commissioner Battle, a former Governor of Virginia, read a statement as follows:

Mr. Chairman, and ladies and gentlemen. Like Dean Storey, I have come to the State of my ancestors. My father was proud to be an Alabamian. My grandfather, Cullen A. Battle, was my constant companion during my boyhood days and, in the War Between the States, the commanding officer of a brigade of Alabama troops which was honored by a resolution of the Confederate Congress, thanking the Alabama officers and Alabama men for their service to the Confederacy.

My grandfather was subsequently denied his seat in Congress, to which the people of Alabama had elected him, because he had served the Confederate cause.

So, I come to the people of Alabama as a friend—I think I may be permitted to say—returning to the house of my father, and none of you white citizens and officials of Alabama believe more strongly than I do in the segregation of the races as the right and proper way of life in the South. It is, in my judgment, the only way in which racial integrity can be preserved and thus prove beneficial to both races.

The President of the United States was not in error when, in asking me to serve as a member of this Commission, he said he wanted someone with strong Southern sentiments, which I have, and I accepted this assignment in the hope that I might be of some service to my country and to the Southland.

It is from this background, ladies and gentlemen, that I am constrained to say, in all friendliness, that I fear the officials of Alabama and certain of its counties have made an error in doing that which appears to be an attempt to cover up their actions in relation to the exercise of the ballot by some people who may be entitled thereto.

The majority of the members of the next Congress will not be sympathetic to the South, and punitive legislation may be passed, and this hearing may be used in the advocacy of that legislation, which will react adversely to us in Virginia and to you in Alabama.

Of course, it is not up to me, nor would I presume to suggest how any counsel or any official should govern himself; but we are adjourning this hearing until tomorrow morning, and may I say to you, as one who is tremendously interested

in the southern cause: Will you kindly reevaluate the situation and see if there is not some way you, in fairness to your convictions, to the officials, may cooperate a little bit more fully with this Commission and not have it said by our enemies in Congress that the people of Alabama were not willing to explain their conduct when requested to do so?

This may be entirely out of order, ladies and gentlemen, but it was in my heart to say it, and I hope you will take it in the spirit in which I say it.

Next morning, Editor Grover C. Hall of *The Montgomery Advertiser*, one of the South's most articulate spokesmen, wrote:

We do not find it easy to take an unmodified position on the noncompliance of the Alabama officials summoned before the U.S. Civil Rights Commission. . . .

The Advertiser will be blunt about the matter.

The refusal of the officials to testify or offer their voter registration records will be construed as an effort to hide something. . . .

Would it not have been better, as Governor Battle reasoned, to fork them over and avoid all the commotion? . . . When it is already notorious that there are counties like Lowndes and Wilcox without a single Negro voter, the revelation would only confirm the obvious.

There must be some Negroes in these counties qualified by *Alabama* law to vote.

The *Lee County* (Ala.) Bulletin, published in the heart of the "Black Belt," had this to say:

Mr. Patterson's pugnacious attitude cannot help but create the impression in other parts of the country that we've got something to hide.

The Atlanta Constitution said that "there can be no doubt that . . . Governor Battle [is] correct," and added: "But if they will not heed him they will heed no one and the tragedy will have to be played out to the bitter end." Later, in an editorial urging the extension of the Commission on Civil Rights, *The Constitution* remarked: "The irresponsible defiance of this Commission in Alabama has done the South's cause more harm than anything since the hate bombings."

Alabama officials were unmoved. Attorney General Patterson's answer was in the press a few hours after Commissioner Battle made his plea. Mr. Patterson denied that Alabama "has anything to hide." He said that—

all citizens both black and white have been treated fairly, justly, and impartially. . . . Our duty in this case is clear: We must do everything within our power to prevent this unlawful invasion of the State of Alabama's judicial officers by the legislative and executive arms of the Federal Government, the Civil Rights Commission in this instance. . . . In fights of this nature there can be no surrender of principle to expediency. The time for retreating has come to an end.

TO THE COURT

That evening—December 8—the Commission voted to turn the complete record of the proceedings over to the Attorney General of the United States for appropriate action.

The Attorney General promptly filed Civil Action No. 1487N in the United States District Court for the Middle District of Alabama, Northern Division. The suit sought a court order requiring the defendants to produce evidence (the records) and give testimony before the Commission. Representatives of the Department of Justice were counsel for the Government, as provided by the Civil Rights Act of 1957.

After some legal sparring by the defendants, United States District Judge Frank M. Johnson, Jr., entered an order commanding the contumacious witnesses to appear and testify, and produce the records called for, before the Commission or a subcommittee on January 9, 1959. A subsequent order specified that the Commission has the "right" to inspect the registration records of Barbour, Bullock, and Macon Counties. (No reason was given for excluding from the order the other counties under study by the Commission: Dallas, Lowndes, and Wilcox.) The inspection, ordered to take place before January 9, was to be made in the counties where the records were being kept.

Members of the Commission's staff then proceeded to the seats of the three counties named in the order. On January 9, the Commission reconvened the Alabama hearings in Montgomery to hear four members of the staff testify under oath as to what had been revealed by the examination of the registration records in these counties.

THE MACON COUNTY RECORDS

An examination of the Macon County records, they reported, had yielded the following information:

There were approved applications on which question No. 19 in the questionnaire (Will you give aid and comfort to the enemies of the United States Government or the Government of the State of Alabama?) had not been answered at all.

An applicant was rejected because she had listed the county of her birth but not the State.

One rejected application had no errors, but the applicant had failed to write in her name for the fourth time in question No. 3.

An applicant who had indicated continuous residence in the State since 1930 (only 2 years is required for registration) was rejected for failing to give the month and the day he had taken up residence.

No rejected application bore any indication that the applicant had been notified of rejection (an appeal to the courts must be made within 30 days).

In one set of applications examined, 51 Negroes had been required to copy article 2 of the U.S. Constitution, but only three white applicants were required to copy this same lengthy article.

There were accepted applications which had no copies of hand-written constitutional provisions attached, as required by Alabama law. Most of these were applications of white persons.

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In a group of 17 applications marked "approved" were errors of the same type that had caused rejection of other applications. Sixteen of these 17 applicants were found to have been registered, and of these, 15 were white persons.

Despite the court order, staff representatives had been permitted to examine only two applications in Barbour County, and two in Bullock County, both in the third circuit of Judge George C. Wallace. There now began an elaborate game of hide-and-seek, in which Judge Wallace delayed obedience to the court order by turning the records over to grand juries in each county. The Barbour County records were the first to be produced and examined.

THE BARBOUR COUNTY RECORDS

Discussion with Registrar Spencer disclosed that white and Negro applicants used the same room while applying, but not usually at the same time. Barbour County registrars ordinarily asked a few questions, such as: Who is probate judge? Who is the circuit judge? Who is the State senator? Who is the sheriff? If these questions were answered to the satisfaction of the board, the applicant was given a questionnaire to complete. Applicants were not required to read or copy any part of the Constitution.

If errors are found on the questionnaire, which is examined in the presence of the applicant, it is returned with the statement, "You made a mistake," but the error is not identified.

Examination of the records available indicated that 607 whites and 15 Negro applicants were registered between July 1956 and April 1958. One hundred and fifteen questionnaires of persons found acceptable by the board were examined. Nineteen of these were submitted by Negroes and 96 by whites. The 115 forms disclosed 97 errors, with question No. 5 being answered erroneously by 52 applicants. Questions 1, 2, 3, and 19 were frequently omitted. One accepted white applicant had answered question No. 19 ("Will you give aid and comfort to the enemies of the U.S. Government or the government of Alabama?") with a reply as murky as the question: "No unless necessary." Another accepted white applicant answered question No. 3 ("Give the names of the places, respectively, where you have lived during the last 5 years; and the name or names by which you have been known during the last 5 years") with: "all the people of Clayton."

THE BULLOCK COUNTY RECORDS

Production of the Bullock County records was preceded by rumor of a grand jury stipulation which caused the Commission's Department of Justice counsel to advise against examining the records. Later, though the rumor was verified, he changed his stand. It was

the feeling of the Commission agents on the scene that the matter could have been handled more expeditiously by the Commission's own staff attorneys.

The 5-year-old official voting list of Bullock County showed only five registered Negroes in the county. M. T. Evans was the only registrar in Bullock County at the time, and since board action by a majority of the members is required by law, the Bullock County board had been inoperative since the resignation of its former chairman in mid-1957.

The board records finally produced were in confusing disorder. Because of this and the limited time available for examination, applications were selected at random.

The applications of 19 white registered electors contained one or more errors. However, each of the 19 was allowed to complete another questionnaire "for the record" which was attached to the first application. There was no evidence that any Negro applicant was ever given this "second chance." None of the forms examined had any copied constitutional provisions attached, as required by Alabama law. As in Macon County, if an applicant was registered, he was to be notified. But if registration was refused, no notice was given.

The "voucher" system was found to be the principal Bullock County device for denying Negroes the right to vote. A voucher, white or Negro, is permitted to vouch for only three applicants in any 3-year period. The record of one white voter showed that he had vouched for three white applicants, all of whom had been registered on July 1, 1957. This card bore the notation "three strikes out." The card of one of the five Negro registrants showed that he had vouched for three Negro applicants, none of whom was registered. But the Negro voter could not again vouch for an applicant for another 3 years.

Under the Bullock County system, the rejection of three applicants supported by each of the five qualified Negro voters in the county effectively prohibited for three years any application by the remaining 5,420 adult Negroes in the county.

FINDINGS

Having reviewed all of the evidence thus obtained by examination of registration records, and all of the testimony received in the hearing, the Commission unanimously adopted detailed official findings of fact specifying and confirming the denial of the right to vote in Alabama. The findings appear in the unabridged version of this report.

NOTHING TO HIDE?

Attorney General Patterson's assertion that "Alabama has nothing to hide" was followed in a few weeks by introduction of a bill in

the Alabama Senate requiring registrars to destroy within 30 days the applications and questionnaires of rejected applicants for registration. The bill, which passed both houses by unanimous vote was amended only to make destruction of the records permissive rather than mandatory. *The Montgomery Advertiser* hailed passage of the bill with the headline: "Alabama Legislature Hurls Legal Punch at U.S. Vote Probe."

Two months after the Commission's December hearing in Montgomery, the United States Department of Justice filed an action in the Federal District Court for the Middle District of Alabama to force the registration of qualified Negroes in Macon County. The suit named as defendants the two surviving members of the Macon County Board of Registrars, Grady Rogers and E. P. Livingston. However, Mr. Rogers and Mr. Livingston had meanwhile resigned from the board, so the court dismissed the suit for lack of a defendant.

AFTERMATH IN BIRMINGHAM: THE ASBURY HOWARD CASE

The facts about voting in some parts of Alabama which were brought out at the Commission's December hearing only hardened the determination of some Alabama citizens to bar Negroes from the voting booths. If this was not made clear by the passage of the bill permitting the destruction of registration applications, then a development in Bessemer, near Birmingham, left little doubt.

Asbury Howard, Sr., a Negro union leader in Bessemer, saw a cartoon of a praying Negro in the *Kansas City Call*, a Negro newspaper. Mr. Howard thought it would be suitable for reproduction on a placard urging Negroes to register and vote. He employed a white sign painter to make the placard.

On Thursday, January 29, 1959, Police Chief George Barron, of Bessemer went to the sign painter's shop. The placard was still on the drawing board. It had not been publicly displayed. Chief Barron arrested the sign painter, charging him with violation of section 2572 of the Bessemer city code, which prohibits the publication of libelous and obscene material. Chief Barron then went to the service station operated by Mr. Howard and arrested him. Later, in jail, Mr. Howard also was charged with violating section 2572.

Trial was set for January 24, 1959, before City Recorder James Hammonds. Negroes who came to the city hall that day were searched before being permitted to enter. White persons who came to hear the trial were not. The sign painter, who did not have a lawyer, entered a plea of guilty.

Asbury Howard's lawyer entered a plea of not guilty. Chief Barron was the sole witness for the city. He testified that he went to the sign painter's office on a "tip," confiscated the sign, learned who

had ordered it, and then arrested Mr. Howard. He conceded that Mr. Howard had committed no offense in his presence that day, nor had he been guilty of loud or boisterous conduct.

Mr. Howard was found guilty as charged. He and the sign painter were each sentenced to six months in jail and $100 fine.

While David H. Wood, counsel for Mr. Howard, was occupied with details necessary for preparing an appeal for both defendants, Police Detective Lawson Grimes told Mr. Howard to leave the courtroom and go downstairs. Mr. Howard met a group of white men, later estimated to number about 40 or 50. Among them was a city policeman named Kendricks. Without provocation, the white men attacked Mr. Howard. His son, Asbury, Jr., called out a warning to his father at the moment of attack. Several white men prevented him from going to his father's aid, drawing knives and blackjacks from their pockets. As he pressed forward, he, too, was struck, knocked down, and beaten.

A police officer returned to the court room to inform Mr. Wood of what had happened, and the attorney hastened to the rescue of the Howards. The younger Howard was taken to jail, charged with resisting arrest and disorderly conduct, and released on $600 bond.

Asbury Howard, Sr., was taken to Bessemer General Hospital, where his head wounds were closed with 10 stitches. At this writing, his conviction was still pending appeal.

The Alabama story is not ended.

CHAPTER V. LOUISIANA ROADBLOCK

In November 1958 the first of a continuing stream of affidavits alleging denial of the right to vote were received by the Commission from Negro citizens of Louisiana. The complainants alleged either that they had been denied the right to register in the first place, or that, having been registered, their names were removed from the rolls and that they were not allowed to register again.

As with all complaints meeting the requirements of the Civil Rights Act, the Commission conducted a field investigation in which all the complainants were interviewed. It also collected all available voting statistics.

According to figures published by the Secretary of State of Louisiana, there were 132,506 Negroes registered in 1959 and 828,686 whites. Voting-age Negroes in 1950 comprised about 30 percent of the voting-age population; in 1959 they comprised 13 percent of the registered voters. In 18 of the State's 64 parishes more than half of the 1950 number of voting-age Negroes were registered. But in four parishes in which voting-age Negroes far outnumbered voting-age whites—East Carroll, Madison, Tensas, and West Feliciana—no Negro was registered in 1959. In nine other parishes with substantial voting-age Negro populations, fewer than 5 percent of voting-age Negroes were registered. Moreover, in 46 of the 64 parishes, the number of registered Negroes had declined since 1956, in some cases by dramatic proportions such as in Red River where the number dropped from 1,360 to 16, or St. Landry, from 13,060 to 7,821, or Webster, from 1,776 to 83. In only 14 parishes had Negro registration increased; in each case the increases were relatively slight.

TABLE 11. *Negro registration, selected Louisiana parishes using permanent registration*

Parish	1950 population	Registration			
		March 1956	October 1956	May 1958	November 1958
Bienville	19,105	587	35	28	28
De Soto	24,398	762	770	489	493
East Feliciana	19,133	1,361	1,319	1,224	450
Ouachita	74,713	5,782	889	799	776
St. Landry	78,476	13,050	13,060	6,440	7,181
Union	19,141	1,600	1,099	348	368

TABLE 12. *Negro registration, Louisiana parishes using periodic registration*

Parishes	1950 population	Registration			
		March 1956	October 1956	May 1958	November 1958
Caldwell	10,293	450	124	38	38
Cameron	6,244	236	184	47	76
Catahoula	11,834	330	349	183	187
Concordia	14,398	587	534	121	176
East Carroll	16,302	0	0	0	0
Franklin	29,376	650	649	232	304
Grant	14,263	864	864	376	525
La Salle	12,717	742	364	96	157
Lincoln	25,782	1,166	1,011	441	470
Livingston	20,054	1,162	1,252	428	564
Madison	17,451	0	0	0	0
Morehouse	32,038	935	947	196	205
Natchitoches	38,144	2,954	2,993	998	1,396
Point Coupee	21,841	1,319	1,326	574	635
Red River	12,113	1,512	1,362	15	15
Richland	26,672	740	742	177	179
St. Bernard	11,087	802	802	162	340
St. Helena	9,013	1,694	1,614	851	1,059
St. Mary	35,848	2,668	2,670	2,347	2,659
Tensas	13,209	0	0	0	0
Vernon	18,974	891	892	588	640
Webster	35,704	1,769	1,773	79	80
West Baton Rouge	11,738	1,017	1,036	577	615
West Carroll	17,248	292	292	69	70
West Feliciana	10,169	0	0	0	0
Winn	16,119	1,430	1,442	581	665

After these preliminary studies, the Commission moved to examine official State registration records. The request was made of Attorney General Jack Gremillion, who by State law serves as counsel for registrars in matters concerning the Federal Government. By agreement with the Attorney General, a Commission representative visited the registrars in two parishes—Caddo and Webster—on March 12, 1959. The Attorney General and several State and parish officials attended the meeting.

The registrars were questioned orally about their official practices. But examination of their records was denied under a Louisiana law which permits such examination only by a registered voter of the parish, and permits copying of the records only on petition of 25 registered voters.

Twice thereafter, William Shaw, counsel for the Joint Legislative Committee of the Louisiana Legislature, demanded in his capacity as attorney for the registrar of Claiborne Parish that the Commission disclose the names of the complainants from that parish. He asserted that their affidavits were false and that their identity was required for a grand jury presentment on a charge of perjury instituted by his client. He also mentioned Louisiana statutes on accessories

after the fact, stating that concealment of the identity of a person charged with crime would make the concealer liable for criminal prosecution. Attorney General Gremillion also tried several times to get the names. The Commission stood firm on its policy against divulging complainants' names.

Before deciding on a costly public hearing, the Commission resolved to try every other legitimate means of getting the needed information about voting in Louisiana. After negotiations between its Staff Director and the Louisiana Attorney General, the Commission prepared interrogatories to be answered under oath by the registrars of the parishes involved. Attorney General Gremillion promised his cooperation. But when the interrogatories were sent to registrars in 19 parishes, Mr. Gremillion took exception to the questions, and announced that he saw no purpose in answering them.

The Commission then decided to hold a hearing in Shreveport, Caddo Parish, La. on July 13, 1959. At this time, 78 sworn voting complaints had been received: 8 from Bienville Parish; 9 from Bossier Parish; 8 from Caddo Parish; 7 from Claiborne Parish; 11 from De Soto Parish; 2 from Jackson Parish; 1 from Ouachita Parish; 8 from Red River Parish, and 24 from Webster Parish.

On July 8, after weeks of legal preparation and field investigation by the Commission staff, United States District Judge Benjamin Dawkins informed the Commission that the Attorney General of Louisiana intended to apply for a temporary restraining order to enjoin the Commission from holding its July 13 hearing. (The Attorney General had recently been confronted with a U.S. Department of Justice suit concerning a purge of Negro voters in Washington Parish.) Two days later, the suit was filed against members of the Commission both individually and in their representative capacity.

Judge Dawkins granted Commission representatives 90 minutes to prepare their response. The Attorney General of the United States, advised of the development, instructed the Commission agents to proceed as best they could until his own agents could reach Shreveport to defend the Commission in the suit.

While the Commission was preparing its answer, Vice Chairman Storey, a former president of the American Bar Association, was personally served by the U.S. marshal with complaints in two civil actions. One was a suit brought by the registrars in their individual capacities and as registrars against the Commissioners individually and as members of the Commission. This suit challenged the constitutionality of the Civil Rights Act of 1957, which created the Commission. The other suit was brought on behalf of various citizens of Louisiana who had been subpenaed by the Commission to testify

concerning their activities in purging registered voters and any knowledge they might have as former registrars.

At 5:30 p.m. on July 12, less than 16 hours before the Commission hearing was scheduled to begin, Judge Dawkins issued the restraining order. As a Federal executive agency, he ruled, the Commission is subject to the Administrative Procedure Act which requires that persons affected by agency action must be timely informed of the matters of fact and law asserted. Recalling the traditional right to be confronted by one's accusers and allowed to cross-examine them, Judge Dawkins declared that there was every reason to believe that some of the complainants who had filed affidavits with the Commission—

> will testify that plaintiffs have violated either the State or Federal laws, or both. Plaintiffs thus will be condemned out of the mouths of these witnesses and plaintiffs' testimony alone, without having the right to cross-examine and thereby to test the truth of such assertions, may not be adequate to meet or overcome the charges, thus permitting plaintiffs to be stigmatized and held up, before the eyes of the Nation, to opprobrium and scorn.

Judge Dawkins concluded with a statement that the constitutionality of the 1957 Civil Rights Act would be adjudicated by a three-judge Federal court.

Commenting on the Judge's ruling, the Washington *Post* observed:

> The Administrative Procedure Act was intended to apply to agencies which make rules or adjudicate cases. The Civil Rights Commission does neither, of course. It is a fact-finding body. . . . To require it to file formal charges and go through the courtroom practice of cross-examination, when it is not prosecuting or trying or judging anyone—when it is not engaged in any sort of adversary proceeding—would be sheer nonsense making the discharge of its real function impossible.

Meanwhile, in Shreveport, staff members added up costs of preparing for the hearing and found that those which would have to be incurred again if the Judge's order were set aside and the hearing finally held were over $12,000. The Commission decided to ask that the plaintiffs be required to post a $10,000 security bond. Judge Dawkins refused. This time he concluded with the observation that, while his restraining order might be set aside as wrongful, "it is all part of the game."

THE LOUISIANA COMPLAINTS

The testimony which complaining witnesses had been prepared to offer at the Shreveport hearing, plus the Commission's own field investigations, indicated three major techniques of voting denial.

First, in the parishes of Madison and East Carroll, no Negro was registered, or had ever been registered to vote. Seven witnesses were prepared to testify concerning the situation in these parishes. An effective bar to Negro registration is the requirement exacted by the

registrars that each prospective registrant obtain two registered voters to swear to his identity. Since no Negroes were registered in either parish, and since no white person (with one exception) would vouch for a prospective Negro registrant, the complainants were effectively stalled. One of the witnesses, a former Army sergeant and still an active reservist, had fought on the Normandy beaches, been awarded four battle stars, was adequately educated, and apparently well qualified to vote.

Second, in the parishes surrounding and including Shreveport several of the witnesses had been excluded from registration by preliminary questioning on the part of the registrars before even receiving a registration form. This process is without sanction in Louisiana law. Some of the witnesses had voted in other States before trying to register in Louisiana; others were veterans, professional people, and educators. In other parishes in this area complainants had been registered for some years, but were purged from the registration lists. Upon attempting to reregister they were met with the rigid standards arbitrarily imposed as a result of the campaign initiated by the Joint Legislative Committee of the Louisiana Legislature in December 1958, and continuing in January and February 1959. The announced purpose of the chairman of the joint legislative committee was to reduce Negro registration in the State of Louisiana from 130,000 to 13,000.

At a series of meetings held throughout the State in these months, registrars were instructed in the procedures of a strict interpretation of the Louisiana registration laws. The instruction was directed by State Senator William Rainach, chairman of the Joint Legislative Committee, but was conveyed to the registrars by the committee's attorney, William Shaw. At the meetings Mr. Shaw documented his instructions by reference to statutes, legal opinions, and particularly the booklet, "Voter Qualification Laws in Louisiana." The front and inside covers of this Citizens Council pamphlet are reproduced on the following page.

In instructing the registrars, Mr. Shaw stressed that applicants must be of good character and be able to interpret any clause of the Constitutions of Louisiana or the United States. As a test of intelligence, he advised the registrars to use a set of 24 model cards distributed at the meetings. One of them is reproduced below. Mr. Shaw asserted that constitutional interpretations are tests of native intelligence and not of book learning; that experience teaches that most white people have this native intelligence while most Negroes do not. As a further precaution, however, he instructed the registrars not to help any Negro applicant fill out his application card by telling him the number of his ward or precinct.

Facsimile of Instructions for Registrars and Others in Louisiana

Voter Qualification Laws In Louisiana

The Key To Victory In The Segregation Struggle

A Manual of Procedure For Registrars of Voters, Police Jurors and Citizens' Councils

December, 1958

- *Foreword* -

Bloc Control — The Goal of the NAACP and the Communists

The Communists and the NAACP plan to register and vote every colored person of age in the South. While the South has slept, they have made serious progress toward their goal in all the Southern states, including Louisiana.

They are not concerned with whether or not the colored bloc is registered in accordance with law. They are interested only in seeing that all persons in this bloc are registered and in using their votes to set up a federal dictatorship in the United States.

They plan to divide the people of the South, and to take us over, state by state, and parish by parish. They would do this by trading the minority bloc back and forth between our split-up factions until we have sold our heritage of freedom and self-government for a shifting parcel of NAACP and Communist controlled votes.

The Enforcement of Voter Qualifications Laws in Louisiana

At least ninety percent of the bloc that they plan to misuse would have to be registered illegally in Louisiana because ninety percent of them cannot meet the voter qualifications prescribed by law. In fact, ninety percent of this bloc now registered and being used by the NAACP to control some of our elections, are registered in violation of our laws and illegally influencing the election of our officials.

The People, the Officials and the Citizens' Councils in Law Enforcement

It has become vitally important that the people see to it themselves that the Registrars of Voters throughout the state comply fully with the provisions for qualifications of voters set forth in our Constitution and our Statutes.

The ACCL has prepared this manual of legal procedure which Registrars in Louisiana may follow in preventing illegal registration. The manual outlines the methods by which parties who have been registered illegally may be removed by law from the registration rolls.

The consistent use of this manual will be especially helpful to our state and local officials, and local Citizens' Councils in lending the Registrars of Voters the support and guidance that they must have in carrying out the all-important job of enforcing our voter qualification laws.

The Key to Victory

We are in a life and death struggle with the Communists and the NAACP to maintain segregation and to preserve the liberties of our people.

The impartial enforcement of our laws is the KEY TO VICTORY in this struggle.

Facsimile of Constitutional Test for Registration of Voters Used in Louisiana

Form No. 5

CONSTITUTIONAL TEST FOR REGISTRATION

Applicant shall read to the Registrar of Voters and give a reasonable interpretation of the following clauses of the Constitution:

The Legislature shall provide by law for change of venue in civil and criminal cases (Art. 7 Sec. 45 La. Const.)

The exercise of the police power of the State shall never be abridged (Art. 19 Sec. 18 La. Const.)

Prescription shall not run against the State in any civil matter (Art. 19 Sec. 16 La. Const.)

(The above qualification test and a registration application form provided for by Section 1 (c), Article VIII of the Louisiana Constitution, (Form LR-1), were received by me from the_____Parish Registrar of Voters upon my request to register, and I have signed both for acknowledgement and identification with my application to register.)

_____
Applicant for Registration

Ward_____ Precinct_____ Address_____
(Over)

Senator Rainach himself informed the registrars that "you don't have to discriminate against Negroes" to keep them off registration rolls, because "nature has already discriminated against them." Proclaiming that "a large number of Negroes just can't pass the test for registration," he concluded: "The tests are based on intelligence, not education, and intelligence is something that is bred into people through long generations."

Third, in Washington Parish during May, June, and July of 1959, over 1,300 of approximately 1,500 Negro registrants were stricken from the rolls on the basis of challenges filed by members of the Citizens Council of that parish. Virtually all of the Negroes whose names were removed from the rolls had been challenged by four white residents of Washington Parish. The most common basis for these challenges was alleged errors in spelling on the application forms. Investigation revealed that the challengers themselves misspelled words when filling out the challenging affidavits. For a sample, in which the voter seems to be charged with an "error in spilling," with names of voter and challengers maked out, see next page.

Facsimile of Affidavit Used for Challenging the Registration of a Voter in Louisiana

AFFIDAVIT IN CASE REGISTRATION
OF VOTER IS CHALLENGED

STATE OF LOUISIANA
PARISH OF Washington

Personally came and appeared before me Curtis M. Thorn

(Deputy) Registrar of Voters in and for the Parish of Washington
State of Louisiana.

_____ and _____

who being duly sworn, do depose and say:

That they are bona fide registered voters of this parish; that after reasonable investigation by them, and each of them, and on information and belief, that _____

Registered from _____
(Municipal number and street, if any)

To whom was issued registration certificate No. _____ Ward _____

Precinct _____, of this Parish, is illegally registered or has lost his or her right to vote in the precinct, ward or parish in which they are registered, for the following reasons:

Error in Spelling

And should be erased from the Official Precinct Register of Ward _____, Precinct _____, that this affidavit is made for the purpose of causing said name to be erased.

Sworn to and subscribed before me, on this 26 day of May, 19 54

Curtis M. Thorn
(Deputy) Registrar of Voters

CHAPTER VI. FEDERAL PROTECTION OF THE RIGHT TO VOTE

The events reported in the preceding chapters have convinced this Commission that qualified American citizens are, because of their race or color, being denied their right to vote.

This betrayal of the ideal set forth in the Declaration of Independence is also in clear violation of the Constitution, whose Fifteenth Amendment provides: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

To the extent that the denial is carried out by State officials rather than by private intimidation, it is also a clear violation of the Constitution's Fourteenth Amendment, which provides that: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

What can the Government of the United States do about these clear violations of its fundamental law?

Once, the answer to this question would also have been clear. During Reconstruction, Congress passed the Enforcement Act of 1870 and kindred measures which spelled out a detailed program for Federal supervision of elections in which Members of Congress were being chosen. Federal offenses were made of such activities as false registration, voting without legal right, making false returns of votes cast, bribery, interference in any manner with election officials, and neglect by any election official of duties imposed by State or Federal law. It was further provided that Federal judges might send Federal marshals to enforce these laws in person.

But in 1894 this legislation was repealed. Once again authority over voting was divided between Federal and State governments, where it remains.

Federal powers to protect the franchise are defined piecemeal in a multiplicity of constitutional provisions, statutes, and court decisions. Readers who wish a detailed review of these matters will find it in the unabridged edition of this report. Here, the heart of the present problem may be stated briefly.

The right of each State to determine the qualifications which its citizens must possess in order to vote is unquestioned. But it is not unlimited. Under the equal protection clause of the Fourteenth Amendment, any voting qualification established by a State must be one which can be applied equally to all persons. Thus a State may

require that every voter must be literate, but it could not require that every voter must be over six feet tall, blonde, and Aryan. The States are specifically forbidden by the Fifteenth and Nineteenth Amendments to require that a voter be white or male.

The Federal Government has clear legal authority to enforce these constitutional provisions regarding the right to vote, in any election involving choice of Federal officers. It can enforce these provisions against discriminatory State actions—the action of registrars, for example—in *any* election, city, State or Federal. In any election in which a Federal officer is to be chosen, it can protect the right to vote against interference by private citizens.

In the case of *Ex parte Yarbrough*, in 1884, the Supreme Court ruled that the right to vote for Members of Congress is one derived from and secured by the Constitution. In 1941, in *U.S. v. Classic*, a Court dictum went beyond the Fourteenth and Fifteenth Amendments to declare that this right may be protected not merely against actions of States but also against those of private individuals. The fact that State officers as well as national officers are being chosen, in an election held at the same time and place, does not nullify these Federal powers. In the Yarbrough decision, the Supreme Court noted that "it is only because the Congress of the United States through long habit and long years of forbearance has, in deference and respect to the States, refrained from the exercise of these powers, that they are now doubted."

In practice, as the Court noted, the Federal Government has left the conduct of registration and elections almost wholly to the States, confining its intervention to such matters as the regulation of campaign contributions. Certain Federal statutes stemming from the Civil Rights Act of 1870 are still on the books, providing civil and criminal sanctions against interference with the right to vote. But these have thus far proven to be of limited application, and difficult to enforce.

When this Commission inquired concerning the number of racial voting complaints received by the U.S. Department of Justice in the past 5 years, Joseph M. F. Ryan, Jr., Acting Assistant Attorney General in charge of the Civil Rights Division, replied that "approximately 120 racial voting complaints were received by the Department" but that "the precise number of investigations which were made of these complaints is not presently available."

After noting that the inadequacies of present voting-violations statutes "have long been recognized," Mr. Ryan continued:

> . . . The Department of Justice over the years has encountered serious difficulties in securing convictions for civil rights violations. Such prosecutive difficulties are compounded in cases of nonviolent racial discrimination, common to the voting field.

As an example of the Department's difficulties, Mr. Ryan cited its experience with a Federal grand jury in the western district of Louisiana in 1956–57. The jury returned no indictments when evidence was presented that 1,400 qualified Negro voters in three parishes had been illegally purged from the voting lists. It also chose not even to hear the complete evidence respecting a similar purge of some 4,700 qualified Negro voters in three additional parishes. It may be noted that while "Washington interference" is the cry commonly raised in civil rights cases, in all such cases, the prosecutor, grand jurors, judge, and trial jurors are normally residents of the community or area.

