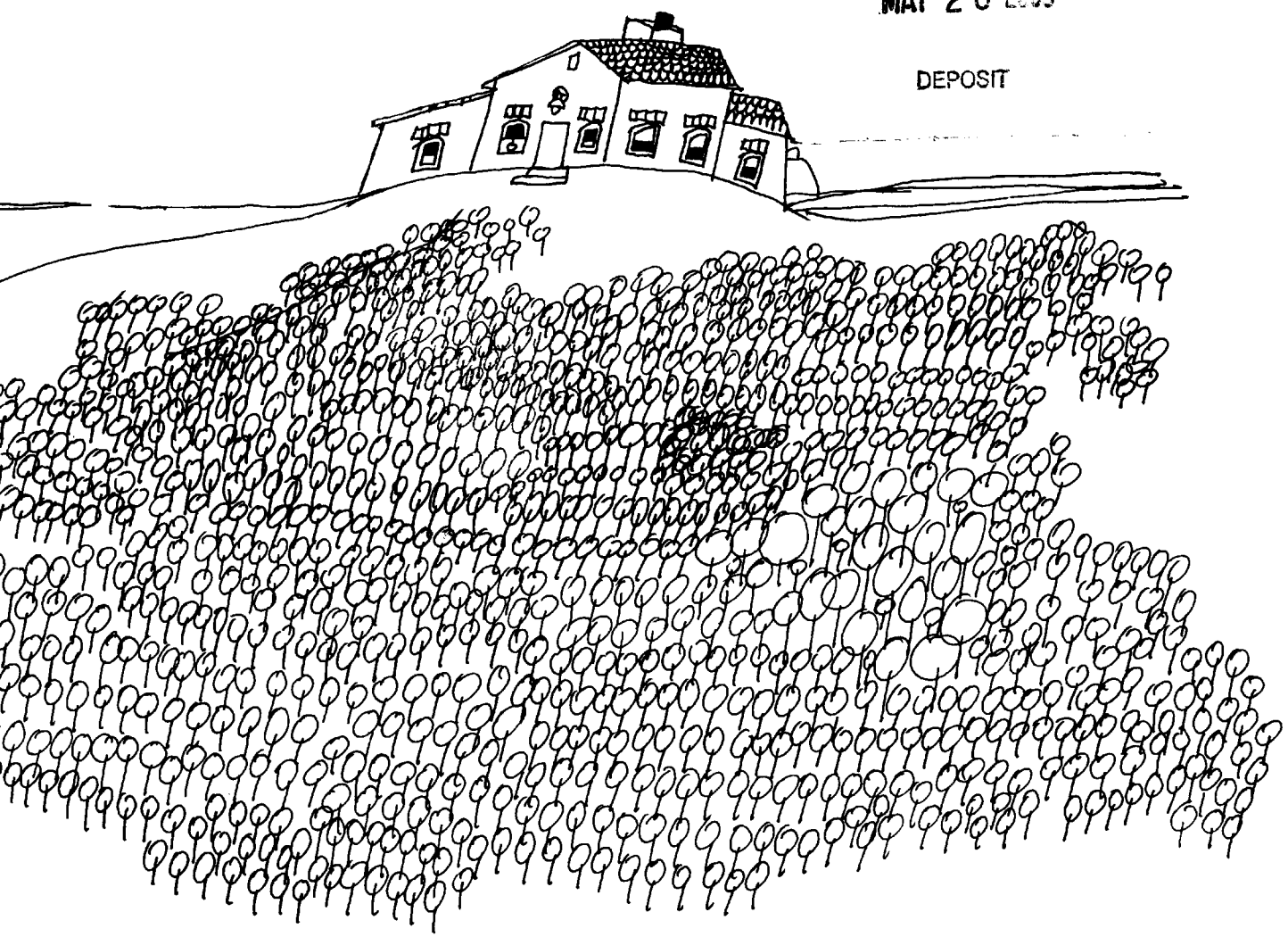
EQUAL OPPORTUNITY IN SUBURBIA

A Report of The United States Commission on Civil Rights

July 1974



U.S. COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights is a temporary, independent, bipartisan agency established by the Congress in 1957 to:

- Investigate complaints alleging denial of the right to vote by reason of race, color, religion, sex, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin; and
- Submit reports, findings, and recommendations to the President and the Congress.

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* Not a member of the Commission during preparation of this report.
** Resigned from the Commission as of March 21, 1974.

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LETTER OF TRANSMITTAL

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

SIRS:

The U.S. Commission on Civil Rights presents this report to you pursuant to Public Law 85–315 as amended.

This report is the product of an extensive study of racial isolation in this Nation's metropolitan areas—a study of why this pattern of isolation has occurred, how it is crippling the growth and prosperity of our cities, and how it can be arrested and reversed. Information was gathered through Commission hearings in St. Louis, Baltimore, and Washington, D.C., and factfinding meetings of State Advisory Committees in those cities and in Boston, Phoenix, and Milwaukee.

With prompt and effective action by both the legislative and executive branches of Government, the problems identified by the study can be solved to the advantage of city and suburb alike. We therefore urge your consideration both of the facts presented and the Commission's recommendations for corrective action.

Respectfully,

Arthur S. Flemming,* Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Maurice B. Mitchell**
Robert S. Rankin
Manuel Ruiz, Jr.

John A. Buggs, Staff Director

* Not a member of the Commission during preparation of this report.
** Resigned from the Commission as of March 21, 1974.

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Preface

More than a decade ago, this Commission noted the development of a "white noose" of new suburban housing on the peripheries of decaying cities with an "ever-increasing concentration of non-whites in racial ghettoes."* Today that pattern is even more pronounced. The exodus of affluent whites from the cities has continued unabated, along with the large-scale movement of jobs and wealth. The new suburbs have enjoyed an era of unparalleled prosperity, while the central cities have strained to answer growing demands for services for the urban poor and, ironically, suburban commuters.

In 1969, the Commission decided to conduct a study of metropolitan area development and its social and economic impact on urban minorities. In public hearings in St. Louis, Baltimore, and Washington, D.C., between January 1970 and June 1971, the Commission documented the problem with the testimony of more than 150 witnesses—from welfare mothers to Cabinet secretaries, from public housing tenants to corporation presidents. Further testimony was gathered by the Commission's State Advisory Committees in those cities and in Boston, Milwaukee, and Phoenix.

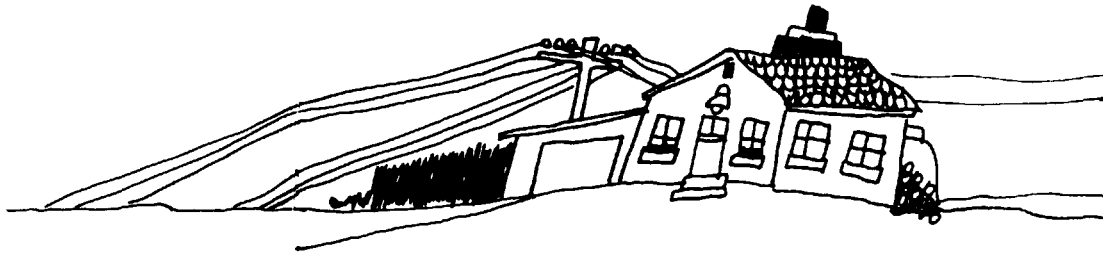
This report is the result of that investigation. It includes both findings of fact and recommendations for action. Its purpose is not to single out for criticism any particular individuals, organizations, agencies, or communities, but to analyze this metropolitan pattern of racial polarization from its causes to its consequences.

By the time of publication, some of the facts contained in the report will undoubtedly need updating. Court cases challenging both government and private actions in a number of directly related or peripheral matters are currently pending in several jurisdictions; and the Federal Government's own housing programs are at best in a state of flux.

Nevertheless, the problems documented herein are long-lived, profound, and complex. Their solution will not be simple. But without an immediate recognition of their impact, it is doubtful that any solution will be forthcoming.

* U.S. Commission on Civil Rights, *1961 Report: Housing* 1 (1961).

Racial and Economic Polarization Today



An Individual Perspective

To many, the problems of the inner city are known only as images flashing through the window of a moving car. To Larman Williams, his wife and children, they were a way of life:

> I guess mainly, where we were, we were dissatisfied with the facilities, we were dissatisfied with the clientele in and around the block. There was high crime in the area, in the neighborhood and on the block, there were attacks on neighbors. One lady across the street was hit on the head with a hatchet, robbed, murdered. Down the street from me on the left a lady was raped and was found the next morning in the nude. And people were prostituting all around and under us and in the apartment, that kind of stuff.
>
> My child was chased from school through an alley by someone, some man who was trying to seduce her. And for all of those reasons I just was afraid to come home to find my family maybe dead or my child raped, or just afraid.[1]

Williams, a high school assistant principal, testified at the January 1970 hearing of the United States Commission on Civil Rights in St. Louis, Missouri. Williams was not alone in his feelings. Inner-city residents at a series of Commission hearings testified about the crime, decayed housing, inferior schools, inadequate municipal services, and lack of jobs—about the dark streets lined with rotted houses in which they had to make their homes and raise their children.

In another sense, however, Larman Williams was fortunate in that his job and economic position enabled him to consider moving away from the conditions that so troubled him. It took a year of looking to find the right house, in suburban Ferguson, Missouri. But it was not enough that Williams was an able and willing buyer. Williams is block and Ferguson was virtually all white.

Only when his white pastor intervened was Williams even able to see the interior of the house.

> [We] took the name off of the sign and called the real estate people and of course they didn't call us back at that time. So [my pastor] asked me if I would mind if he would look into it and get the price of the house and all of [the] details that we would want to know, and I told him I wouldn't, and he got this information. And I said, "Well, that sounds good; I think we can handle that price and that kind of a thing."

Williams' pastor went to the owner of the home and told him he knew of a person who wanted to buy the house:

> . . . And the owner said that he didn't mind but his neighbors were not in the mood for selling to black people. . . .
>
> My pastor went and knocked on their doors and he got them together and they had a caucus and a prayer meeting and decided that it was only the right thing to do, to sell to a black person.
>
> And then the person, the owner, called the real estate people and they came and got in contact with me and we made the transaction from there.[2]

It would not be difficult for Larman Williams to understand why the black population of St. Louis County in 1970 was only 4.1 percent and why the black population of St. Louis City was 43.7.[3]

[1] *Hearing Before the U.S. Commission on Civil Rights, St. Louis, Missouri*, 301 (1970) (hereafter referred to as *St. Louis Hearing*).

[2] *Id.* at 302.

[3] *Id.* at 460.

Thousands today are not as fortunate as the Williams family. They remain in the ghettos of St. Louis, Baltimore, and Washington, D.C., in the "barrio" of Phoenix, and in the centers of dozens of other American cities. Many do not freely choose to live in these conditions. But they are trapped. They are poor. They are members of a minority group. Too often, they are poor because they are members of a minority group.

The National Perspective

The decade of the sixties was one of increasing suburbanization of whites in metropolitan areas and of increasing concentration of blacks within central cities—in short, of increasing racial separation. Between 1960 and 1970 the white central city population in metropolitan areas having a population of 500,000 or more declined by 1.9 million people, while the comparable black population increased by 2.8 million. The suburban rings of these same metropolitan areas had a white population increase of 12.5 million and a black population increase of only 0.8 million.[4] In terms of percentage changes, the increase in the black share of the central city population was 2¼ times as great as the increase in the black share of total metropolitan population in these areas.[5] Moreover, in 10 of the 34 metropolitan areas having a population of one million or more, the percentage of black suburban residents stayed the same or declined between 1960 and 1970.[6]

We cannot expect these patterns to reverse themselves on their own. If metropolitan population is projected to the year 2000, the percentage of whites living in central cities drops from about 40 percent in 1970 to approximately 25 percent in 2000; the change for blacks is from 79 percent in 1970 to between 70.1 and 74.8 percent.[7]

As testimony before the Commission showed, this picture of racial separation in metropolitan residential patterns persists for two main reasons: past and present discrimination in the sale and rental of housing and because of the lower income of blacks and other minority group members.

While housing discrimination is not practiced as frequently or as openly as it was before such discrimination was outlawed, it is still accurate to describe most metropolitan areas as having two housing markets—one for whites and one for blacks. Even if discriminatory practices were ended, special effort would be needed to overcome residential patterns established by decades of discrimination.