In the Civil Rights Act of 1957, which created this Commission, the Congress sought to remedy these "prosecutive difficulties" of criminal sanctions by reinforcing and extending Federal *civil* powers to protect the franchise. Section 1 of the Act of 1870, now codified as 42 U.S.C. sec. 1971, was amended by adding new enforcement provisions to its declaration now designated as subsection "a" that all citizens "otherwise qualified by law to vote" shall be allowed to vote in "any election by the people in any State, Territory, district, county, city, parish . . . without distinction of race, color, or previous condition of servitude." These four provisions were added:

(1) Section (b) declares that no person shall intimidate, threaten, or coerce, or attempt to intimidate, threaten or coerce, another for the purpose of interfering with his right to vote in any election in which a Federal officer is to be selected.

(2) Section (c) gives to the Attorney General of the United States power to institute, for or in the name of the United States, any civil action or proper proceeding for preventive relief, whenever any person has deprived or there are reasonable grounds to believe he is about to deprive another of rights secured in sections (a) and (b).

(3) Section (d) gives to the Federal district court jurisdiction of proceedings instituted under section (c). Of consequence is the provision that the Federal court shall entertain such proceedings without requiring that the party aggrieved first exhaust his State administrative or other remedies.

(4) Section (e) establishes contempt proceedings and provides for the rights of individuals cited for contempt of an order issued in an action instituted under section 1971.

The device of allowing the United States, through its Attorney General, to institute a civil action against infringement or threatened infringement of an individual's right to vote is a unique contribution to the field of voting protection. It appears to be the first time that the Federal Government has been empowered to act thus in the realm of civil rights. In addition to the fact that this is a civil proceeding for injunctive relief by a judge rather than a criminal prosecution before a jury, two other aspects are noteworthy. The Attorney General need not wait for a complaint from an intimidated

victim, but may bring suit even without his consent. And the action, bypassing State and local courts, may be initiated in a Federal district court, permitting relief before it is too late to be effective, i.e., before the election is held.

But in terms of securing and protecting the right to vote, the record of the Department of Justice's Civil Rights Division under the Civil Rights Act of 1957 is hardly more encouraging than it was before.

Nearly 2 years after passage of the Act, the Department of Justice had brought only three actions under its new powers to seek preventive civil relief, rather than criminal conviction, against any interference with the right to vote.

The Terrell County, Ga., action was dismissed on the ground that the relevant sections of the Act of 1957 are unconstitutional. Although the action had been brought against State officials in regard to registration for elections involving candidates for Federal office, the Federal district judge rejected it because the act provides—unconstitutionally, he thought—for action against private individuals, and in purely State or local elections.

As noted in Chapter IV, the Macon County, Ala., action was brought against two registrars, and was dismissed because the registrars had resigned, leaving no party defendant.

At this writing, the Washington Parish, La., action is still pending.

Thus the new Federal powers provided by the Act of 1957 have not been thoroughly tested.* Mr. Ryan, of the Civil Rights Division, states that the Department of Justice's experience in the administra-

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*COMMISSIONER JOHNSON:

Section 131(c) of the Civil Rights Act of 1957 (42 U.S.C. 1971(c)) authorizes the Attorney General to "institute a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order" where "there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person" of the right to vote. The Commission's Report shows that this grant of power to the Attorney General has not been fully tested, having been invoked three times. Yet our findings also show that in 16 counties where Negroes constituted a majority of the 1950 voting-age population there are *no* Negroes registered to vote. In 49 other counties where Negroes constituted a majority of the 1950 voting-age population, some Negroes are registered, but in numbers representing fewer than *five* percent of each county's 1950 voting-age Negroes. The total absence of Negroes from the registration rolls or the registration of only a few in such counties in the writer's view warrants at least an investigation by the Department of Justice to ascertain whether there are not "reasonable grounds" to institute actions for the preventive relief authorized by the statute. Even if such investigations may be hampered by the inability to examine registration records, they should nonetheless be undertaken.

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tion of the Civil Rights Act of 1957 "has demonstrated the need for its implementation by a law giving access to registration records and requiring their retention."

This Commission has also met with difficulties in seeking access to registration records. But even if a law were adopted to guarantee such access and even if the Attorney General should bring civil suits for preventive relief in a larger number of districts where there are presently "reasonable grounds to believe" that persons are being deprived of their right to vote, there is little reason to believe that such litigation would afford adequate relief.

The history of voting in the United States shows, and the experience of this Commission has confirmed, that where there is will and opportunity to discriminate against certain potential voters, ways to discriminate will be found. The burden of litigation involved in acting against each new evasion of the Constitution, county by county, and registrar by registrar, would be immense. Nor is there any presently available effective remedy for a situation where the registrars simply resign.

If any State were to pass a law forthrightly declaring colored citizens ineligible to vote, the Supreme Court would strike it down forthwith as in flagrant violation of the Fifteenth Amendment. The trouble, however, comes not from discriminatory laws, but from the discriminatory application and administration of apparently nondiscriminatory laws.

Against the prejudice of registrars and jurors, the U.S. Government appears under present law, to be helpless to make good the guarantees of the U.S. Constitution.

CHAPTER VII

FINDINGS AND RECOMMENDATIONS

The Problem

"To secure these rights," declared the great charter of American liberty, "governments are instituted among men, deriving their just powers from the consent of the governed." The instrument by which consent is given or withheld is the ballot.

Few Americans would deny, at least in theory, the right of all qualified citizens to vote. A significant number, however, differ as to which citizens are qualified. None in good conscience can state that the goal of universal adult suffrage has been achieved. Many Americans, even today, are denied the franchise because of race. This is accomplished through the creation of legal impediments, administrative obstacles, and positive discouragement engendered by fears of economic reprisal and physical harm. With those Americans who of their own volition are too apathetic either to register or, once registered, too apathetic to vote, this report does not concern itself. But with denials of the right to vote because of race, color, religion, or national origin, this Commission and the Congress of the United States are urgently concerned.

The Commission's studies reveal that many Negroes are eager to exercise their political rights as free Americans and that they have made some progress. Our investigations have revealed further that many Negro American citizens find it difficult, and often impossible, to vote. An attempt has been made to gather and assess statistics and facts regarding denial of the right to vote. This task has required careful analysis and understanding of the legal impediments.

The Commission has sought to evaluate the extent to which there is an obligation on the part of the Federal Government to prevent denial of the right to vote because of discrimination by reason of color, race, religion, or national origin. This is what Congress asked. The scope of Federal power to protect the suffrage depends on whether interference comes from State and local officers or from private persons; on whether improper voting procedure alone is involved, or whether the interference is based on race or color, and on the nature of the election itself, whether State or national.

Article I, section 2, of the U.S. Constitution has long stood for the proposition that while the qualifications of electors of Members of Congress are governed by State law, the right to vote for such representatives is derived from the U.S. Constitution. Article I, section

4, authorizes Federal protection of voting in Federal elections against interference from any source. The Fourteenth Amendment affords protection against State interference with the equality of opportunity to vote in any election. The Fifteenth Amendment prohibits any action by the United States or a State, in any election, which interferes with the right to vote because of race or color or previous condition of servitude. The Seventeenth Amendment provides that a person possesssing State qualifications has a right to vote which is derived not merely from the constitution or the laws of the state from which the Senator is chosen, but has its foundation in the Constitution of the United States. The Nineteenth Amendment supports action in any election against State interference with the right to vote because of sex.

On many occasions our nation has found it necessary to review the state of the civil rights of its people. During the period 1776 through 1791 civil rights were of prime concern in the drafting of the Declaration of Independence, the writing of the Constitution and the Bill of Rights. A new concept of liberty emerged. It was almost immediately challenged by the Alien and Sedition Acts of 1798. Then, prior to, during, and after the War Between the States an appraisal of civil rights culminated in the adoption of the Thirteenth, Fourteenth and Fifteenth Amendments. The most recent review prior to 1957 was initiated by Executive Order 9808 promulgated by President Harry S. Truman on December 5, 1946, establishing the President's Committee on Civil Rights. This culminated in the 1947 report of the Committee entitled *To Secure These Rights.* Many recommendations were made in the voting field. Twelve years have passed since that report was issued. Without attempting to evaluate specific changes other than those reflected in the body of our report on voting, it has become apparent that legislation presently on the books is inadequate to assure that all our qualified citizens shall enjoy the right to vote. There exists here a striking gap between our principles and our everyday practices. This is a moral gap. It spills over into and vitiates other areas of our society. It runs counter to our traditional concepts of fair play. It is a partial repudiation of our faith in the democratic system. It undermines the moral suasion of our national stand in international affairs. It reduces the productivity of our nation. In the belief that new legislation is needed, we submit for consideration of the President and the Congress the following recommendations which we believe will help Americans to make good our declarations of national purpose.

REGISTRATION AND VOTING STATISTICS

Background

The Commission study of voting revealed that information on voting turnout in the United States is incomplete. Data on voting

turnout among specific racial groups, particularly on a comparative basis for States or sections, was impossible to obtain except for fragmentary material provided by the Survey Research Center of the University of Michigan, Elmo Roper and Associates, and the Gallup Organization. Official State sources are of only limited help. Some States report total registration figures, in some cases broken down by counties. Other States do not report such figures. To know the extent of nonvoting requires a standard, and the one usually adopted is the potential vote, that is, the total number of citizens of voting age. This is an inexact standard because, in any year, millions of citizens are ineligible to vote because of State residence and other requirements. If it were possible to have reliable registration figures, State by State and county by county, the computation of voting turnout among those qualified to vote would be simple. Millions of citizens are eligible to register but neglect to do so and their number can be more accurately estimated if reliable registration figures are available.

Findings

The Commission finds that there is a general deficiency of information pertinent to the phenomenon of nonvoting. There is a general lack of reliable information on voting according to race, color, or national origin, and there is no single repository of the fragmentary information available. The lack of this kind of information presents real difficulties in any undertaking such as this Commission's.

Recommendation No. 1

Therefore, the Commission recommends that the Bureau of the Census be authorized and directed to undertake, in connection with the census of 1960 or at the earliest possible time thereafter, a nationwide and territorial compilation of registration and voting statistics which shall include a count of individuals by race, color, and national origin who are registered, and a determination of the extent to which such individuals have voted since the prior decennial census.*

AVAILABILITY OF VOTING RECORDS

Background

In its effort to discharge its duty to "investigate" formal complaints of denial of the right to vote by reason of race and color, the Commission found it necessary to examine the registration and voting records kept by local officials pursuant to provisions of State law. In both Alabama and Louisiana, the two States which led in the number of voting complaints received by the Commission, the Com-

*The 1960 decennial census forms were "frozen" in December 1958, and are already being printed. The Commission urges the Congress to consider the feasibility of a supplementary census for the collection of these urgently-needed voting statistics.

mission and its staff encountered obstacles in its effort to examine records. These obstacles were erected upon existing State laws, or interpretations thereof, by State officials; they were at least partially effective as a deterrent to the Commission's discharge of its duty.

Specifically, officials of the State of Alabama interpreted constitutional provisions vesting adjudicatory powers in boards of registrars to pass upon applications as precluding examination thereof by a nonjudicial body of the Federal Government. This interpretation was held to be without merit by the Federal courts. Alabama officials further interpreted custodial and repository provisions of State law as precluding production of the records at the Commission's hearing. By compromise agreement, some of the records were examined by the Commission staff after the hearing.

Officials of the State of Louisiana interpreted provisions for examination of the State registration and voting records as prohibiting such examination by the Commission staff. This interpretation, similar to the Alabama refusal, necessitated exercise of the Commission's subpena power, and unnecessarily delayed the Commission's efforts to evaluate the merits of the complaints in both States.

Furthermore, after records in only one-half of the counties being investigated in Alabama had been examined, the State legislature passed a bill which permits the destruction of application forms of persons denied registration. Such forms are essential to any investigation of denials of the right to vote.

Findings

The Commission finds that lack of uniform provision for the preservation and public inspection of all records pertaining to registration and voting hampers and impedes investigation of alleged denials of the right to vote by reason of race, color, religion, or national origin.

Recommendation No. 2

Therefore, the Commission recommends that the Congress require that all State and Territorial registration and voting records shall be public records and must be preserved for a period of 5 years, during which time they shall be subject to public inspection, provided that all care be taken to preserve the secrecy of the ballot.

EVASION OF REGISTRATION RESPONSIBILITIES

Background

Complaints were frequently made that State officials charged with responsibility to register qualified persons as electors evaded this responsibility, in the case of persons of a particular race or color, by inaction. Such practices are beyond the effective reach of the present remedial provisions of the Civil Rights Act of 1957.

Specifically, the Commission found that boards of registrars in both Bullock and Macon Counties in Alabama frequently did not function as boards to register Negro applicants on scheduled dates for registration. Furthermore, in these same two counties, on several different occasions, one or more members of such boards—always in sufficient numbers to preclude the existence of the "majority" required for approval of registration—resigned their posts. And further, State officials responsible for appointing members of boards of registrars repeatedly have delayed such appointments when boards became inoperative through resignation.

Findings

The Commission finds that the lack of an affirmative duty to constitute boards of registrars, or failure to discharge or enforce such duty under State law, and the failure of such boards to function on particular occasion or for long periods of time, or to restrict periods of function to such limited periods of time as to make it impossible for most citizens to register, are devices by which the right to vote is denied to citizens of the United States by reason of their race or color. It further finds that such failure to act is arbitrary, capricious, and without legal cause or justification.

Recommendation No. 3

Therefore, the Commission recommends that part IV of the Civil Rights Act of 1957 (42 U.S.C. 1971) shall be amended by insertion of the following paragraph after the first paragraph in section 1971(b):

Nor shall any person or group of persons, under color of State law, arbitrarily and without legal justification or cause, act, or being under duty to act, fail to act, in such manner as to deprive or threaten to deprive any individual or group of individuals of the opportunity to register, vote and have that vote counted for any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegate or Commissioner for the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

REFUSAL OF WITNESSES TO TESTIFY

Background

In the course of conducting voting hearings in Montgomery, Ala., in December 1958, the Commission was impressed with the fact that its purposes were not fully realized because of the divided authority for compelling the production of registration records. The Commission can subpena such records but the initiative rests with the Attorney General to petition the court to order a contumacious witness to comply with a Commission subpena. Such divided responsibility is unusual. These situations require rapid, coordinated action and

communication. Both are difficult to achieve when there is dual responsibility and operation.

Findings

The Commission finds that the necessity for securing the aid and cooperation of a separate agency of the Federal Government in order to discharge the Commission's responsibilities under law is a needlessly cumbersome procedure. It is not a sound system of administration. Full and effective implementation of Commission policy in the discharge of Commission responsibilities under law requires full and exclusive control of any necessary resort to the courts by the Commission itself.

Recommendation No. 4

Therefore, the Commission recommends that in cases of contumacy or refusal to obey a subpena issued by the Commission on Civil Rights (under sec. 105(f) of the Civil Rights Act of 1957) for the attendance and testimony of witnesses or the production of written or other matter, the Commission should be empowered to apply directly to the appropriate U.S. district court for an order enforcing such subpena.

APPOINTMENT OF TEMPORARY FEDERAL REGISTRARS

Background

The Commission has investigated sworn complaints of denials of the right to vote by reason of color or race in seven States. In two States where it determined to hold formal hearings, Alabama and Louisiana, its efforts to secure all relevant facts were met with open resistance by State officials. Nevertheless, on the basis of the testimony of witnesses and the examination of the registration records that were made available in Alabama, and through field investigation in other States, the Commission found that a substantial number of Negroes are being denied their right to vote. The infringement of this right is usually accomplished through discriminatory application and administration of State registration laws.

But discriminatory registration is not the only problem. The Commission also found instances in which there was no registration board in existence, or none capable of functioning lawfully. In all such cases, the majority of the electorate already registered were white persons.

For one example, the members of the Macon County, Alabama Board of Registrars resigned after this Commission's Alabama hearing. At the hearing, 25 Macon County Negroes had testified that the Board had unlawfully refused to register them. Invited to answer these charges, the Macon County registrars had refused to testify. But an injunction suit against the Board to compel registration of 17

of the hearing witnesses and other apparently qualified Negroes, brought by the U.S. Attorney General under the new provisions of the Civil Rights Act of 1957, was dismissed for lack of anyone to sue. Subsequently, new appointees to the Macon County Board were named in July 1959. They refused to serve. Their reason, according to a United Press International report, was "the pressure for Negro registration" and "fear of being 'hounded' by the United States Civil Rights Commission."

The two other suits brought by the Attorney General under the same Act had not at this writing resulted in a single registration. The suit in Georgia had been dismissed and was on appeal; the one in Louisiana was pending.

In short, no one had yet been registered through the civil remedies of the 1957 act.

Class suits on behalf of a number of Negroes to obtain registration have rarely been successful. The courts have inclined to the view that these suits are of an individual nature, with the result that a vast number of suits may be necessary.

The delays inherent in litigation, and the real possibility that in the end litigation will prove fruitless because the registrars have resigned make necessary further remedial action by Congress if many qualified citizens are not to be denied their constitutional right to vote in the 1960 elections.

Findings

The Commission finds that substantial numbers of citizens qualified to vote under State registration and election laws are being denied the right to register, and thus the right to vote, by reason of their race or color. It finds that the existing remedies under the Civil Rights Act of 1957 are insufficient to secure and protect the right to vote of such citizens. It further finds that some direct procedure for temporary Federal registration for Federal elections is required if these citizens are not to be denied their right to register and vote in the forthcoming national elections. Some method must be found by which a Federal officer is empowered to register voters for Federal elections who are qualified under State registration laws but are otherwise unable to register.

Such a temporary Federal registrar should serve only until local officials are prepared to register voters without discrimination. The temporary Federal registrar should be an individual located in the area involved, such as the Postmaster, U.S. Attorney, or Clerk of the Federal District Court. The fact-finding responsibilities to determine whether reasonable grounds exist to believe that the right to vote is being denied could be discharged by the Commission on Civil Rights, if extended. Because of the importance of the matter, such

a temporary Federal registrar should be appointed directly by the President of the United States.

Recommendation No. 5

Therefore, the Commission recommends that, upon receipt by the President of the United States of sworn affidavits by nine or more individuals from any district, county, parish, or other political subdivision of a State, alleging that the affiants have unsuccessfully attempted to register with the duly constituted State registration office, and that the affiants believe themselves qualified under State law to be electors, but have been denied the right to register because of race, color, religion or national origin, the President shall refer such affidavits to the Commission on Civil Rights, if extended.

A. The Commission shall:

1. Investigate the validity of the allegations.
2. Dismiss such affidavits as prove, on investigation, to be unfounded.
3. Certify any and all well-founded affidavits to the President and to such temporary registrar as he may designate.

B. The President upon such certification shall designate an existing Federal officer or employee in the area from which complaints are received, to act as a temporary registrar.

C. Such registrar-designate shall administer the State qualification laws and issue to all individuals found qualified, registration certificates which shall entitle them to vote for any candidate for the Federal offices of President, Vice President, presidential elector, Members of the Senate or Members of the House of Representatives, Delegates or Commissioners for the Territories or possessions, in any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

D. The registrar-designate shall certify to the responsible State registration officials the names and fact of registration of all persons registered by him. Such certification shall permit all such registrants to participate in Federal elections previously enumerated.

E. Jurisdiction shall be retained until such time as the President determines that the presence of the appointed registrar is no longer necessary.

Dissent by Commissioner Battle

I concur in the proposition that all properly qualified American citizens should have the right to vote but I believe the present laws are sufficient to protect that right and I disagree with the proposal for the appointment of a Federal Registrar which would place in the hands of the Federal Government a vital part of the election process so jealously guarded and carefully reserved to the States by the founding fathers.

PROPOSAL FOR A CONSTITUTIONAL AMENDMENT TO ESTABLISH UNIVERSAL SUFFRAGE

By Chairman Hannah and Commissioners Hesburgh and Johnson

The Commission's recommendation for temporary Federal registration should, if enacted by Congress, secure the right to vote in the forthcoming national elections for many qualified citizens who would otherwise, because of their race or color, be denied this most fundamental of American civil rights. But the proposed measure is clearly a stopgap.

In its investigations, hearings and studies the Commission has seen that complex voter qualification laws, including tests of literacy, education and "interpretation," have been used and may readily be used arbitrarily to deny the right to vote to citizens of the United States.

Most denials of the right to vote are in fact accomplished through the discriminatory application and administration of such State laws. The difficulty of proving discrimination in any particular case is considerable. It appears to be impossible to enforce an impartial administration of the literacy tests now in force in some States, for where there is a will to discriminate, these tests provide the way.

Therefore, as the best ultimate solution of the problem of securing and protecting the right to vote, we propose a constitutional amendment to establish a free and universal franchise throughout the United States.

An important aim of this amendment would be to remove the occasion for further direct Federal intervention in the States' administration and conduct of elections, by prohibiting complex voting requirements and providing clear, simple and easily enforceable standards.

The proposed constitutional amendment would give the right to vote to every citizen who meets his State's age and residence requirements and who is not legally confined at the time of registration or election.

Age and residence are objective and simple standards. With only such readily ascertainable standards to be met, the present civil remedies of the Civil Rights Act should prove more effective in any future cases of discriminatory application. A court injunction could require the immediate registration of any person who meets these clear-cut State qualifications.

The proposed amendment is in harmony with the American tradition and with the trend in the whole democratic world. As noted in the beginning of this section of the Commission's report, the growth of American democracy has been marked by a steady expansion of the franchise; first by the abandonment of property qualifications

and then by conferral of suffrage upon the two great disfranchised groups, Negroes and women. Only 19 States now require that voters demonstrate their literacy. Michigan, New Hampshire, Pennsylvania, Tennessee, and Vermont have suffered no apparent harm from absence of the common provisions disqualifying mental incompetents. With minor exceptions, mostly involving election offenses, Colorado, Maine, Massachusetts, Michigan, Pennsylvania, Utah, Vermont, and West Virginia have no provisions barring certain ex-convicts from the vote, and of the States which do have such provisions, all but eight also provide for restoration of the former felon's civil rights. In only five States is the payment of a poll tax still a condition upon the suffrage.

The number of Americans disqualified under each of these categories is very small compared with the approximately 90 million now normally qualified to vote. It is also small in relation to the numbers of qualified nonwhite citizens presently being disfranchised by the discriminatory application of these complex laws. The march of education has almost eliminated illiteracy. In a nation dedicated to the full development of every citizen's human potential, there is no excuse for whatever illiteracy that may remain. Ratification of the proposed amendment would, we believe, provide an additional incentive for its total elimination. Meanwhile, abundant information about political candidates and issues is available to all by way of television and radio.

We believe that the time has come for the United States to take the last of its many steps toward free and universal suffrage. The ratification of this amendment would be a reaffirmation of our faith in the principles upon which his nation was founded. It would reassure lovers of freedom throughout a world in which hundreds of millions of people, most of them colored, are becoming free and are hesitating between alternative paths of national development.

For all these reasons we propose the following Twenty-third Amendment to the Constitution of the United States.

ARTICLE XXIII

SECTION 1

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State or by any person for any cause except inability to meet State age or length-of-residence requirements uniformly applied to all persons within the State, or legal confinement at the time of registration or election. This right to vote shall include the right to register or otherwise qualify to vote, and to have one's vote counted.

SECTION 2

The Congress shall have power to enforce this article by appropriate legislation.

SEPARATE STATEMENT REGARDING PROPOSED XXIII AMENDMENT

By Vice Chairman Storey and Commissioner Carlton

We strongly believe in the right of every qualified citizen of the United States, irrespective of his color, race, religion, or national origin, to register, vote, and have his vote counted. We regard full protection of these rights of suffrage by both State and Federal Governments necessary and proper. Therefore, we have supported and voted for all recommendations of the Commission (except the proposed XXIII Amendment) to strengthen the laws and improve the administration of registration and voting procedures. However, we cannot join our distinguished colleagues in the recommendation of the proposed constitutional amendment. These are our several reasons:

1. We believe that our Commission recommendations, if enacted into law and properly enforced, will eliminate most if not all of the restrictions on registration and voting by reason of race, color, religion, or national origin.

A recommendation proposing a constitutional amendment granting additional power to the Federal Government would be in order only if we had found a lack of power under existing constitutional provisions. Such is not the case.

2. On principle, proposals for constitutional amendments which would alter long-standing Federal-State relationships, such as the constitutional provision that matters pertaining to the qualifications of electors shall be left to the several States, should not be proposed in the absence of clear proof that no other action will correct an existing evil. No such proof is apparent.

3. The Constitution of the United States of America presently includes sufficient authority to the Federal Government to enable it effectively to deal with denials of the right to vote by reason of race, color, religion, and national origin.

4. The information and findings cited in support of the proposed Twenty-third Amendment disclose that some illiteracy still exists, that authoritative State statistics and studies are wholly lacking to support such an important proposal, and that our staff has not had the opportunity to make a thorough study of such a far-reaching proposal.

* * *

I heartily agree with the objections of Commissioners Storey and Carlton to the proposed Constitutional Amendment.

John S. Battle, Commissioner

PART THREE

PUBLIC EDUCATION

CHAPTER I. WHAT THE COURT DECIDED

At the root of the Supreme Court's decision in the *School Segregation Cases*, Chief Justice Warren explained, was "our American ideal of fairness."

Speaking in 1954 for a unanimous Court on the actions brought on behalf of Negro children against school boards in four States, the Chief Justice declared:

> Today, education is perhaps the most important function of State and local governments. . . . It is the very foundation of good citizenship. . . . In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the State has undertaken to provide it, is a right which must be made available to all on equal terms.
>
> We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

Reviewing earlier cases in which the Court had decided that "intangible considerations" made separate university graduate and professional schools for Negroes in fact unequal, the Chief Justice continued:

> Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.

Journalistic brevity and popular misconception have led many Americans to believe that the Court commanded the nation's public schools to "integrate" students of all races in their classrooms. But neither in the opinion quoted above nor in the accompanying decision on a similar case involving the District of Columbia did the Chief Justice use the words "integrate" or "integration." Nor did he use the words "desegregate" or "desegregation."

What the Court condemned was racial discrimination. What the Court declared was that no pupil may be refused admission to a public school solely because of his race or color. In the four State cases, the Court ruled that segregation in the public schools solely because of race or color is a denial of the equal protection of the laws promised

by the Fourteenth Amendment to the U.S. Constitution. Because the equal protection clause applies only to actions by States, a companion case from the District of Columbia required a separate decision; here the Court ruled that such segregation is also a violation of the due process of law guaranteed by the Constitution's Fifth Amendment.

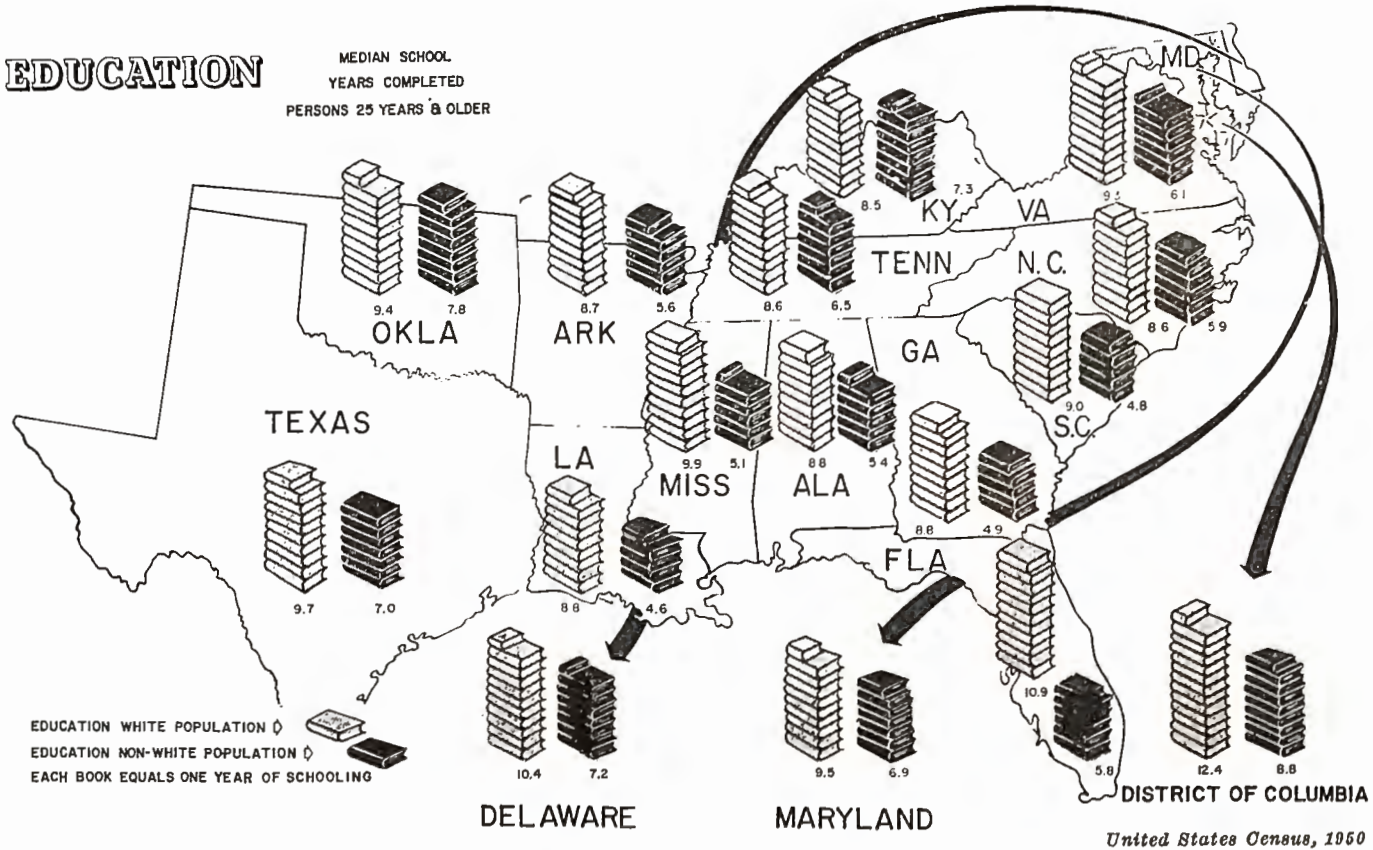
This was not a precipitous reversal of all previous Court opinion. The doctrine that the equal protection requirements of the Fourteenth Amendment can be satisfied by "separate but equal" public schools had been advanced by a Supreme Court justice as a judicial aside (dictum) in the 1896 case of *Plessy* v. *Ferguson*, which was concerned not with schools but with segregated transportation. The doctrine was allowed to stand for some years. But beginning in 1938, in a series of decisions ordering the immediate admission of Negro applicants to State university graduate and professional schools, the Court had foreshadowed its 1954 ruling by declaring with growing emphasis that separate schools cannot be truly equal.

Yet to many white Americans, the 1954 decision seemed an unfair denial of their own State's rights and individual rights. What right has the Supreme Court, they asked, to compel a State to run its own public school system in a certain way? What right has the Federal Government, parents asked, to compel us to send our children to school with Negroes?

After a period of relative calm, the Southern States hardest hit by the Court decision—Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Virginia—rallied to challenge the Court ruling. Reviving the doctrine of interposition, they also enacted laws of "massive resistance" discussed in the following chapter. Louisiana, for example, amended its constitution in 1954 to declare that a provision for separate white and Negro schools was not, as originally stated, because of race. No one questions a State's police power to promote and protect its own public health, morals, better education, peace and good order. This, said the Louisiana amendment, was now the purpose of its separate schools.

In 1957 the amendment was struck down by the Fifth U.S. Circuit Court of Appeals. A State may indeed use its police power for the positive purposes mentioned. But it may not use that power, the Court ruled, to negate the U.S. Constitution by denying any person his constitutional rights as defined by the Supreme Court.

The point became even clearer when, in 1956, Louisiana tried another legal tactic. This time it acted on the theory that, under the Eleventh Amendment to the U.S. Constitution, a State cannot be sued without its consent. The Louisiana constitution was thereupon amended to withdraw the State's consent to suits against certain



United States Census, 1950

CHART V. Comparison of White and Non-white Education

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State agencies, including those concerned with recreation and education.

Once again the Fifth U.S. Circuit Court blocked the way. Suits brought against a local school board to gain admission to a public school, said the Court, are not suits brought against the State to compel the State to *do* something. On the contrary, the Court continued, their purpose is to make State officials *stop* doing something which unlawfully denies people their Constitutional rights.

The difference is subtle and profound. But it is plain fact that, in public education as in voting and public housing, Negro Americans are not seeking any novel or special privileges for themselves. They are not trying to compel the nation's Federal, State, and local governments to do anything for them which these governments are not already doing for other Americans. They ask only that these governments *not* do things that deny to Negroes the rights which the Constitution promises to all Americans.

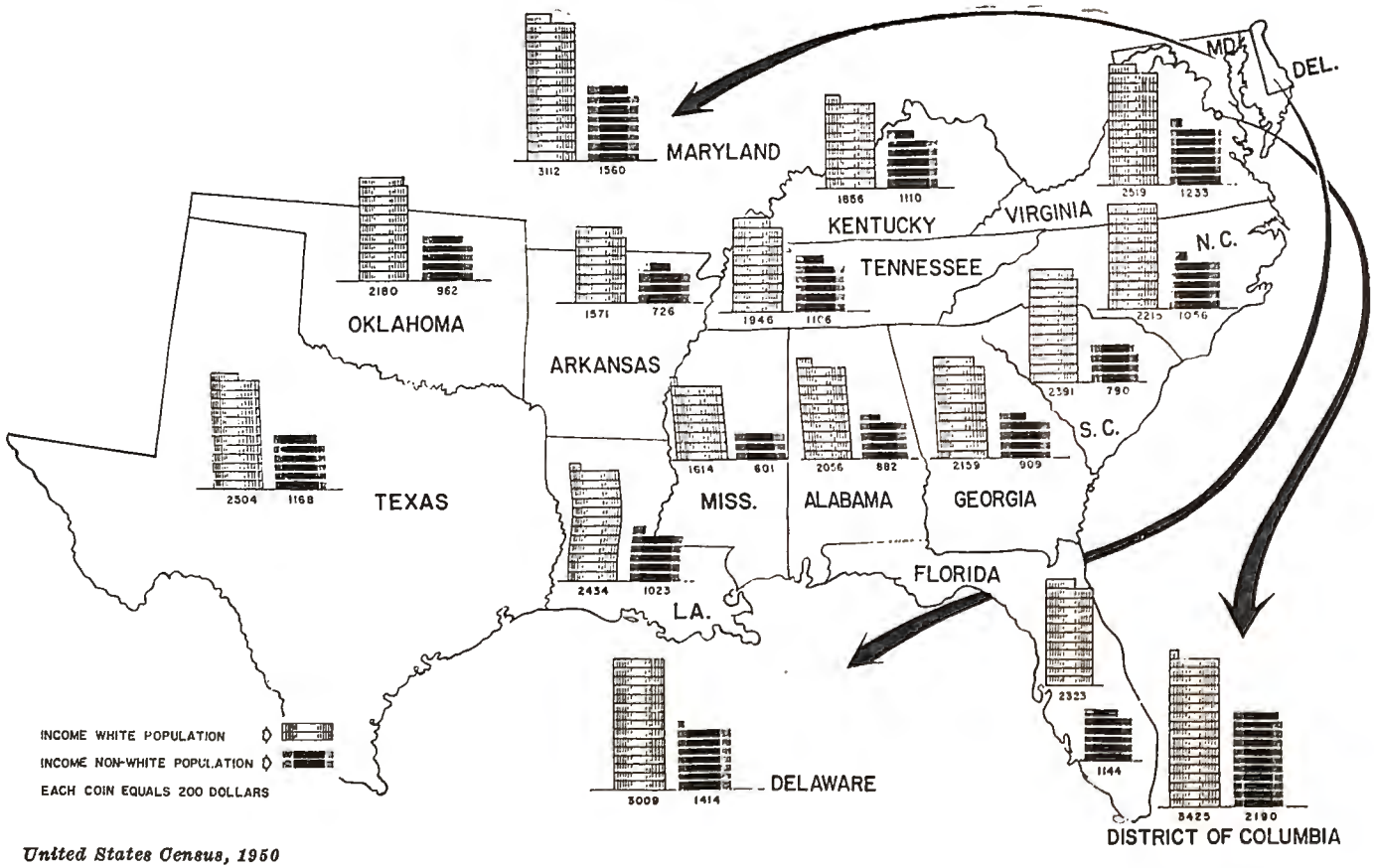
THE PHILOSOPHICAL BASIS OF THE COURT DECISION

What the Supreme Court and lower Federal courts have been reaffirming is a principle embedded not only in U.S. law but, even more deeply, in American democratic philosophy.

The materialistic philosophy championed by totalitarians asserts that human beings are chance products of blind physical forces and hence are possessed of no natural rights whatever, but only of such privileges as may be granted them by the state. The United States of America was founded on the opposite concept of the nature of man. Our first premises are that a Creator exists, and that every human being is endowed by his Creator with certain inalienable rights. Not granted by the state, these rights may not rightfully be denied by the state, because they are God-given elements of human nature, present at birth and essential to human fulfillment. This century's world revolution of colonial and subject peoples is evidence that the deepest innate needs and urges of his nature impel every human being—black or yellow no less than white—toward life, liberty, and the pursuit of happiness.

But human freedom is not absolute. Every man's freedom ends where another's begins. Men can live happily together, the Founding Fathers agreed, only if every man will respect every other's fundamental rights, and restrain his own impulses accordingly.

But honest men may honestly differ, as Americans have in the school segregation controversy, about whose rights and which rights are paramount in any given conflict. To resolve such differences peaceably is the purpose of law; the alternative is anarchy. It was such a resolution that the Supreme Court made in 1954.



United States Census, 1950

CHART VI. Comparison of White and Non-white Income, Families and Unrelated Individuals

CHAPTER II. WHAT THE PEOPLE DID

In his recent book, *Image of America*, the French scholar-priest R. L. Bruckberger observed:

> The great revolution of modern times, the only one that has essentially changed the forms of society, was carried out, not by Russia, but by America, without fanfare, quietly, patiently, and laboriously, as a field is plowed furrow by furrow.

Father Bruckberger was writing about the whole great Second American Revolution—industrial and social—of the 20th century. But his observation may be applied accurately to that phase of the revolution which was speeded by the Supreme Court's school decision.

Most of the headlines have gone to those comparatively few white Americans who—in Little Rock, Clinton, Nashville, and elsewhere—set out to demonstrate their racial superiority and disrespect for law by beatings, bombs, mob action, and defiance of the Supreme Court. But most Americans who oppose the Court ruling have restricted themselves to the democratic rights which the Court itself has often affirmed: the rights to criticize an unpopular Court decision, to seek to persuade others, and to offer orderly legal resistance.

And countless other Americans have, "without fanfare, quietly, patiently, and laboriously," gone about the task of reorganizing their emotions and their school systems in obedience to the law of the land.

It was a gigantic task that the Court set them, and a national one. Racial discrimination is not a Southern invention. Long before the South began establishing its first public school system after the War Between the States, school segregation began in the nonslave States of the North. The Supreme Court dictum of 1896 which asserted the constitutionality of "separate but equal" schools, and which was erased by the Court of 1954, was based largely on such earlier State court decisions as that in the case of *Roberts* v. *City of Boston*. Here, in 1849, it was decided that the capital of abolitionism could lawfully continue to segregate its Negro schoolchildren.

In 1954, when the *School Segregation Cases* were decided, no less than 17 States plus the District of Columbia were maintaining dual public school systems by compulsion of State (or District) law. Within these systems were thousands of schools with nearly 11 million pupils, about one-fourth of whom were Negro. This realm of compulsory segregation included the whole South, plus the Border and Western States of Delaware, Maryland, West Virginia, Kentucky, Missouri, Arkansas, Oklahoma, and Texas.

CHART VII. Status of Segregation, 1954

In addition there were three States—Arizona, Kansas, and New Mexico—in which many school districts were maintaining separate white and colored schools by permission of State law. The searchlight of the decision also turned up a few communities—in California, Ohio, and elsewhere—that were segregating their schoolchildren in outright defiance of State law.

Well aware of the mountainous problems that would be involved in reorganizing these school systems, the Supreme Court delayed its implementing decision for a full year, and then mildly required that the reorganization proceed "with all deliberate speed." Federal district courts were assigned to decide, in disputed cases, whether a community was making a "prompt and reasonable start toward full compliance" with the law. Once such a start has been made in good faith, the ruling stated, the district court may allow additional time for fulfillment. In providing for gradual transition, the courts "may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units . . ., and revision of local laws and regulations which may be necessary in solving the foregoing problems."

THE PACE AND PATTERN

Five American cities and scattered school districts elsewhere began to merge their dual school systems without waiting for the Supreme Court's implementing order. Among the smaller communities that began in 1954 were Fayetteville and Charleston, Ark., Newark and Dover, Del., and 22 counties in West Virginia. The five cities that set the pace and the pattern for much of the desegregation that would follow were Washington, D.C., Baltimore, Md., Wilmington, Del., and St. Louis and Kansas City, Mo. All five had high percentages of Negro population. But all in greater or less degree had long since begun to eliminate compulsory racial discrimination from such areas of community life as parks, playgrounds, theaters, restaurants, transportation, jobs, and professional organizations. And all five enjoyed the strong State and local leadership in favor of obedience to law, that proved to be an essential factor in successful desegregation everywhere.

Baltimore and Washington desegregated at one stroke, and without much special community preparation after the May 1954 decision. Baltimore's operation was the simplest: never having established school attendance zones except in cases of overcrowding, it simply announced that every student could attend the school of his choice, provided it was not overcrowded. Of the city's 163 public schools, 49 were chosen by both Negro and white students or their parents in

September 1954. Of the nearly 4,000 Negro pupils who entered schools with more than 46,000 white students, most were kindergartners or first graders who happened to live near the schools. Only a few hundred Negroes chose to attend formerly all-white junior and senior high schools.

The Washington operation involved an elaborate reshuffling of the city's school districts, to establish new neighborhood districts without regard to race. Having always districted their schools, and with the school population approaching its 1959 proportions of three Negroes to one white, Washington authorities found it impracticable or unnecessary to permit as much freedom of student choice as Baltimore was allowing, and as many other communities would in the future. Children already enrolled in a city school who now found themselves in a new school zone had the option of continuing in the old school or entering the new one. There was no choice, however, for children new to the system, or for those just entering junior or senior high school. But with the strong backing of the District Commissioners and President Eisenhower ("I propose to use whatever authority exists in the Office of the President to end segregation in the District of Columbia * * *"), the move met only minor resistance. When the schools opened in September 1954, nearly three-fourths of them enrolled both white and Negro pupils, and nearly one-fourth had teachers of both races.

As many another community was to discover, Washington soon found that unification of its two school systems made sense from more than one standpoint. Great waste and inefficiency had been the price of duplicating facilities and administration; a Negro school might be grossly overcrowded while a nearby white school was only half full. Just before unification, the city's Negro schools were at 107.9 percent of capacity, while its white schools were at only 77.7 percent.

When school officials of 13 States and the District of Columbia met at Nashville on March 5 and 6, 1959, to report their desegregation experiences at the national conference called by this Commission, the Washington Superintendent of Schools, Dr. Carl F. Hansen, testified to another value of unification. It enabled, he said,

> . . . the board of education, school officials, teachers, pupils, parents, citizens, and civil organizations . . . to meet together and work together and exchange views without fear or self-consciousness or the defensiveness which the old system fostered.

Dr. Hansen further pointed out that under the dual system,

> the simple claim for better equalization of space, teachers, and resources led to intrafamily squabbling that prevented progress and improvement. Child was set against child, group against group. This was the pattern of social and civic disunity that was shaped by the matrix of the dual system. It is hard to imagine

that opponents of desegregation would want really to return to the clumsy, provocative, and inefficient system of education which had been tolerated so long in the Nation's Capital.

* * *

Wilmington, St. Louis, and Kansas City all chose to desegregate piecemeal, after careful planning and special programs of preparation for students, teachers, parents, and the community at large.

In Wilmington, the National Association for the Advancement of Colored People urged that the changeover be total and immediate. Its request was rejected, and a 3-year plan adopted, beginning with elementary schools. These opened in September without significant opposition, and the expected rash of transfer requests did not develop. At the end of the first year, NAACP officers complimented the board of education for proceeding as it had.

St. Louis, with about half of Missouri's Negro pupils enrolled in its public schools, adopted a 2-year plan, beginning in September with junior and teacher colleges and such special citywide schools and classes as those for handicapped children. In February 1955 it proceeded with high schools (except technical) and adult education classes, and in September it threw open all the doors. Kansas City, with a similar two-year plan, adopted a more liberal transfer policy. But St. Louis eased the mandatory attendance rule in its new school zones by permitting students to continue in their old schools until graduation and allowing transfers in cases of overcrowding.

Results of banishing compulsory racial discrimination from the public schools of these and other cities and towns will be reported in a later chapter. The most interesting fact to be noted here is that the calm and successful desegregation in these 5 cities, with a combined 1950 population 31 times that of Little Rock, passed without wide public notice outside their own borders.

THE SOUTH RESISTS

Against this record of successful transition in border cities and communities stands the massive resistance—and the far greater difficulties—of the South.

Despite massive Negro emigration, the States of the Deep South probably still stand first, as they did in 1950, in percentages of Negro population. In 1950 whites were actually outnumbered by Negroes in 158 counties of 11 States. But the difficulty did not and does not lie in numbers alone. Many a Southern city is comparable in size and in percent of Negro population with one or more of the five cities reported above. The great difference was that, as Baltimore's Superintendent Fischer observed, "This was the biggest single step our community has ever taken toward desegregation, but it was in no sense

a change of course. We simply kept moving in the same direction in which we had been moving for many years." Southerners, with a way of life built on strict segregation, were asked to take the hardest step first. Understandably, they balked.

Even before 1954, some Southern States anticipating the Supreme Court ruling had created legislative committees to plan legal ways and means of escape. Such committees and plans burgeoned after the Court decisions.

Georgia called for impeachment of Supreme Court justices and declared the Fourteenth and Fifteenth Amendments invalid. Florida proposed to set aside the Court ruling by constitutional amendment. Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, South Carolina, Tennessee, and Virginia invoked the doctrine of interposition, asserting the right of a State to interpose its sovereignty to prevent or arrest contested action by the Federal Government within its borders.

For communities that might prefer no public schools at all to racially mixed ones, eight States provided for legal closing of their schools. The Arkansas and Virginia school-closing statutes (except those relating to presence of Federal troops) have been declared unconstitutional by federal courts. The same fate overtook an Arkansas provision for leasing public school buildings to private organizations. To let public school students attend private, nonsectarian, segregated schools, Arkansas, Alabama, Georgia, Louisiana, North Carolina, and Virginia authorized tuition grants payable from public funds. But at this writing, no actual payment of such grants had been made, and their constitutionality awaited judicial decision. Administration of the "pupil placement" laws enacted by eight Southern States (see p. 125) awaited similar decision.

The difficulties of transition are compounded in Southern rural areas, where the school is often the center of community social life, where community pressures on school officials are direct and rigorous, and where the freedom of choice easily granted in large cities is difficult or impossible. According to the 1950 census, Negroes in the six Deep South States had little more than half the median education of their white neighbors, and in five of these States had well under half the median income.

North and South, in the United States as in Africa, many a Negro has proved himself a first-rate human being. But two centuries of slavery, followed by a century of poverty, discrimination, fear, guilt, resentment, contempt, and overly protective paternalism, are hardly conducive to the development of a group's full human potential. It was a northern Negro educator who, telling how he had gone one

morning to watch the opening of a new school on the outskirts of a big Southern city, said to a member of this Commission's staff:

I stood on the steps as the children came to class. I watched those little boys and girls, so many of them in dirty, ragged clothes, carrying their shoes to put on when they went into the new school building. I saw their uncombed, tangled hair, and I remembered the shacks and tenements and broken homes they had just come from. I found tears streaming down my face, for them and for the white people, too. For a moment—just a moment—I put myself in the shoes of a white parent, and I knew that even one who believed in brotherhood, even one who thought the Supreme Court was right, would look at those little Negro children and say "No, not now, not with them, not my child, not yet."

CHAPTER III. THE FEARS AND THE FACTS

In July 1955, a university seminar for Kentucky educators and school board members listed the following principal desegregation fears of both whites and Negroes.

Whites feared that:

(1) their children might be taught by Negro teachers;
(2) school associations would result in social relationships to be deplored because of low Negro standards of health and morals;
(3) school standards would be dragged down by poor Negro scholarship.

Negroes feared that:

(1) desegregation would be conducted in the usual pattern of white supremacy, with Negroes expected only to obey orders;
(2) white leaders would refuse to work with true Negro leaders, but only with their accustomed Negro political henchmen;
(3) Negro teachers would lose their jobs.

Surprisingly, the prospect that Negro children might be abused by white teachers and pupils was not found to be a primary Negro fear.

HAVE SCHOLASTIC STANDARDS BEEN LOWERED?

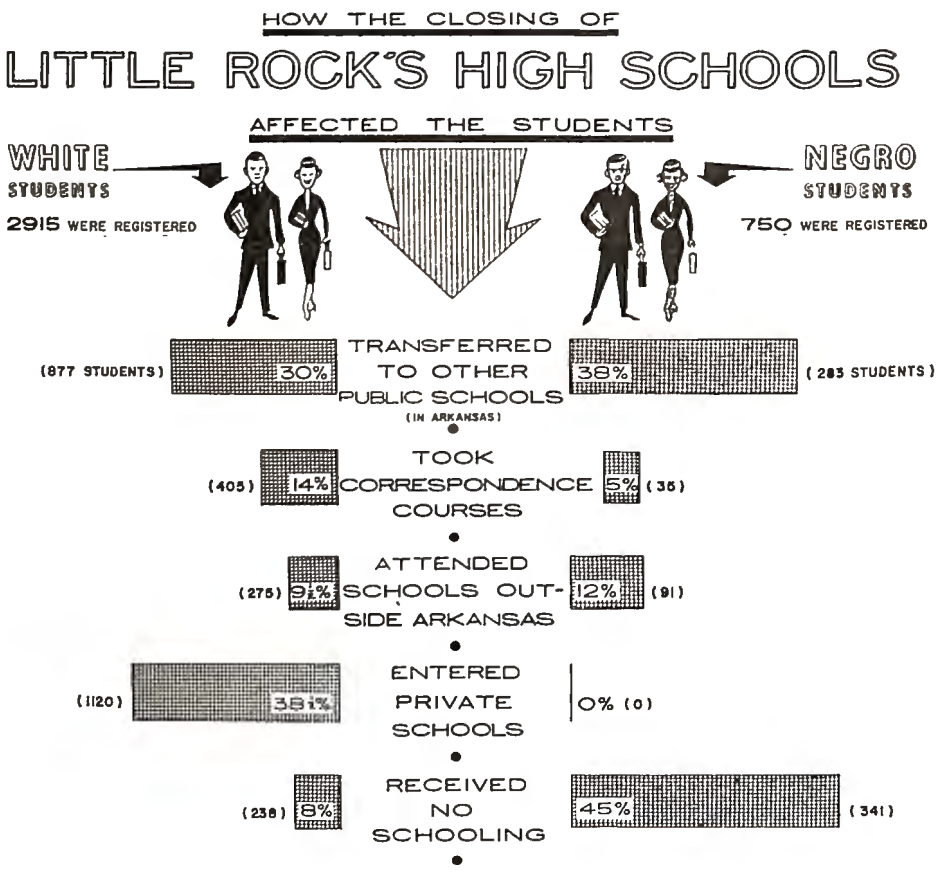
This Commission's study has been based on conviction that the law of the land must be obeyed, and that the American system of public education must be preserved unimpaired, and even improved, during the process of readjustment. First consideration will be given, therefore, to the question of whether the admission of Negroes to formerly white schools has resulted in a lowering of scholastic standards and achievement.

The overwhelming testimony of the public school officials at the Commission's Nashville conference was that there has not been such a lowering.

No scientific evidence has been found to indicate that Negroes—or members of any race—are inherently inferior to members of any other race. Anthropologists and psychologists who still assert that such racial differences may exist have become exceedingly rare.

There was general agreement at Nashville as elsewhere, however, that many Negro children are handicapped in their schoolwork. They

CHART VIII



are handicapped, the educators at Nashville declared, not by any inherent racial inferiority, but often by low cultural standards at home, sometimes by inferior training in a separate and unequal Negro school, and frequently by the lack of ambition which comes from the knowledge that few of them can hope to rise far in a white-dominated society.

But no nation in history can match American experience in educating similarly handicapped children. First, beginning about 1850, came the flood of immigrants from the peasant stock of Ireland and of southern and eastern Europe. Then there were the children of the poor who began staying on in school after compulsory attendance laws were passed. A similar problem arose in many parts of the country when rural schoolchildren were brought into consolidated schools with children who had had superior educational opportunity in urban schools.

Baltimore's Superintendent John Fischer has said:

> The problem of educating all the children of all the people is not new. We have been working at it for more than a century. Each time the doors of the schools have been opened without reservation to a larger group, the argument has been heard anew that this will ruin the schools and society as well. But somehow both continue to survive—as some of us believe, all the better for what has occurred.

Superintendent Carl Hansen, at Nashville, reported that the overall standards of Washington, D.C.'s school system have not gone down since desegregation, but up. This had happened despite the fact that a continuing migration of Negroes to the Capital, plus the normal exodus of white families to the suburbs, had been steadily raising the proportion of Negro students in Washington schools to its 1958 level of nearly 75 percent. For Dr. Hansen, this was proof enough of Negro educability, despite cultural and economic poverty.

In a Stanford Achievement Test in 1959, some 8,000 Washington sixth-graders proved themselves above the national standards in five out of six subjects. In 1957, the city's sixth-graders had been below the national standards in all six subjects, and in 1958 they matched the standard in only one.

Baltimore, too, reported Superintendent Fischer, has made a general effort to improve its schools, resulting in better schooling for both whites and Negroes. But desegregation as such, he declared, "has no more effect on academic standards than it has on the yardstick by which a pupil's height is measured." As a general rule, he observed, what matters in scholastic achievement is not the color of a student's skin but the level of his cultural background.

In Louisville, Ky., records of school achievement by race have been kept for many years. A study made after 2 years of desegregation showed that in desegregated schools there had been a substantial rise in Negro performance and a slight improvement among whites. Similar improvement, though perhaps less marked, had appeared in the city's schools that remain all white or all Negro. Reporting these facts at Nashville, the Louisville superintendent, Dr. Omer Carmichael, explained the betterment in all-Negro schools by saying that Negro teachers were working to refute his expressed opinion that, on the average, they were not as competent as whites.

Reports of scholastic standards maintained or bettered since desegregation were also received at Nashville from principals or superintendents of schools in Wilmington, Del., Oklahoma City, San Angelo, Tex., Logan County, Ky., Hobbs, N.Mex., Leavenworth, Kans., and for West Virginia as a whole from the assistant State superintendent, Dr. Rex M. Smith.

The Nashville conferees did agree, however, that Negro students as a group unquestionably rank lower scholastically than whites as

a group. Despite gifted exceptions, most of those entering formerly white schools for the first time need at least temporary special attention. The popular way to give it is to divide students not according to color or sex, but according to scholastic performance. Washington's "four track" system, for example, divides high school students into four ability groups, each with a program especially tailored to its needs.

Such grouping is comparatively easy for large schools and cities, and difficult for small ones. But after a two-year study of American high schools, Harvard's President-Emeritus James B. Conant has concluded that there are too many of them anyway. He urges that small schools, understaffed and underequipped, be consolidated. Many a U.S. community has been maintaining a small, uneconomic school for a handful of Negroes. By closing 163 such schools through desegregation, Oklahoma has reported a saving of $750,000 which could be used now to give its remaining schools more and better teachers and equipment.

WHAT ABOUT SOCIAL RELATIONSHIPS?

One answer to the fear of social mixing is that Negroes have shown themselves to be no more eager to rush the process than whites. Five years after the Supreme Court decision, in the 17 States and District of Columbia where compulsory segregation had been the rule, 93 percent of all Negro students were still attending all-Negro schools. Many of them, to be sure, in States and communities still resisting desegregation, had no choice in the matter. But where the doors of formerly white schools had been thrown open, city after city and school after school has reported that most Negroes simply do not choose to enter.

Experience has also shown that excitement over desegregation is mostly among parents rather than students, who soon learn to accept each other as a matter of course. Mixed schools report overwhelmingly that, while Negroes and whites may range from indifferent to friendly with each other in classrooms, athletics, and other student activities, they almost never mix on dates or at dances. In fear of such mixing, some districts have banned all school social activity. But after nearly 5 years of desegregation in Washington, only one case was known of marriage between a Negro and a white who had attended the same school.

Problems of discipline have been presented by desegregation, but in general they have proved to be less serious than many school administrators anticipated. Here, again, most school officials ascribe such problems not to race, but to a cultural background shared by many whites as well as Negroes. "No Negro child," says Super-

intendent Fischer of Baltimore, "has ever brought into any of our schools a problem that had not already been presented somewhere by a white child."

WHAT ABOUT NEGRO TEACHERS?

When desegregation began in Wilmington, Del., one Negro teacher who was to have an all-white first grade visited the children and their parents at home before school opened. At the end of the year, the parents requested that she be allowed to go on to the next grade with their children.

Few of the nation's Negro teachers have had so happy a desegregation experience. In large cities they have generally kept their jobs, sometimes teaching mixed classes. But desegregation of teaching staffs has in general lagged behind that of pupils. And especially in rural areas where small Negro schools were closed, some Negro teachers have lost their jobs. In Oklahoma, 344 Negro teachers were displaced by the closing of 163 Negro schools. Kentucky reported 31 school districts with fewer Negro teachers after desegregation. A recent survey revealed that West Virginia had 98 fewer Negro teachers and principals than in 1954—a reduction of about 10 percent. The Commission's Pennsylvania Advisory Committee reported that, of the State's 500 school districts with Negro pupils, only 56 employed any Negro teachers.

Litigation in the 19 Northern and Western States that have fair employment practices acts prohibiting racial discrimination shows that, as it affects Negro teachers, such discrimination remains a nationwide problem. But discrimination here is difficult to prove; a white principal may be genuinely convinced that a white applicant is better qualified than a Negro applicant for the same job. Opinions about the relative ability of Negro and white teachers, group for group, remain mixed.

Most of the Commission's State Advisory Committees reporting on the problem of teacher discrimination emphasized the need for time to achieve community enlightenment.

WHAT ABOUT NEGRO-WHITE COOPERATION?

Like those of whites, some Negro fears about desegregation have failed to materialize. In some communities, militant Negroes and their organizations have been shunned. More often, as throughout the States of Maryland and Kentucky, responsible Negro leaders have been invited to share the planning and responsibilities as members of biracial committees. Most of them, in turn, have proven to be notably sympathetic toward the problems involved for both races, and moder-

ate to extremely cautious in their proposals. In Hot Springs, Ark., for example, a biracial committee decided that the best way to launch desegregation was to confine it, at first, to a high school course in auto mechanics.

Of community planning and preparation in general, it may be said that it does not guarantee successful desegregation. But the record indicates that, when the community as a whole is consulted and prepared, the chances of a smooth transition are improved.

CHAPTER IV. THE RECORD AND THE FUTURE

Five years after the Supreme Court school decision, the statistical record of compliance was as follows:

Some start toward compliance with the Court's decision had been made in 11 of the 17 compulsory-segregation States of 1954. In the District of Columbia, some other large cities, and many smaller communities, complete desegregation had been achieved. Six States remained adamantly noncompliant.

Of the 11 more or less complying States, 8 (Delaware, Kentucky, Maryland, Missouri, Oklahoma, Tennessee, Texas, West Virginia) had 1950 nonwhite populations constituting less than 20 percent of the whole; the nonwhite populations of the 3 others (Arkansas, North Carolina, Virginia) were between 20 and 30 percent of the whole.

Of the six flatly noncomplying States, five (Alabama, Georgia, Louisiana, Mississippi, South Carolina) had nonwhite populations of more than 30 percent, and that of the sixth (Florida) was over 20 percent. It should be noted that, except in Oklahoma with its many Indians, the U.S. Census classification of "nonwhite" is for all practical purposes "Negro."

Some move toward desegregation had been made by 1959 in all of the biracial school districts of Maryland and West Virginia, in almost 90 percent of those in Oklahoma and Missouri, and in 70 percent of those in Kentucky. From there the percentages ranged down to 25 in Delaware, 17 in Texas, and insignificant fractions in Arkansas, North Carolina, Tennessee, and Virginia.

In sum, few more than one-fourth of all the biracial school districts in the 17 States had even begun to desegregate. Of these, about 3 percent had acted under the order of a lower Federal court, and there were others which had proceeded under threat of litigation or after suit had been filed.

The record by school districts tells only part of the story, since percentages of Negro population vary greatly among districts within a State. Just as most of the districts that had moved toward compliance were located in States with a smaller percentage of Negroes, so within each State it had generally been the districts having the smallest percentages of Negroes that had made a start. In addition, some of the districts that were classified as desegregated on the strength of

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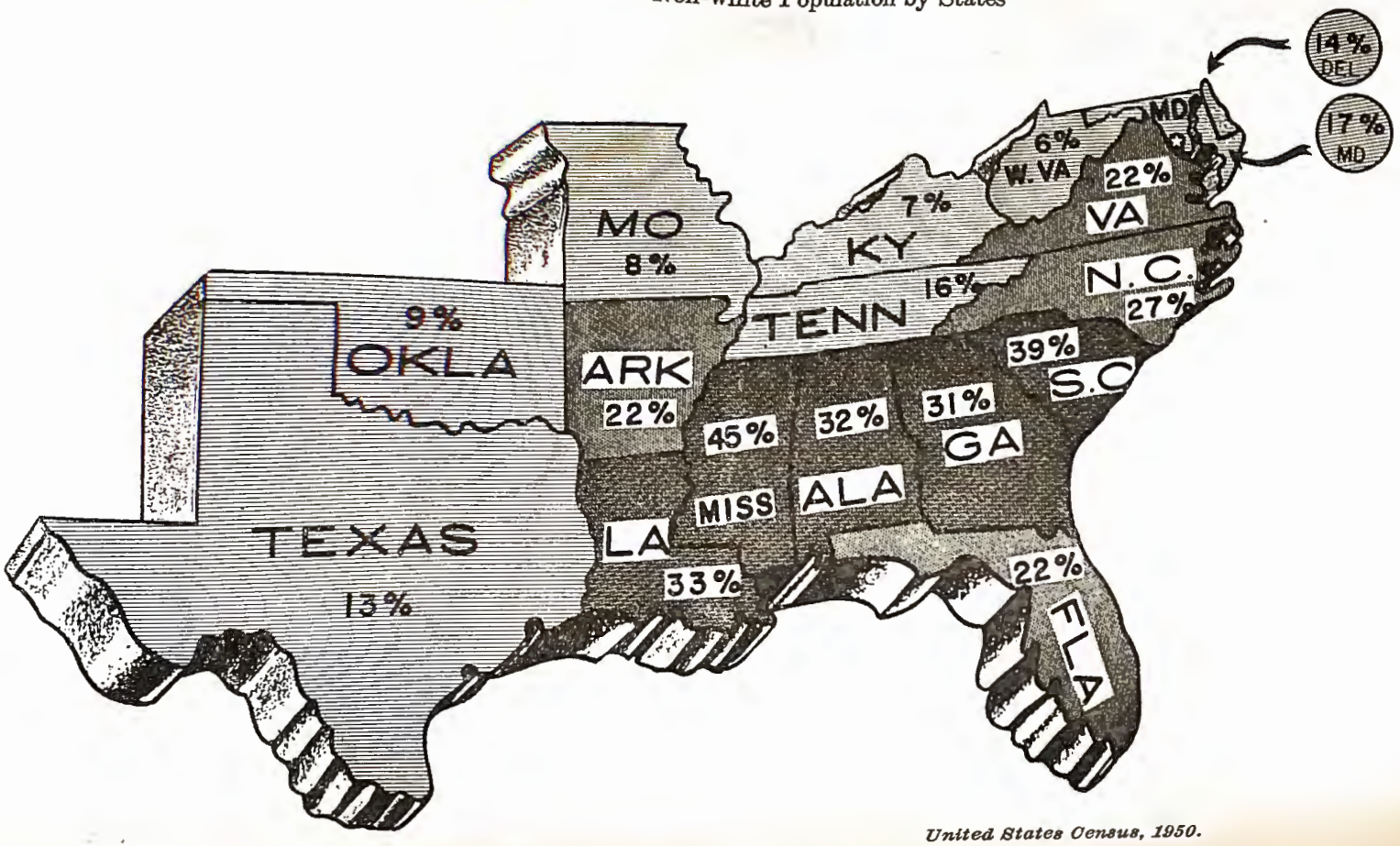
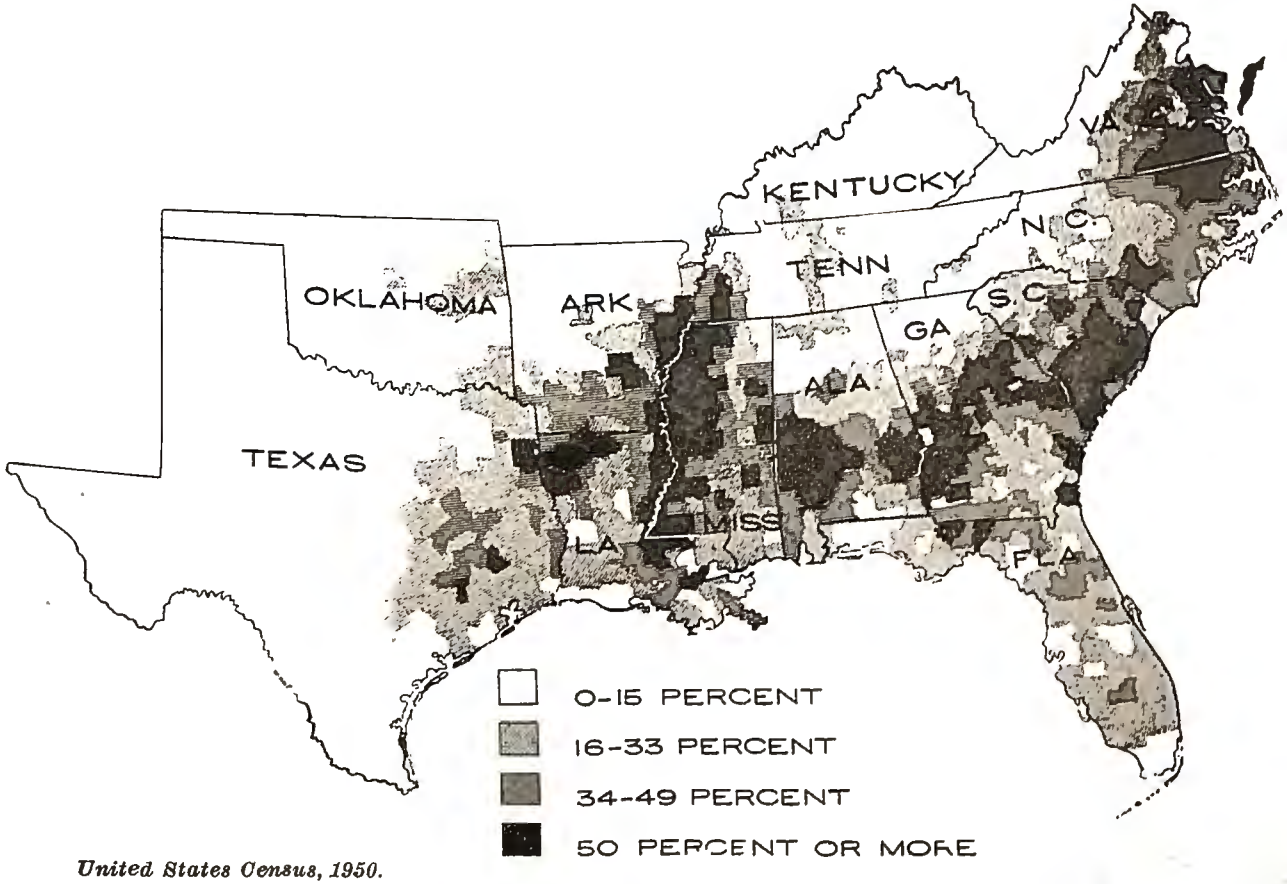
CHART IX. Non-white Population by States



United States Census, 1950.