Lower income also puts racial and ethnic minorities at a competitive disadvantage in the housing market. In 1969, according to Census Bureau statistics, nearly one-third of the Nation's blacks had incomes below the poverty level,[8] compared with one-tenth of the country's whites. The median family income for all black families in 1969 was $5,999, nearly 40 percent less than the median white family income of $9,794.[9]

The dual causes of residential segregation—discrimination and low income—must be looked at together, since they reinforce each other. For blacks to have incomes equal to whites would not in and of itself solve the problem. This would only lower the percentage of black metropolitan residents who live in central cities (in areas of one million or more population) from 81.1 to 78.4.[10]

At every income level whites are more likely than blacks to live in suburbia. In 1970, 85.5 percent of black metropolitan families earning less than $4,000 lived in the central city, as compared with 46.4 percent of white families in the same income range. In the $4,000 to $10,000 income range, 82.5 percent of the black families and 41.6 percent of the white families lived in central city. For families with an annual income of $10,000 or more, the central city figures are 76.8 percent black and 30.9 percent white.[11]

But income is not irrelevant. Many white suburbanites bought their houses at a time when prices were significantly lower. Today the supply of inexpensive suburban housing is insufficient for even those black

[4] Statement of Dr. George H. Brown, Director, Bureau of the Census, U.S. Dep't of Commerce, *Hearing Before the U.S. Commission on Civil Rights. Washington. D.C.*, table 1.5 at 531 (1971) (hereafter referred to as *Washington Hearing*).

[5] Based on table 5. *id.* at 539.

[6] Table 8, *id.* at 542–550.

[7] Bureau of the Census, U.S. Dep't of Commerce, *Population Inside and Outside Central Cities by Race: 2000*, in *Washington Hearing* at 1087. These figures are not predictions, but projections of present trends based on various characteristics of the population and on alternative demographic assumptions.

[8] U.S. Dep't of Labor, *Black Americans* 14 (1971).

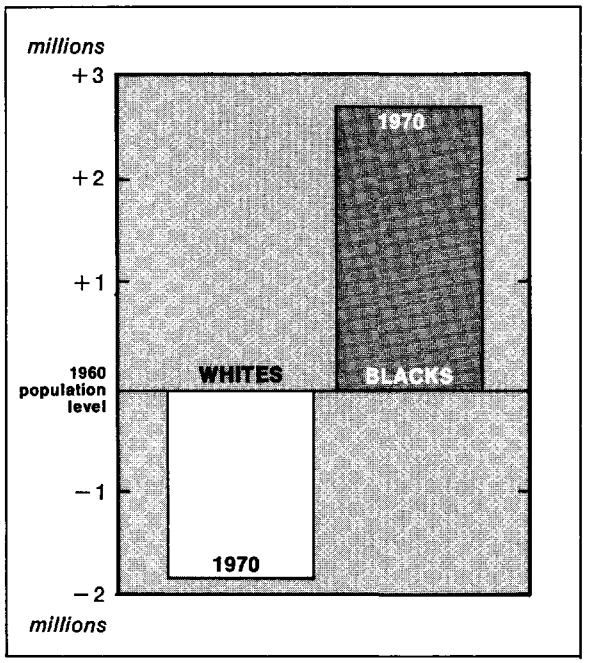
[9] *Id.*

[10] Statement of Dr. George H. Brown, Director, Bureau of the Census, U.S. Dep't of Commerce, *Washington Hearing* at 528. The National Commission on Urban Problems wrote in its report *Building the American City* (1968) (hereafter referred to as *Douglas Commission Report*) at 52:

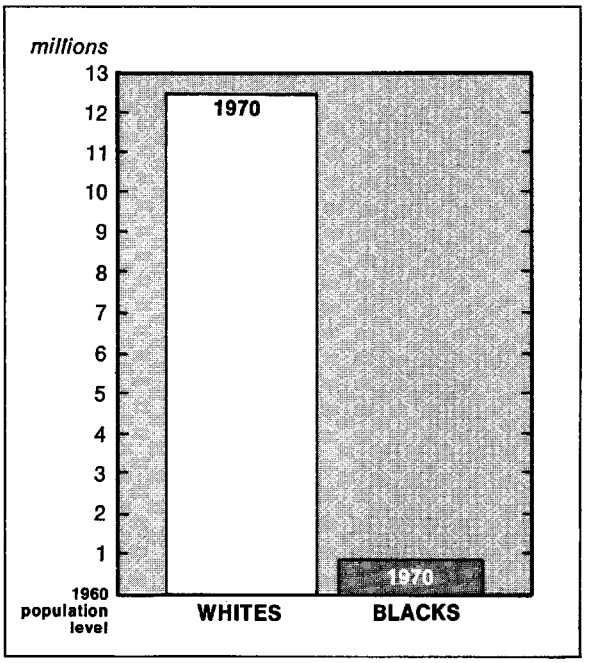
> The suburban ring has a majority of the residents of the metropolitan area. It also has less than its proportionate share of the poor, and only 5 percent of American nonwhites. . . . The suburbs, however, contain nearly half the *white* metropolitan poor—a figure which suggests that the suburbs discriminate more on the basis of race than on the basis of economic status.

[11] *Washington Hearing* at 527–528. These figures are for metropolitan areas having a population of one million or more.

Changes in racial concentration of central cities between 1960 and 1970

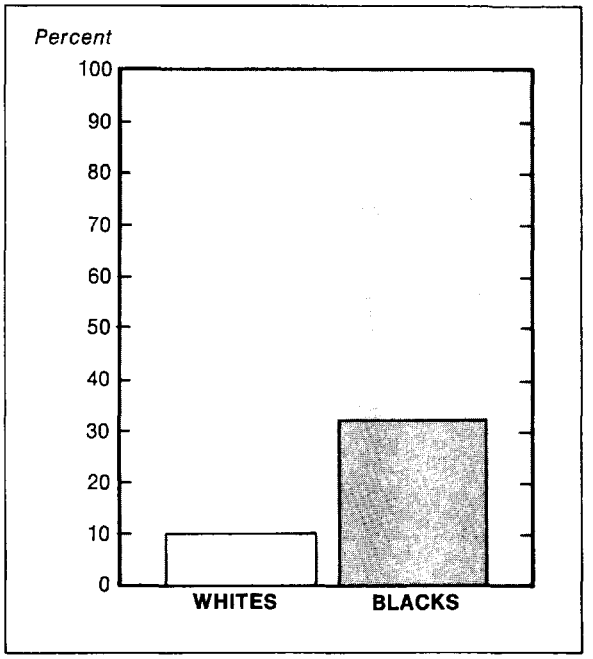


Increase in suburban population according to race from 1960 to 1970



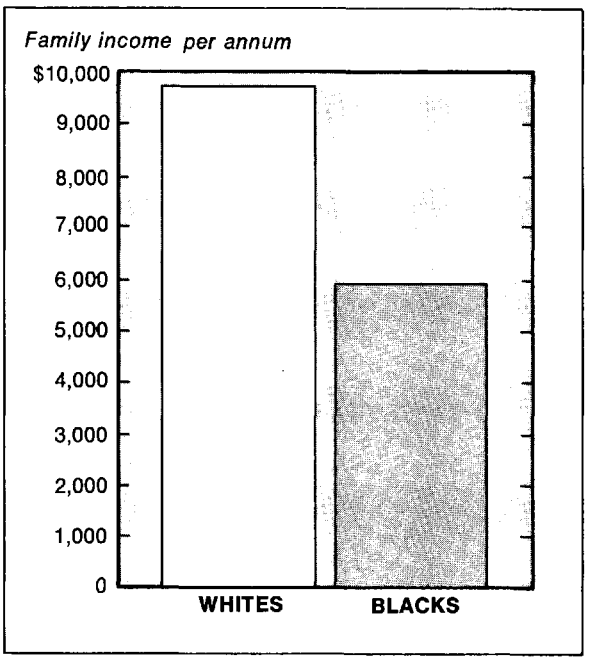
Source: Statement of Dr. G. H. Brown, Director, Bureau of the Census, U.S. Dep't of Commerce, *Hearing Before the U.S. Commission on Civil Rights, Washington, D.C.*, table 1.5 at 531 (1971).

Percentage of population below poverty level income according to race for 1969



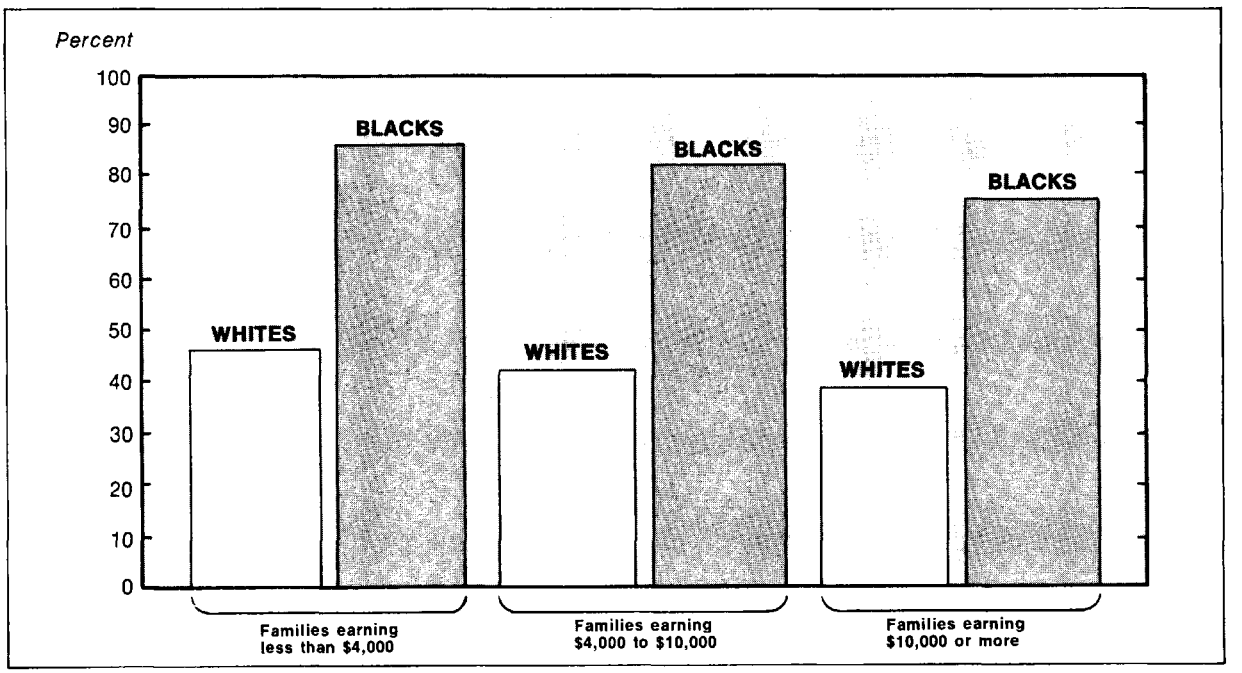
Source: U.S. Dep't of Labor, *Black Americans* 14 (1971).

The median family income for American families according to race for 1969



Source: U.S. Dep't of Labor, *Black Americans* 14 (1971).

White and black families within given income brackets living in central city, 1970



Source: Statement of Dr. G. H. Brown, Director, Bureau of the Census, U.S. Dep't of Commerce, *Hearing Before the U.S. Commission on Civil Rights, Washington, D.C.*, 527-528 (1971).

purchasers or renters whose income is comparable to that of whites.

To a great extent, the income disparity is also the result of discrimination. Inferior education has been offered to minority group members, with access to higher education often blocked. Even when a comparable education has been achieved, discrimination in employment prevents minority group members from converting their education to income as successfully as do whites.

The lack of inexpensive housing in suburbia is not only the result of market forces but also of local practices which limit low-cost dwellings or exclude them altogether. The motivation behind these restrictions is complex, with racial and economic motivations intertwined. The exclusion of low- and moderate-income housing not only assures open space, uncrowded schools and streets, and more favorable tax revenues; it also excludes low-income families. And this exclusion is disproportionately severe for blacks and other "undesirable" minorities because of their higher incidence of poverty. A witness at an open meeting conducted by the Commission's District of Columbia Advisory Committee in May 1970 described the all too common situation in Montgomery County, Maryland.

> Housing in Montgomery County is almost nonexistent for the black people who work for the Federal Government because, by and large, those people who work for the Federal Government are the lower paid employees. The [median] housing in Montgomery County last year, the new construction, sold for [about] $40,000, and anyone that earns $15,000 or less cannot afford to buy a house today in Montgomery County. And I know very, very few black people who earn $15,000 a year.[12]

This economic-racial exclusion may well be called the racism of the seventies. Coupled with vestiges of the more open racism of the past, it furnishes an explanation for the picture portrayed by the census figures, an image of a suburban "white noose" encircling a black inner city. As George Laurent, a witness at the Commission's Baltimore hearing, stated:

> [T]here are three reasons that blacks do not live in suburbia or in predominantly white sections of the cities: one, they don't want to live there; two, they can't afford it; and three, discrimination. By far the last is the most important.[13]

As already noted, reasons two and three are often closely related.