CHART X. Non-white Population by Counties



United States Census, 1950.

having adopted a transfer plan had not in fact enrolled a single Negro student in a white school. In others, by reason of selective placement, the number of Negroes in formerly white schools was small indeed.

HARD QUESTIONS AND UNCERTAIN ANSWERS

The 5-year record was dismaying, but not necessarily discouraging. God's justice, as Thomas Jefferson warned of slavery, cannot sleep forever. But no reasonable citizen, and least of all the Supreme Court justices themselves, expected or wanted the great change to be made overnight. Few issues in American history have so clearly demanded exercise of the democratic process of education, discussion, and persuasion by which the consent of the governed, or their will to seek constitutional change, is shaped and registered.

But to what specifically, and when, are the governed asked to consent? The goal is clear, but for those disposed to move cautiously, if at all, the way is murky. How deliberate may "all deliberate speed" become? Precisely what manner of start will be judged "prompt and reasonable?" What if anything, short of total desegregation, is "full compliance?" Because of differing decisions by the lower Federal courts charged with answering these questions in specific cases, conscientious school officials and other citizens may reasonably be bewildered. Their confusion is all the more damaging because voluntary desegregation reached its peak in 1956. Since then a growing proportion of starts have been under court order, and the trend seems likely to continue.

A PROMPT AND REASONABLE START

In the first years after the Supreme Court decision, the lower courts were liberal in finding that "a prompt and reasonable start toward full compliance" had been made if a school board had exhibited any activity whatever pointing toward compliance. The formation of a citizens committee to study the problems of desegregation, or study and planning by a school board itself, was held sufficient. Courts allowed school boards 6 months or more to prepare plans. In one Tennessee case, a board was allowed 6 months even though it had had the problem before it for 5 years without taking positive action.

In another instance, in Virginia, failure for 2 years to take any action resulted in an injunction ". . . to dispel the misapprehensions of school authorities as to their obligations under the law." Later, however, the court allowed the same school board to present a plan involving a 6-month delay. Significantly, the plan, which was approved in due course, proposed constructive action within the time limit.

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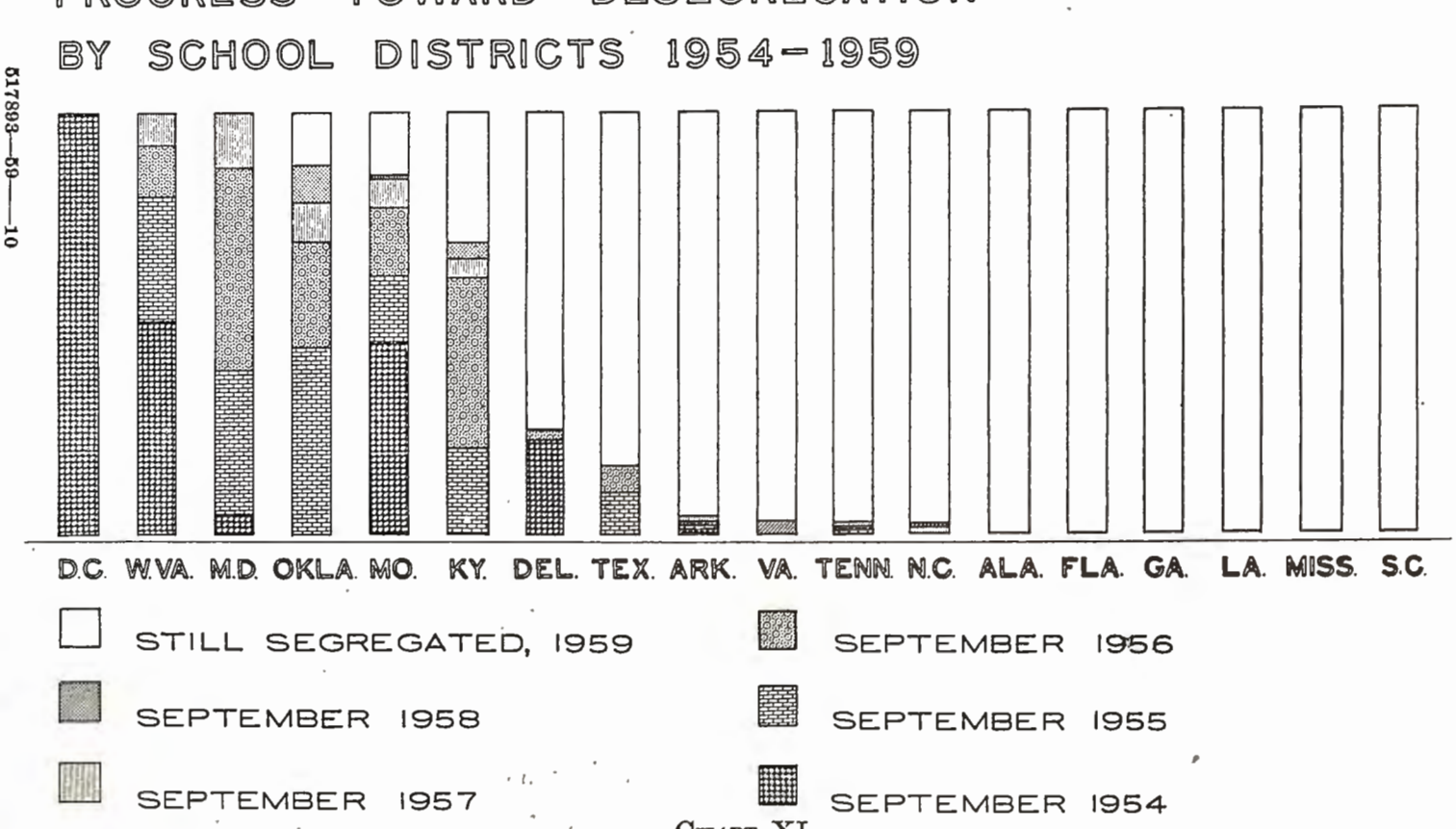


CHART XI

The percentage of school districts that began desegregation each year is shown here. School districts in which only Negroes or whites were enrolled have not been included in computing the percentages

District courts in some cases have entered only general orders, without time limits, which have not resulted in a start of any kind. Two of the original *School Segregation Cases* decided in 1954 may be cited as examples. In the Clarendon County, S.C., case, upon reconsideration after remand, an injunction was entered to be effective "from and after such time as they [the members of the school board] may have made the necessary arrangements for admission of children to such school on a nondiscriminatory basis with all deliberate speed." This was in 1955. The case was retained on the docket for entry of further orders and nothing more appears to have happened.

The School Board of Prince Edward County was the Virginia defendant in the 1954 *School Segregation Cases.* Upon remand from the United States Supreme Court a similar, indefinite order was entered.

The plaintiffs in the Prince Edward County case, however, were more persistent than those in South Carolina. Upon motion to order their admission to Prince Edward schools in September 1956, the District Court withheld the order because public opinion opposed it and because it would lead to the closing of the school under State law then in effect. The court of appeals reversed the decision and instructed the district court to order the school board to make a prompt and reasonable start. The district court then fixed 10 years following the Supreme Court's 1955 implementing decision as the time for such compliance. The court of appeals reversed this order on May 5, 1959, because the school authorities had taken no action whatever in 4 years and contemplated none. As a result of this decision, the board of supervisors of the county refused to appropriate any funds for operation of public schools in 1959–60. The school board thereupon applied to the Supreme Court for review of the appeals court decision, asking that it take judicial notice of the calamitous result.

In deciding an appeal from Little Rock which reached it in 1958, the Supreme Court forcefully reaffirmed its ruling that mere local hostility to desegregation cannot be considered justification for delay. However, such tangible factors as overcrowded schools, building programs in process, disadvantage of midyear entrance, and preparation of professional personnel, pupils and community, have been held by lower Federal courts to be sufficient, singly and in combination, to justify a short and definite deferment.

FULL COMPLIANCE

What, short of the unification of a dual school system, would be held to constitute full compliance?

Several lower courts have stated that abolishing discrimination does not necessarily mean that white and Negro children shall be "mixed" in the schools. Nor does it require that Negro schools be abolished if attendance at such schools is voluntary. The fact that a school may be attended only by members of one race because only one race lives within the attendance area has been adjudged not constitutionally objectionable, unless the area has been deliberately zoned for this purpose.

On the positive side, a desegregation plan that does no more than permit a Negro to apply for transfer from the Negro school to a white school nearer his home has been judicially approved. Under such a plan, it would appear that the local school board could continue to maintain white and Negro schools indefinitely, and assign pupils to them as it chose.

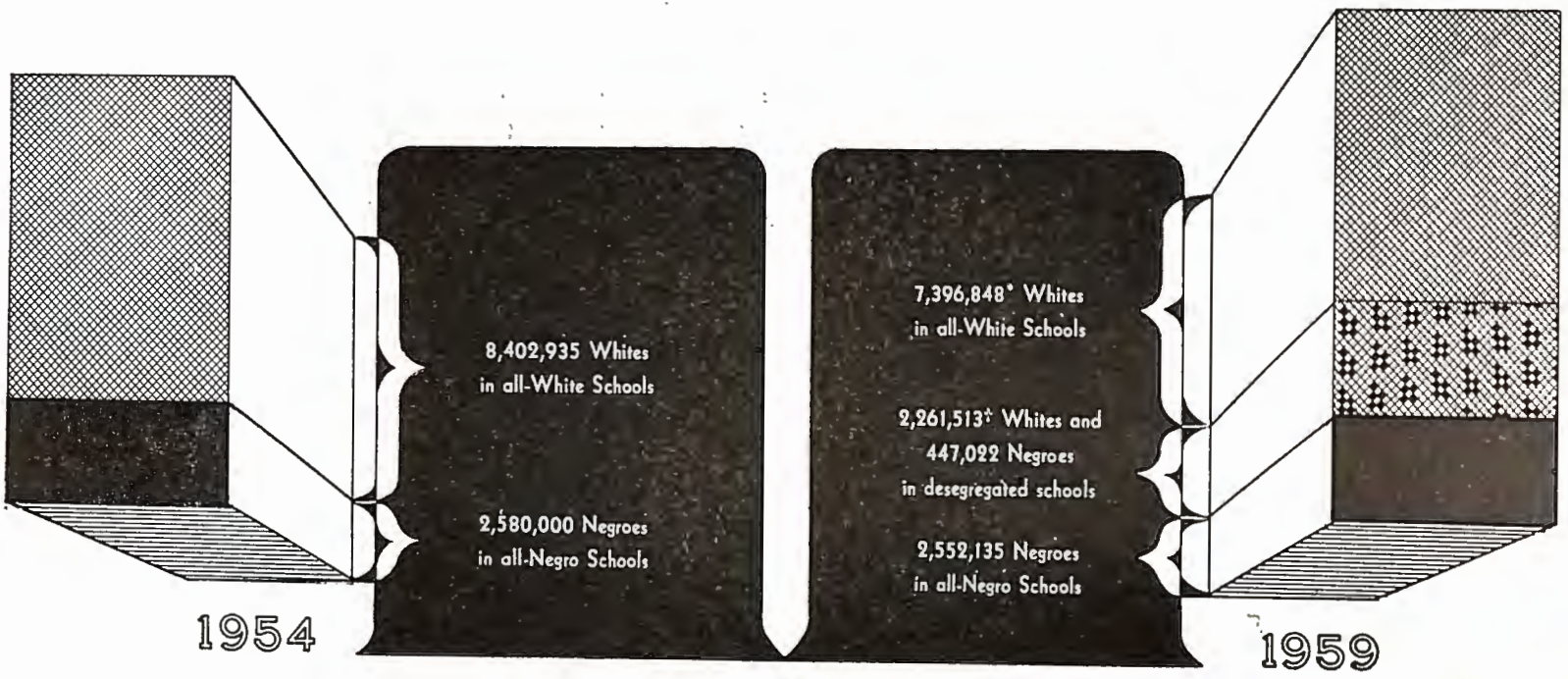
The North Carolina "Pearsall plan" seems to operate this way in practice. So far as this Commission was able to ascertain, the school boards of North Carolina have unanimously exercised their discretion by assigning *all* white students to white schools and *all* Negro students to Negro schools. Only a handful of Negroes, in three cities, have had their applications for transfer to a white school accepted.

Final court decision on such plans and on the administration of the "pupil placement" laws enacted by eight Southern States was, at this writing, yet to come. The Alabama placement statute grants local school boards authority to assign pupils to one school or another on a basis of no less than 17 nonracial criteria, ranging from "availability of transportation" to the "morals, conduct, health, and personal standards of the pupil." The Supreme Court upheld the law as valid on its face, but recognized that in some future proceeding it might be declared unconstitutional in application.

The action of two Virginia school boards in applying nonracial criteria to applications for transfer had recent court examination. The school boards of Arlington County and of the city of Norfolk adopted several nonracial criteria for deciding on applications for transfer from Negro to white schools. The Arlington County Board had found reasons to reject all such applications. Upon examination, the Court found that four of them had been denied without legal basis.

The Norfolk board had accepted 17 of 151 applicants for transfer and asked that their admission be deferred until September 1959. The district court denied the motion to defer admission and approved the rejection of the other 134 applications. But it reserved for further consideration questions concerning the validity of all the standards, criteria and procedures adopted by the board, many of which had

NUMBER OF PUPILS AFFECTED BY DESEGREGATION



This chart combines the totals from the 17 Southern and Border States and the District of Columbia.

The 447,022 Negro pupils in school systems that desegregated between 1954 and 1959 represent 15 percent of the total Negro enrollment, as shown here. However, approximately half of them, either because of residential segregation or for other reasons, are still in all-Negro schools. See Table 13.

*An unknown number of white pupils in Missouri are in desegregated schools but have been included in the top panel because of insufficient data.
†This division is actually larger than shown, because an unknown percentage of Missouri's white pupils are in desegregated schools.

Data from Southern Education Reporting Service, May 15, 1959.

not been applied in the 134 rejected cases. On appeal, the order was affirmed as to the admission of the 17 applicants and remanded as to the 134. The district court again approved the action of the board in denying the 134 applications as not capricious, arbitrary or illegal, and found all the board's standards, criteria and procedures not unconstitutional on their face.

TABLE 13.—*Status of segregation-desegregation, 1958–59, in 11 States and District of Columbia*

	Enrollment			Negroes Enrolled in Desegregated Schools	Percent of Total Negro Enrollment
	Total	White	Negro		
Arkansas	419,971	316,441	103,530	76	0.07
Delaware	73,551	60,141	13,410	5,717	42.63
District of Columbia	111,756	28,623	83,133	68,421	82.30
Kentucky	585,857	546,149	39,708	11,468	28.88
Maryland	556,290	432,485	123,805	37,840	30.56
Missouri	787,000	708,300	78,700	74,135	94.20
North Carolina	1,063,000	749,000	314,000	13	.004
Oklahoma	542,000	507,000	35,000	8,351	23.86
Tennessee	790,000	652,540	137,460	90	.07
Texas	1,955,425	1,692,615	262,810	3,750	1.43
Virginia	827,500	623,935	203,565	51	.03
West Virginia	464,402	439,324	25,078	6,259	24.9
Total	8,176,752	6,756,553	1,420,199	216,171	15.22

An appeal was taken also by the unsuccessful applicants in the Arlington case. The court of appeals remanded with direction to the district court to require the school board to reexamine the applications, which it could do more freely as a result of the invalidation of Virginia's school-closing law. In so doing, the court of appeals stated that evidence in the record showed that the Negro applicants for transfer had been subjected to tests not applied to white students seeking transfer. The school board again rejected all applicants, but the district court heeded the admonition of the court of appeals. It ordered 12 applicants admitted because, in being rejected on account of overcrowding of a school or for scholastic deficiency, they had been held to more strict requirements than were applied to white students.

DELIBERATE SPEED

Cases involving plans for gradual desegregation have provided varying answers to the question of what "deliberate speed" may be under varying conditions. Six-year, 7-year, and 12-year plans have received court approval. But another court rejected both a 12-year and a 4-year plan as being too deliberate. Many more court decisions will be needed to clarify the deliberately imprecise phrase "with all deliberate speed."

CHAPTER V. THE PROBLEM OF FEDERAL GRANTS

The United States Government is the greatest patron of education in world history. While operating schools of its own for Federal employees and wards, it spends far more in grants to other publicly supported and privately supported institutions of learning, for their general support and for research programs and special projects. It also makes grants to individuals for graduate study and research.

For these educational purposes, in fiscal 1957, the Government spent $1,997,825,000. The National Defense Education Act of 1958 added another $115,300,000 to this yearly outlay, and the appropriation for the National Science Foundation was increased by half for fiscal 1958, to a total of $49,750,000. The principal recipients of these Federal grants are the nation's colleges and universities. More than $1 billion of the fiscal 1957 expenditure went for higher education.

To this Commission, with its congressional assignment to "appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution," these facts present an inescapable question:

Can the Federal Government, in law and in conscience, continue to grant public funds to institutions that deny the equal protection of the laws to certain citizens by refusing them admission because of their race, color, religion, or national origin?

The chief and perhaps only Federal aid disbursed directly to public elementary and secondary schools by statutory directive goes to those in areas in which the Government has acquired land for its own uses. To compensate the local governments for taxes lost thereby, and for the expense of educating children in some way connected with the Federal enterprise, Public Laws 874 and 815 authorize Federal payments for the construction and operation of local public schools.

In fiscal 1958 local governments in the 17 segregating States, including the 6 States still flatly noncompliant with the Supreme Court's school decision, received just under $48 million for school operation. In 1951–58 localities in the same States received just over $300 million for school construction.

In response to a questionnaire from this Commission, the Department of Health, Education, and Welfare stated its policy in this matter as follows:

> Broadly, within the provisions of these acts, these Federal payments are treated as local taxes for use by local educational agencies in accordance with

the laws of the State. Both acts contain specific prohibitions against Federal direction, supervision, or control of the school program.

As may be inferred from the general policy stated previously, it is our view that to withhold these payments from an otherwise eligible school district because of the existence of a pattern of racial segregation in the schools of such district would interpose the Department between the State and local school officials and the Federal district court in a manner not contemplated in the orders of the Supreme Court.

The Department of Health, Education, and Welfare has announced its general policy on grants to noncompliant schools as follows:

(1) Under the Supreme Court decision on segregation in reference to public elementary and secondary education, it is the Federal judiciary, and not the executive branch of the Federal Government, which is to determine how compliance with the Supreme Court mandate is to be brought about and what constitutes compliance in good faith.

(2) Judicial implementation of the Supreme Court decision, in the manner charted by the Court in its decree, and the meeting of the urgent, overall educational needs of our country, can go forward at the same time.

(3) For the executive branch to exercise the power, on the basis of its own determinations as to the requirements of the Supreme Court mandate, to reserve or withhold funds necessary to progress in meeting educational needs, might interfere with such progress and would in the long run interfere with the responsibilities of the Federal judiciary.

The chief and perhaps only Federal aid disbursed directly to designated institutions of higher education by statutory directive goes to land-grant colleges and universities under the Morrill-Nelson and Bankhead-Jones Acts.

The statute authorizing financial assistance to these State colleges and universities seems to be the only one governing Federal educational grants that specifically forbids racial discrimination. But it further provides that this requirement may be satisfied by separate colleges for white and colored students. This provision was, of course, nullified by the school decision of 1954—which, the Supreme Court later made clear, definitely applies to tax-supported institutions of higher education.

By September 1958 more than half of the 208 white public colleges and universities in the 17 segregating States had admitted Negro students. But among the colleges and universities that had not done so were all those in Georgia, Mississippi, South Carolina, and (except for one Negro matriculant who was promptly expelled) Alabama. Yet these latter were still receiving their land-grant payments from the U.S. Government.

And these and many other colleges and universities, public and private, were still receiving a multiplicity of other Federal grants. Among them were a number whose admission policies were at least suspect of being in violation of the Supreme Court decision of 1954.

CHAPTER VI.

FINDINGS AND RECOMMENDATIONS

The Problem

In 1954 the Supreme Court of the United States held that compulsory racial segregation in public schools is a denial of the equal protection of the laws under the Fourteenth Amendment to the United States Constitution, and of the due process of law required by the Fifth Amendment. In so holding, the Court did not require racial integration in the schools. What the Court did hold is that publicly supported schools must be opened to all races on a nonsegregated basis.

The requirements of this declaration of constitutional principle have been stated clearly by the late Judge John J. Parker of the United States Court of Appeals for the 4th Circuit in the case of *Briggs* v. *Elliott:*

> What it (the Supreme Court) has decided, and all that it has decided, is that a State may not deny to any person on account of race the right to attend any school that it maintains. This, under the decision of the Supreme Court, the State may not do directly or indirectly; but if the schools which it maintains are open to children of all races, no violation of the Constitution is involved even though the children of different races voluntarily attend different schools, as they attend different churches (132 F. Supp. 776 (1955)).

The Commission based its study of legal developments constituting a denial of the equal protection of the laws in the field of public education upon two fundamental premises:

(1) The American system of public education must be preserved without impairment because an educated citizenry is the mainstay of the Republic and full educational opportunity for each and every citizen is America's major defense against the world threat to freedom.

(2) The constitutional right to be free from compulsory segregation in public education can be and must be realized, for this is a government of law, and the Constitution as interpreted by the Supreme Court is the supreme law of the land.

The problem, therefore, is how to comply with the Supreme Court decision while preserving and even improving public education. The ultimate choice of each State is between finding reasonable ways of ending compulsory segregation in its schools or abandoning its system of free public education.

Information, Advisory, and Conciliation Services

Background

The Commission's studies, and particularly its conference with school officials from districts in border States and a few in the South

that have in some measure desegregated since 1954, demonstrate that when local school officials are permitted to act responsibly in adopting plans that fit local conditions the difficulties of desegregation can be minimized. A variety of plans have proved to be successful, ranging from the merger of the former Negro and white school systems into one integrated system (particularly in communities where the Negro population was small and the cost of maintaining separate systems considerable) to the gradual Nashville plan that began in the first grade and is proceeding at the rate of one grade a year, with voluntary transfer permitted to any child assigned to a school where his race is in the minority.

In *Shuttlesworth* v. *Birmingham Board of Education*, 358 U.S. 101 (1958) the United States Supreme Court upheld as valid on its face the Alabama pupil placement law on the assumption that the law would be administered in a constitutional manner. Eight Southern States have adopted pupil placement laws as a means of meeting the test of nondiscrimination. This is another possible method by which compliance may be achieved.

In many instances desegregation has been used by the local community as the occasion to raise its educational standards. In many instances remedial programs have been adopted for the handicapped, and advanced programs established for gifted students. Such programs were described to the Commission at its Nashville conference by the superintendents from Wilmington, Del.; Washington, D.C.; and San Angelo, Tex. St. Louis, Mo., has adopted a similar program. It is important that any transition should not result in the lowering of educational standards for either the white or Negro student. If possible, it should result in an improvement of educational standards for both; a number of school officials report that this has already happened in their communities.

In the transition to a nondiscriminatory school system, a carefully developed State or local plan is better than a plan imposed by a court for the immediate admission of certain litigants, or a plan imposed by any outside agency. The Supreme Court and the Federal lower courts have made it clear that they will consider sympathetically any reasonable plan proposed in good faith. This seems to be an area in which the principle of State's rights can most effectively express itself through local option in meeting this problem. If State governments do not permit local school officials to develop such plans for good faith compliance, the effectiveness of the school system in the State as a whole will be impaired. By permitting such local option a variety of methods of transition can be developed that take into account the varying circumstances in different areas of the State.

Findings

1. The ease of adjustment of a school system to desegregation is influenced by many factors including the relative size and location of the white and Negro population, the extent to which the Negro children are culturally handicapped, segregation practices in other areas of community life, the presence or absence of democratic participation in the planning of the program used or preparation of the community for its acceptance, and the character of the leadership in the community and State.

2. Many factors must be considered and weighed in determining what constitutes a prompt and reasonable start toward full compliance and the means by which and the rate at which desegregation should be accomplished.

3. Desegregation by court order has been notably more difficult than desegregation by voluntary action wherein the method and timing have been locally determined.

4. Many school districts in attempting to evolve a desegregation plan have had no established and qualified source to which to turn for information and advice. Furthermore, many of these districts have been confused and frustrated by apparent inconsistencies in decisions of lower Federal courts.

Recommendations No. 1 (a) and 1 (b)

Therefore, the Commission recommends: 1(a) That the President propose and the Congress enact legislation to authorize the Commission on Civil Rights, if extended, to serve as a clearinghouse to collect and make available to States and to local communities information concerning programs and procedures used by school districts to comply with the Supreme Court mandate either voluntarily or by court order, including data as to the known effects of the programs on the quality of education and the cost thereof.

1(b) That the Commission on Civil Rights be authorized to establish an advisory and conciliation service to assist local school officials in developing plans designed to meet constitutional requirements and local conditions; and to mediate and conciliate, upon request, disputes as to proposed plans and their implementation.

ANNUAL SCHOOL CENSUS

Background

The primary problem of equal protection of the laws in the field of public education is desegregation of public school systems in which separate schools for white and Negro children have been maintained by compulsion of State law. The Commission's study of this problem necessarily required public school enrollment figures, by race of students and type of school attended, for all school districts in the 17

States and the District of Columbia where compulsory segregation had been the rule.

The Commission found that the United States Office of Education of the Department of Health, Education, and Welfare, which formerly collected and published such information, ceased doing so with the school year 1953–54. It was necessary, therefore, to secure such data directly from State and local officials or from secondary sources. As a matter of policy the keeping of records by race has been discontinued in the States of Kentucky, Missouri, Oklahoma, West Virginia, and in some parts of Maryland.

A study such as that of the Commission requires complete and authoritative factual data. But because there is a possibility that school records of the race of students might be used in a discriminatory manner in recommendations to colleges and universities and to prospective employers, the Commission cannot request the maintenance of permanent school records by race.

Findings

1. No agency of the United States Government, other than this Commission, has collected data either on public school enrollment by race since the school year 1953–54, or on the existence of segregation or nonsegregation by policy or practice in the public schools of the nation.

2. The public school study of the Commission has been rendered difficult by the lack of such information within the Federal Government and by the policy, adopted by some States and school districts that maintained racially segregated schools immediately prior to May 17, 1954, to discontinue recording the race of pupils.

Recommendation No. 2

Therefore, the Commission recommends that the Office of Education of the Department of Health, Education, and Welfare, in cooperation with the Bureau of the Census of the Department of Commerce, conduct an annual school census that will show the number and race of all students enrolled in all public educational institutions in the United States, and compile such data by States, by school districts, and by individual institutions of higher education within each State. Further, that initially this data be collected at the time of the taking of the next decennial census, and thereafter from official State sources insofar as possible.*

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*Commissioner Johnson:

I have agreed to this recommendation with the understanding that it does not suggest or require that public educational institutions maintain school records by race and that the recommended school census can be taken without the maintenance of such records.

SUPPLEMENTARY STATEMENT ON EDUCATION

By Vice Chairman Storey and Commissioners Battle and Carlton

Although the portion of the report dealing with public education contains much interesting material, the text preceding the Findings and Recommendations is to a large extent argumentative and colored by the author's views of the sociological and philosophical aspects of the school integration problem. It is based largely upon information supplied by school officials from five large "border" cities which have integrated their schools. These officials appear to take pride in their accomplishment and constitute special pleaders for their cause. Little acknowledgment has been given to different conditions found in large areas of the country where the problem is most acute.

Further study and investigation should be made of the areas where school integration efforts run counter to long-established customs and traditions that formerly had legal sanction.

This tremendously serious and complex problem will not be solved by hasty action but must have the most careful and sympathetic consideration, with due regard for the way of life of large numbers of loyal Americans.

PROPOSAL TO REQUIRE EQUAL OPPORTUNITY AS A CONDITION OF FEDERAL GRANTS TO HIGHER EDUCATION

By Chairman Hannah and Commissioners Hesburgh and Johnson

More than $2 billion a year of Federal funds go for educational purposes and to educational institutions. The principal recipients of these funds are the nation's colleges, universities, and other institutions of higher education. Whether tax-supported or privately financed, they receive Federal grants and loans both for their general support and capital improvements as well as for research projects, special programs, and institutes.

Discriminatory admission policies and other practices are known to exist in a number of such institutions. None of the Federal agencies administering these educational assistance programs require proof or an attestation of nondiscrimination by the institutions as a condition for the receipt of Federal funds.

With its duty to "appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution," the Commission was compelled to ask whether it is consistent for the Federal Government to aid and support educational programs and activities in institutions of higher education which are not open to all citizens on an equal and nondiscriminatory basis.

While Congress has not required such conditions for these grants,

the operations of the Federal Government are subject to the constitutional principle of equal protection or equal treatment.

The Supreme Court has held racial discrimination in public education to be a denial of equal protection. In regard to public institutions of higher education the courts have required the immediate admission of qualified students without discrimination. The reasons for the gradual elimination of racial discrimination in elementary and secondary schools do not obtain in the field of higher education. There, immediate equality of opportunity for qualified students of all races is possible and necessary.