For a country as large and varied as the United States, it is hard to make generalizations which will be valid throughout. Thus this report is more relevant to older, generally northeastern or midwestern metropolitan areas with a substantial minority population than it is to others. The study of St. Louis and Baltimore leads to many conclusions that one can reasonably believe will apply to Detroit or Pittsburgh but not without modification to some newer metropolitan areas in the West and South.[14]

Generalizations about "the central city" or "the suburbs" also hide a great deal of diversity. Residents of the many prosperous neighborhoods which continue to exist in central cities can legitimately disclaim any assertion that their neighborhoods suffer from deteriorating housing or are losing jobs. Suburbs, too, come in all kinds—older, working-class suburbs, majority black suburbs, small towns until recently beyond the influence of the metropolitan area.[15]

Nevertheless, when all the exceptions and the diversity are taken into account, a clear pattern of differences between central cities and suburbs, between minority group neighborhoods and white neighborhoods remains.

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[12] Testimony of Charles Mahone, Transcript of Open Meeting Before the District of Columbia Advisory Committee to the U.S. Commission on Civil Rights 45 (May 14, 1970) (hereafter referred to as *D.C. SAC Transcript*).

[13] *Hearing Before the U.S. Commission on Civil Rights, Baltimore, Maryland,* 108 (1970) (hereafter referred to as *Baltimore Hearing*).

[14] W. B. Neenan, *Political Economy of Urban Areas* 16 (1972).

[15] *See* R. Farley, *The Changing Distribution of Negroes within Metropolitan Areas: The Emergence of Black Suburbs,* 75 *Am. J.* 512 (1970); *Suburbia: The New American Plurality, Time Magazine,* Mar. 15, 1971, at 14.

The Consequences of Racial Polarization

> You see, I don't think that it's bad to have suburbs. I don't think that we should lament the existence of the suburbs. I also don't think that it's unnatural that a certain amount of retail and other sorts of activities would follow those settlement patterns.
>
> But I do think that it is criminal and I do think that it is racist and I do think that it is stupid to think that a central city must go down the drain because there has been a rearrangement of settlement patterns to accommodate growth.[16]

The Downward Spiral of the Central City

The economic and racial separation of American cities and suburbs is widely recognized. Yet, there is little understanding of either the causes of this polarization or its devastating effect on our cities, their residents, and all who use city facilities or services.

The growth of the suburbs is a phenomenon that has drained the city of its resources and precipitated present conditions. As suburban development accelerated in the 1940's and 1950's, middle-class whites moved out of the city in large numbers and settled in these outlying communities.[17] The neighborhoods which they left behind were then inhabited by those who could not afford to move out of the city, often minority group members, and by blacks unable to move to the suburbs because of racially exclusionary practices.

Once this pattern was started, the process of urban/suburban stratification accelerated as people's fears, prejudices, and economic and social aspirations fed upon each other. White residents, seeing their neighborhoods becoming racially mixed, "fled" to the white suburbs. Their exodus created more vacancies which were filled by nonwhites in need of housing. This in turn convinced the whites who were still in the city that fears of racial inundation were justified, and they, too, left. Neighborhoods often were integrated only during a transitional stage from all white to all black. In the end, the white "suburban collar" surrounding a black central city emerged.

On the average, those remaining in the city have a lower income than suburbanites.[18] Tax burdens, however, have not declined. In fact, the fiscal needs of the city have increased along with the growing demand for more in municipal services, such as welfare, education, sanitation, and health facilities. The often declining quality of these services under the added financial strains have provided further motivation for moving away from the city to those who are able to do so.

Business and industry have also joined in the exodus to the suburbs. The Nation's largest employer, the Federal Government, has relocated many of its facilities outside the central city. Testifying at an open meeting of the Commission's District of Columbia Advisory Committee in May 1970, former D.C. City Council Chairman John Hechinger described the impact on the city of the exodus of Federal agencies to the suburbs. Although the specifics with which he is dealing are unique to the District of Columbia, Mr.

[16] James Gibson, president, Washington Planning and Housing Association, Inc.. *Washington Hearing* at 57.

[17] *See Report of the National Advisory Committee on Civil Disorders* (Kerner Commission Report), ch. 6 (Mar. 1968) for a brief but well-documented description of the development of metropolitan racial polarization. *See also,* U.S. Commission on Civil Rights; *1961 Report: Housing.*

[18] Median income for families in central cities in 1969 was $9,507; for those in suburban rings, it was $11,586. *1970 Census of Population: General Social and Economic Characteristics,* table 116 at 422 For black families, the difference between city and suburb was smaller: $6,790 in central cities, $7,542 in suburbs. *Id.,* table 128 at 444.

Hechinger's analysis is applicable, insofar as the movement of private employers is concerned, to many large American cities:

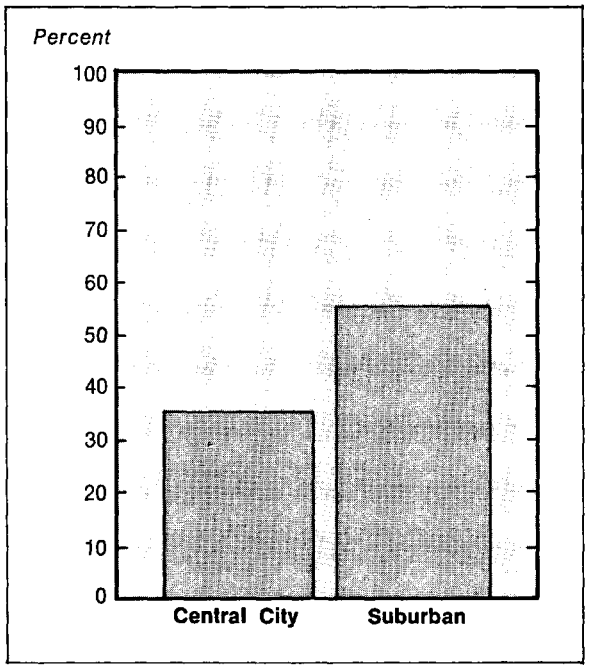
> It causes the departure of middle-class technical and professional families, mostly white but black as well, who follow their jobs. The District is then left more and more to the poor, who are predominantly black.
>
> This causes the departure of the private industries and businesses that service the Federal agencies and their suburban employees. . . .
>
> This causes the process of flight to the suburbs to feed upon itself, and accelerate like an avalanche. Individuals who don't need to move do so to escape blacks, or rising taxes, or declining schools, or deteriorating neighborhoods.
>
> . . . those to whom the city is left . . . demand more in services—education, welfare, training, health facilities, and so forth—and are less able to afford them than those who leave.[19]

The process which Mr. Hechinger describes is one that lessens the city's viability. Cities increasingly find themselves without the resources to meet their own needs. They continue to carry most of the burden of providing welfare, health services, and housing for the urban area poor.

This problem is nowhere more starkly apparent than in the field of public education. Within a metropolitan area, it is the central city school system which must bear the burden of educating large numbers of disadvantaged children, while suburban school systems serve wealthier white families.

Although there are many reasons for the inadequacy of central city schools, one of the most fundamental is the lack of funds for quality educational programs. Yet it is in the inner-city schools, the schools which often have the least adequate funding, that the need for such educational programs is most pressing. Compensatory programs, tutoring, and low student-teacher ratios are sacrificed because of economic considerations, and the present system of financing public schools becomes, for millions of Americans, a major barrier to a quality education and the life style which a quality education can produce.[20]

Proportion of local government revenue spent on education in central cities compared to suburbs



Source: J. Berke and J. Callahan, *Inequities in School Finance*, in Senate Select Comm. on Equal Educational Opportunity, *Issues in School Finance*, 92d Cong. 2d Sess. 141-143 (1972).

At the same time that financial resources for central city education become scarcer, integration in the public schools becomes harder to achieve. By 1965, 7 of the Nation's 15 largest cities had a majority nonwhite public school enrollment; in two other cities enrollment was 40 and 50 percent nonwhite.[21] In these districts the elimination of predominantly black schools can be achieved only on a metropolitan basis.

Although the problems of financing quality education are greatest in the central city, the city government is forced to spend a smaller share of its revenue on education than the suburbs. In the central cities of 37 metropolitan areas in 1970, 36 percent of total local government expenditures went to education; in

[19] *D.C. SAC Transcript* at 31-32.

[20] School systems are financed by local property taxes, supplemented by contributions from State and Federal funds. A community's ability to provide quality schooling, therefore, is closely related to its tax base, and hence to the wealth of its residents, its tax rate, and the proportion of its local revenue which can be used for schools, as opposed to other municipal services. The Supreme Court considered the inherent inequities of such a system in San Antonio Independent School District v. Rodriguez, 41 U.S.L.W. 4407 (U.S., Mar. 21, 1973), but found no constitutional violations because it saw the relationship between school district wealth and the income of residents of a school district as uncertain; the Court also preferred a political solution to the problem of financing public services. *See* J. Berke and J. Callahan, *Inequities in School Finance: Implications of the School Finance Cases and Proposed Federal Revenue Sharing Programs*, in Senate Select Comm. on Equal Educational Opportunity, *Issues in School Finance*, 92d Cong. 2d Sess. 129 (1972) (hereafter referred to as *Berke and Callahan*); Note, A Statistical Analysis of the School Finance Decisions: On Winning Battles and Losing Wars, 81 *Yale L.J.* 1303 (1972); U.S. Commission on Civil Rights, *Inequality in School Financing: The Role of Law* (1972).

[21] *Berke and Callahan, supra* at 139.

the suburbs the percentage was 56.[22] The central city must spend proportionately more than the suburbs on welfare, police protection, and traffic control.

Aid from the Federal and State governments does not make up for the higher cost of central city public services or the lower income of central city residents. Central city residents pay a higher proportion of their income in local taxes than do suburbanites. In 33 of 37 metropolitan areas in 1970, central city residents had a greater tax burden. In eight of the central cities, the percentage of income taken by taxes was greater than in any of the suburban rings.[23] Much of what the central city resident pays in taxes, moreover, is for the cost of providing public services to a large low-income population.[24]

Baltimore City Council fiscal advisor Janet Hoffman believes a most serious problem is the parasitic financial relationship which exists between the city and the suburbs. Testifying at an August 1970 Commission hearing in Baltimore, Ms. Hoffman described the drain which commuters cause on city resources. Baltimore is not able to tax suburbanites who work in the city, yet it supports many services used by suburban dwellers. Ms. Hoffman cited the hospitals, stadium, zoo, art museums, and many tax-exempt organizations—health, cultural, charitable, and religious—as examples of activities which the city alone subsidizes, but which people from the regional area use extensively.[25] There is no parallel benefit from the suburbs to the urban dweller.

Thus, the downward spiraling of the city has complemented the flourishing of the suburbs, and continues to do so. The burden of the deterioration falls most heavily upon the Nation's black and Spanish-speaking populations, more than half of which live in the central cities.

Employment Opportunities

In city after city, the Commission has found that businesses and industries are leaving the inner city and relocating in the suburbs. In greater Baltimore, for example, between 1955 and 1965, 82 industries relocated from the city to the surrounding suburbs, most of them in Baltimore County.[26] Taking into account movement to and from other regions and births and deaths of firms, the city suffered a net loss of 338 manufacturing firms in that period.[27] In St. Louis, Boston, Phoenix, Washington, D.C., and New York the pattern is the same: jobs have been accompanying the movement of middle-class housing to the suburbs. Ironically, the jobs that are relocating in suburban communities are largely blue collar, for which many minority group persons are qualified. The job shift in the St. Louis area over the period 1951–1967 is illustrative of the national trend:

> St. Louis County gained over 75,000 jobs in manufacturing and 47,000 jobs in wholesale and retail trade. At the same time the city lost 50,000 manufacturing jobs and 35,000 jobs in wholesale and retail trade. These industries are the biggest employers of blue-collar workers. The areas in which the city has increased in employment—principally finance, real estate and insurance, and services—are white-collar. This shift in the structure of jobs affects black persons more adversely than whites because black persons are concentrated in blue-collar jobs, but live in the central city, physically separated from jobs which they could fill.[28]

The Commission was also told that between 1968 and 1970:

> Seventy-seven firms have left the City of Boston. . . . This represents a loss of more than 10,000 jobs. These move-outs were especially high in the three high-growth industries, chemicals, electrical machinery, and rubber-plastics.[29]

The suburban relocation of employment opportunities would not have the strong adverse effect on minority group persons that it does if there were either available housing near job sites or adequate transportation from the city to the suburbs. However, residential patterns preclude low-income minority group persons from living near available work, and

[22] *Id.* at 142–143.

[23] *Id.* at 145.

[24] Neenan concludes, in a systematic study of cross-subsidization in the Detroit metropolitan area, that Detroit provides greater benefits to its suburbs than vice versa. W. B. Neenan, *Political Economy of Urban Areas* (1972). *See especially* chs. 1–5 for his analysis.

[25] *Baltimore Hearing* at 20–21.

[26] *Baltimore Hearing* at 503.

[27] ***Id. at* 504.**

[28] Staff of U.S. Commission on Civil Rights, ***Demographic, Economic*** *and Social Characteristics of City of St. Louis and St. Louis County,* in *St. Louis Hearing* at 458, 471–472.

[29] J. Kinney O'Rourke, executive director, Boston Economic Development and Industrial Commission, Transcript of Open Meeting Before the Massachusetts State Advisory Committee to the U.S. Commission on Civil Rights held in conjunction with the Massachusetts Commission Against Discrimination, Boston, Massachusetts, vol. I at 207–208 (June 1–4, 1970) (hereafter referred to as *Mass. SAC-MCAD Boston Transcript*).

metropolitan public transportation systems are designed to service suburban commuters going into the city in the morning and out to the suburbs at night. Often an unemployed city dweller simply cannot get to an available job in the suburbs.

In Phoenix, the head of the local chapter of the National Welfare Rights Organization, Ida Nobel, testified that jobs go begging because of the isolation of ghetto residents:

> . . . I have sometimes four or five young men come through my office a day. They get a job but it's way out and they don't have transportation to get to the job, so they ask us to try to provide transportation for them. So this is, as I say, a major problem for the poor peoples here. You can't get no transportation.[30]

The jobs, Mrs. Nobel testified, are "way out; they're way out somewhere like out in Scottsdale, Glendale, around out on Camelback, they're so far out." Asked if there was housing in those communities for the workers, she replied, "Not as I know of. If it is, I'm not aware of it."[31]

In Baltimore, a study conducted by a business group in the summer of 1968 found that in one area of the city about one-fourth of the work force was unemployed or underemployed, while at the same time many jobs were available along the beltway. As one witness observed:

> The simplistic answer is why don't the people in the inner city go to those jobs? You might as well say Timbuktu. There is no transportation.
>
> Three transfers, poor transportation, antiquated transportation system; it's expensive, unreliable.[32]

In Washington, D. C., the handicap which public transportation creates for city dwellers trying to reach suburban jobs was described by a number of Federal employees who worked for agencies which had moved, or planned to move, their facilities to the suburbs. Employees at GS–2 and GS–3—low salary—levels[33] told the Commission's D.C. State Advisory Committee that they would have to resign if their jobs left the District because they could not afford the increased busfare, or the additional babysitter costs which a long trip to and from work would require.[34] One black HEW employee calculated that the additional busfare she would have to pay when her agency moved to a Maryland suburb would be almost $350 a year and that her commuting time would double in length to 5 or 6 hours round trip.[35] The agency move, she predicted, would be especially hard on black employees:

> We see our men there, and most of our men we see are either in the mail rooms, they are messengers, or they are working machines. This makes us know that they are in grades 1 through 5. Then they're telling us about how our families are breaking up. I'm real concerned.
>
> And then, on top of this, some of them are working two jobs. If they move to Parklawn they will not get into the District early enough to be able to moonlight and work on this second job. So how do you expect these men to support a family?[36]

In St. Louis, there is very little public transportation between the inner city and job opportunities in St. Louis County, where several large employers, including the McDonnell Douglas Corporation and a Chrysler plant, are located. Most of these companies' black employees live in the city of St. Louis and are handicapped by the lack of transportation. As witness Mango Ali explained to the Commission:

> . . . It is a very important problem. Most of the black employees out there, they have to ride to work with someone else. They have to depend upon someone with an automobile to get them to work and because of this many times they miss quite a few days because of the person who they are riding with. They miss 12 days in a year and they are subject to a reprimand and if they get too many reprimands, maybe two or three, then they are subject to being fired. And the sole reason is not necessarily the person doesn't want to come to work, it might not be economical for him to own an automobile so that he can get there and have his own reliable transportation himself.
>
> There are buses that go out to McDonnell but I think it takes approximately about 2 hours through

[30] Transcript of Open Meeting Before the Arizona State Advisory Committee to the U.S. Commission on Civil Rights, vol. 2 at 24–25 (May 14–15, 1971).

[31] *Id.* at 25.

[32] Mr. William Boucher III, executive director, Greater Baltimore Committee, *Baltimore Hearing* at 377.

[33] As of January 1973, the GS–2 salary level began at $5,432 per year. The GS–3 level began at $6,128.

[34] *D.C. SAC Transcript* at 81–83.

[35] *Id.* at 121.

[36] *Id.* at 122–123.

the public system to go there.[37]

In St. Louis, an experimental bus program, subsidized by the Federal Government, provided transportation from a black area of the city to a number of industrial complexes. The bus ride was only 1 hour, but the program was not successful. A similar program in the greater Boston area also failed, and the chairwoman of Job Opportunities in Needham explained why:

> Some factors that we feel contributed to the fewer-than-expected number of riders were the length of time for some residents who live far away from Dudley Station to reach this area by public transportation; the scheduling of a 6:00 o'clock-in-the-morning bus, which was too early to attract residents who would have to arise at approximately 4:30 a.m. to get to their jobs, and maybe earlier, if they lived a mile or two from Dudley Station; the fact that the jobs available for the 6:00 a.m. bus were for female assemblers, whose wages would vary between $1.94 and $2.20 an hour, not enough wage or job compensation for arising so early and traveling so far; the fact that the Employment Express was not adequately advertised; the fact that not as many people were hired as had been expected.[38]

Thus, the movement of jobs to suburbs with exclusionary housing practices takes its daily toll on unemployed and underemployed city residents, and on the city itself, which must pay for their support despite decreasing tax bases. Transportation—a method which requires a great deal of time spent commuting to an area where minorities feel unwelcome—is only a partial solution to the problem. Unless adequate suburban housing is provided for minority and low-income workers, the city and its residents will continue to pay for the suburbs' practices.

Housing Opportunities

Racial discrimination in housing compels blacks and other minority group members to live in the metropolitan area's least desirable housing. Their housing tends to be older, in worse condition, and in less desirable neighborhoods.

Central city housing in which blacks are likely to reside is more likely to be dilapidated and substandard than housing in the suburbs. A special census of housing made for the Douglas Commission found that 33.3 percent of central city units were in poverty areas, as contrasted with 10.2 percent in the suburbs. These urban poverty areas contained:

> Four out of five of all housing units occupied by nonwhites in these central cities;
>
> Three out of four of the substandard units in these central cities;
>
> Nine out of 10 of the substandard units occupied by nonwhites in these central cities;
>
> Over half of the overcrowded units in these central cities;
>
> Five out of six of the overcrowded units occupied by nonwhites in these central cities;
>
> Four out of 10 of all housing structures built before 1940 were in these central cities, or those which were almost a third of a century old or older; and
>
> Five out of six of all the structures built before 1940 which were lived in by nonwhites in these central cities. . . .[39]

The Douglas Commission concluded that:

> These facts are clear evidence of the inadequacy of the figures which show that only 10 or 11 percent of the urban areas, cities, and suburbs of the SMSA's [Standard Metropolitan Statistical Areas] have substandard or overcrowded housing. These facts show how concentrated the problems really are.[40]

Robert Embry, commissioner of the Baltimore City Department of Housing and Community Development, described the problems of finding adequate housing for that city's poor. Of the 300,000 city dwelling units in 1970, roughly 11,000 were public housing. Almost 40,000 persons, 90 percent of whom were black, lived in public housing, and there was a waiting list of more than 3,000, which represented only a small portion of those with inadequate housing. Mr. Embry testified:

> [W]e find that as we build new public housing, as the new projects are seen, the waiting list increases.

[37] *St. Louis Hearing* at 112.

[38] Mrs. Carol S. Knapton, chairwoman, Job Opportunities in Needham, *Mass. SAC-MCAD Boston Transcript*, vol. II at 13.

[39] *Douglas Commission Report* at 77–78.

[40] *Id.* at 78.

So I don't know that the 3,000 applicants anywhere near expresses the total demand for such housing.[41]

In contrast, there was no public housing in the surrounding suburbs. Mr. Embry testified that because of this a significant number of low-income suburban residents were moving into public housing in the city.[42]

Racial Attitudes

The racial isolation in which most Americans live has a psychological effect on individuals of all races. It creates suspicion and fear about persons of different races, which in turn create or heighten feelings of racism.[43]

The Commission was told that in various suburban communities whites harbor stereotypes which cause considerable fear of and animosity toward blacks, Mexican Americans, and Puerto Ricans, particularly those perceived as being of a lower class. Thomas Dawes, a member and former chairman of the Baltimore County Human Relations Commission, described, for example, the attitude of county residents toward blacks:

> Generally, I would say that the attitude of people is negative. A great many people are without personal knowledge of black people. They respond to stereotyped ideas that we have all been brought up to inherit in a segregated society. We have a great many residents in the county who have had experiences in neighborhoods in the city where the real estate industry has abandoned areas once change has begun, and they feel that they have been hurt, and to them racial change means great difficulty, it means dissolution of neighborhoods, and they don't recognize the great harm and the great hurt that is done to black people who are caught up in this process as well.[44]

Whites who profess to have liberal views towards residential integration are often unwilling to speak out against the neighborhood norm if it is one of racial exclusion. In Baltimore County, a fair housing group had difficulty getting volunteers to work for it in their own neighborhoods. Its director explained:

> [My] great experience . . . in talking with people and talking with our fair housing council people is that there is still a tremendous amount of resistance. . . . We broached to our fair housing council the concept, let's have neighbor-to-neighbor discussions. And we got a fairly reluctant group of people to agree to start this. I remember one community, we went through a training program, we had 12 families agree to talk to their neighbors and at the last moment nine chickened out. And we have come to the realization that even among the people who say they are devoted to fair housing and the liberals and so forth, they are scared to death to talk to their neighbor because of fear of intense hostility. This gives me an idea of just how deep this thing is in the community.[45]

Generally, however, white acceptance of interracial living has been growing, although this acceptance of sharing neighborhoods with blacks does not extend to situations in which whites would be in a minority.[46] Two factors primarily account for this and should lead to even greater acceptance in the future. First, experience in stable interracial living situations leads to greater racial acceptance and the reduction of prejudice. Thus, the more housing is integrated today, the more it is likely to be in the future. Secondly, the existence of law changes how people believe they should act and changes their expectations of how others will act. Therefore, a strong national policy in favor of open housing and strong enforcement of fair housing laws will lead people to expect integrated neighborhoods as the norm.

Blacks, like whites, choose their housing primarily for convenience to work, appropriate size and special features, and manageable cost.[47] They are generally willing to live in interracial areas if necessary to find desirable housing but are reluctant to live in areas that are practically all white. Black reluctance to leave black neighborhoods is in large part caused by a realistic appraisal of the barrier of housing discrimination and of the treatment they and their families might receive in white areas.

Black witnesses who had moved from the city to the suburbs, or considered doing so, tended to bear out

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[41] *Baltimore Hearing* at 73.

[42] *Id.* at 73–74.

[43] For a general summary see Pettigrew, *Attitudes on Race and Housing: A Social-Psychological View*, in *Segregation in Residential Areas: Papers on Racial and Socio-economic Factors in Choice of Housing*, 21–84 (A. H. Hawley & V. Rock eds. 1973) (hereafter cited as *Pettigrew*). *See also* Foley, *Institutional and Contextual Factors Affecting the Housing Choices of Minority Residents*, *id.* at 85–87 (hereafter cited as *Foley*).

[44] *Baltimore Hearing* at 267.

[45] George Laurent, *Baltimore Hearing* at 109–110.

[46] *See Pettigrew, supra* note 43.

[47] *Pettigrew, supra* note 43.

this conclusion. Black people who have moved to formerly all-white suburbs have done so for the quality of housing, schooling, and services available there. But they also have found racism expressed in many ways. After describing instances of neighbors moving away, hostility of other neighbors, and discrimination against his children in school, Adel Allen, a black suburban resident in St. Louis County, concluded that living in the suburbs was worth the difficulties it entailed, although he described St. Louis County as "a little bit south of Mississippi."[48]

Many blacks told the Commission that the suburbs are an alien, unfriendly land which they preferred not to confront.[49] One such witness was Donald Whitworth of St. Louis. A worker at the suburban Chrysler plant, Mr. Whitworth chose to commute rather than look for a house in the suburbs. His explanation shows the fear of racial hostility and confrontation which many blacks share:

> I personally feel that if I did move into a community such as Fenton or the surrounding areas of Valley Park, or Union, Missouri, or Jefferson County, Washington County, that my daughter . . . being 6 years old and in the first grade, would probably be subjected to a racial harassment by her white counterparts; and [I would worry about] my wife's social atmosphere while I was at work, because surely, if I moved in that neighboring area, she probably would have to give up her job in the city.
>
> Mr. Glickstein [then Commission Staff Director]. Well, it would be much more convenient. Wouldn't you be prepared to attempt to be a pioneer, to move out there and—
>
> Mr. Whitworth. As an individual, being a pioneer doesn't frighten me at all. In fact, it encourages me. But let me say this: In that respect—and I'm thinking in the respect of fear, happiness for my family, and what have you—in that respect I would be selfish, I feel, if I was to take on the venture. I would be showing everybody, look how big Don Whitworth is; he's going out there and showing them that he doesn't care. He's glad to be there. And he's going to really strive to show that we can overcome.
>
> But what's happening to my wife and daughter in the meantime? This is my prime concern. And I do believe that in some form they would be in an environmental, mental and social jeopardy when my presence was not merited.[50]

A resident of Montgomery County, Maryland, Doris Stanley, also had mixed feelings about the benefits of living in the suburbs when she testified before the District of Columbia Advisory Committee to the Commission. To Mrs. Stanley, her environment was nothing but hostility. "Living in the suburbs," she said, "is nice if you're white."[51] She continued that she liked "getting the services of the whites that they perform for their own" but was reluctant to recommend that other black persons follow her to the suburbs.