Although the equal protection clause of the Fourteenth Amendment applies only to State action, "it would be unthinkable," the Supreme Court has held, "that the same Constitution would impose a lesser duty on the Federal Government."

We believe that it is inconsistent with the Constitution and public policy of the United States for the Federal Government to grant financial assistance to institutions of higher education that practice racial discrimination.

We recommend that Federal agencies act in accordance with the fundamental constitutional principle of equal protection and equal treatment, and that these agencies be authorized and directed to withhold funds in any form to institutions of higher learning, both publicly supported and privately supported, which refuse, on racial grounds, to admit students otherwise qualified for admission.

ADDITIONAL PROPOSAL BY COMMISSIONER JOHNSON

While joining in the above proposal, I recommend that the policy set forth apply to all educational institutions that receive Federal funds, including public elementary and secondary schools. My reasons are set forth in my closing statement at the end of this report.

SEPARATE STATEMENT ON CONDITIONAL FEDERAL GRANTS FOR HIGHER EDUCATION

By Vice Chairman Storey and Commissioners Battle and Carlton

We oppose the recommendation that Federal agencies be authorized to withhold all public funds from institutions of higher learning (public and private) which refuse, on racial grounds, to admit students otherwise qualified for admission for the following reasons:

1. The Commission has agreed that the preservation and improvement of education is a matter of great national interest, and is a fundamental principle within which the problems of equal protection must be evaluated. Therefore, we cannot conscientiously endorse a program which might well undermine that principle.

2. Present problems of equal protection pertaining to education fall within the sweep of the Fourteenth Amendment, an area long since preempted by the courts. We cannot endorse a program of economic coercion as either a substitute for or a supplement to the direct enforcement of the law through the orderly processes of justice, as administered by the courts.

3. Such a proposal by this Commission—as an agency of the Federal Government—would drastically affect the administration of privately owned institutions of higher education. Such action goes beyond the scope of the Commission's duties.

4. Our staff studies were directed toward understanding and evaluation of equal protection problems in public and secondary schools, not private schools upon any level, and not institutions of higher education, whether public or private.

PART FOUR

HOUSING

INTRODUCTION

The housing of Americans appeared to the Commission to be one of the central problems of civil rights. Housing involves the American home, and the home is the heart of a good society.

Congress has declared the national housing goal to be "a decent home and a suitable living environment for every American family." The President has declared that it is the purpose of Federal housing programs "to assure equal opportunity for all of our citizens to acquire, within their means, good and well-located homes." The Constitution promises the equal protection of the laws. And yet, as the President reported to Congress:

> It must be frankly and honestly acknowledged that many members of minority groups, regardless of their income or economic status, have had the least opportunity of all of our citizens to acquire a good home.

This Commission was aware that such discrimination in housing by reason of color, race, religion, or national origin does exist to some extent in all parts of the country. But before it could make recommendations to the President and Congress in this field it had to learn the extent and nature, the causes and effects of the discrimination, the role played by city, State, and Federal laws or governmental action, and what is being done on all levels of government and by private enterprise or voluntary citizens' action to remedy it.

In earlier times pioneer Americans had the opportunity to build their own homes on virgin land. Later the Federal Government promoted equality of opportunity by offering a homestead of free land from the national domain to any man who would till it.

Today, with about two-thirds of the American people living in urban areas, with city land costly and for the most part already developed, the terms of the problem have changed. Now the Federal Government plays a major and complicated role in housing through its various programs of assistance for slum clearance and urban renewal, public housing and mortgage insurance. City and State governments have their own extensive programs. In all of these programs questions of discrimination have been raised.

With nearly half of the nonwhite population of the nation now living in the North and West, this is clearly not a matter vexing the southern region alone. The "black belts" of Negro residential areas

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now spreading in most metropolitan centers result in schools that are segregated in fact even if not by law. And the value of the right to vote is diminished in the social demoralization that goes with slums, congestion, and blighted areas.

The face of America is being reshaped by the various governmental programs of urban redevelopment and publicly assisted housing. The question is whether the new face of America will be marred by further discrimination or will have the dignity and harmony of the Constitution.

What is at issue is not the imposition of any residential pattern of racial integration. Rather it is the right of every American to equal opportunity for decent housing. There may be many Americans who prefer to live in neighborhoods with people of their own race, color, religion, or national origin. The right of voluntary association is also important. But if some Americans, because of their color, race, religion or national origin have no choice but to grow up and live in conditions of squalor and in rigidly confined areas then all America suffers. If through the action of city, State or Federal governments some Americans are denied freedom of choice and equality of opportunity in housing, the constitutional rule of equal protection and equal justice under law is being violated.

Or the question may be stated more positively. Is the Federal Government doing all that it can and should to promote freedom of choice and equality of opportunity in housing for all Americans?

Opportunities and freedom of choice in housing could be increased in several ways, all of which came within the scope of the Commission's study: the promotion of new housing developments for minority groups both in or adjacent to the present areas of minority-group concentration and in outlying areas; the promotion of new open-occupancy housing projects available to both members of minority groups and others who choose to live there; and the promotion of policies of equality of treatment in the housing market generally so that builders and property owners may rent or sell and lending institutions make loans on equal terms to all those in search of housing.*

In order to get the most complete and accurate picture possible of the obstacles to freedom of choice and equal opportunity in housing

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*Commissioner Johnson:

I believe that equal opportunity to housing and freedom of choice in housing can be promoted in many ways, but I do not believe that this goal can be attained through so-called minority housing. Such housing merely makes available to Negroes better housing in new or existing ghettos and does not give them the full range of choice enjoyed by most other American citizens. In no real sense can this be called equality of opportunity or freedom of choice.

for minority groups, the Commission held four hearings: three regional hearings in New York, Atlanta, and Chicago, and one in Washington, D.C., with the appropriate Federal housing officials. It also asked each of its State Advisory Committees in 48 States to supply information on the housing situation in its State. Some of these State committees held hearings or conferences on housing or appointed subcommittees that conducted studies.

What follows is a summary of the facts found and the lessons learned by the Commission as a result of these studies, hearings, and investigations in housing.

A. America's Housing Needs and Problems

CHAPTER I. THE GENERAL HOUSING CRISIS

The first fact in appraising racial problems in housing, as Mayor William B. Hartsfield of Atlanta told the Commission, is that there are slums. Slums and blighted areas are plaguing every city that the Commission has studied. Most lower-income Americans in most cities lack adequate opportunity to live outside these substandard areas.

Questions of denial of equal opportunity in housing by reason of color, race, religion, or national origin should first be seen within the context of this general housing crisis.

Industrialization has drawn men to the cities, where the factories and jobs are but where decent housing is difficult to find. The cities are full and yet the great migration from rural to urban areas continues and population growth compounds the problem. The other great migration from central city to suburbs adds further complications. Already about 100 million Americans live within the 168 standard metropolitan areas. Over 120 million live in urban areas and it is estimated that in the next 20 years our urban areas will have to house some 72 million more people. This crisis has been called "The Exploding Metropolis."

In New York, Atlanta, and Chicago the Commission has seen for itself and has heard expert testimony concerning the shortage of decent low-cost housing. Most housing experts testified that this lack of sufficient housing for lower-income citizens is a nationwide fact of crucial significance.

Migration of people is itself also an important factor in this picture. It is estimated that some 5 million Americans move each year from one State to another. Unable to afford good housing in the suburbs, many of them fill existing slums and overflow into neighboring areas, creating new slums. Those who come from low-income rural backgrounds find adjustment to city life difficult, and their maladjustment thus becomes an additional cause of the spread of slum conditions. This is true irrespective of race or nationality. These social and housing maladies have arisen in some cities by an influx of rural white people from the South, just as a similar influx of European migrants once filled and expanded our slums.

From the squalor and demoralization of the central city the more fortunate citizens move to the suburbs. This, too, is not essentially

a racial phenomenon. The flight to the suburbs began before great city concentrations of Negroes became a problem and is taking place in every metropolitan area whether or not a large Negro concentration is involved.

Thus the metropolitan area divides itself into two cities. In order to preserve their pleasant residential character, suburban communities enact zoning regulations requiring lots or homes of considerable size, or otherwise make it difficult for low-cost homes to be constructed. With the suburbs forming a practically impenetrable ring around the city, the expanding lower-income city population is trapped. Increasing overcrowding then breeds more slums which in turn drive more upper and middle-income residents to the suburbs. More and more the central city is inhabited by lower income residents who require more costly social services but who pay less taxes than those who leave.

The consequent loss in municipal revenue makes it difficult, if not impossible, for the city alone to prevent the further spread of slums. For the cost of slum clearance is immense, and low-income housing built on the resulting high-cost land can rarely be self-supporting.

There is no simple way out of this crisis. But there seems to be agreement that efforts to overcome the shortage in decent low-cost housing are a primary prerequisite to any solution. This would permit slum clearance and the enforcement of city codes against overcrowding and dilapidation to proceed without disastrous consequences for the persons displaced. It would encourage higher income residents to remain in or to return to the central city without fear of being engulfed by slums. It would narrow the widening gap between high suburban standards and urban squalor. It would increase the range of opportunities for housing open to all the people.

But at this point the problem of discrimination in housing rises to block a rational solution. Racial discrimination enters into and magnifies every one of the above factors producing the general housing crisis. While it is important to see these problems in their general shape in order to keep their racial aspects in perspective, it is also necessary to understand the special housing needs and problems of minorities, particularly of the racial minorities, in order to see the nation's housing crisis in its full dimensions.

CHAPTER II. DISCRIMINATION IN HOUSING

1. Quality and Quantity of Housing Occupied by or Available to Minorities, Compared With That Available Generally

United States Census statistics tell much of the story of the inferior quality and quantity of housing for the nonwhite minority in this country. In 1950 nearly 70 percent of nonwhite families lived in dwellings that were dilapidated or had inadequate plumbing. This is nearly three times the proportion of white families then living under such conditions. A third of all nonfarm dwellings occupied by nonwhites had more than one person per room. Only one in eight of all such white-occupied dwellings were similarly crowded.

While conditions vary from city to city, the gap between the quality and quantity of housing available to nonwhites and to whites appears to be nationwide. Practically every State Advisory Committee report noted this. Despite some progress in housing since 1950, the gap was so wide in New York, Atlanta, and Chicago at the time of the Commission's hearings that nothing but an earthquake could close it quickly.

Moreover, evidence was submitted in each of the hearings and in many reports of the Commission's State Advisory Committees confirming the testimony of Administrator Norman Mason of the Federal Housing and Home Finance Agency that minorities are "generally able to buy less housing value and secure less home financing service on poorer terms per dollar than whites."

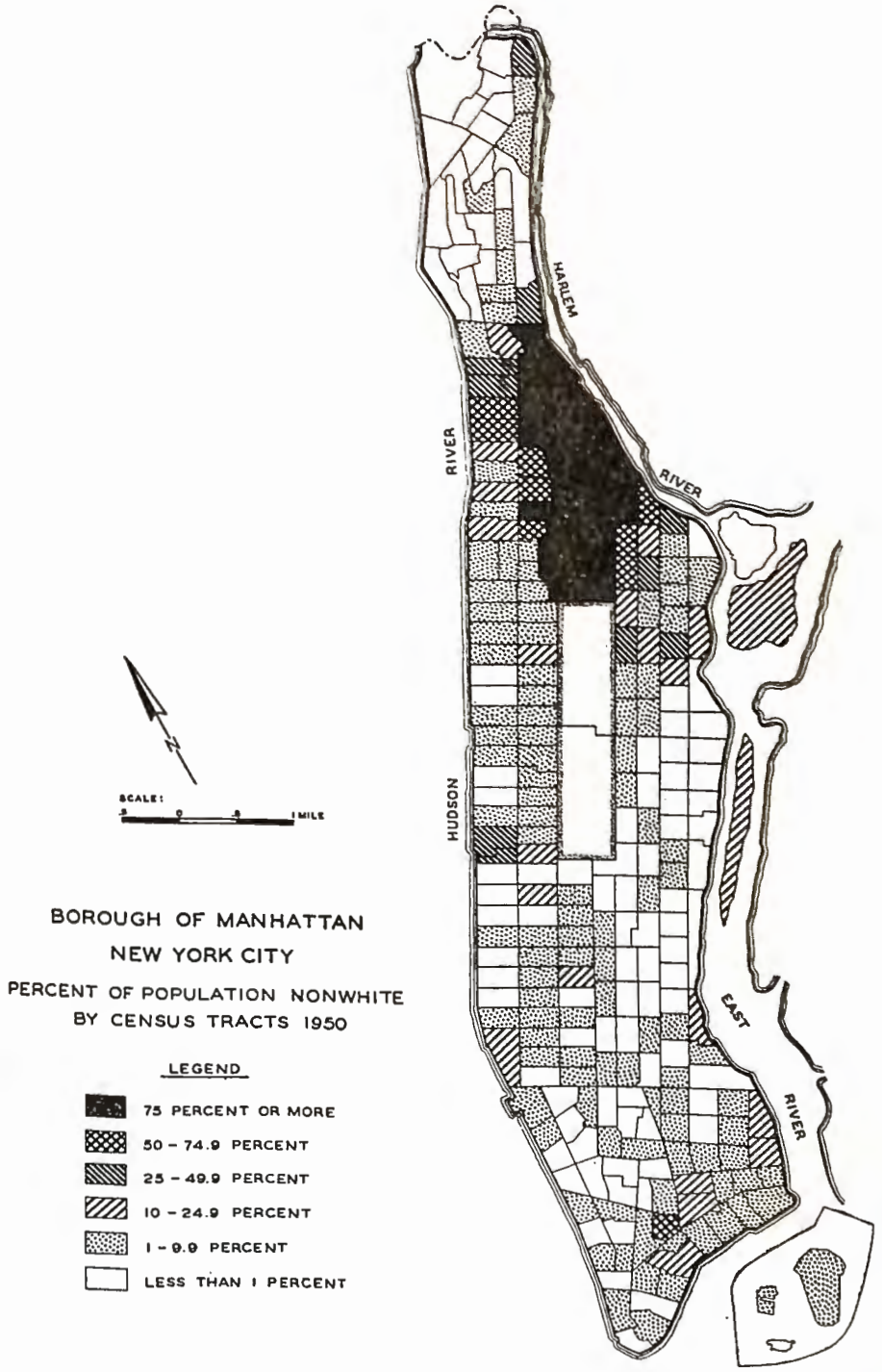
This is not surprising in view of the scarcity of new housing for nonwhites. It is estimated that from 1935 to 1950 over 9 million new private dwelling units were constructed, of which about 100,000, or slightly over 1 percent, were available to the nonwhite 10 percent of the population.

2. Residential Patterns of Minorities

Statistics tell only part of the story. A substandard house in a good neighborhood is one thing. An inferior, overcrowded house in a slum or blighted area is another. What makes the bad housing of a large proportion of nonwhites so much worse than that of most whites is its heavy concentration within limited, deteriorating areas. In 1954 the former Housing and Home Finance Administrator Albert Cole estimated that at least two-thirds of the slum families in most of our major cities are members of minority groups.

Maps introduced in the Commission hearings show the high degree of concentration of nonwhite housing in New York, Atlanta, Chicago, Detroit, Birmingham, and New Orleans. In fact, the racial concentration is generally greater than indicated by the legend on the maps which states that the areas in black are 75 percent nonwhite.

CHART XIII. Population in the Borough of Manhattan

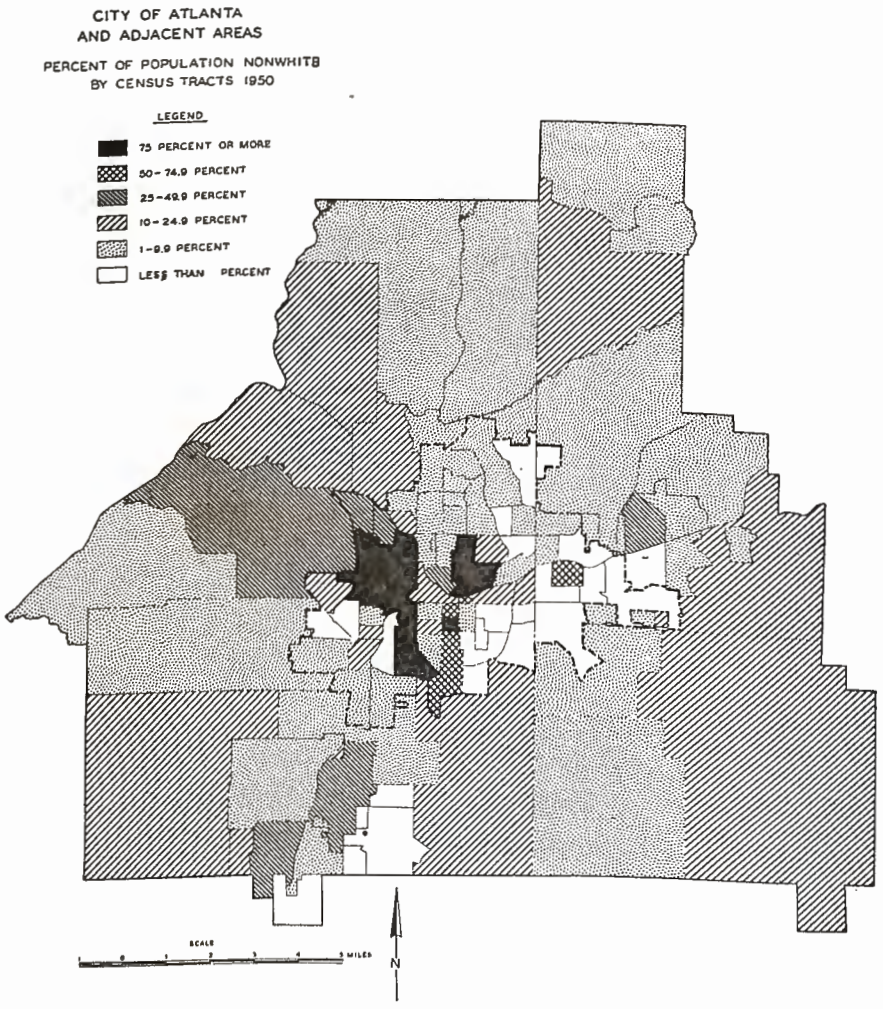


Reproduced by courtesy of *Commission on Race and Housing*

Often it is 95 or practically 100 percent nonwhite. State Advisory Committees, particularly in Northern and Western States, report this same kind of racial concentration in their major cities.

While these maps indicate more dispersion of nonwhites in the Southern cities, much of it represents smaller, scattered pockets of Negro concentration. As suburbs develop, the old Southern pattern, carried over from days of slavery, of Negroes and whites living in close proximity, is giving way to the more general Northern pattern, of a central concentration of nonwhites ringed by outlying white areas. On the basis of studies of Census tracts, Chicago is the most residentially-segregated large city in the nation.

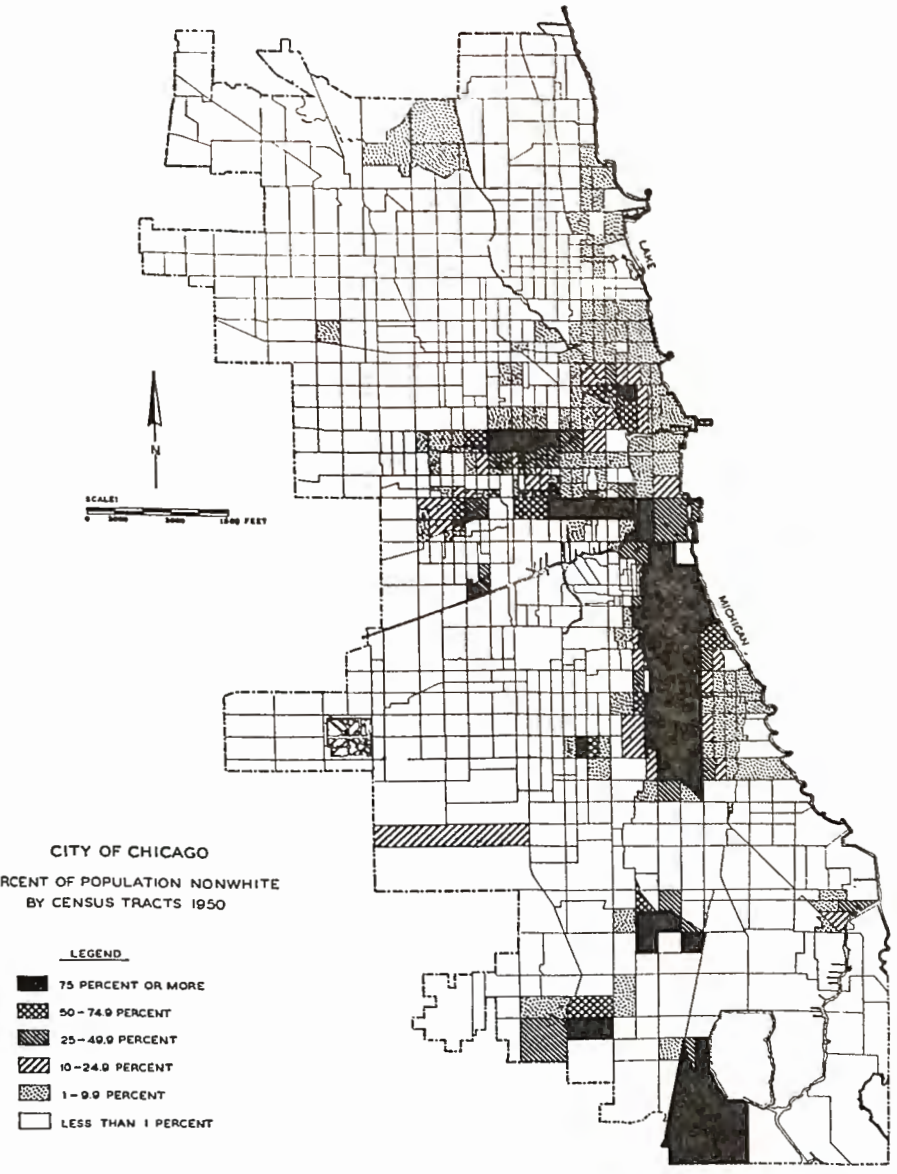
CHART XIV. Population in the City of Atlanta



Reproduced by courtesy of *Commission on Race and Housing*

This pattern of minority residential concentration is not entirely new. In the case of each group of newly arrived immigrants, the new Americans first lived in separate enclaves, often in the aging or decayed areas of the city. Then increasingly they spread throughout the metropolitan area.

CHART XV. Population in the City of Chicago



Reproduced by courtesy of *Commission on Race and Housing*

However, there are few signs that the normal American pattern of gradual dispersion is occurring with respect to Negro Americans. In only a few cities, notably Atlanta, where there is an all-Negro corridor to growing Negro suburbs, do Negroes have access to open land in outlying areas.

In most metropolitan areas, there is already formed or in the process of formation the white suburban ring that Mayor Richardson Dilworth of Philadelphia calls "the white noose around the city."

With the growth of Negro population by birth and by migration the pressure for expansion of Negro living space mounts. If the population density in some of Harlem's worst blocks obtained in the rest of New York City, the entire population of the United States could fit into three of New York's boroughs.

The result of this is the phenomenon known as "blockbusting." This occurs when Negroes move into an all-white block and the whites all leave. "The Negro housing shortage acts on the city just as heat applied to water in a boiler does," a white spokesman for the Back-of-the-Yards Neighborhood Council in Chicago told the Commission. "After the pressure reaches a certain point an opening is forced and the excess steam escapes." The Negro "population pileup is so great that a breakout results in complete occupation of the adjacent white community."

The residential pattern emerging from this process of Negro concentration in an overcrowded inner city, with the borders of the Negro area expanding painfully through blockbusting, is contrary to previous American experience. The causes and effects of this pattern and the possible remedies must be of concern to all Americans.

3. Causes of the Housing Inequalities of Minorities

In part the special housing problem of minorities is caused by their economic, social, and cultural disabilities.

A high proportion of Negro, Puerto Rican, and Mexican Americans are in the low-income category that faces acute housing difficulties regardless of race. In 1946, a period of large-scale postwar construction of homes, only some 9 percent of nonwhite families residing in urban areas outside the South had annual incomes above $5,000 and only 3 percent of those in the South had such incomes. By 1957 the situation had greatly improved, but still only about 29 percent of nonwhite families in Northern urban areas had such incomes and 18 percent in Southern urban areas.

The pattern of racial concentration is in part voluntary. The executive secretary of the National Association for the Advancement of Colored People, Roy Wilkins, testified that there are "colored people in Harlem who wouldn't move out of Harlem if you gave them a gold-plated apartment."

On the other hand, the concentration is also involuntary. It is this shutting of the door of opportunity open to other Americans, this confinement behind invisible lines, that makes Negroes call their residential areas a ghetto. The invisible barriers to equal opportunity and freedom of choice are manifest when a Jackie Robinson, with a high income and the respect of the nation, cannot find a satisfactory suburban home in the State of New York.

The low educational, cultural, or social status of most low-income nonwhites is no explanation of the housing difficulties of well-educated, prosperous nonwhites. White immigrants who learned the American language and had an American haircut became Americanized. They were able to move from the ghettos as they prospered.*

The crucial factor in minority housing today is that the visibility of Negro Americans and dark Puerto Ricans seems to make this choice impossible. There are, as Archbishop Meyer of Chicago noted, many Negro Americans "teaching in the classrooms of our universities, pleading cases in our law courts, performing operations in our hospitals, and in short doing work that only the highest intelligences most perfectly trained are capable of." He then asked the uncomfortable question:

> Has this new and rapidly increasing Negro middle class been able to choose its place of residence as the children of our European immigrants were able to do? Does the fully competent Negro person have the option we alluded to above? Unfortunately, the only honest answer we can give it, at best, is a qualified no.

Some forms of discrimination against Negroes may be understood. The tensions and human upheavals involved in Negro expansion through blockbusting are understandable. But why there should be opposition to Negro purchases in outlying areas beyond the range of any possible contiguous Negro area expansion is more difficult to understand.

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*Commissioner Johnson:

I do not think that this portion of the Commission's report can be overemphasized. The "race tag" attached to housing which results in the denial of freedom of choice in housing for Negroes regardless of their educational, cultural, or economic achievements, is in my view, one of the most disturbing facts of American life today. It is an outstanding example of the gap between American ideals and practices. The American ideal that men should advance on their merit becomes a mockery when a man's race or color in fact forecloses him from exercising free choice in providing a home for his family. Indeed, the "race tag" operates as a penalty against some who have succeeded by depriving them of the enjoyment of a home of their choice and as a brake against some with the capacity to achieve. Continued denial of freedom of choice in housing accommodations tends to deprive minority citizens of an important incentive for self-improvement and community excellence.

The fears expressed here are not of inundation but of a loss of both social status and of property values resulting from the presence of Negroes. Although there is considerable evidence that the standards of a neighborhood and the property values need not be depreciated by such Negro residence, these fears by their own force can become self-fulfilling prophecies. The fear produces panic selling which in turn results in the very depreciation in the particular housing market that was feared. In a real sense what people in this situation have most to fear is fear itself.

But while racial discrimination may be said to be a major cause of the housing difficulties of nonwhites, no one can say what is at bottom the cause of the discrimination. That the universal human phenomenon of ancient, unreasoning prejudice is involved, and not necessarily prejudice based on color, is shown by the continuing discrimination against Jews.

Today Jews can, in most cases, get housing that is equivalent in quality to that of other whites, but testimony was presented to the Commission that in practically every large city in the United States and in its suburbs there is discrimination against Jews in housing. In New York City over a third of the 200 cooperative apartment houses were said to exclude Jews. The Westchester suburb of Bronxville is said to be what Hitler called "Judenrein"—free of Jews. In the nation's Capital, there are said to be 14 areas in the District of Columbia and its environs from which Jews are excluded.

4. Effects of the Housing Inequalities of Minorities

Some of the effects can be seen with the eye, some can be shown by statistics, some can be measured only in the mind and heart.

The Mayor of Atlanta took the Commission to one of the worst slums in the country, Buttermilk Bottom. No one who has walked through these unpaved alleys, followed by ragged children who are growing up in overcrowded tenements and shacks, can doubt that slums breed disease, demoralization, juvenile delinquency, and crime.

Some of the firsthand testimony in the Commission's hearings will be difficult to forget. A Puerto Rican witness described the "rent jungle" of East Harlem "where 10 and 11 human beings have been crowded into one room * * * where tenants are afraid to put their lights out at night for fear of rats."

"For many charity begins at home," Jackie Robinson testified. "So do hate, hostility, delinquency . . . ." The president of the Protestant Council of New York, Dr. Gardner Taylor, called slum-living "a form of infanticide."

The estimated substandard 20 percent of metropolitan areas are said to account for 60 percent of the area's tuberculosis, 55 percent of

the juvenile delinquency, 45 percent of the crimes, and 35 percent of the fires—while they comprise only 33 percent of the population.

The relation between bad housing and crime was evident in New York long before Negroes took over most of the worst housing. Crime and juvenile delinquency were common among each new group of immigrants when they lived in the central city slums. As they moved from these centers to better outlying neighborhoods, their high crime and delinquency rates declined sharply.

In Atlanta the Citizens' Crime Committee found that Negro areas had a higher than average rate of juvenile delinquency. But the committee also found one predominantly Negro census tract, where there was a high incidence of Negro home-ownership, which was as free of juvenile delinquency as the most favorable white neighborhood. It found another predominantly white census tract, where there were a large number of white migrants from rural areas, with a rate of juvenile delinquency as high as that of any Negro neighborhood in the city. The incidence of juvenile delinquency was found to be heaviest in areas where housing is dilapidated, poverty widespread, living conditions overcrowded and home-ownership low.

Justice Justine Wise Polier, for 23 years a judge in the Children's Court of New York City, told the Commission that in a study of 500 children who came before her court she found that the majority were living in substandard housing areas. A common denominator of the defendants in her court, she said, is "fear of the real world, an awareness of low family status, beyond anything that people who do not meet with these little children may realize, little sense of personal worth and terrible discouragement as to their own future." Living in a slum, knowing that it is a Negro area and that Negroes have little chance to live elsewhere "violates a child's sense of justice, certainly his respect for himself," and the young Negro loses his ability "to reach out and function up to his capacity," Justice Polier reported.

Thus their housing conditions are a major factor in the vicious circle in which most colored Americans are caught. From the Negro slum dweller's viewpoint, education is not readily seen as a passport to a better life. The sense of futility is manifested in low achievement. To make matters worse, the schools available to slum dwellers are usually inferior. Located in the oldest sections of cities, they are likely to be antiquated and overcrowded as well as segregated in fact if not by law. In Chicago, two-thirds of the students on double shift in elementary schools are Negro. Approximately 100,000 Negro children attend all-Negro schools. In New York the percentage of substitute teachers in predominantly Negro junior high schools is 30 percent higher than in other city schools. "Teachers do not want to go into these areas because the children have not had the advantages of other

children," testified a member of the New York City School Board, "and so the children who have not had the advantages of other children are doomed to continue to be disadvantaged because they have not had the advantages."

The whole city suffers from these effects of minority housing inequalities. It is estimated that the substandard 20 percent of our urban centers, containing some 33 percent of the urban population, accounts for 45 percent of the total city costs but yields only 6 percent of the real-estate tax revenues. An Atlanta official testified:

> The failure of a community to discharge its responsibilities in housing and leadership will inevitably produce high taxes in the form of police and prison charges, the toll of disease and the cost of added health services.

The deepest injury to the city, however, is not measurable in money. What kind of a citizen will the child become who grows up seeing or suffering these inequities? What happens to the inner values of the child who constantly witnesses this gap between the American promise of equal opportunity and housing conditions that violate human dignity?

This is the final tragedy: that the effect of slums, discrimination and inequalities is more slums, discrimination, and inequalities. For prejudice feeds on the conditions caused by prejudice. Restricted slum living produces demoralized human beings—and their demoralization then becomes a reason for "keeping them in their place."

These are the findings not only of the Commission but of every State Advisory Committee dealing with the subject.

B. What Is Being Done To Meet These Needs and Problems

"The legitimate object of government," said Lincoln, "is to do for the people what needs to be done, but which they cannot, by individual effort, do at all, or do so well, for themselves."

The needs of colored Americans for equal opportunity and the needs of low-income Americans generally for good, well-located homes within their means are clear and pressing. The question is how these needs will be met.

In order to answer this the Commission sought to appraise the progress now being made by government on all levels and by the people themselves through their private enterprise and voluntary action. First, the Commission surveyed the laws, policies and housing programs of city and State governments, where the initial responsibility rests. For the most part Federal housing programs depend on either city and State initiative or private initiative or a combination of these.