> I would recommend that they be told ahead of time, don't fool yourself, it is hostile. But I feel that, you know, this whole country is hostile wherever you are . . . So I would recommend that they would come out but they would need an awful lot of help. The suburbs are not open to them and are not welcoming them in, it is a fight.[52]

[48] *St. Louis Hearing* at 308.
[49] *Mass. SAC-MCAD Boston Transcript* at 342; *St. Louis Transcript* at 34–35.
[50] *St. Louis Hearing* at 34–35.
[51] *D.C. SAC Transcript* at 50.
[52] *Id.* at 51.

The Causes of Racial Polarization: The Private Sector

Segregated housing patterns cannot be explained away by the attitudes and decisions of individual families—of white families who are "prejudiced" or who want a more pleasant suburban environment, or of black families who prefer to live in homogeneous areas or who are unwilling to confront the obstacles that prevent them from having a free choice of housing. There have been and there still are powerful institutional forces involved. This chapter will look at the private economy to see how it determines where certain people will live and what form metropolitan growth will take. The next two chapters will consider the governmental forces involved in this process.[53]

Real Estate Agents

Over the past few decades the real estate industry has played a leading role in creating and maintaining segregated neighborhoods. The marketing practices of real estate brokers are an important factor in determining the availability of housing in the suburban market to minority buyers. Both sellers and buyers depend extensively on a broker's advice and sales methods. As a broker who testified in Baltimore explained:

> I think that you have to recognize that the bulk of the properties that go for sale on the market are listed with brokers. The brokers have the authority, or they have the influence, at least, to direct the buyer to a specific property or to direct him away from the property.[54]

Malcolm Sherman, a broker from Maryland, held the view that real estate brokers actually encourage white desire for exclusivity.

> . . . it is really not the homeowner who is making that decision to keep that neighborhood all-white for his friends and neighbors, so much [as] the real estate broker who is in business and who still considers it economic suicide to make a sale to blacks in that all-white neighborhood.[55]

Of course, brokers are also influenced by any discriminatory desires of homeowners or developers whom they represent as agents.[56]

The importance of the broker's practices is that they affect home buyers on a much larger scale than individual discriminatory practices ever can achieve. One of the firms represented at the Commission's Baltimore hearing reportedly sold 350 homes each month.[57] A St. Louis firm represented at the Commission's hearing sold 850 homes in 1969 and had a sales volume of $18 million.[58]

The average person often tends to think of housing discrimination in terms of a minority family's inability to buy a particular house in a particular neighborhood. However, the testimony heard by the Commission alleges more than individual instances of housing discrimination; it indicates the existence of a dual housing market—one for whites, one for blacks and other minorities—that determines racial residential patterns for entire metropolitan populations as effec-

[53] *See generally Foley, supra* note 43, at 85, 95–107.

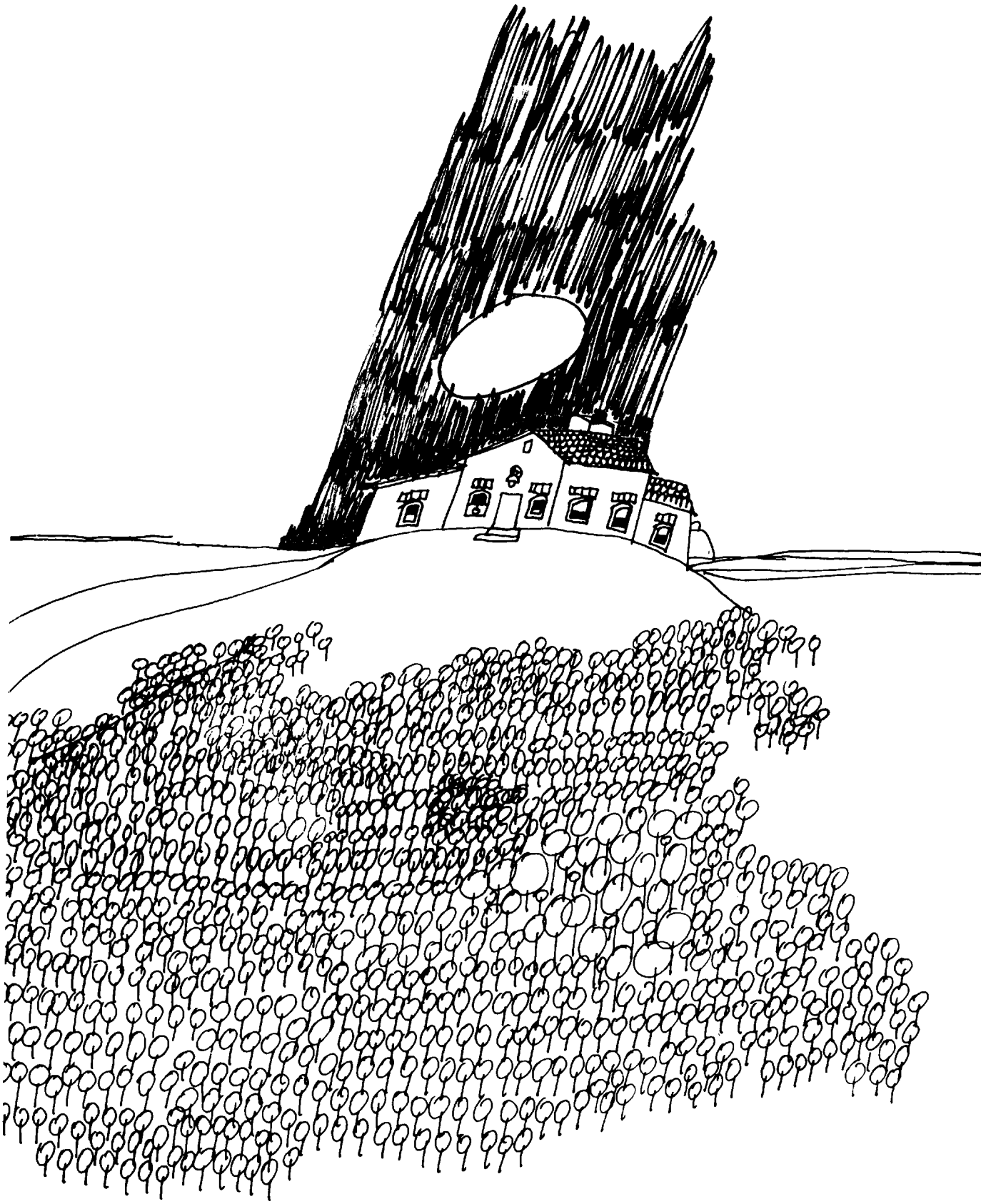
[54] Testimony of Arthur Sparrow, *Baltimore Hearing* at 138.

[55] *Id.* at 115. For example, Walter Faerber, president of John Armbruster Real Estate Co. in St. Louis, testified concerning the strong feeling of white owners in Overland, a St. Louis suburb, against selling to black buyers. *St. Louis Hearing* at 253.

[56] *See, e.g.*, testimony of H. Jackson Pontius, executive vice president, National Association of Real Estate Boards, *Washington Hearing* at 125.

[57] *Baltimore Hearing* at 140.

[58] *St. Louis Hearing* at 229.



tively as ordinances which would designate certain areas as black and others as white.[59]

The existence of real estate practices which create this duality is commonly recognized. Secretary of Housing and Urban Development George Romney put it in no uncertain terms at the Commission's Washington hearing:

> As a matter of fact, you don't have to prove through me that we've got a dual housing situation in the country. We've got a dual housing situation. We've got dual housing markets in practically every metropolitan area in the country . . .[60]

The practices, however, are difficult to detect, especially by the individual homeseeker.

Steering

Since housing discrimination is illegal under the Fair Housing Act of 1968, it would be naive to expect to discover such practices by simply canvassing brokers. Few people will willingly admit that they would violate Federal laws or generally accepted moral principles. An effective way to investigate real estate practices is "testing," or comparing the responses of brokers to potential black and white customers who are quite similar in all respects except race. This relatively common technique usually shows different treatment of each race.

At the Commission's St. Louis hearing, witnesses who had conducted a testing survey in 1969 for the Greater St. Louis Committee for Freedom of Residence described a discriminatory real estate practice called "steering"—showing white persons houses for sale only in white neighborhoods and showing black persons houses listed for sale only in predominantly black or changing neighborhoods. Lorraine Parks, a black schoolteacher, testified that she visited about 12 real estate offices in St. Louis to find out where they would offer her housing. In almost every one, she was referred to a black or changing neighborhood. Usually she was told about University City, a St. Louis suburb with an increasing black and decreasing white population.

> They would immediately begin to talk about or show me property—show me pictures, or refer to listings in University City . . . In some instances I would state that I wasn't interested in University City; I wasn't particular about living there. And in most instances it was University City or nothing else available.[61]

In a few instances Mrs. Parks was referred to another area, Northwoods, which is also experiencing racial change. She was never offered properties within the price range she indicated (up to $30,000) in any other areas in suburban St. Louis.[62]

Heddy Epstein, a white woman, also visited 12 real estate companies in St. Louis. She indicated that she wanted a location that would include University City:

> And then when I would say: "Well, how about a little bit further east?" I was [in] each instance told: "Well, University City is all colored; you don't want to go there."[63]

Two of the real estate agents visited by Mrs. Parks and Mrs. Epstein testified at the hearing. Walter F. Faerber, of the Armbruster Company, was asked why so many black people have moved to University City. He replied that it was because of economics. Commission counsel questioned this explanation.

> Mr. Glick. Well, isn't there housing for sale in the Overland-St. Johns area for $15,000 and $18,000, below $20,000, let's say?
>
> Mr. Faerber. Yes, there is.
>
> Mr. Glick. But there has not been the large migration of black people into Overland-St. John area as there has been to University City?
>
> Mr. Faerber. No.[64]

Further testimony showed that turnover rates, as well as prices, were comparable between the two areas.[65]

Control of Listings

Real estate agents further control the availability of housing to black purchasers by preventing black bro-

[59] The Commission found dual markets in the four cities—St. Louis, Denver, Baltimore, and Philadelphia—studied in its 1971 report, *Home Ownership for Lower Income Families* 89 (hereafter referred to as *Home Ownership*).

[60] *Washington Hearing* at 244.

[61] *St. Louis Hearing* at 25.

[62] *Id.* at 205–208.

[63] *Id.* at 208.

[64] *Id.* at 232.

[65] *Id.* at 240. On Mar. 10, 1970, the Department of Justice charged John H. Armbruster and Co., Jerome L. Howe, Inc., and two other St. Louis real estate firms with violating the 1968 fair housing law by steering black persons to changing neighborhoods and white persons

kers, whose clientele is primarily black, from getting access to listings of houses for sale in white areas. This technique of segregation is invisible to the individual home buyer, but widely recognized by black brokers. Black brokers alleged at the Commission's Baltimore hearing that this was a common practice in that area. A black broker, Ralph Johnson, explained the importance of access to listings:

> In Baltimore County, I think the real estate business is controlled primarily by the white real estate brokers. They control the business and they control the listings. And by controlling the listings, they control the business. Because the listings are the key to the real estate business.[66]

Not all listings are exclusive: it is common practice in the real estate field to allow another broker to show a company's listings and to split the resulting commission. Another black broker, Arthur Sparrow, alleged that white brokers refuse to share listings with black colleagues:

> Well, I think the most obvious and [yet] the most commonly used technique is, for example, if I, a black broker, were to call a white broker requesting to show one of his listings or property that is listed with his firm . . . the common practice is that they would tell me that the property is under contract if they didn't want me to show it. . . .
>
> I think another practice—I would say secondly in term[s] of its rank—is the fact that white brokers will frequently tell you that they can't reach the sellers. . . . The third technique, which I have found, especially in certain areas, is that when you insist, they give you the appointment, but then nobody shows up to meet you.[67]

Pattern of Market Control

The brokers who testified at the Baltimore hearing stated clearly that discrimination went beyond individual instances. "You see, in Baltimore," testified a black broker, "we have a black market and we have a white market." [68]

This fact is best illustrated by the existence of separate black and white organizations of real estate brokers on local and national levels. The Real Estate Board of Greater Baltimore had no black members until 1960 and as of 1970 had 15 black brokers out of 650.[69] Being a member of the board is particularly important because only members have access to its multiple listing service. The St. Louis Metropolitan Real Estate Board has about a dozen black broker members out of a total membership of 4,400 (which includes brokers and their associates).[70] The first black broker was admitted in 1963.[71]

On the national level, the black National Association of Real Estate Brokers was founded about a quarter of a century ago because black brokers could not belong to the white realtor association, the National Association of Real Estate Boards (NAREB). Today, the two organizations are still operated on racially separate lines.[72]

At the Baltimore hearing, Commission counsel asked whether the fair housing law had any effect in breaking down the dual housing market. The black witnesses believed that it had had a very limited effect. As one broker put it:

> [A]s long as you have the white brokers controlling the real estate business here in Baltimore, you will have this dual market. Because in order to control the real estate business, the black brokers would have to control the listings and in order for them to control the listings, they would have to be able to have the availability of going out into the county and getting the listings and this is just not possible, because of the racial characteristic of the county and other things. . . .[73]

White brokers who testified at the Baltimore hearing denied that they refused to share any listings with black brokers.[74] But they did not deny the fact that the black and white markets are self-perpetuating. William L. Antrim, vice president and sales manager for the firm of Russell T. Baker & Co., justified the absence of black agents in his firm by stating that it would be almost impossible for a black agent to make a living in the county at that time.

away from integrating communities. The suit was settled by consent decree on Dec. 15, 1971. It was concluded by the adoption of a Code of Fair Housing Practices by the Real Estate Board of Metropolitan St. Louis, applicable to 509 member firms, including the defendants. The code outlaws the discriminatory practices alleged in the suit. The board agreed to establish a five-member equal rights committee. The defendants agreed not to continue defense of the suit and promised to take steps to remedy the effects of past discriminatory practices, including the posting of fair housing notices and the giving of a fair practices course to their employees.

[66] *Baltimore Hearing* at 130.

[67] *Id.* at 133–134.

[68] Testimony of Ralph Johnson, *id.* at 134.

[69] *Id.* at 157, 162.

[70] *St. Louis Hearing* at 245.

[71] *Id.* at 246.

[72] *Washington Hearing* at 121. Section 806 of the Civil Rights Act of 1968, 42 U.S.C. §3606 (1970), prohibits racial discrimination in the membership of real estate brokers' organizations.

[73] *Baltimore Hearing* at 135.

[74] *Id.* at 156.

> If you are selling paint, you have paint to sell, but you don't have any product in the real estate business until you get a listing. Now, if you don't get a listing, you are not going to get any telephone calls, because when you get a listing, calls come into the office and we refer that person to the listing agent; so that, as you can see, if a person is unable to list property, and usually we start out on the basis of them doing it in the neighborhood in which they live, their friends, their associates. . . .[75]

Malcolm Sherman, a white Maryland real estate broker, agreed that black salesmen operated at a handicap in a white market, but he described how his company attempted to overcome it in the mid-1960's by an affirmative program for training black personnel.

> We found that the only way we could hire black salesmen was to practice discrimination in reverse . . . and decide that we would put them on a 6 months program of $100 a week, this would be about 26 weeks, and we might blow $2,600, but . . . we had to do this to put them through an educational training session where they could at least make some money while they were learning, if we wanted to attract black salesmen in the business.[76]

He believes that similar efforts are needed now to produce a unitary housing market:

> And it's incumbent upon the real estate profession to do this and to hire black salespeople because they can develop into good salespeople and one of the ways to do black business is to have black salespeople.[77]

The more general view, however, is that maintaining the dual housing market is more profitable than creating an integrated one. Economic motivations play a large part in determining racial practices in the real estate business. One of the St. Louis real estate agents visited by Heddy Epstein, who is coordinator for the Greater St. Louis Committee for the Freedom of Residence, explained to her, in defense of discriminatory practices he had described: "Selling to blacks is bad business for us, we have to consider our reputation."[78]

Substantial pressure not to "rock the boat" comes from within the industry. Real estate brokers sometimes perpetuate a dual housing market by punishing those white brokers who are willing to sell to blacks in white areas, thus keeping them in line.

Kenneth Mumbower, a St. Louis real estate broker, testified about the treatment he received after one of his salesmen showed a house in a white area to a black customer. The branch manager of another broker's office phoned Mr. Mumbower and threatened him economically.[79]

Broker Malcolm Sherman testified that his residential sales business was all but ruined by industry pressure after announcing in 1963 that it was company policy to sell property regardless of race.

> Our business was affected in one way that we never expected it to be. It was not affected by the owners who had listings with us. They did not question our policy and it was not affected by prospects that we were working with, but it was affected by our competition. At that time, we were selling more property than 18 brokers in our neighborhood, who were our competition put together. Their campaign against us—and we gave them every opportunity to knock us down—resulted within 6 months [in] our being down to no more than 25 or 30 listings a month and that many sales a month. Our business had gone down by some 65 to 70 percent.[80]

Other elements contribute to the profitability of residential segregation. Kay Drey, who works for a University City open housing group, compared sales of housing in the integrated area of University City with sales in Clayton, a neighboring, all-white suburb, and concluded that brokers can make a premium by selling property that satisfies white people's desire for exclusivity.[81]

By guiding black and white buyers to different markets, the broker can increase profits in both markets. Mr. Sherman gave an example in the Baltimore area.

> . . . the practice still goes something like this, that certain pocket areas and sections of the Liberty Road area northwest are open occupancy and that there are blacks living with whites in some blocks practically all-black . . . if he has a black buyer [a broker] will move that black buyer into one of those listings . . . instead of viewing the marketplace. . . . That way, he does not disrupt the business that he is doing in an all-white neighborhood but

[75] *Id.* at 154.
[76] *Id.* at 101.
[77] *Id.* at 101-102.
[78] *St. Louis Hearing* at 209.
[79] *Id.* at 200.
[80] *Baltimore Hearing* at 95.
[81] *St. Louis Hearing* at 333.

adds black to where blacks already bought, let's say out in the Liberty Road area.[82]

In the black housing market, a policy of housing segregation may also mean a profitable operation. Black brokers are generally free of competition from whites and have a captive market of black homeseekers.

The actions of real estate brokers in maintaining segregated housing patterns also may be related to professional standards concerning racial homogeneity which were long considered to be part of the profession's ethics.[83] White real estate brokers usually belong to real estate boards which are members of the National Association of Real Estate Boards.

At its Washington hearing, the Commission asked representatives of NAREB what affirmative efforts they had undertaken to change broker practices they formerly had advocated and thereby promote fair housing practices within the profession. Jackson Pontius, executive vice president of NAREB, replied:

> [A] good many of our member boards throughout the Nation are even going so far as to conduct what they call equal rights committees. . . . We have encouraged the local boards to set up equal rights committees.[84]

However, when questioned about specific efforts to overcome past discrimination, Mr. Pontius was negative. He said that HUD's requirement of an equal opportunity "logo" in housing ads went "too far."[85]

> I think in view of the 1968 Civil Rights Act we have to assume that everybody has to live with that act. I don't think it's necessary to spend the money to say that we support the act.[86]

The effect of discriminatory practices by real estate brokers is not only to deprive individuals of their choices but to impose rigid segregation on whole neighborhoods. A. J. Wilson, director of University City's Human Relations Commission, stated that University City, which had indicated its openness to black residents by means of fair employment ordinances and other civil rights measures, quickly became the target of discriminatory real estate practices:

> Finally, I think when the movement [of black residents] began and when there was somewhat acceptance of this we found blockbusting . . . which was also of course something that encouraged movement artificially. We were forced to pass ordinances, local ordinances, outlawing block busting and ultimately were forced to pass an ordinance which restricted all real estate solicitation in our city to eliminate the practice of real estate companies coming in, purchasing property. We had speculators come into the community in the same way.[87]

University City established a City Residential Service to help families bypass real estate dealers who might steer them in discriminatory patterns. This service placed more than 500 white families in University City, trying to retain an integrated community, and attempted to give black homeseekers a wide range of choices within their price limits in a number of suburban communities.[88] But as Mr. Wilson indicated, University City cannot by its own efforts determine its racial patterns:

> I think . . . that you are going to have a black ghetto in the northwest St. Louis County unless there's an aggressive policy of opening up houses in all areas of St. Louis County.[89]

If only one or two neighborhoods in a suburban area are "open" to blacks, then the systematic discrimination discussed above—steering, pressure on brokers from within the profession, control of listings—may well turn these sections into all-black enclaves. Only the implementation of fair housing practices throughout a metropolitan area will result in stably integrated neighborhoods rather than "changing" neighborhoods which ultimately become segregated.

The discriminatory policies of real estate brokers—along with other institutional supports of racial segregation—lead many whites to fear that property values in their neighborhood will decline if the area is al-

[82] *Baltimore Hearing* at 115.

[83] *Washington Hearing* at 122. NAREB's 1928 Code of Ethics contained the following provision (Article 34):

> A Realtor should never be instrumental in introducing into a neighborhood, by character of property or occupancy, members of any race or nationality, or any individuals whose presence will clearly be detrimental to property values in that neighborhood.

The current NAREB Code provides (Article 5):

> The Realtor should not be instrumental in introducing into a neighborhood a character of property or use which will clearly be detrimental to property values in that neighborhood.

[84] *Washington Hearing* at 123–124.

[85] *Id.* at 126. NAREB had in fact opposed the fair housing act before it was passed. *Washington Hearing* at 123.

[86] *Id.* at 126.

[87] *St. Louis Hearing* at 316.

[88] *Id.* at 321.

[89] *Id.* at 322.

lowed to become integrated. Often these fears are stimulated by real estate brokers after the initial entry of a black family into the neighborhood. If many white owners decide to sell in panic, the law of supply and demand dictates the inevitable result: prices fall as the fear acts as a self-fulfilling prophecy. Ironically, however, the initial drop in price does not necessarily lead to bargains for minority purchasers. The difference can be absorbed by speculators who buy from whites at reduced prices and sell to blacks—whose housing opportunities are limited—at inflated prices.[90]

Contrary to popular notions regarding race and property values, however, prices may subsequently stabilize at a higher level when the neighborhood becomes racially stable, either as an integrated or an all-minority neighborhood, as pointed out in a study as far back as 1961.[91]

In 1972, the Social Science Panel of the National Academy of Sciences' Advisory Committee to HUD found that "the weight of the evidence is that, in comparison with all-white neighborhoods of otherwise similar character (age, location, housing quality, etc.), property values in neighborhoods entered by nonwhites do not generally fall and have sometimes risen because of the concentration of nonwhite demand."[92]

Financial Institutions

For a family to buy a house, or a landlord to provide apartments, a source of credit is necessary. The family, even if it has a substantial income, will require a long term mortgage to be able to purchase a house. The landlord will need a mortgage to obtain the capital necessary for the renovation of his property. It is not surprising, therefore, that the practices and attitudes of financial institutions—savings and loan associations, banks, mortgage brokers, and insurance companies—will have a significant impact on the housing market. If these institutions are unwilling, for example, to give a mortgage loan to a black family that wishes to buy a house in a white neighborhood or if they refuse to make available mortgage loans at reasonable rates in a neighborhood that is predominantly black or substantially integrated, then blacks will not be able to find housing outside of black neighborhoods and housing within black neighborhoods will deteriorate.[93]

Unfortunately, these examples represent the practices of many lenders. In June 1971, a questionnaire was sent to lending institutions by the Federal financial regulatory agencies in conjunction with HUD. Analysis of the questionnaire indicates that discrimination by mortgage lenders is still in evidence. If lenders take the initiative in providing mortgage loans to blacks seeking housing in white neighborhoods and demonstrate a willingness to finance at reasonable rates homes and apartments in areas with substantial black populations, they can make a most important contribution to increasing housing opportunities for blacks.

At the Baltimore hearing, the Commission heard a panel of financing experts, including Michael D. Quinn, assistant vice president of Weaver Brothers, a Baltimore mortgage banking firm, and Winfred O. Bryson, president of Advance Federal Savings and Loan Association, a minority-controlled financial institution. The witnesses agreed that, for a variety of reasons, home loans had not been readily available to black applicants. Mr. Bryson's company, Advance Federal, was organized to provide loans to minority families and businesses, including very small loans:

> Our association was founded 13 years ago, and the time that it was founded, the reasons given a large extent by the individuals who were in part in the real estate business, and part in the construction business, all of these being . . . black . . . was that the mortgage loan money was not freely available to the individuals and on exactly the same terms, even though mortgages were being granted.[94]

Institutions which finance the housing market have limited minority access to suburban markets by practices which discourage integrated community development and heighten residential segregation.

A survey conducted by the Federal Home Loan Bank Board revealed a number of discriminatory practices among lending institutions.[95] Some lenders admitted using the race of an applicant as a factor in determining whether he would be given the loan or in determining the terms under which the loan would be

[90] *See* R. Helper, *Racial Policies and Practices of Real Estate Brokers* (1969).

[91] *See* L. Laurenti, *Property Values and Race* (1961).

[92] National Academy of Sciences-National Academy of Engineering, *Freedom of Choice in Housing: Opportunities and Constraints* 23 (1972).

[93] *See* U.S. Commission on Civil Rights. *1961 Report: Housing.*

[94] *Baltimore Hearing* at 201.