CHAPTER III. CITY AND STATE LAWS, POLICIES AND HOUSING PROGRAMS

The Commission held hearings on housing in three major cities—New York, Atlanta, and Chicago—each representing a different approach to racial housing problems.

1. New York: Laws, Policies and Programs Against Discrimination in Housing

Thirteen States and some 34 cities or counties have enacted significant legislation against racial discrimination or segregation in some phase of housing. The scope of these laws varies from those limited to public housing projects through those including all publicly-assisted housing to those also covering all multiunit housing, public and private. In eight of these States and several of the cities there are official commissions or agencies to administer the laws.

Because New York State had the longest and widest experience with state laws against discrimination in publicly-assisted housing and New York City with a city law against discrimination in private housing, and because they were the largest State and city in the Union, with enormous racial problems, the Commission decided to hold its first housing hearing there. It heard testimony from city and State officials and community, business and minority leaders on the effects of these laws and enforcement programs. The Commission was impressed with the seriousness of purpose and good will shown by all concerned and by the many varied efforts underway to eliminate the considerable discrimination in housing that all agreed existed.

New York's Negro population of over 950,000 is substantially larger than the combined Negro populations of the capital cities of all of the States of the South. New York's Puerto Rican population of over 600,000 is rapidly approaching the Negro population. Between 1940 and 1957 more than 650,000 nonwhites and Puerto Ricans migrated to New York City.

The city fair housing practices law of 1957 bars discrimination in the sale or rental of private multiple dwellings and in developments of 10 or more homes. This first law of such far-reaching scope covers about 70 percent of the city's housing supply compared with about 7 percent that is covered by the State law against discrimination in publicly-assisted housing.

The City Commission on Intergroup Relations (COIR) that administers the city law concentrates on bringing about compliance through education and negotiation. After it receives a complaint of discrimination its intergroup relations officers conduct an investigation, then there are "mediations in the field." If these are not suc-

cessful, conciliation conferences conducted by members of the commission follow. Only if these fail are there formal hearings by the commission and finally, before court enforcement action is taken, there is a review by a special panel appointed by the mayor.

In the first 13 months of operation COIR had processed 325 complaints, many of which were settled by the agreement of the respondent to comply with the law. No case had required court action. COIR Chairman Dr. Alfred Marrow stated that "outright discrimination has gone underground in New York City because of law and the positive declarations of our municipal policy have taught our citizens that discrimination can have no acceptance in our daily affairs."

The testimony by the State Commission Against Discrimination (SCAD) that administers the State laws against discrimination in publicly-assisted housing was in much the same vein. "We use the compulsive powers very little," Chairman Charles Abrams stated. SCAD had been able to get the private owners of a number of developments in and around New York City to accept Negroes in their all-white projects. He attributed these limited successes to the emphasis on conciliation plus the fact that the law "also had teeth in it" if conciliation should fail.

The antidiscrimination legislation does not seem to have affected adversely the construction of housing in New York. The State is reported to be far ahead in investments made in urban renewal and publicly-assisted housing projects. More than $2 billion of private investment has been made subject to the laws.

One large housing developer in New York, James Scheuer, who has extensive experience with urban renewal projects around the country, testified that the fears about these laws "simply have not materialized." He said that "the effect of nondiscrimination legislation is to scatterize nonwhite housing demands so it has no impact on any one community or any one project." He testified that he knew of no instance "of a community that has suffered a decline in property values due solely to the fact of entry of a nonwhite into a theretofore white community."

No one in New York contended that laws alone will suffice to solve the problem of discrimination in housing, but most of the witnesses agreed that laws play an important educational role. The chairman of COIR, Dr. Marrow, discussed this point:

> It is true that such regulations do not at once change habits and attitudes, but it is even truer that they set moral and civic standards. * * * I feel without a statute supporting the work of the agency that our educational efforts would bog down.

Changing the practices of people by law, he said, "will lead sooner to a change in attitude than if the practice were to continue unchanged."

As evidence of the efficacy of this approach, COIR presented a map

indicating the degree of dispersion of nonwhites outside the areas of concentration. These areas of dispersion were said to be where the law has been put into effect in publicly-assisted or public housing projects.

Most witnesses in New York agreed with Mayor Wagner that, "A legislative program to combat discrimination in housing cannot be effective without a simultaneous program to increase the housing supply." The reason for this is clear enough, said SCAD Chairman Abrams:

> It's only where people fear that the infiltration will be followed by a mass influx that you get this resistance, and the only way you can prevent a mass influx in the cities is by increasing the housing supply in the region.

In this respect New York has pioneered with special programs of assistance to private housing projects for low and middle-income citizens. Through direct loans on liberal terms to developers by the State Housing Division or by municipalities, substantial reductions in financing are achieved which are reflected in lower rents.

Governor Rockefeller stressed that "we still have a long way to go in achieving our goal of making New York State a shining example of our faith in freedom and justice for all men." Rather than hide these problems of the "dark corners of prejudices and discrimination in our midst," he hoped—

> that by facing them and doing our best to solve them with good will and intelligence we can make this State a testing ground and a demonstration for the nation and the world, a place in which we apply the truths that we declare to be self-evident, a place in which we strive tirelessly and without reservation to fulfill the promises of our Constitution.

2. Atlanta: Programs for Separate but Equal Housing

There are a number of cities and States where the residential separation of the races is the prevailing public policy. While racial zoning laws have been declared unconstitutional, segregation in all public housing projects and in most urban renewal projects appears to be the official rule throughout the South. Even without laws, the predominant attitude of the white majority in these States or cities is probably sufficient in itself to preserve if not extend the present racial residential pattern. There appears also to be considerable acceptance among Southern Negroes of the necessity for, or the desirability of, racial separation in housing at the present time and in the context of present white attitudes.

Racial integration in housing is not now a dominant issue in the South. However, the question of providing greater opportunities to Negroes for decent housing in decent neighborhoods is a pressing and important issue there as elsewhere.

The Commission's hearing in Atlanta threw light on the problems and the progress possible in Southern cities. There was general

agreement among white officials and community leaders that Negro housing opportunities have not been equal. Mayor Hartsfield is concerned about "the fact that the Negro land area is always restricted, * * * cruelly restricted." He has been trying to help the Negro reverse the usual urban trend by which "the white man will wind up in the suburbs and the Negro will wind up in the center of the old city with the old housing, secondhand housing."

Mayor Hartsfield's program of equal opportunity for Negroes has been within the pattern of segregation which he says "the overwhelming public opinion" requires. While Negro witnesses expressed reservations about or opposition to segregation, even the sharply critical president of the Negro real estate board, Q. V. Williamson, agreed that "considering the range of inequities still to be found throughout our Nation" it was correct to say that "the Negro population of Atlanta is housed in more modern, decent, safe, and sanitary housing in proportion to the population than are the Negroes in any city of the United States."

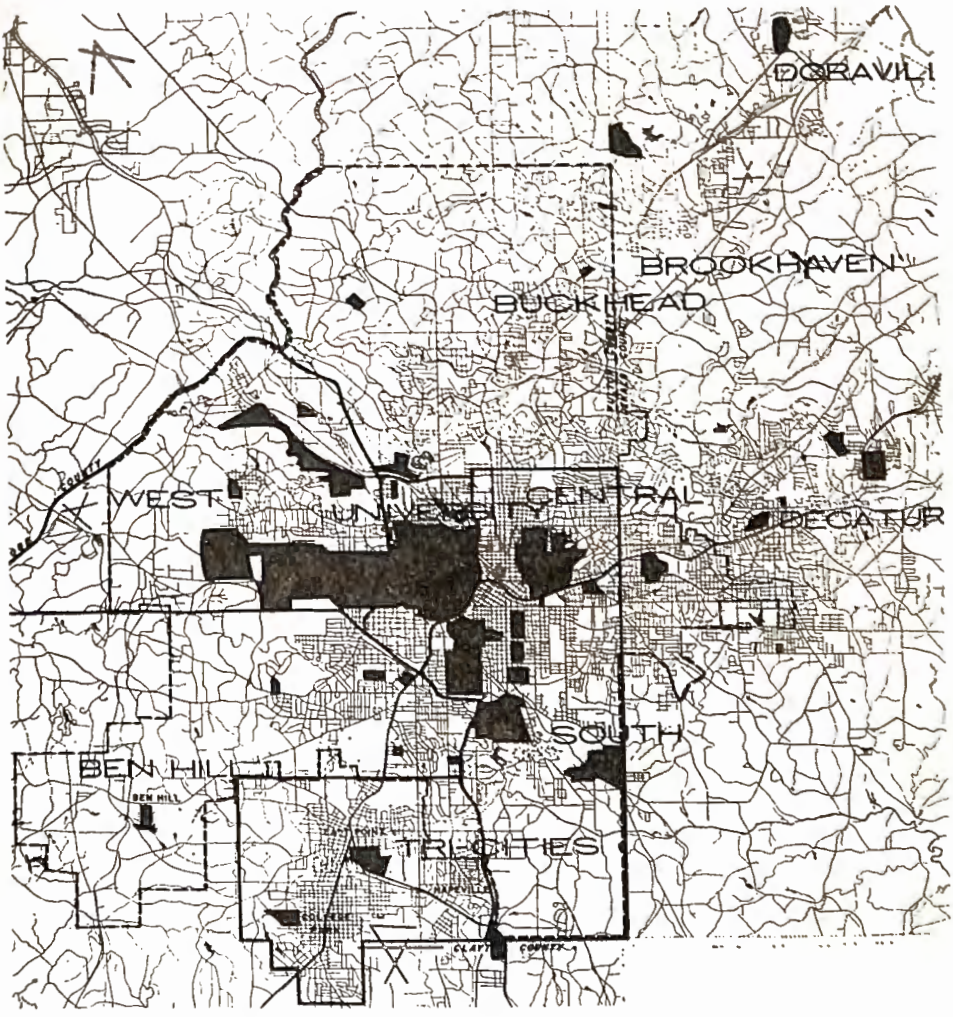
It is not that Atlanta lacks its Negro slums. The unusual development in Atlanta is that a corridor has been opened for Negro expansion into the outlying areas, and middle- and upper-income Negro suburbs are being established that rank in quality with any suburbs in the country (see Chart XVI). Mayor Hartsfield drove the Commission through this growing area of beautiful homes, including some in the $50,000 to $100,000 class. Even more significant perhaps is the fact that a procedure has been devised by which problems connected with Negro expansion can be handled through biracial negotiation.

In 1952 the Mayor established the biracial West Side Mutual Development Committee. There had been tension and violence on the West Side in the face of the inevitable Negro pressure to move out of the congested inner city. Negroes were blockbusting into white neighborhoods and the only answer of the white residents was "Don't move here." A committee of three Negro and three white members was appointed to find some better answer to the whole problem. The official Metropolitan Planning Commission gathered, analyzed and presented to the unofficial biracial West Side Committee the facts about housing needs and trends. The committee began to get the parties involved in a particular neighborhood to discuss the facts and try to reach voluntary agreements about the direction of Negro expansion in light of the facts.

According to Mayor Hartsfield—

> when they sat down and began to talk about their mutual problems, both sides found that they could concede something, and for the first time a committee sat down that was concerned not with just 'Don't move in my section,' but also concerned with where they would or could move. So out of that committee certain agreements were made voluntarily, all on a high basis, nobody's pride

CHART XVI. Non-white Housing in Atlanta



was hurt, in which the Negro citizen agreed to stay out of certain sections that were tension areas. The white citizens agreed that the Negro needed more land area.

When a particular white subdivision was a bottleneck to Negro expansion westward into the suburbs, "The white people in that area were by white people asked to move and get out and take that cork * * * out of the bottle." While the law could not be used as a sanction for any such agreements, the business community supported this voluntary approach and, according to the Mayor, "before anybody would make a loan they would find out what West Side Mutual Development had agreed on."

Uncertainty about whether an area is to go all-Negro or remain predominantly white appears to be a major cause of tension and panic

in so-called transition areas. A white businessman on the West Side Committee told how it had "been able to go into areas where there was no real estate market" and "work out a real estate market by establishing that a portion of the area would be white or would be Negro, and so the people could sell their homes." Once the white people jointly decide that an area is going all-Negro then homes can be sold to Negroes without any drop in the market. In the "cork in the bottle" discussed by the Mayor, after the facts had been presented by the West Side Committee and the white residents had voted to move out, an orderly 2-year transition to a completely Negro neighborhood was planned. In contrast to previous transitions in Atlanta and most such transitions in other cities, there were, according to a white West Side spokesman, "no violence, no ill will, no hard feelings on either side."

On the other hand, if through agreement with Negro representatives the white people in a neighborhood become convinced that Negroes will not move into their area, then the fear of being uprooted subsides and the white neighborhood is stabilized without panic sales.

The Negro spokesman from the West Side Committee, a prominent insurance executive, agreed that as a result of this approach "we have been able through negotiation to work out more peacefully our problems than most Southern cities." He reported that "mutual respect and understanding" had gradually developed after a "cold and cautious" beginning. "We found out that in many cases we had speculated incorrectly as to the aims and aspirations of each group," he said. The whites had learned that Negroes had no desire "just to infringe and encroach into white communities" but had a great need for new housing, and the Negroes came to understand the resentment of whites who did not want to have to leave their homes.

Mayor Hartsfield agreed that the ability of the Negroes, through loans from their own financial institutions and the initiative of their own real-estate men, to purchase and develop property, was an essential factor in expanding Negro housing opportunities. It is what permitted the Negro members of the West Side Committee to bargain from strength. But the Mayor considered the establishment of an effective procedure for negotiation and reconciliation no mean accomplishment. "In this field of race relations, like fire, sometimes a little fire can be put out and a big one can't," he said. "Through close liaison you put out the little fires."

Negro leaders in Atlanta were troubled by the fact that Atlanta housing is more segregated today than it was 20 years ago. They had difficulty answering when asked whether the gains in quality and quantity of housing available to them outweighed the increased segregation. To this Mayor Hartsfield said that with continued "good will and fairly close liaison" there would be progress:

It may be slow in one place, a little faster in another, but always there will be progress, and * * * the important thing is the direction in which we are moving and not always the speed with which we are moving.

3. Chicago: Where There Are No Effective Laws or Policies Relating to Discrimination in Housing

Most cities and States do not have laws prohibiting discrimination in housing, nor do they have a public policy in favor of residential separation. Chicago, where the Commission held its third housing hearing, is an example of such a city with no effective laws or policies on this subject despite the fact that it has long had a large Negro population and a serious racial problem. Nor does Illinois have any statewide antidiscrimination laws or policies of any significance.

There is a State Commission on Human Relations with power to study, educate, and make recommendations but with no specific authority in the field of housing. And there is the Chicago Commission on Human Relations established in 1943 after a race riot in a nearby city.

The Chicago commission has a Migration Services Department responsible for developing techniques to ease the adaptation of migrants to the city. Much of this work is done by volunteers and is among white migrants from the South and Southwest.

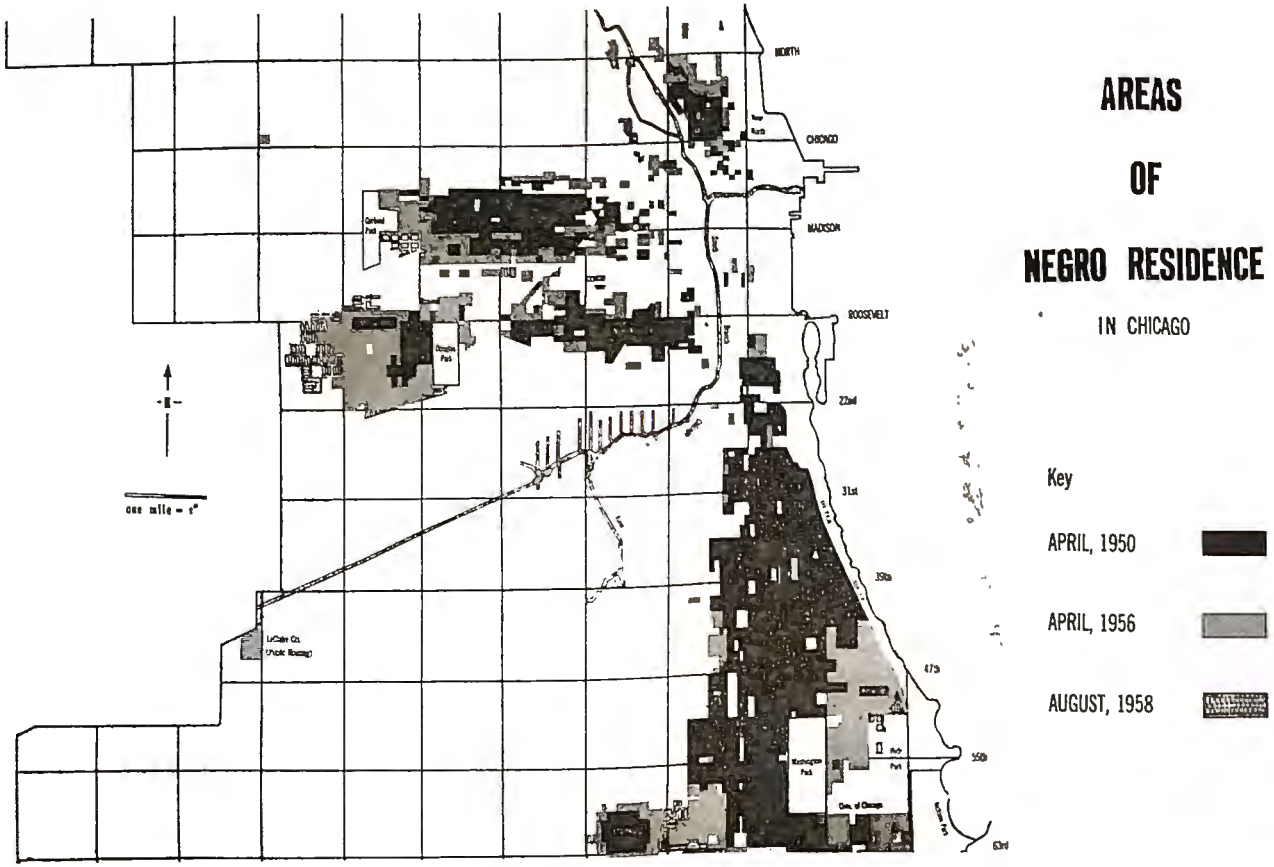
With a staff numbering over 30, the Chicago commission devotes much of its effort to assisting community organizations in areas of so-called racial transition that "are recognizing the futility of trying to preserve the quality of their neighborhoods simply by excluding minority groups," and are "looking for ways in which to absorb minority group members while maintaining or even improving the quality of their neighborhoods."

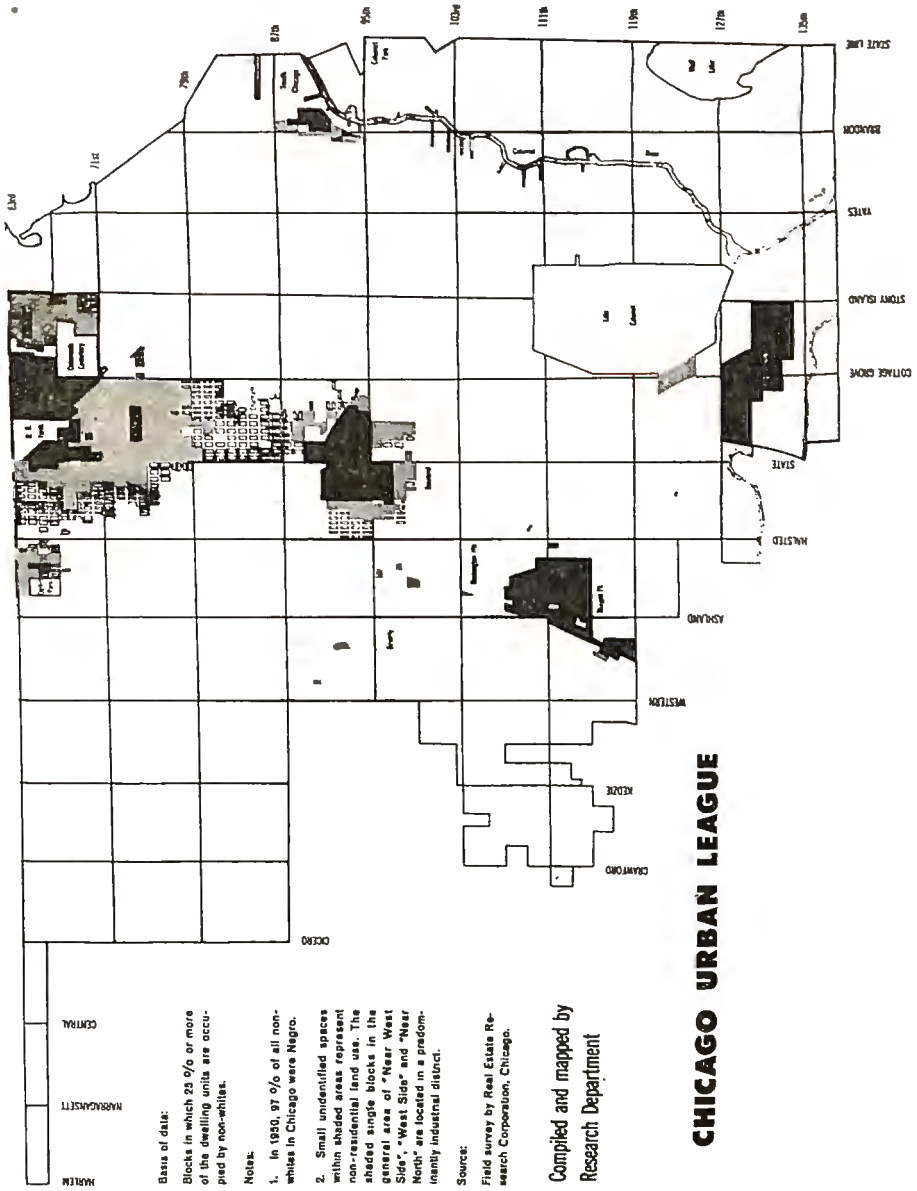
Given the complexity of the housing problems in Chicago, it is doubtful that any educational program alone, however well conceived and executed by the Chicago commission, can by itself check or reverse the evolution of white neighborhoods to areas of transition and then to Negro neighborhoods.

Aside from the work of the Chicago commission, there is no other city program relating to the problem of discrimination and racial concentration in housing. On the contrary, city policies particularly in public housing, or the lack of policies, have contributed to making Chicago in terms of racial residential patterns the most segregated city of more than 500,000 in the country.

Chicago is a classic example of Negro confinement within a congested Black Belt and of Negro expansion primarily through blockbusting. (See Chart XVII.) The frustrations of Negroes restricted largely to bad housing in slums or blighted neighborhoods, and of

CHART XVII. Areas of Negro Residence in Chicago




CHICAGO URBAN LEAGUE
Compiled and mapped by Research Department
Basis of data:
Blocks in which 25 o/o or more of the dwelling units are occupied by non-whites.
Notes:
1. In 1950, 97 o/o of all non-whites in Chicago were Negro.
2. Small unidentified spaces within shaded areas represent non-residential land use. The shaded single blocks in the general area of "Near West Side", "West Side" and "Near North" are located in a predominantly industrial district.
Source:
Field survey by Real Estate Research Corporation, Chicago.
HARLEM
MARSHALL-WEST
CENTRAL
CICERO
CRAWFORD
KEDZIE
WESTERN
ASHLAND
HALSTED
STATE
COTTAGE GROVE
STONY ISLAND
YATES
JEANOOR
STATE LINE

white people caught in the path of Negro expansion, are always simmering. Since World War II three large-scale riots of some duration have occurred in areas where Negroes were moving into white neighborhoods. Between 1956 and 1958 there were 256 reported incidents of racial violence, including 5 deaths and 38 cases of arson. Of these 176 were attacks by whites on Negroes, 53 were attacks by Negroes on whites. (See Chart XVIII.)

It is not surprising that higher income white families are moving out of the city. Every week in Chicago the white population decreases by an estimated 300 persons. What is surprising is that with these unsolved problems Chicago continues to grow, largely through the migration of Negroes. Every week the Negro population increases by nearly 600. Between 1910 and 1920, and then again between 1920 and 1930, the Negro population more than doubled. Following a decrease during the depression of the 1930's, it increased 77 percent between 1940 and 1950. It is estimated that the nonwhite population (96 percent Negro) swelled from 509,000 in 1950 to 749,000 in 1957, going from 14 percent of Chicago's total population in 1950 to 20 percent in 1957.

Through programs of slum clearance, code enforcement, conservation and redevelopment, the city has made some progress in increasing its total housing supply, leaving aside racial aspects. Since 1950 the city's housing has increased by 5.3 percent, as compared with a population increase of 3.4 percent. Substandard housing decreased by 31 percent while standard housing increased by 16.3 percent. Overcrowding decreased by 30 percent and home ownership rose by 16.5 percent, to the highest rate since 1900. But there were no equivalent statistics on the extent to which Negroes were able to share in these gains.

The city has a public housing program, with 18,458 dwelling units. But the startling racial fact is that, as of January 1, 1959, some 85 percent of the tenants were Negro, about 13 percent white, and about 2 percent Puerto Rican. Despite a declaration by the Chicago City Council that tenants in public housing projects "shall not be segregated or otherwise discriminated against on grounds of race," 8 of the city's 31 projects are occupied exclusively by Negroes, 1 is exclusively white, and in 18 of the remaining 22 the tenants are more than 75 percent Negro. The proportion of white tenants has decreased steadily since 1949 when they comprised nearly 40 percent.

Even the 1949 ratio was the reverse of the estimated needs for low-rent housing by the respective racial groups. In 1950, based on relative need, it was estimated that 60 percent of all units then planned should be allocated to white families. In the 1957 National Housing Inventory there were reported to be some 66,000 substandard units

occupied by nonwhites and 100,000 occupied by whites. Even making allowance for the special factors creating special Negro needs for public housing, Chicago's Negroes are receiving a disproportionate share of the low-rent subsidized housing available.

Probably the main reason for this imbalance in racial occupancy is the concentration of sites for a disproportionate number of projects within predominantly Negro areas, usually in slums or blighted neighborhoods. A few years ago when the Chicago Housing Authority suggested sites in better neighborhoods outside the "black belt," opposition from the white areas involved effectively blocked city approval. Now, accepting this opposition as an established fact, the housing authority is planning to locate additional projects in Negro neighborhoods. This will not only increase the overall percentage of Negro occupancy but will reinforce the city pattern of racial residential concentration. Since low-income white families cannot be expected to flock to projects in deteriorating, overcrowded Negro areas, this city policy of site selection in effect discriminates against low-income whites. Unless something is done to reverse this trend, public housing in Chicago will soon become almost entirely a Negro housing program and the "integration" of these projects will be merely a euphemism.

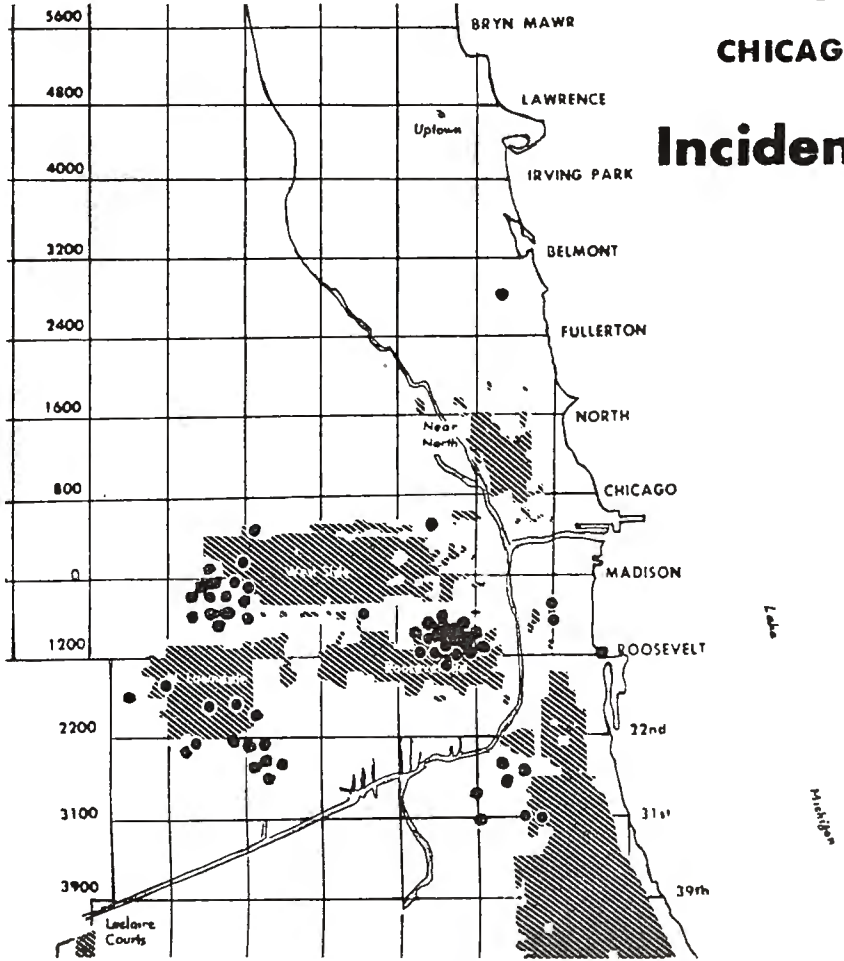
In its urban renewal program the city is cooperating with private developers and neighborhood organizations in open occupancy projects and in the stabilization of interracial neighborhoods on the south side, but in these few notable cases, the initiative came from the developers or local citizens.

It is too early to judge whether a new pattern is really developing or whether Lake Meadows, Prairie Shores, and Hyde Park-Kenwood are the exceptions that prove the rule. These are but "tiny cracks" in the "walls of the ghetto", said the executive director of the Chicago Urban League, Edwin Berry. Moreover, a price in human terms has been paid for these experiments. In order to achieve integrated middle-income housing for 3,700 families at Lake Meadows and Prairie Shores, some 3,820 families were dislocated, with few of them able to return to live in the higher rent apartments.

"Are Negro relocatee families at liberty to take advantage of vacancies in Chicago's total housing supply?" asked Mr. Berry. "The answer is 'No.' What this does to intensify overcrowding and spread blight in Negro communities is obvious." Mr. Berry concluded that "Chicago is in trouble—serious trouble." He predicted "that unless the present picture is drastically altered, segregation in Chicago will increase rather than decline."