[95] Federal Home Loan Bank Board Survey (released Mar. 1972). FHLBB considered the results of the survey inconclusive, since it included only 74 of the 5,000 federally-supervised savings and loan associations.

made. Other common practices of mortgage lenders, the survey also found, while perhaps not instituted in order to discriminate, have the effect of discriminating against minority applicants. For example, lenders discount disproportionately a working wife's income and use the existence of an arrest record as a bar to the approval of a mortgage.[96]

"Redlining" is a practice by which certain residential areas, often of substandard ghetto housing, are excluded from eligibility or greatly disfavored for mortgage financing. The justification for this practice generally is presented in terms of the area's "rundown condition." Thirty percent of the responding mortgage lenders admitted to disqualifying neighborhoods for loans because of their residential composition.[97] The predictable result has been to accelerate the area's decline, speeding the exodus of those, usually whites, able to flee to better neighborhoods.

A. J. Wilson, University City's Human Relations Commission director, described the impact of practices such as redlining:

> We in University City have had to face, because of 16 percent of our population being black, many of the same forms of discrimination that black people have experienced for years. We have trouble getting developers to come in, we have trouble getting financing for development, we have trouble getting mortgages, we have some insurance companies starting to say: "We are going to stop insuring."[98]

Another discriminatory practice consists of appraising properties at a lower value in black or mixed areas than in all-white areas, making whites reluctant to sell to nonwhites. Mr. Wilson complained that even FHA appraisers share this bias:

> [T]hese things occur today where FHA appraisers come out and are appraising that property on the basis of the neighborhood . . . on the basis of the fact that there are black people there, when in fact University City is better physically today because of a variety of improvements and code enforcement and in our housing program, better physically today than it was 5 years ago.[99]

Most of the practices described above are specifically prohibited by the latest Federal Home Loan Bank Board guidelines, issued in December 1973.[100]

Builders and the Construction Industry

In the field of race relations, the homebuilding industry has a somewhat better reputation than the real estate brokers. The National Association of Home Builders (NAHB) did not oppose the 1968 Fair Housing Act, while the National Association of Real Estate Boards lobbied against it.[101]

NAHB has supported the passage and funding of many acts furthering low-income housing construction. The Federal subsidy for low-income housing provides builders with an additional market that would not be profitable without subsidy; and the subsidy has made the homebuilders allies of groups seeking greater access to suburban areas for low- to moderate-income housing.[102]

Nevertheless, the Commission's study of homeownership under the Section 235 program in four metropolitan areas found that new developments, built with Federal assistance, reflected the same segregated housing patterns prevalent throughout those communities for conventionally financed housing.[103] Suburban developments financed under Section 235 were all white or nearly so, while housing sold under the program in the city was generally occupied by blacks.

The Commission found that some builders actively discriminated and that others did so passively, by allowing community practice to determine the racial occupancy of their projects. Many said that they did not need to advertise. Word of mouth advertising in segregated neighborhoods often results in segregated occupancy.[104]

Several builders testified at the Commission's Baltimore and St. Louis hearings. All of the builders testifying in Baltimore had developments in Baltimore

[96] *Id.*
[97] *Id.*
[98] *St. Louis Hearing* at 328-29.
[99] *Id.* at 329.
[100] 38 Fed. Reg. 31653 (Dec. 17, 1973).
[101] *Washington Hearing* at 123.
[102] On Jan. 5, 1973, HUD suspended all subsidized housing programs. Addressing the National Association of Homebuilders on Jan. 8, Secretary Romney said the programs had become a "monstrosity that could not possibly yield effective results even with the wisest and most professional management systems. In a Jan. 15 letter to Senator John Sparkman, Chairman of the Senate Banking, Housing and Urban Affairs Committee, Kenneth Cole, Director of the Domestic Council, repeated that argument as the administration's justification for the housing moratorium. A congressional subcommittee disputed the administration's evaluation, finding instead that "most of the scandals and abuses in our housing programs have been due to faulty administration by the Department of Housing and Urban Development rather than to any inherent defects in the legislation." Subcomm. on Priorities and Economy in Government of the Joint Economic Comm., *Housing Subsidies and Housing Policy*, 93d Cong., 1st Sess. 3, 6, (1973).
[103] *Home Ownership* at 87.
[104] *Id.* at 51-57.

County. Henry J. Knott, Melvin Colvin, and Carl T. Julio had black and white families in all of their projects, although they did not know in what numbers. Harvey Myerberg, however, who built a development of houses priced at $16,000 to $17,000 in all-white Essex County, had no black buyers.

All of the builders found strong demand for their product.

> The apartments we build, we don't even advertise them! They rent so cheap, they just rent.[105]

Eliot M. Alport, of the Eliot Construction Company of St. Louis, Missouri, felt that the marketability of his houses was affected by racial prejudice. The houses he built in St. Louis County and Florissant ranged from $15,000 to $20,000 in price and only about 4 or 5 out of 200 had been sold to blacks. Commission counsel asked Mr. Alport what the effect of those sales had been. He replied:

> They had a definitive adverse effect . . . The problem was that if we sold a home, apparently as I understand it, to a black customer on Lot A, when the next customer came along, he, having a choice of lots just as the black customer did, he chose not to be on lot—the lot on either side of that black customer, nor the lots across the street from the customer, nor the lots behind the customer, so that all of a sudden one sale to the black customer meant that we had anywhere from 5 to 10 lots which our white customers preferred not to be associated with. Also, I might say that from what I hear again from our salespeople, a black customer did not want to be next to another black customer; he would prefer to be among white customers.[106]

Mr. Alport did not think that homebuilders should adopt affirmative programs but considered it the role of government to insure that housing is open without discrimination. He said he had been willing to announce a nondiscriminative policy "if they could get others to go along," but that apparently the effort was unsuccessful, since he was never contacted about it again.[107]

John A. Stastny, at the time president of the National Association of Home Builders, told the Commission's Washington hearing that the association for many years had publicized within its membership its policy in favor of open housing.[108] The association had not, however, adopted a policy of affirmative action under which builders would assume responsibility for overcoming segregated marketing patterns in the sale of their developments. NAHB, in fact, has consistently opposed HUD's affirmative marketing regulations on a variety of grounds, including the argument that it places "FHA-insured housing at a distinct competitive disadvantage"[109] and "drives some builders out of the FHA program."[110] The association has also ignored the evidence showing that without affirmative efforts to promote fair housing, new housing will continue to reflect existing residential patterns. Affirmative marketing techniques are necessary to overcome segregated practices and only recently has the Federal Government required that such techniques be utilized in all subsidized construction projects.

The Role of Major Employers

Earlier sections have described the move of many corporations and plants to suburban locations, and the economic, racial, and logistical factors involved in the resulting inaccessibility of suburban-based jobs to central city minority group members.

The Commission heard clear evidence that the mismatch between jobs and housing is a serious problem of nationwide significance. Neil Gold, codirector of the Suburban Action Institute, told the Commission at the Washington hearing of the tremendous growth of suburban job opportunities, both blue and white collar, that occurred in the 40 largest metropolitan areas in the last half of the sixties:

> In that period, central cities gained 782,000, while suburbs gained 4,370,000 or 85 percent of the total increase, in new jobs.
>
> Now, to put the figures that way really masks the reality of what has happened. For example, in the manufacturing sector which provides job opportunities for a large proportion of the minority labor

[105] Testimony of Henry J. Knott, *Baltimore Hearing* at 183.
[106] *St. Louis Hearing* at 280.
[107] *Id.* at 281–282.
[108] *Washington Hearing* at 383.
[109] Letter of Nov. 1, 1971, from John A. Stastny, president of NAHB, to the Office of General Counsel of HUD, stating NAHB's opposition to HUD's "Affirmative Fair Housing Marketing Regulations" (36 Fed. Reg. 19320, Oct. 2, 1971) (letter in USCCR files).
[110] Letter of Jan. 7, 1972, from Richard J. Canavan, staff vice president, Builder Services Division, NAHB, to Samuel J. Simmons, Assistant Secretary of HUD for Equal Opportunity, containing further comments in opposition to HUD's affirmative fair housing marketing program (letter in USCCR files).

force in the United States, the total number of new jobs in the last five census years in the 40 largest SMSA's was 2,080,000 . . . The cities actually lost 29,000.

It seems to me when you put together the general sense of what's happening, the outmigration of jobs, and when you look rather carefully at . . . what kinds of jobs are leaving the cities, you see that it is precisely those jobs which low-income, moderate-income and minority workers must have in order to survive, so what's really at stake in the failure to allow minority people and low- and-moderate-income people to live throughout metropolitan areas is in a sense a denial of equal employment opportunity to these groups. [111]

The determination of many corporations that suburbs offer such advantages as more space and a more attractive tax picture has only led to a worsening of the property tax base in the inner city and increasing unemployment. The gravity of the problem was emphasized by President Nixon in his statement on equal housing opportunity:

Another price of racial segregation is being paid each day in dollars; in wages lost because minority Americans are unable to find housing near the suburban jobs for which they could qualify. Industry and jobs are leaving central cities for the surrounding areas. Unless minority workers can move along with the jobs, the jobs that go to the suburbs will be denied to the minorities—and more persons who want to work will be added to the cities' unemployment and welfare rolls.[112]

A case study of the problem of jobs but no housing is presented by the Ford Motor Company plant located in Mahwah, New Jersey—a low density, strictly zoned, prosperous community in Bergen County. When Ford moved its facility to this location from Edgewater, New York, it made no effective effort to locate its black and Puerto Rican employees in the new area.[113] The problems created for workers were described at the Commission's hearings: long trips to and from work, expense, delays, and, at times, the loss of employment due to inability to obtain housing in the new location.

When Ford Motor Company proposed to locate a plant there, doubtless many in Mahwah welcomed the tax revenues and consumer dollars which the plant would bring. Yet, according to testimony at the Washington hearing, Mahwah had different feelings about the workers who would staff the plant and spend the consumer dollars. A worker at the plant, Aaron Resnick, told the Commission about the scarcity of land available for low- and moderate-income housing:

To begin with . . . Mahwah is the largest township in Bergen County, and one of the largest townships in the State of New Jersey. Over 75 percent of their land is still vacant . . . Over 50 percent is zoned 1 acre or 2 acres . . . Twenty or 25 percent of it is zoned for additional industry, and right up to the present they still haven't made any provision for the workers to come along with the industry.

Mr. Powell (the Commission's General Counsel). Is there any significant percentage of the land zoned for multi-unit development of low and moderate income housing?

Mr. Resnick. Approximately 1 percent zoned with very little of it remaining available.

Mr. Powell. Mr. Resnick, have you discussed the workers' housing need with Mahwah civic groups?

Mr. Resnick. Yes, I have.

Mr. Powell. What has been the response of those groups with whom you have talked?

Mr. Resnick. Well, we have gotten a favorable response from one newly formed organization. However, generally the response has been antagonistic.[114]

Robert Carter, president of the National Committee Against Discrimination in Housing, described the situation in New York City:

. . . the jobs are moving out, . . . there is a displacement and mismatch between job opportunities and availability. Blacks are being left in the cities while blue-collar jobs are burgeoning in the suburbs. At the same time the central city is becoming generally professional, managerial, high prestige, white collar employment, and service oriented.[115]

Charles W. Swartout, vice president and general manager of the personnel division of Mallinckrodt

[111] *Washington Hearing* at 271.
[112] Statement by the President on Federal Policies Relative to Equal Housing Opportunity, June 11, 1971, at 4, printed in *Washington Hearing* at 573, 576.
[113] *Washington Hearing* at 402.
[114] *Id.* at 403.
[115] *Id.* at 157.

Chemical Works in St. Louis, explained from an employer's point of view the difficulty of hiring minorities to work at a newly-established suburban facility:

> . . . it has now been about a year and a half that we've been out there, and we have tried to hire minority people for our Brown Road installation, and have found it impossible. Several things make this so. Number one, there are no large minority groups in our area out there, with the possible exception of Kinlock, which isn't too far from us.
>
> We have found that no one has been willing to be hired at St. Louis for a job at Brown Road, none of the minority employees. It has even gotten to the point where we have some young women who are very competent secretaries who, upon being asked to transfer, have preferred to stay at the St. Louis plant.[116]

At the Commission's St. Louis hearing, there was considerable testimony about the absence of housing opportunities for minority workers near the suburban plant of McDonnell Douglas. Orrie W. Dueringer, housing coordinator for the company, testified that, to his knowledge, most of the white employees lived in St. Charles County and Florissant. Some blacks lived in Kinloch, some in Ferguson, and the rest in St. Louis City.[117] In spite of this segregated pattern, the company made no effort to see that housing listed by the company was actually open on a nondiscriminatory basis.