The Commission heard conflicting testimony on what might be done to change this picture. The most novel proposal was made by

CHART XVIII. Incidents of Racial Violence in Chicago in Relation to Population Pattern



CHICAGO'S NEGRO RESIDENTIAL AREA

as related to

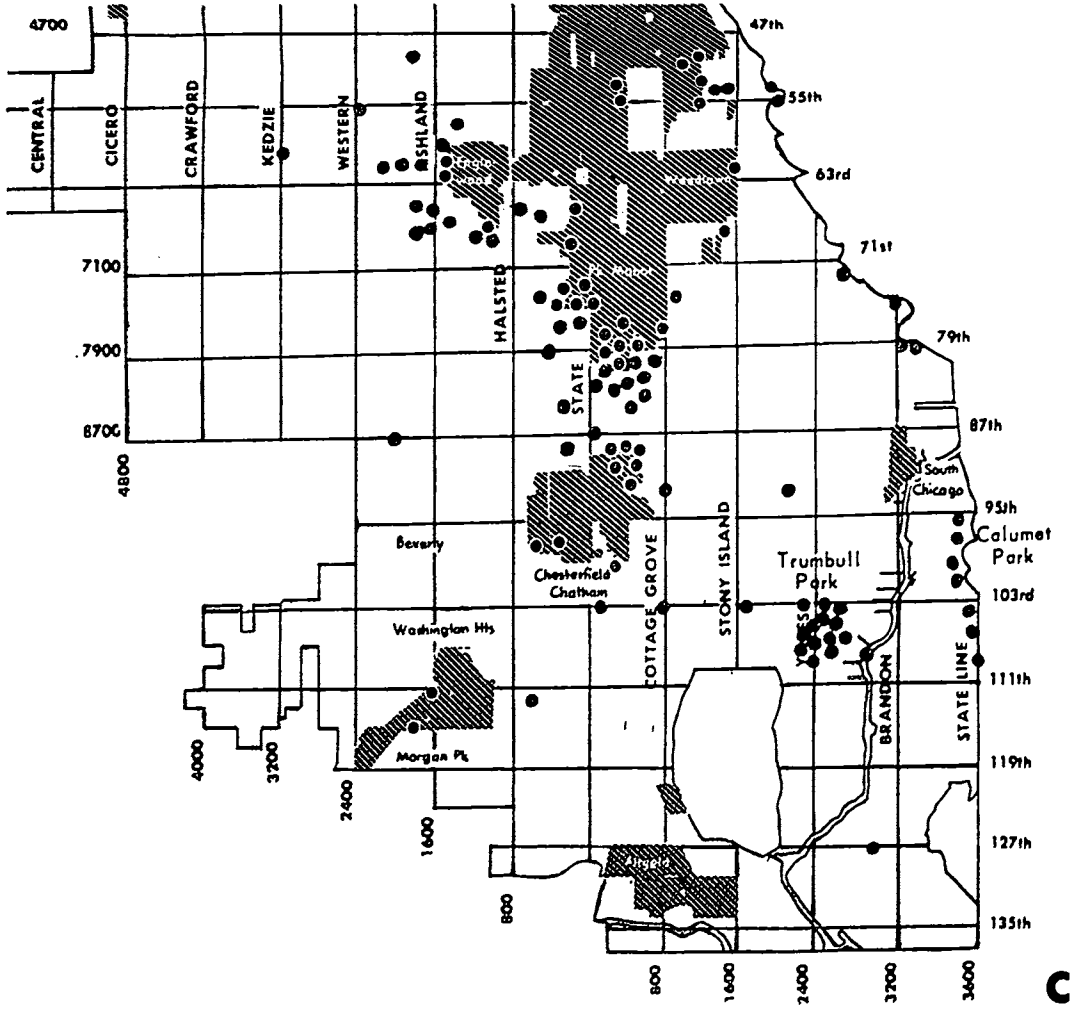
Incidents of Racial Violence

1956 . . . 1957

KEY

Each dot represents 1 incident

Negro residential areas



1956		1957	
January	7	January	6
February	7	February	4
March	9	March	16
April	17	April	7
May	5	May	1
June	5	June	9
July	6	July*	23
August	6	August	9
September	5	September	4
October	5	October	2
November	6	November	3
December	1	December	1
TOTAL	79	TOTAL	85

*Includes Calumet Park race riot of July 28, 1957

Each incident of "racial violence" is a separate case of exertion of any physical force against a person or persons or property, because of the race of the affected person or persons.

Basic data on residential areas by cooperation of Real Estate Research, Inc. Incidents of violence compiled and mapped by

Research Department

CHICAGO URBAN LEAGUE

Saul Alinsky, executive director of the Industrial Areas Foundation and technical consultant of the Back-of-the-Yards Neighborhood Council. He said that the fears of the white residents on the edge of the Negro area that their neighborhood would be inundated were real and legitimate. He added:

> We can ignore these facts and continue to blow the trumpet for moral reaffirmations, but unless we can develop a program which recognizes the legitimate self-interest of the white communities, we have no right to condemn them morally because they refuse to commit hara-kiri.

The means must be found, he proposed, "to prevent the swamping of white communities by large numbers of Negroes driven out from the heart of the ghetto by the forces of the housing shortage. Simultaneously, a means must be found that will forestall the panicky flight of the white population out of communities where a few Negroes have moved in."

A means to do both, he suggested, should be possible because "people of like background, income, occupation, and way of life have and will continue to prefer to live together * * * whether we are talking about whites living with whites, Negroes living with Negroes, or whites living with Negroes. If the white people could be assured that they would not be overwhelmed by a tide of Negroes coming out of the slums, they would accept Negroes of their own approximate economic and social level as neighbors," Mr. Alinsky said. "Too many whites have already sold and run, only to sell and run again. They're tired and broke. They are now willing to settle for something less than all-white neighborhoods."

To this end he proposed a system of racial quotas involving a series of communities now in the path of Negro expansion. By such agreed quotas under which a limited number of Negroes—perhaps 7 or 8 percent or one or two Negroes in a block—would be welcomed into white neighborhoods, the Negro population wishing to live outside all-Negro areas could be diffused throughout a broad area. The quota's effectiveness, he conceded, depends on a community's ability to control itself. There would have to be a community organization strong enough to be able to buy and sell homes put up for sale if necessary to prevent blockbusting tactics. Another ingredient wanted for such a solution was "a Negro community organization which can speak for the Negro population."

To charges that any such quota was odious and discriminatory Mr. Alinsky said:

> I find it somewhat ironic that I, a person of the Jewish faith, should stand in public and speak favorably about a system of quotas. In the past, the quota has been used as a means of depriving individuals of my faith of opportunities and rights which were properly theirs, but the past is the past. What is an unjust instrument in one case can serve justice in another.

To those who were "shocked by the idea of opening up of white communities to Negroes on a quota basis aiming toward the diffusion of the Negro population throughout the city scene," he asked "what solution do they propose?"

The only other new answer suggested was that of the executive director of the South East Chicago Commission, Julian Levi. On the basis of the experience in stabilizing the Hyde Park-Kenwood area racially without the use of quotas, he said that an open community could be achieved only through "community excellence." To be successful open occupancy projects or neighborhoods must provide high quality housing at reasonable cost; the people, backed by public authorities, must insist that the housing codes be enforced; funds must be available to help owners purchase, rehabilitate, and improve their property. In short, standards of the community must be raised and maintained simultaneously with integration.

The way to insure the success of an integrated school, Mr. Levi argued, "is to make that school a great educational institution." Similarly, he thought, "the best way to insure the successful development of integrated housing is to provide values and finances comparable with the best found on the market."

CHAPTER IV. FEDERAL LAWS, POLICIES, AND HOUSING PROGRAMS

1. The Constitution, Statutes, and Judicial Decisions

The right of all citizens to acquire, enjoy, own, and dispose of houses and land is protected from discriminatory State action by the Fourteenth Amendment to the Constitution. As the Supreme Court has held without dissent:

> Equality in the enjoyment of property rights was regarded by the framers of that amendment as an essential precondition to the realization of other basic civil rights and liberties which the amendment was intended to guarantee.

This "essential precondition" was originally among the rights which Congress specifically sought to protect by statute in the passage of the Civil Rights Act of 1866, which was reenacted in 1870. Section 1982 of Title 42 of the United States Code provides that—

> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase. lease, sell, hold, and convey real and personal property.

This remains the sole Federal statute relating specifically to equal opportunity in housing. However, Federal housing programs are subject to the constitutional principles of equal protection of the laws and due process. The Supreme Court has held that the Fourteenth Amendment prohibits State or city action to enforce segregation through residential zoning on a racial basis, or to enforce racially restrictive private covenants in housing. It has also held that this antidiscrimination rule expresses the public policy of the United States and is applicable to the action of Federal as well as State agencies. The Fifth Amendment guarantees due process of law to all Americans in their dealings with the Government. Racial discrimination by the Government has been held to be unreasonable and a denial of due process. It "would be unthinkable," the Supreme Court has held, "that the same Constitution would impose a lesser duty on the Federal Government" than is imposed on the States by the equal protection clause of the Fourteenth Amendment.

It is noteworthy that the doctrine of "separate but equal" has never been adopted by the Court in cases concerning discrimination in housing. On the other hand, the Court has always made clear that the Fourteenth Amendment "erects no shield against merely private conduct, however discriminatory or wrongful."

The many cases in the courts dealing with city, State and Federal housing programs involve the question of drawing the line between

what is prohibited official discrimination and what is "merely private conduct." The Supreme Court has not yet spoken authoritatively on the matter of residential segregation and discrimination in the sale or renting of dwelling units in public housing projects or in publicly assisted private housing constructed under Government mortgage insurance or urban renewal programs. Neither the policies and practices of the various Federal housing agencies nor the State and local legislation designed to outlaw discrimination in private and publicly-assisted housing have been reviewed by the Court.

In the lower Federal courts there has been considerable litigation involving segregation and discrimination in public housing projects. Courts have gone both ways on the constitutionality of segregated projects, although the clear trend is toward declaring such segregation illegal and requiring local authorities to proceed with desegregation of the projects with due regard to the variety of obstacles and with all deliberate speed.

Urban renewal programs in some cities have been attacked on the ground that if consummated they would result in accentuating or perpetuating residential segregation. In one of the two cases to reach a Federal court, the suit was dismissed as premature and based only on speculation that the city officials would ignore "the law that is now so clear" requiring "that there can be no governmentally enforced segregation solely because of race or color." In the other case the court found no proof that the local authorities would enforce segregation in the projects. No cases have yet considered whether or to what extent housing constructed with the very considerable governmental benefits of the slum clearance and redevelopment programs comes within the ambit of constitutional protection against discrimination.

A more complicated question concerns discrimination in the sale of houses under mortgage insurance programs administered by the Federal Housing Authority and the Veterans' Administration. In the single decision on this, a Federal district court held that while the Government guaranteed loans under conditions requiring approval of architectural and development plans, this did not "make the Government of the United States the builder or developer of the Levittown project."

The situation is in flux, however. Recently a California Superior Court held that in view of the Federal Housing Administration's degree of involvement in the planning and inspection of private housing projects and the insuring of mortgages, there was sufficient governmental action to give a Negro plaintiff a constitutional right not to be discriminated against in the sale of homes by the real estate agents and builders. The court approved the plaintiff's argument that "when

one dips one's hand into the Federal Treasury, a little democracy necessarily clings to whatever is withdrawn."

Whether the Supreme Court or any Federal court will go this far in applying the principle of equal protection in the housing field cannot now be known. But the judiciary is not the only branch of the Government concerned with upholding the Constitution. Congress, by legislation, or the President by Executive Order as in the field of Government contracts, could require nondiscrimination as a condition of the receipt of Federal housing aid.

2. Programs and Policies of Federal Agencies

Housing and Home Finance Agency (HHFA)

The HHFA is the overall planning and coordinating agency responsible for the principal housing programs of the Federal Government.

In 1954 President Eisenhower told Congress that—

> the administrative policies governing the operation of the several housing agencies must be, and they will be, materially strengthened and augmented in order to assure equal opportunity for all of our citizens to acquire, within their means, good and well-located homes.

Some progress has been made within the housing agencies in giving greater attention to problems of racial equity, in encouraging the housing industry to build more housing for minorities, and in opening new avenues for financing of minority and open occupancy projects. Also the Federal agencies are cooperating with States that have adopted antidiscrimination laws.

But Federal mortgage loan insurance still goes unquestioningly to builders of great projects and new development towns who openly plan to, and do, exclude Negroes. Public housing projects in many parts of the country are in fact segregated either by declared city policy, as in Atlanta, or by the process of site location, as in Chicago. Urban renewal projects are in some places accentuating existing patterns or creating new patterns of racial separation.

HHFA Administrator Norman P. Mason, shortly after his appointment in January 1959, said that his "hope and wish now is that we may be able to move further and faster" toward the goal of equal opportunity in housing. To this Commission, Mr. Mason said:

> . . . [w]e can and must take needed action in all our programs to assure equal treatment and opportunity in their benefits to all our citizens, irrespective of race, color, or creed. I believe it is my responsibility to give leadership and guidance in both policy development and its implementation in this field.

The Federal Government, he said—

> has inherent basic responsibilities in adminstering its programs equally to its citizens. It also has at hand an inventory of national experience that belongs to the people and must be made available as a significant tool for moving

forward in this field. There are many ways to lead—by cooperating, by encouraging, by stimulating. It is sometimes necessary to prod, but whatever the method, it is my view, we must lead.

Mr. Mason told the Commission that he intended to bring together in his office "a leadership nucleus of informed intergroup relations specialists" who would recommend "specific programs and steps" for the implementation of these goals.

In each of its three regional housing hearings, the Commission heard recommendations for the issuance of an Executive Order by the President to assure equal opportunity in Federal housing programs. Many of these proposals included a Presidential Committee for Equal Opportunity in Housing to work in this field along the lines of previous Presidential committees on equal opportunity in the Armed Forces, and in Government contracts and Government employment.

Some witnesses testified that any immediate Federal requirement of an end to discrimination in Federal housing programs would mean an end to the programs themselves in some areas, and would thus do more harm than good. Mr. Mason, who also doubted the value of trying to act "precipitously," indicated that the principle of nondiscrimination should be applied here, as elsewhere, with all deliberate speed. He said that a Presidential committee on equal opportunity in housing or some "continuing group" to take up where the Commission on Civil Rights might leave off "would be helpful."

Federal Housing Administration (FHA)

FHA administers the various Federal home mortgage loan insurance programs. It has insured mortgages on more than 5 million homes, and property improvement loans for more than 22 million homeowners. Since 1934, FHA insurance has covered from 8 or 9 percent to about 30 percent of the whole mortgage market. (After World War II the Veterans Administration's loan guaranty program increased the proportion of the market covered by Federal insurance.) All this had led *Fortune* magazine to conclude that—

the overwhelming fact is that Government guarantee of mortgages, which has cost the taxpayer nothing so far, has done more than anything else to make possible a million or more new houses a year.

However, nonwhite home buyers and renters have not enjoyed the benefits of FHA mortgage insurance to the same extent as whites. According to testimony before this Commission, fewer than 2 percent of the total number of new homes insured by FHA since 1946 have been available to minorities, and most of these homes have been in all-Negro developments in the South.

Although the lower participation of nonwhites has in part been due to their lower incomes, FHA itself bears some responsibility.

Until the Supreme Court ruled in 1948 that official enforcement of racially restrictive covenants was unconstitutional, FHA actually encouraged the use of such covenants.

This is no longer the case, but FHA continues to insure mortgages on housing developments where the builder announces his intention to exclude Negroes, even where this is contrary to State or city laws against discrimination. FHA assistance has played an important part in the development of all-white suburbs around most large cities. William Levitt, who with an avowed policy of racial exclusion has built several large communities known as Levittowns, states that he is "100 percent dependent on the Government" for the success of these projects.

FHA does refuse to insure loans for discriminatory builders in States with antidiscrimination laws if the particular builder has been adjudicated by a State agency to be in violation of the State law. But FHA takes no action on its own initiative to prevent such discrimination by a builder. By the time a particular case is adjudicated by a State agency, it is likely that the builder will have completed and sold the homes on a discriminatory basis. In one case that the Commission followed closely, that of Levittown, N.J., this appears to be what is happening. Moreover, HHFA Administrator Mason told the Commission that Mr. Levitt has continued to get FHA commitments during this period of apparent violation of State law.

Mr. Mason testified that "FHA is ready and willing to take any step that it can" to correct this situation, but doubts that it can cut off assistance to a builder simply because he was quoted in the newspaper as saying that he intends to discriminate in violation of State law. A suggestion that a covenant be written into the FHA agreement with a builder to the effect that any violation of the State anti-discrimination law would be ground for such FHA action as refusal to make further commitments to him was greeted by Mr. Mason as "interesting" and "worth exploring."

In addition to its present limited policy of support for State anti-discrimination laws, FHA has in recent years assisted the construction of both "minority housing" projects and open occupancy projects. In 1957 there were 41 open occupancy projects with FHA-insured mortgages totaling $53 million. At the Commission's Washington hearing, FHA's spokesman testified that reports from every FHA zone show an increased use of FHA mortgage insurance by minority group buyers.

Public Housing Administration (PHA)

By 1958 almost 2 million people were housed in more than 2,000 federally aided low-rent projects in 42 States, the District of Columbia, Alaska, Hawaii, Puerto Rico, and the Virgin Islands. These repre-

sented an outstanding capital investment of more than $3 billion by more than 1,000 local housing authorities. Of this sum, only $105 million or 3.4 percent were direct loans from PHA. The rest has been obtained locally through the sale of tax-exempt notes and bonds to private investors.

In view of the high proportion of Negroes in the very low income category, it is perhaps not surprising that Negroes occupied about 45.5 percent of the low rent public housing units as of March 1959.

PHA leaves racial occupancy policies largely to the discretion of local authorities, except for a provision that to be eligible for Federal assistance local programs "must reflect equitable provision for eligible families of all races determined on the approximate volume and urgency of their respective needs for such housing." This "racial equity" formula has worked to assure that in localities where segregated projects are maintained, the rule of "separate but equal" is fairly applied.

However, PHA does not apply the racial equity formula to communities with an open occupancy policy even though other factors, such as site selection, may lead to a racial imbalance in the occupancy. In Chicago, as noted above, Negroes occupy 85 percent of the public housing, although low-income whites are estimated to have at least as much need for such housing as Negroes, yet the city is still locating most projects in areas of Negro concentration.

Administrator Mason agreed that "something should be done in these areas" to see that public housing does not become almost entirely Negro housing. There is one PHA program that may ultimately contribute to a solution of this problem and others. PHA is encouraging communities to get away from the institutional approach to public housing by scattering smaller projects throughout the city, instead of concentrating large numbers of low-income residents in a cluster of tall apartments.

An increasing number of local authorities are adopting open occupancy policies, some of them under court order. The number of racially integrated projects rose from 76 in 1952 to 428 in March 1959, in 310 or 35 percent of the participating localities. Whether "open occupancy" will prove to be merely another name for all-Negro projects remains to be seen.

Urban Renewal Administration (URA)

Urban renewal, HHFA Administrator Mason told the Commission, "offers real potential for moving ahead" toward equal opportunity in housing. This slum clearance and redevelopment program also presents some pitfalls.

Federal funds, through URA, supply two-thirds of the cost of purchasing and clearing redevelopment sites approved by local urban

renewal authorities. Then private developers usually purchase the sites at very reduced prices. Already some $1.3 billion has been provided for these projects by the Federal Government.

Congress has required that before this Federal assistance is granted a locality must prepare and submit a "workable program" that the HHFA Administrator certifies to be adequate for the overall development of the community. Among the required ingredients of a workable program are citizens' participation in the preparation of the program, and provision for the relocation of displaced families.

Since in practically every urban community, Negro and other minority group families are concentrated in the areas most in need of renewal, URA has emphasized the need for minority group participation in the formulation and adoption of the workable program. In some communities full participation of racial minorities has resulted in constructive approaches to racial aspects of urban renewal. In others, lack of such participation appears to be a serious detriment.

Since over 55 percent of some 133,000 families scheduled to be displaced under 303 urban renewal projects as of the beginning of 1959 were nonwhite, and since the housing shortage for low-income nonwhites is acute everywhere, relocation is the biggest racial problem in urban renewal. Congress has required that in all renewal programs there be provision for an adequate number of "decent, safe, and sanitary dwellings" to be available to displaced persons either "in the urban renewal area or in other areas not generally less desirable." But this is not easy to do.

The section 221 low-cost relocation housing program is making only slow headway because of the difficulty of finding sites that localities will approve, and because high land and construction costs make it difficult to stay within the maximum mortgage limitation of $9,000, or in some areas $10,000.

Nor does there appear to be enough public housing to accommodate the displaced persons who are eligible for low-rent subsidized units.

URA statistics indicate that, so far, 69 percent of the families displaced by its projects have been rehoused in locally certified standard housing. But the housing status of 10.3 percent of the families is unknown, and over 6 percent are in substandard housing.

Finally, the clearance of slums occupied largely by Negroes and the construction of new housing beyond the means of most Negroes has given rise to the suggestion that slum clearance is being used for "Negro clearance." Because of the restricted housing available to Negroes, displacement may mean their further concentration in overcrowded all-Negro areas. Whether such accentuation of the pat-

tern of residential segregation, or in some cases the establishment for the first time of such a clear-cut pattern, meets the congressional requirement of relocation in "areas not generally less desirable" than those originally occupied by the displaced persons, is another pressing question.

Administrator Mason has suggested that he intends to take action to assure that the intentions of Congress are more fully achieved by breathing "deeper meaning" into the requirements of the workable program. He emphasizes that urban renewal "must result in adding to the living space available to the people being displaced." This is in accord with President Eisenhower's assurance to Congress that—

> we shall take steps to insure that families of minority groups displaced by urban redevelopment operations have a fair opportunity to acquire adequate housing; we shall prevent the dislocation of such families through the misuse of slum clearance programs; and we shall encourage adequate mortgage financing for the construction of new housing for such families on good, well-located sites.

Voluntary Home Mortgage Credit Program (VHMCP)

Established in 1954 to find mortgage lenders for (1) qualified homebuyers living in small towns and (2) qualified minority group home buyers in any area who are unable to get mortgage credit from local sources, VHMCP has a direct impact on racial housing problems. It was sponsored by private lending institutions as an alternative to direct Government lending to those who could not obtain FHA-insured or VA-guaranteed loans on terms as favorable as are generally available to others. The HHFA Administrator serves as Chairman. There are Negro members on the national committee and on all regional committees. The HHFA provides a small staff and administrative assistance.

When a Negro is unable to secure a mortgage he may apply to the VHMCP, which then refers his application to its participating lending institutions. These in turn voluntarily reject or accept the application. In its first 4½ years, more than 8,000 loans totaling $80 million, and representing 60 percent of all such applications received, were secured through VHMCP for minority group members in metropolitan areas. VHMCP has also arranged the financing of three project loans covering 546 open-occupancy rental units.

Yet VHMCP has received a relatively small number of nonwhite applications. This may be largely due to lack of knowledge of its services. Or it may indicate that mortgage financing is becoming less of a problem for nonwhites. "Through VHMCP," according to its Executive Secretary, Joseph Graves—

> private lenders have discovered that the delinquency rate is as low for well-checked loans to minorities as for loans made to the general public. By

forcefully focusing attention upon the worth of mortgage loans to minorities, the VHMCP has contributed greatly to a more equitable flow of mortgage credit to these groups.

* * *

In the full report of this Commission there is discussion of the impact on racial housing problems of the Federal National Mortgage Association, the Veterans' Administration, and the Federal-Aid Highway Program. VA's policies are similar in most respects to FHA's discussed above. The chief problem under the Federal-aid highway program is that there are no provisions similar to those of URA for relocation of displaced persons, despite the fact that federally-aided highways are displacing large numbers of urban slum dwellers, including many nonwhites.

CHAPTER V. BUSINESS AND PRIVATE PROGRAMS AND POLICIES

Though governmental participation is substantial and many-sided, private enterprise remains the major factor in the complex partnership that plans and produces housing for almost 180 million Americans. And while laws play an important role in shaping housing patterns and policies, most decisions in this field are made voluntarily by individual citizens and private organizations.

The Commission has studied both efforts to improve the housing of minorities without changing residential patterns, and efforts to promote open-occupancy housing.

In Atlanta the primary role in opening the Negro corridor to the suburbs was played by Negro real estate men, builders, and lending institutions. By their initiative, Negro businessmen and home purchasers proved that the construction of good homes for Negroes can be good business.

Today there is a considerable untapped Negro market for better homes, although this market still has special problems that cannot be ignored. As Negro incomes continue to rise, the difficulties in securing mortgages should diminish. As opportunities for good housing are opened to them, the incentive for Negroes to invest in better homes should increase. There is no sign at present, however, that the difficulties in finding decent sites for new homes for Negroes in most metropolitan areas are being overcome.

Many Negroes oppose the concept of Negro or "minority" housing on principle as a step backward. There is fear that new housing developments *for* Negroes, such as in Atlanta and other Southern cities, will become the racial ghettos of the future.

On the other hand, the need for better housing for Negroes, both in present areas of Negro concentration and in new locations, is great. The construction of such new housing at least increases the range of choice for Negro home seekers. It also promotes the conditions under which equality of opportunity in housing can best be advanced. By demonstrating that Negroes want higher standard new housing, that they can afford it, that they repay their loans, and that they keep their homes and their new neighborhoods in good condition and do not lower property values, such "minority housing" projects can serve to convince the white majority in local communities and in the housing industry that their present fears are not justified.

This is happening in Atlanta where the beautiful Negro suburbs have added to the city's beauty and greatly impressed the whites. A generation of young Negroes is growing up accustomed to decent housing in good neighborhoods.

* * *

The existence of open-occupancy housing projects and neighborhoods increases freedom of choice in housing for all Americans. The Commission heard testimony about the success of a number of such projects or neighborhoods in Northern cities. A private corporation, Modern Community Developers, Inc., with headquarters in Princeton, N.J., is now seeking to promote such developments throughout the country.

In Concord Park, near Philadelphia, a voluntary quota of about 45 percent for Negroes was adopted in order to preserve the interracial character of this new middle-class suburban development. In Chicago, the managers of the Prairie Shores Apartments found that the adoption of social and educational standards for tenants, rather than any quota, was sufficient to preserve a racial balance.

In a number of existing apartments or developments in outlying areas not contiguous to an expanding Negro area, and particularly in States with antidiscrimination laws, Negroes have moved in without any effect on property values or any serious difficulty. Only a few go into any one community and there is no likelihood of "inundation." However, the problem on the edge of large Negro concentrations where blockbusting takes place remains serious.

It is intensified by the resistance of the housing industry to the idea of an open market and freedom of choice for Negroes. Lending institutions and real estate agents, by unwritten agreement, generally refuse to assist Negroes to move into non-Negro neighborhoods except in a so-called transition area, and there only after a certain number of Negroes have "broken" the block and assured its "engulfment" in the Negro ghetto. The restriction of Negro expansion to these areas of transition assures the very inundation that is feared.

Working together, sifting facts, clearing up rumors, opening new housing opportunities for Negroes, protecting existing neighborhoods from being uprooted, white and Negro real estate men might be able to ameliorate this problem if not find its solution. But communication between them is difficult, since most real estate boards exclude Negro realtors from membership.

The Commission heard testimony from spokesmen of neighborhood associations and community leaders who are seeking rational solutions. In New York City a white housewife from Springfield Gardens in Queens told how real estate speculators tried to start a panic in her neighborhood because some Negroes had moved in, and how "the

housewives got up a bit in arms." The issue for them, according to Mrs. Evelyn Klavens, was freedom of choice:

> They had their fears; they had their prejudices, but they felt, by gosh, nobody was going to tell them what to do.

They put up signs in their homes: "Not For Sale—We Believe In Democracy." They "let the new neighbors know they were welcome," and they stabilized their community, at least for the present. "It's either this," Mrs. Klavens said, "or taking a rowboat and rowing off Montauk Point, and then who knows * * * you might meet a fish you don't like."

Speaking of the failure of many communities to act as the residents of Springfield Gardens did, Archbishop Meyer of Chicago declared in his statement to the Commission:

> Had there been cooperation between individuals, between churches, between business institutions, had there been planning, had there been constructive programming of many different kinds, we believe that many communities could have been stabilized so that a truly free market would have been created. A free market would have permitted the entrance into white middle-class communities of a proportion of Negro families who could only be considered an asset in any neighborhood.

He called on communities to become "masters of the trends of the time, rather than to allow circumstances to master them." For this, he said, "It will be necessary for representative interests to discover how they can plan, work and meet the future together." Together, he believed, private citizens, businesses, and industries, and religious bodies could—

> work out a variety of forms of local cooperation in order to stabilize the populations, to control and guide conservation and development, and to make sure Negroes of like economic and social backgrounds do gain admission in a manner that is harmonious, and a credit to us as Christians and Americans.

CHAPTER VI

FINDINGS AND RECOMMENDATIONS

The Problem

It is the public policy of the United States, declared by the Congress and the President and in accord with the declared purposes of the Constitution, that every American family shall have equal opportunity to secure a decent home in a good neighborhood. Since the home is the heart of a good society it is essential that this aspect of the promise of equal protection of the laws be fulfilled forthwith.

From the Commission's study of housing two basic facts were found to constitute the central problem.

First, a considerable number of Americans, by reason of their color or race, are being denied equal opportunity in housing. A large proportion of colored Americans are living in overcrowded slums or blighted areas in restricted sections of our cities, with little or no access to new housing or to suburban areas. Most of these Americans, regardless of their educational, economic, or professional accomplishments, have no alternative but to live in used dwellings originally occupied by white Americans who have a free choice of housing, new or old. Housing thus seems to be the one commodity in the American market that is not freely available on equal terms to everyone who can afford to pay. It would be an affront to human dignity for any one group of Americans to be restricted to wearing only hand-me-down clothing or to eating the leftovers of others' food. Like food and clothing, housing is an essential of life, yet many nonwhite American families have no choice but secondhand homes. The results can be seen in high rates of disease, fire, juvenile delinquency, crime and social demoralization among those forced to live in such conditions. A nation dedicated to respect for the human dignity of every individual should not permit such conditions to continue.

Second, the housing disabilities of colored Americans are part of a national housing crisis involving a general shortage of low-cost housing. Americans of lower income, both colored and white, have few opportunities for decent homes in good neighborhoods. Since most suburban housing is beyond their means, they remain crowded in the central city, creating new slums. Since colored people comprise a rising proportion of the city dwellers with lowest income, these slums are becoming increasingly colored. The population of metro-

politan areas, already comprising over 60 percent of the American people, is growing rapidly not merely by births but by migration. These migrants, many of them colored, most of them unadapted to urban life, form the cutting edge of the housing crisis.

From these facts it is evident that for decent homes in good neighborhoods to be available for all Americans, two things must happen: the housing shortage for all lower income Americans must be relieved, *and* equality of opportunity to good housing must be secured for colored Americans. If racial discrimination is ended but adequate low-cost housing is not available, most colored Americans will remain confined in spreading slums. If low-cost housing is constructed in outlying areas and little or none of it is available for colored Americans, the present inequality of opportunity and the resulting resentments and frustrations will be accentuated.

The need is not for a pattern of integrated housing. It is for equal opportunity to secure decent housing. The difficulties in achieving this are considerable. Most of the available city land is already occupied and the cost of clearing slum property for new low-rent housing is practically prohibitive without Government assistance. The pressure for expansion of overcrowded Negro areas is so great that when an opening occurs, the pent-up Negro demand pours into the new neighborhood and the white residents usually flee in panic. The Negro's need for an alternative to blockbusting as a way of securing housing must be met just as the legitimate interests of white neighborhoods on the edge of Negro expansion areas must be protected. To achieve both these results and relieve the pressure of the present Negro concentration, new housing opportunities available to Negroes on all levels of income must be opened in the metropolitan area generally; slum clearance and the construction of new housing must take place in the central city.

The development of adequate and sound programs to achieve such equal opportunity to decent housing is urgent. The Commission found that a number of existing city, State, Federal, and private programs are contributing to this. It offers the following specific findings and recommendations as a further contribution to the necessary public understanding and action.

CITY AND STATE LAWS, POLICIES, AND PROGRAMS

Findings

In New York City, as in Pittsburgh and in four States—Colorado, Connecticut, Massachusetts, and Oregon—there are far-reaching laws against discrimination in the sale or rental of multi-unit private housing, and all publicly-assisted housing. In New York State, as in 10

other States, there are laws against discrimination in publicly-assisted or urban renewal housing. Officials and community leaders in New York testified that these laws are having a valuable educational effect and that their enforcement, principally through mediation by the city Commission on Intergroup Relations and the State Commission Against Discrimination, is helping to promote equal opportunity in housing.

In Atlanta, the work of the Mayor's West Side Mutual Development Committee, representing equally the Negro and white people in the area of the city undergoing the greatest racial transition, has served to replace blockbusting and reduce racial tension and violence by means of expanding Negro residential areas through negotiation and consent. This has enabled Negroes in Atlanta, unlike those in most American cities, to gain access to good outlying land and to build new suburban neighborhoods.

In Chicago, which has neither New York's laws against discrimination nor Atlanta's policy of negotiating agreements for Negro expansion, the Commission found that the Negroes' primary method of securing better housing was through the mutually unsatisfactory system of blockbusting, with the consequent uprooting of adjacent white neighborhoods and with inevitable racial tension and occasional violence.

On the basis of its hearings in these three cities the Commission finds that, whatever the particular approach adopted, some official city and State program and agency concerned with promoting equal opportunity to decent housing is needed. Such programs and agencies can bring about better public understanding of the problems and better communication between citizens. Whether or not cities or States are prepared to adopt antidiscrimination laws, and even in areas where racial separation is the prevailing public policy, it is possible that through interracial negotiation practical agreements for progress in housing can be reached. Where public opinion makes possible the adoption of laws against discrimination in housing, this might contribute significantly to the work of the agency promoting equal opportunity in housing. Then the agency would have legal support in its efforts at mediation and conciliation.

Recommendation No. 1

The Commission recommends that an appropriate biracial committee or commission on housing be established in every city and State with a substantial nonwhite population. Such agencies should be empowered to study racial problems in housing, receive and investigate complaints alleging discrimination, attempt to solve problems through

mediation and conciliation, and consider whether these agencies should be strengthened by the enactment of legislation for equal opportunity in areas of housing deemed advisable.*

OVERALL FEDERAL LAWS, POLICIES, AND PROGRAMS

Findings

The Federal Government now plays a major role in housing. Its participation in slum clearance, urban redevelopment, public housing and mortgage loan insurance amounts to billions of dollars. The Constitution prohibits any governmental discrimination by reason of race, color, religion, or national origin. The operation of Federal housing agencies and programs is subject to this principle. In addition there is in effect an act of Congress adopted in 1866 and reenacted in 1870 that recognizes the equal right of all citizens, regardless of color, to purchase, rent, sell, or use real property.

While the fundamental legal principle is clear, Federal housing policies need to be better directed toward fulfilling the constitutional and congressional objective of equal opportunity. Norman Mason, the Administrator of the Housing and Home Finance Agency, who is responsible for coordinating the various housing programs of the constituents of HHFA, testified before this Commission that he intends to develop policies that will further promote the principle of equal opportunity in all these housing programs. The Commission finds that there is much that the Administrator of the HHFA can do, through careful and determined administration, to assure that the principle of equal opportunity in Federal housing programs is applied not only in the top policies but at the operating levels in each constituent agency.

Because of the paramount national importance of this problem the Commission finds that direct action by the President in the form of an Executive Order on equality of opportunity in housing is needed. The order should apply to all Federally-assisted housing, including housing constructed with the assistance of Federal mortgage insurance or loan guarantees as well as Federally-aided public housing and urban renewal projects.

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*COMMISSIONERS HESBURGH AND JOHNSON: We wish to add that in line with the Commission's recommendation for biracial committees, it would be helpful if all real estate boards admitted qualified Negroes to membership. In view of the important role real estate boards play in determining housing policies and patterns throughout a community, we believe these boards are not merely private associations but are clothed with the public interest and that the constitutional principle of nondiscrimination, applicable to all parts of our public life, should be followed. With white and Negro realtors meeting and working together, misunderstandings could be cleared up and there would be greater possibility of solving racial housing problems through negotiation, understanding, and goodwill.

There have been such Executive Orders calling for the application of the principles of equal opportunity and equal treatment in the fields of Government contracts and Government employment, and in the armed services. Instead of establishing a new Presidential Committee, as was done in these other Executive Orders, the President could request the Commission on Civil Rights, if its life is extended, to conduct the necessary continuing studies and investigations and make further recommendations.

Recommendations Nos. 2 and 3

Therefore, the Commission recommends

2. That the President issue an Executive Order stating the constitutional objective of equal opportunity in housing, directing all Federal agencies to shape their policies and practices to make the maximum contribution to the achievement of this goal, and requesting the Commission on Civil Rights, if extended, to continue to study and appraise the policies of Federal housing agencies, to prepare and propose plans to bring about the end of discrimination in all Federally-assisted housing, and to make appropriate recommendations.

3. That the Administrator of the Housing and Home Finance Agency give high priority to the problem of gearing the policies and the operations of his constituent housing agencies to the attainment of equal opportunity in housing.

FHA AND VA

Findings

The present policy of the Federal Housing Administration and the Veterans' Administration is not to do further business with a builder who has been found in violation of a State or city law prohibiting discrimination. However, waiting upon the appropriate State or city agency to make a finding of violation of State or city law may result in Federal assistance to a builder who is openly or manifestly evading such law. By the time any State or city action against such a builder has been completed the projects may well have been built and sold or rented on a discriminatory basis.

Recommendation No. 4

Therefore, the Commission recommends that, in support of State and city laws the Federal Housing Administration and the Veterans' Administration should strengthen their present agreements with States and cities having laws against discrimination in housing by requiring that builders subject to these laws who desire the benefits of Federal mortgage insurance and loan guaranty programs agree in writing that they will abide by such laws. FHA and VA should establish their own factfinding machinery to determine whether such builders are violating State and city laws, and, if it is found that they are, im-

mediate steps should be taken to withdraw Federal benefits from them, pending final action by the appropriate State agency or court.

PUBLIC HOUSING

Findings

The location of sites for public housing projects and the kind of housing provided play an important part in determining whether public housing becomes almost entirely nonwhite housing, whether it accentuates or decreases the present patterns of racial concentration, and whether it contributes to a rise in housing standards generally. A policy of "scatteration" of smaller projects throughout the whole metropolitan area may remedy some of the present defects of public housing.

Public housing projects can serve as schools for better housing and home keeping. A large number of the tenants are recent migrants from rural areas, unprepared for urban life. Placing them in decent housing units and requiring that decent standards be maintained will help them make a successful adjustment to city life. Locating these projects in better neighborhoods and making them less institutional in appearance will add to this educational process.

As a result of the large number of nonwhites in need of low-cost housing and the tendency of whites to avoid living in the midst of a nonwhite majority, many projects are all or predominantly nonwhite. This may result in a proportion of nonwhite occupancy higher than that actually required under the Public Housing Administration's "racial equity" formula based on the estimated needs of the two racial groups. In one city the Commission found that the location of public housing sites within areas of Negro concentration resulted in *de facto* discrimination against low-income white citizens.

Recommendation No. 5

Therefore, the Commission recommends that the Public Housing Administration take affirmative action to encourage the selection of sites on open land in good areas outside the present centers of racial concentration. PHA should put the local housing authorities on notice that their proposals will be evaluated in this light. PHA should further encourage the construction of smaller projects that fit better into residential neighborhoods, rather than large developments of tall "high rise" apartments that set a special group apart in a community of its own.

URBAN RENEWAL

Findings

City and private programs of slum clearance, conservation, and redevelopment, assisted by Federal aid from the Urban Renewal Administration, are changing the face of the nation. Since nonwhite

residents comprise a large proportion of the persons displaced by these programs and since nonwhites do not have equal opportunity to housing, it is important that special needs and problems of the nonwhite minority receive adequate and fair consideration in all such programs.

Recommendation No. 6

Therefore, the Commission recommends that the Urban Renewal Administration take positive steps to assure that in the preparation of overall community "workable programs" for urban renewal, spokesmen for minority groups are in fact included among the citizens whose participation is required.

SUPPLEMENTARY STATEMENT ON HOUSING

By Vice Chairman Storey and Commissioners Battle and Carlton

We yield to no one in our goodwill and anxiety for equal justice to all races, in the field of housing as elsewhere. A good home should be the goal of everyone regardless of color, and the Government should aid in providing housing in keeping with the means and ambitions of the people. Government aid is important where public improvements have displaced people and where slums become a liability to the community. This does not mean, however, that the Government owes everyone a house regardless of his ambition, industry, or will to provide for himself. When generosity takes away self-reliance or the determination of one to improve his own lot, it ceases to be a blessing. We should help, but not pamper. But there remains a financial limit beyond which the Government cannot go.

In dealing with the problem of housing, we must face realities and recognize the fact that no one pattern will serve the country as a whole. Some parts of the foregoing report are argumentative, with suggestions keyed to integration rather than housing, and if carried out in full will result in delay and in many cases defeat of adequate housing, which is our prime objective. The repeated expressions, "freedom of choice," "open housing," "open market," and "scatteration" suggest a fixed program of mixing the races anywhere and everywhere regardless of the wishes of either race and particular problems involved. The result would be dissension, strife, and even violence evident in sections where you would least expect it.

To us it is not only wise but imperative that biracial committees be set up in different sections to provide areas for adequate housing in keeping with just requirements for the people involved. This can be done, it is being done in different sections such as Atlanta, Georgia, in keeping with the wishes of both races. This responsibility, however, must be met in a positive, courageous and constructive manner in keeping with the requirement at the local level.

SUPPLEMENTARY STATEMENT ON HOUSING

By Commissioners Hesburgh and Johnson

While the Commission has not had time to consider many important aspects of the complicated housing problem in view of its primary attention to investigations of alleged denials of the right to vote, and of its studies in the education field, three points that were much under discussion in the Commission's housing hearings in our opinion deserve special attention.

(1) RELOCATION OF PERSONS DISPLACED BY FEDERALLY-AIDED PROJECTS

The Commission has found that nonwhite Americans constitute a high proportion of those displaced by urban renewal programs (and, it should be added, by Federally-aided highway programs), and that such nonwhites are severely restricted in their housing opportunities. We believe that, in addition to the recommendation of the Commission that in the preparation of local "workable programs" for urban renewal there be adequate nonwhite participation, other measures should be taken to assure that the human side of slum clearance and redevolpment is given adequate attention.

For instance, the Federal-aid highway program, which is displacing an increasing number of urban residents and is often being used to clear slums, has no provision requiring that displaced families be rehoused in accordance with specific standards, nor is any financial assistance provided for their relocation. While property owners receive compensation for property condemned, the problem of relocation arises largely in urban areas where those displaced, many of them tenants who receive no compensation, have great difficulty finding, or cannot find, decent, safe, and sanitary dwellings within their means.

In the urban renewal program, on the other hand, the act of Congress requires that "decent, safe, and sanitary dwellings" be available at rents and prices within the financial means of the displaced families, either in the urban renewal area itself, or in areas "not generally less desirable." However, the Commission received evidence that such housing for relocation is in some places not in fact available.

President Eisenhower has said that steps must be taken "to insure that families of minority groups displaced by urban redevelopment operations have an opportunity to acquire adequate housing." It seems to us essential that all the Federal agencies take such positive steps to assure that these minimum human requirements of slum clearance and redevelopment are in fact met by the local communities.

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While the Federal-aid highway program should not be turned into a housing program, the act should be amended to provide that in any urban area where any substantial number of low-income persons are to be displaced by the construction of a Federally-aided highway, the locality must incorporate the highway program in its urban renewal program, and the relocation requirements and standards of the Urban Renewal Administration must be met in regard to all such displaced persons, or the localities must otherwise see that decent, safe, and sanitary housing is available to such persons.

(2) RACIAL PATTERNS IN URBAN RENEWAL

As President Eisenhower has also said, the Federal Government must "prevent the dislocation of such [minority group] families through the misuse of slum clearance programs." In the Commission's housing hearings there were allegations that urban renewal programs are being used in some instances for "Negro clearance" and that either new patterns of segregated neighborhoods are being created or existing patterns of segregation are being substantially accentuated. With the nonwhite citizens' participation in planning urban renewal at the local level which the Commission has recommended such questions should be raised at an early stage. In addition, we recommend that communities' "workable programs" and specific urban renewal projects be examined by the Urban Renewal Administration and the Housing and Home Finance Administrator to assure that no community is using Federal urban renewal assistance to accomplish such results. Examination of each urban renewal project in this light will require the services of persons of special competence in the field of intergroup relations.

(3) THE SHORTAGE OF LOW-COST HOUSING

The studies and hearings of the Commission have shown that progress in remedying the lack of opportunity to decent housing by nonwhite Americans depends in large part upon progress in overcoming the general housing shortage for lower-income Americans. This is also directly connected with relocation and urban renewal. Slum clearance and urban redevelopment are necessary but they require the provision of decent low-cost housing for those displaced. President Eisenhower has said that the Government will "encourage adequate market financing and the construction of new housing for such families on good, well-located sites."

In the absence of better answers, it seems imperative that the present programs of urban renewal, public housing, home mortgage insurance and assistance, including the Voluntary Home Mortgage Credit Program, be continued on a sufficiently long-term basis to make

sound planning by local housing authorities possible. Beyond this, most officials, housing experts and industry leaders testified that further efforts must still be undertaken to encourage the construction and sale of decent low-cost private housing.

The Commission did not try to make specific recommendations in these areas that require expert knowledge, but we would like to stress the importance of this being done and of sound measures being put into effect by those who are so competent.

In view of the testimony in Atlanta and Chicago that the ceiling on section 221 (low-cost relocation housing) mortgage insurance is too low for new housing in urban areas and in view of the recent action of Congress in approving an increase in the permissible amounts of FHA mortgage insurance, including an increase in the ceiling on section 221, consideration should be given to raising the section 221 limitations to levels consistent with the cost of new housing in urban areas. Consideration should also be given to proposals made by leaders of the housing industry in the Commission's hearings for the reduction of the cost of financing housing for lower-income residents, including proposals for special mortgage assistance through the Federal National Mortgage Association and for direct loans such as those provided at 3⅛ percent interest for 40 years in the college housing program of the Community Facilities Administration.

Without trying to appraise particular proposals, it can be said that programs to overcome the housing shortage for lower-income Americans are not luxuries but are essential needs of the nation.

PART FIVE

THE PROBLEM AS A WHOLE

Through its studies of three particular aspects of civil rights—voting, education, and housing—the Commission has come to see the organic nature of the problem as a whole. The problem is one of securing the full rights of citizenship to those Americans who are being denied in any degree that vital recognition of human dignity, the equal protection of the laws.

To a large extent this is now a racial problem. In the past there was widespread denial of equal opportunity and equal justice by reason of religion or national origin. Some discrimination against Jews remains, particularly in housing, and some recent immigrants undoubtedly still have to overcome prejudice. But with a single exception the only denials of the right to vote that have come to the attention of the Commission are by reason of race or color. This is also clearly the issue in public education. In housing, too, it is primarily nonwhites who lack equal opportunity. Therefore, the Commission has concentrated its studies on the status of the 18 million Negro American citizens, who constitute this country's largest racial minority. If a way can be found to secure and protect the civil rights of this minority group, if a way can be opened for them to finish moving up from slavery to the full human dignity of first-class citizenship, then America will be well on its way toward fulfilling the great promises of the Constitution.

In part this is the old problem of the vicious circle. Slavery, discrimination and second-class citizenship have demoralized a considerable portion of those suffering these injustices, and the consequent demoralization is then seen by others as a reason for continuing the very conditions that caused the demoralization.

The fundamental interrelationships among the subjects of voting, education, and housing make it impossible for the problem to be solved by the improvement of any one factor alone. If the right to vote is secured, but there is not equal opportunity in education and housing, the value of that right will be discounted by apathy and ignorance. If compulsory discrimination is ended in public education, but children continue to be brought up in slums and restricted areas of racial concentration, the conditions for good education and good citizenship will still not obtain. If decent housing is made available to nonwhites

on equal terms but their education and habits of citizenship are not raised, new neighborhoods will degenerate into slums.

On the other hand, there is a positive correlation, too. In Atlanta, according to uncontradicted testimony by both white and Negro leaders, the extension of the right to vote to Negroes some years ago has contributed to improvement in racial relations in other areas, including housing.

Similarly, the establishment in Atlanta many years ago of a number of institutions of higher learning for Negroes, now organized in the Atlanta University system, has been a significant factor in making possible both Negro voting and increased opportunities in housing. Racial tolerance, according to Mayor Hartsfield, "goes up with education and down with lack of education."

And in its turn the new areas of high standard Negro housing in Atlanta appear to be raising the standards of both Negro education and voting. The Commission saw the new schools being erected in the Negro suburbs. There is clear evidence that the proportion of Negroes registered to vote is highest in districts with good housing and lowest in slums, as is true among white citizens.

Many racial problems which now appear so difficult "will be less difficult tomorrow," said the chairman of the Citizens' Crime Committee of Atlanta, "when and if the blessings of proper housing for all classes and segments of the population are available. As housing improves and incomes rise, people of all races and classes lose many of their differences, and many people lose their genuine fears and frustrations."

In this complex picture there are, of course, other major factors that the Commission has not studied directly, particularly questions of discrimination in employment, in the administration of justice, and in public accommodations. A number of the Commission's State Advisory Committees have studied these subjects. Their importance was made clear by the Commission's own studies in voting, education, and housing. The low-income and employment status of a majority of Negroes emerged as a central fact in the discrimination in housing. Negro concern for equal justice is one of the main motivations behind the drive to get the vote, and fairer administration of justice appears to be one of the main fruits of attaining the right to vote. In Atlanta, as a result of a large Negro vote, the following improvements in the administration of justice were reported:

> Negro policemen have been hired. Race-baiting groups such as the Klan and the Columbians have been suppressed. City officials have been more courteous and sensitive to the demands of Negroes. Courtroom decorum has improved. Several Negro deputies have been added to the Fulton County sheriff's offices. For the first time a Negro has been elected to membership on the Atlanta Board of Education. * * * For the first time two Negroes have been elected to the city executive committee.

The problem is seen at its sharpest and worst where all these factors are negative. In Wilcox County, Ala., for instance, which was one of the counties involved in the Commission's Alabama hearing, Negroes constituted over 70 percent of the voting-age 1950 population but none was registered to vote in early 1959. In that county only some 10 percent of the dwelling units had hot running water and a toilet and were not dilapidated, according to the 1950 housing census. On a national average, some 63 percent of all dwelling units meet these standards. In the first 25 counties from which the Commission received voting complaints the percentage of nondilapidated dwellings with hot running water and toilet ranged from 10 percent to 54 percent. In 11 of the 25 counties, fewer than 20 percent of the dwellings met these standards. Twenty-two of the twenty-five fall below 50 percent in this minimum measure of housing quality.

At its worst, the problem involves a massive demoralization of a part of the nonwhite population. This is the legacy of generations of slavery, discrimination, and second-class citizenship. Through the vote, education, better housing, and other improving standards of living, American Negroes have made massive strides up from slavery. But many of them, along with many Puerto Rican, Mexican, and oriental Americans, are still being denied equal opportunity to develop their full potential as human beings.

The pace of progress during the 96 years since emanciaption has been remarkable. But this is an age of revolutionary change. The colored peoples of Asia and Africa, constituting a majority of the human race, are swiftly coming into their own. The non-colored people of the world are on test. The future peace of the world is at stake.

Moreover, science and technology have opened new realms of freedom. In the present competition with the Soviet Union and world communism the United States cannot afford to lose the potential intelligence and skill of any section of its population.

Equal opportunity and equal justice under law must be achieved in all sections of American public life with all deliberate speed. It is not a court of law alone that tells us this, but also the needs of the nation in the light of the clear and present dangers and opportunities facing us, and in the light of our restive national conscience. Time is essential in resolving any great and difficult problem, and more time will be required to solve this one. However, it is not time alone that helps, but the constructive use of time.

The whole problem will not be solved without high vision, serious purpose, and imaginative leadership. Prohibiting discrimination in voting, education, housing, or other parts of our public life will not suffice. The demoralization of a part of the nonwhite population resulting from generations of discrimination can ultimately be over-

come only by positive measures. The law is not merely a command, and government is not just a policeman. Law must be inventive, creative, and educational.

To eliminate discrimination and demoralization, some dramatic and creative intervention by the leaders of our national life is necessary. In the American system much of the action needed should come from private enterprise and voluntary citizens' groups and from local and State governments. If they fail in their responsibilities the burden falls unduly on the Federal Government.

This Commission would add only one further suggestion. The fundamental cause of prejudice is hidden in the minds and hearts of men. That prejudice will not be cured by concentrating constantly on the discrimination. It may be cured, or reduced, or at least forgotten if sights can be raised to new and challenging targets. Thus a curriculum designed to educate young Americans for this unfolding 20th-century world, with better teachers and better schools, will go a long way to facilitate the transition in public education. Equal opportunity in housing will come easier as part of a great program of urban reconstruction and regeneration. The right to vote will more easily be secured throughout the whole South if there are great issues on which people want to vote.

What is involved is the ancient warning against the division of society into Two Cities. The Constitution of the United States, which was ordained to establish one society with equal justice under law, stands against such a division. America, which already has come closer to equality of opportunity than probably any other country, must succeed where others have failed. It can do this not only by resolving to end discrimination but also by creating through works of faith in freedom a clear and present vision of the City of Man, the one city of free and equal man envisioned by the Constitution.

PART SIX

GENERAL STATEMENTS BY COMMISSIONERS

STATEMENT BY COMMISSIONER JOHN S. BATTLE

I have stated my objections to certain specific recommendations contained in the report.

In addition thereto, and without in any way impugning the motives of any member of the Commission, for each of whom I have the highest regard, I must strongly disagree with the nature and tenor of the report. In my judgment it is not an impartial factual statement, such as I believe to have been the intent of the Congress, but rather, in large part, an argument in advocacy of preconceived ideas in the field of race relations.

STATEMENT BY COMMISSIONER THEODORE M. HESBURGH

I should like to explain my personal position on the basic issues of this report and, especially, on those recommendations which were not unanimous. May I say, at once, how deeply I respect the persons, the convictions, and the judgments of all my distinguished fellow Commissioners, and may I frankly disavow, for myself, any personal claim to ultimate wisdom in these difficult questions of prudential judgment. One can only, in good conscience, do his honest best.

In appraising admittedly thorny situations in the various areas of civil rights examined by the Commission, one must be guided by his own general philosophical and theological convictions. I believe that civil rights were not created, but only recognized and formulated, by our Federal and State Constitutions and charters. Civil rights are important corollaries of the great proposition, at the heart of Western civilization, that every human person is a *res sacra*, a sacred reality, and as such is entitled to the opportunity of fulfilling those great human potentials with which God has endowed every man. Without this spiritual and moral concept of the nature and destiny of man, our political philosophy is meaningless, bankrupt, and defenseless in the face of the opposite philosophy of man that stalks the world today.

I begin then with the proposition so well enunciated in our Declaration of Independence, that all men are indeed created equal. Equality, however, is not the same as egalitarianism, for all men are not created with equal intelligence, equal ambition, equal talent. But

all men are entitled to an equal opportunity to exercise and develop whatever intelligence, ambition, and talent they possess. Ultimately, the full flowering of the democratic process depends upon the full development of all the various human talents existing in the nation.

As I read American history, the unfolding story of our nation centers about the often agonizing attempt to achieve the fullness of human dignity through the ever-widening application of that equal opportunity which has best characterized America in the family of nations. Deep and often dark emotions have been aroused by the discussion of integration and segregation, but anyone who really understands the majesty of the "American dream" cannot fail to see in our history that equality of opportunity for all men has been our most valid response to the inherent and God-given dignity of every human person.

I firmly believe that if all Americans are given the equal opportunity to be educated to the full extent of their human talents, equal opportunity to work to the fullness of their potential contribution to our society, equal opportunity at least to live in decent housing and in wholesome neighborhoods consonant with their basic human dignity, and, moreover, equal access to housing and neighborhoods as befits their means and social development, and, finally, equal opportunity to participate in the body politic through the free and universal exercise of the franchise, then the problem of civil rights for all Americans will eventually solve itself, to the end that America, and the human dignity of all Americans, will be the richer for this solution.

The growth of equal opportunity on this fourfold front of voting, education, work, and housing is the full and unavoidable price of completely eliminating second class citizenship across the face of America. The civil rights problem differs, of course, from place to place, but it would be difficult, if not impossible, to find any section of America where all of these equal opportunities flourish in their fullness. And there are localities in America today where not one of these four opportunities exists for nonwhite Americans.

Several myths impede a reasonable approach to a solution. Perhaps the most basic is the myth of white superiority: that any white man is, simply by reason of his being white, superior to any nonwhite man. Apart from the philosophical, theological, and scientific absurdity of this myth, it is best disproved in practice. Deprive any white man, however talented and ambitious, of the equal opportunity to become educated; to work as befits his education, ambition, and talent; to live in a decent house and neighborhood; deprive him of the opportunity of participating in the political process; continue this total deprivation for his children and his children's children, and then see how superior he, his children, and his grandchildren are. On the

other hand, open up such equal opportunities to nonwhites and their children, and see how many of them will begin to excel. This is not a distant speculation. It is already happening here and abroad.

A lesser corollary of this myth of white superiority is to say that the nonwhites are not ready for equal opportunity. Yet, if nonwhites are to be eternally denied the opportunity, they will never be ready, and the problem becomes eternally insoluble. There must be a beginning to every solution.

No full-fledged solution is possible unless the fourfold equal opportunity mentioned above is considered to be indivisible. If the nonwhite American is granted one equal opportunity, say, education, and then denied the choice of a job and a house commensurate with his education and achievement, the inner core of his motivation for self-improvement is destroyed. If he achieves education, professional status, and the vote—three equal opportunities possible in some sections of America—and still is constrained from living where his heart desires and his means and achievement permit, then the stigma of second-class citizenship is still visited upon him and his family. I see no answer to this total problem unless human judgments and evaluations be made by reason of the quality, not the pigmentation, of the human person.

No one is so naive as to imagine the complete and overnight realization of equal opportunity on this fourfold front for all Americans. But, on the other hand, no one who really believes in full-fledged citizenship for all Americans should delude himself today regarding the true personal price involved in achieving it. The price will be nothing short of heroism in certain areas. Because of the deep emotional overtones of this problem, and its existence in every phase of American life, no American can escape taking a stand on civil rights. No American can really disengage himself from this problem. Each of us must choose to deepen the anguish of the problem, by silence and passivity, if nothing more, or must take a forthright stand on principles that give some hope of eventual solution.

There have been and will be reasonable differences of opinion regarding the nature and timing of practical solutions. But prudence, patience, good will, honesty, and compassion must be among the ingredients of all hopeful solutions. I pray that our differences of opinion may not divide us; that the basic principles of human dignity may be asserted by all; and that respect for the sacred reality of every human person may be central to all solutions.

* * *

Now for the specifics. The Commission's voting recommendation No. 5, for the Presidential appointment of temporary Federal registrars in cases of voting discrimination, is an attempt to assure

qualified voters of equal opportunity to vote in the next Federal election, an opportunity now denied many. I have gone beyond this, together with Chairman Hannah and Commissioner Johnson, to propose an amendment to the Constitution that as a long-range solution would, clearly and simply, assure all Americans the equal opportunity of free and universal suffrage in all elections. The American dream would thus at last become a political reality, and America could then validly proclaim to all the world that we have full faith in the democratic process, without equivocation, chicanery, or subterfuge. To me, this is the final answer to the problems we have studied in the field of voting.

In education, again I have associated myself with Chairman Hannah and Commissioner Johnson in calling for consistency in the three powers of the Federal Government. The judiciary has outlawed compulsory segregation, and yet legislative programs and executive agencies continue to grant millions to institutions of higher learning which in practice disregard the supreme law of the land. Solutions are admittedly more difficult and complicated in the area of elementary and secondary education. But higher education is a mature and sophisticated domain, the birthplace of our future leaders, the Alma Mater that is ready, I believe, as the Armed Forces were, to grant immediate full opportunity to all Americans who qualify to enter this domain. I favor equal opportunity to obtain Federal educational subsidies that strengthen all our institutions of higher education in this country, both public and private. But the reception of these public funds should be conditioned by the equal opportunity of all the public to enjoy the educational benefits they provide, insofar as any American is qualified educationally, not racially, to enjoy them. Any other arrangement allows the various branches of government to work at cross-purposes, and places an undue burden on the judiciary alone. Moreover, I am personally convinced that the intelligent and mature leaders of higher education, administrations and faculties alike, are ready for this forthright admission of equal opportunity in this most sensitive segment of our nation—our colleges and universities, both public and private.

Finally, in the field of housing, perhaps the most difficult of all areas, I have associated myself with Commissioner Johnson in several conclusions beyond those unanimously adopted by the Commission. Again, the use of public money for the benefit of all, equal opportunity, is the cardinal principle. How to do this practically, in a world of admitted prejudice, is the nub of the problem. It does not appear revolutionary to insist that, when the most needy members of our society—those with the presently poorest housing and the lowest income—are displaced by Federally-assisted slum clear-

ance, urban redevelopment, or new highway programs, they be given opportunity to find decent, safe, and sanitary housing elsewhere, within their means, and not be dumped into already overcrowded racial ghettos. It does not seem inconsistent with the testimony we have heard to suggest that local and State laws might lead the way in those communities that pride themselves on equal opportunity. However, it would seem inconsistent with equal opportunity if Federal funds are used in a discriminatory manner, either to confine nonwhite Americans to a certain area of the city, generally less desirable, or to circumscribe Federal assistance in new private housing almost entirely at the whim of builders for white Americans. Also, it seems unfair that Federally-assisted hospitals and airports have different facilities for different classes of American citizens.

While Federal laws and policies may and should illuminate the ideal of equal civil rights for all Americans, it is fairly obvious, from the varying and nationwide dimensions of the problem, that only State and local leadership, wise and courageous, patient, compassionate, and understanding, will eventually bring the ideal to greater reality throughout our nation. It is in this sense that legislation alone will not solve the problem, and that ultimate solutions must come, as the President has said, from individual minds and hearts. But law, defining the goals and standards of the community, is itself one of the great changers of minds and hearts. In this democracy, law points the way toward ultimate freedom and justice for all Americans, everywhere in our land. Equality under the law has long been a cherished American ideal. May it ever become, more and more, a proud American reality.

STATEMENT BY COMMISSIONER GEORGE M. JOHNSON

While my service as a member of the Commission has been relatively short, I have been involved in its studies from the beginning as Director of the Office of Laws, Plans, and Research. Some of the points I make in this supplementary statement arise from my desire to make the Commission's recommendations more fully responsive to the findings of those studies. It is our duty to recommend measures that are equal to the problems disclosed by our factfinding. I would like to have had more time to discuss some of these points further with my fellow Commission members. However we may disagree on certain matters of timing and principle, I respect each one's judgment.

The problems which Congress assigned to this Commission for investigation, study, and appraisal relate generally to the American constitutional promise of equal justice under law for all. Implicit in this promise is the democratic goal of equal opportunity for all.

Under our Constitution the power and responsibility to implement and fulfill the constitutional promise and the goal are shared by the Federal Government, State and local governments, and the people. This Commission was asked by the Congress to study and appraise the Federal Government's role in exercising its power and discharging it responsibilities in this regard.

A crucial element in such a study and appraisal is the extent to which the Federal Government may be found to be participating, directly or indirectly, in activities contrary to the goal of equal opportunity. The elimination of all Federal policies and practices falling in this category is, in my view, a matter of prime importance and requires immediate remedial action by the executive and legislative branches of the Federal Government.

Prompt and effective measures to eliminate such practices should be undertaken, even though some citizens may be inconvenienced temporarily. For this reason I have recommended the withholding of Federal funds in aid of education at the primary and secondary levels, as well as those in aid of higher education, wherever the policies and practices of the institutions involved are not in accord with the constitutional principle of equal protection of the laws. Since 1954, compulsory racial segregation in public schools has been unconstitutional. It is time to require as a condition of further Federal assistance to any such school or school district that there be some indication of good-faith compliance with the constitutional requirement of desegregation with all deliberate speed.

The achievement of equal justice under the law and equality of opportunity should not be left to the Federal judiciary. The legislative and executive branches of the Federal Government also have basic responsibilities to secure and protect the constitutional rights of all citizens. The public interest is not best served if private citizens and organizations are left to vindicate constitutional rights of national significance through litigation in the Federal courts. The development of public law should not be left primarily to private litigation.

The void created by inaction on the part of the legislative and executive branches of the Federal Government must be filled with positive and constructive measures designed to remove from all Federal policies and practices any semblance of inconsistency with the mandate of the Constitution. Where necessary, laws should be enacted to accomplish this result.

Experience has demonstrated that laws are necessary to implement fundamental constitutional principles and that they are effective in areas of intergroup conflict. Laws restrain those few who will not respect the rights of others. They also have an educative value for the community as a whole. In this way laws help to change the

hearts and minds of men by changing some of their practices and by keeping them ever mindful of the goals towards which a free people dedicated to equal justice under law and equal opportunity for all citizens must strive.

Accordingly, in my view, there is great merit in the often proposed legislation to broaden the powers of the Attorney General to seek injunctive relief in civil rights matters. Such legislation would provide the executive branch of the Federal Government with additional power to correct flagrant abuses of the rights of some American citizens. Unfortunately, the shortness of time and the pressure of its activities precluded the Commission from exploring the need for such legislation. However, my appraisal of the areas of study selected by the Commission, and particularly of the problem of effecting school desegregation, has convinced me of the necessity for and the efficacy of such legislation.

While I believe that laws consistently and effectively enforced are necessary to secure and protect the civil rights of some American citizens, they constitute only a portion of what is required if equal justice and equal opportunity are to be attained throughout this nation. There is as great a need for leadership.

Neither in their enactment nor in their enforcement will laws of themselves provide real and lasting solutions of the most controversial problems of civil rights facing this nation. The need is for enlightened and constructive leadership capable of devising practical programs consonant with constitutional principles and of rallying the American people to the cause of justice for all citizens.

The Federal Government should take the lead in this task. It should seek to bring together leaders of both races who in good faith could explore ways and means to reduce tensions, create better understanding, increase respect for law and order, and organize the resources of the nation in a concerted effort to eradicate within the foreseeable future inequalities based on race, color, religion, or national origin. I believe that within our nation such leadership exists and that when marshaled and fully utilized it will be capable of meeting the present crisis in civil rights.

Finally, I would say that while none of us has the solutions of these complex problems, by approaching them with moral conviction and resolute courage we can take the necessary and proper steps toward full realization of the goal of equal justice under law and equal opportunity for all.

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