Staff Director Howard Glickstein asked the company's personnel director whether it should do more:

> Mr. Windsor. Well, Mr. Glickstein, I don't know that I can speak for the entire corporation on what its long range objectives and policies should be—policies established by the chairman and officers—but I can say this, we have our hands pretty full trying to run our plant and build airplanes. This is pretty highly competitive business.[118]

Upon further questioning, Mr. Windsor recognized that his corporation had a duty to promote equal opportunity, but he felt that he was primarily in his position "to assist in trying to get those airplanes built and out the door." [119]

Some companies grew to regret their shortsighted view of housing problems. Idamae Garrott, president of the Montgomery County, Maryland, Council, described the reactions of several corporations which had recently moved into the county:

> I have met either with the presidents or top management people in those firms and they have said to me really with considerable bitterness—and I don't blame them perhaps for being bitter—that if they had known that the housing situation would be so bad for low and moderate income people that indeed they would not have brought their firms to Montgomery County.[120]

The cost of housing is so high in Montgomery County, partially due to local land use controls that, Mrs. Garrott said, the county has taken "the cream . . and not provided [for] the needs of . . . lower echelon employees." [121]

Montgomery County had pursued the standard suburban policy of attracting businesses for their tax benefits while attempting to avoid any concomitant tax burdens which would be brought in by lower-income residents. Other communities apparently enforced that policy by means of specific agreements with incoming industry. One company's vice president told the Massachusetts State Advisory Committee meeting that his company had promised to "stay out" of housing and allow a town to continue its exclusionary land use practices in order to obtain the industrial zoning the company needed: "[W]e have made . . . a pledge to the communities that we locate industry in, that we will not . . . deal in housing." The communities, he testified, have zoning bylaws "so antiquated that you can have housing in the industrial area as well as industry." They are concerned that if the industrial site cannot be filled with industry, the company will build housing. "[W]e had to make it quite clear they wouldn't suddenly wake up one or two years later and find there was a residential development." [122]

Very few employers have acknowledged any responsibility for efforts to overcome such barriers to minority workers as the lack of housing and transportation. Some corporations have undertaken to assist the development of nondiscriminatory and low-income housing. After the Commission's St. Louis hearing, the Department of Defense increased pressure on the McDonnell Douglas Corporation to comply with the affirmative action requirements of Executive Order 11246. There-

[116] *St. Louis Hearing* at 51.
[117] *St. Louis Hearing* at 173.
[118] *Id.* at 174.
[119] *Id.* at 177.
[120] *Washington Hearing* at 73.
[121] *Id.*
[122] *Mass. SAC-MCAD Boston Transcript*, vol. I at 245.

after, the corporation strengthened enforcement of its fair housing policy in referrals and made a financial contribution to the construction of a moderate-income housing development in Black Jack, Missouri, which has been the subject of a well-known zoning controversy.[123]

Representatives of other companies testifying at the Boston joint meeting of the Massachusetts Commission Against Discrimination and the Massachusetts State Advisory Committee of the U.S. Commission on Civil Rights said that they had considered the housing problems of their minority employees in areas with scarce supplies of available housing. Robert Palmer, community relations manager for Polaroid Corporation, stated that Polaroid contacted local banks and real estate brokers and leased several apartments to serve as temporary quarters for employees having difficulty finding housing. Mr. Palmer felt that these activities had produced some responsiveness on the part of mortgage lenders and real estate brokers.[124] A Norton Company employee testified that the board chairman of Norton called six large real estate agents in the Boston area "and told them, rather strongly and rather forcefully, that Norton Company was bringing in new black employees from all parts of the country, and they damn well were going to find places to live around Worcester, and they all have." [125]

Some midwestern corporations which were represented at the Commission's Washington hearing took some modest steps to improve low-income housing opportunities in their communities. The Northern Illinois Gas Company, for example, had worked with Chicago's Leadership Council for Metropolitan Open Communities, a group formed in 1965 to promote open housing, and had sponsored some moderate-income developments in suburban areas. But in 1971 only one project of about 40 homes was under construction. Two proposed projects failed to obtain the necessary zoning.[126] Another corporation, the Cummins Engine Company, encouraged a white developer to build a 100 unit single-family project under Section 235 in its community.[127] The company made no financial contribution to the project.

The effectiveness of these companies' efforts is not encouraging.[128] Despite these few examples, the Commission generally found that private corporations are unlikely to pursue with persistent vigor a very difficult fight in the absence of stringent economic necessity or governmental pressure. Marvin Chandler, chief executive officer of Northern Illinois Gas explained why only the coalition of the large and prestigious corporations that make up the Leadership Conference has enabled him to persist so far:

> If I were up there alone as Northern Illinois Gas trying to build this [low-income] project, or any other which may fit zoning better, I would be pretty uncomfortable, because there is flak, and these people are customers, and they are public, and we want to live and get along with everybody.[129]

[123] See discussion ch. 5, p. 41, below.
[124] *Mass. SAC-MCAD Boston Transcript*, vol. IV at 207–209.
[125] *Id.*, vol. IV at 243.
[126] *Washington Hearing* at 412–414.
[127] *Id.* at 418.
[128] Evaluations by Commission staff of the effort of the Leadership Conference indicated that it had not been successful in opening up the Chicago metropolitan area to low-income and minority persons. Chicago Field Trip Report (Nov. 1971) (in USCCR files).
[129] *Washington Hearing* at 414.

The Causes of Racial Polarization: State and Local Government

Control of the use of land—the decision as to where to locate housing, stores, industry, and so on—has traditionally been at the level of local government. The extent of this control is such that individual property owners have been limited in the use to which they might put their land. The decisions made by the local government predictably have been ones which would benefit, or were believed to benefit, the residents of the municipality in question. In many suburban municipalities the prevailing view has been that the community should be homogeneous in its population, that housing patterns associated with big city slums should be avoided, and that population groups which might cause an increase in local taxation should live elsewhere. This, in more concrete terms, has meant land use policies which exclude lower-income families, a disproportionate percentage of whom are minorities.

Residents of the metropolitan area as a whole, especially those residents who are in the groups which tend to be excluded, have no voice in the process; nor have there been effective mechanisms to assure that a community take into account more than the above-described narrow view of its own self-interest.

Local control is exercised in several ways. Communities use zoning to prevent land uses which are considered incompatible or in conflict with each other. Subdivision regulations determine the nature of residential development by specifying, for example, how wide residential streets will be and whether sidewalks are required, and by allocating the costs of these and other improvements between the developer (and thus ultimately the home buyer) and the municipality. Building codes regulate construction materials and methods, thereby influencing the cost of the finished product.

Other actions which the local government might take—or decide not to take—are also directly related to who will live within its boundaries. Urban renewal can displace residents who are unable to find other housing within the community. The jurisdiction can prevent low- or moderate-income housing—whether or not financed under a Federal program—from being built. Finally, it can fail to intervene in the system of private discrimination described in the last chapter.

Control Over Community Development

Zoning, though local in its operation, is metropolitan in its ramifications. A decision by a community to allow, for example, a shopping center or industrial park within its borders will affect the growth pattern, the transportation patterns, and consequently the general welfare of residents of the whole metropolitan area.[130] A community's decision on the type of housing to allow will have an even greater effect upon the residential opportunities of people throughout the metropolitan area. Commission witnesses did not question the validity of the use of zoning controls to regulate the use of land and population density. They pointed out, however, that in the metropolitan context the interests of central cities and suburbs do not necessarily coincide, and the suburbs often use their land use powers so as to exclude low-income and minority persons. As already noted, such exclusion has a disproportionately adverse effect upon blacks, Mexican Americans, and Puerto Ricans.

The zoning system is established at the State level

[130] *See* Daniel R. Mandelker, *The Role of Zoning in Housing and Metropolitan Development*, in *Papers Submitted to the Subcomm. on Housing Panels of the House Comm. on Banking and Currency*, 92d Cong., 1st Sess. 785, 789–790 (1971), and Staff of U.S. Commission on Civil Rights, *Land Use Control in Relation to Racial and Economic Integration*, in *Baltimore Hearing* at 640.

and exercised by the local governments to regulate the height, size, and density of structures and the location and uses of lands, prohibiting some uses altogether for the purposes of public "health, safety, morals or general welfare."[131] Although these powers were construed by the Supreme Court of the United States (when zoning was in its infancy) to reach their limit "where the general public interest" outweighs "the interest of the municipality,"[132] they have been liberally construed by the State courts in many decisions challenging the use of zoning powers.[133]

Local suburban zoning officials, who are responsible only to their limited constituency, have used their powers to further the suburbs' "general welfare" as it is perceived by such communities. In many suburbs the policy has been to limit residential development to the construction of relatively expensive single-family homes at low densities.[134] This policy has been implemented by means of density controls (such as minimum lot size requirements) cost controls (such as minimum house size requirements), and the exclusion of specific uses (such as multifamily dwellings or mobile homes).[135]

When suburban officials were questioned at Commission hearings about their responsibility to the whole metropolitan area, their responses showed primary concern for preserving what was considered their local interest. Lawrence Roos, supervisor [chief executive] of St. Louis County, expressed his point of view:

> I would like to see in St. Louis County a county where anyone who seeks the quality of life that we think our county represents and who has the economic capacity to live in that quality of life, be they black or white I think that they should all have the privilege [of] enjoying this . . . But I don't think it is the business of government to—and certainly of a county government—to reach out and to reach into the inner city, let's say, and to physically—to transplant people—I would hate to be a party to a transplant if you will, of slums from the city into the county.[136]

Mr. Roos expressed concern for the living conditions of poor and minority persons in the city of St. Louis and he also favored metropolitan cooperation between governments. But he did not view increasing housing opportunities in his jurisdiction for less affluent persons as a required or desirable method of solving area problems.

Dale Anderson, Baltimore County executive, had the same point of view. He was in favor of rebuilding and improving Baltimore City. But, when asked why Baltimore County's residents did not encourage inmigration from the city which would relieve Baltimore's crowding, he replied:

> I do not think it is a hostility. I think . . . it is an apprehension that they do not want to see the mistakes duplicated. They do not want to see overcrowding here and overcrowding there. They want a planned community.[137]

Mr. Anderson also stated:

> We cannot go about . . . making the same mistake that we made in the major cities by just moving our problems across the county line into the county.[138]

These statements represent more than the vague rhetoric of suburban officials. A close study of suburban zoning actions shows that many local governments have implemented these policies systematically and effectively. The policies often have been effectuated in two stages: first, the displacement of the poor, rural, or semirural black population enclaves that were often found in what have become today's suburbs; then, the zoning of land to be developed in such fashion as to discourage the construction of housing within the price range of low-income groups.

Displacement of Minority Residents

A survey of zoning in Baltimore County conducted for the Commission by Yale Rabin, an urban planning consultant, showed that the county had used its zoning powers to eliminate many black suburban enclaves and at the same time had failed to use the same powers to facilitate residential construction for low- and moderate-income persons near employment opportunities. Mr. Rabin concluded from his study:

> I think it can be said that development control

[131] Village of Euclid v. Ambler Realty Co. 272 U.S. 365, 373 (1926).
[132] *Id.* at 390.
[133] Trubeck, *Will State Courts and Legislatures Eliminate Exclusionary Land Use Controls?* in *Washington Hearing* at 840.
[134] *Id.* at 833.
[135] *Id.* at 834.
[136] *St. Louis Hearing* at 367–68.
[137] *Baltimore Hearing* at 399.
[138] *Id.* at 393.

activities in Baltimore County have functioned to substantially reduce housing opportunities in the county for low-income, predominantly but not exclusively black households.[139]

He noted that nonresidential zoning of black residential areas has been a significant factor in the demolition of many black-occupied homes. New construction or even additions to or renovations of existing structures may be prohibited and, as the existing homes fall into disrepair, they are often vacated and demolished. Other homeowners, surrounded by decaying houses or by industrial uses, are prompted to move out.

Two of the examples Mr. Rabin gave were in Turner Station and Towson. In the latter, an entire black community called Sandy Bottom was destroyed by commercial zoning, which permitted landlords to sell properties rented by blacks for more profitable commercial uses.[140] In Turner Station, a white residential pocket located in an industrial area was zoned to remain residential and thereby avoided destruction, while the surrounding black residential area (with homes which were built at the same time) was zoned industrial.[141] As a result, most of the black homes were torn down.

Other action by the local government also prevented the development of suburban black communities. According to Mr. Rabin:

> The expansion and renewal of some black residential areas is prevented by adjacent nonresidential zoning or unreasonably low density residential zoning. Some black residential areas have been isolated from their surroundings and particularly from adjacent white residential areas by discontinuous street patterns and, as indicated earlier, also many black residential areas are characterized by unpaved streets and a generally low level of public improvements while adjacent white residential areas often have paved streets and are better served.
>
> Now code enforcement and subsequent demolitions combined with the absence of available low-cost housing, has forced many low-income black and some white families to leave the county.[142]

Examples of isolated communities included Lauralle, Bengies, and Edgemere.[143] Some of these settlements date back to the Civil War.

Other governmental actions besides zoning can lead to the displacement of suburban and rural black communities. Urban renewal programs and highway construction, for example, can also force blacks into central city ghettos.[144]

The Elmwood Park section of Olivette, Missouri, is a semirural area located along the railroad tracks at the northern boundary of the city. In 1960, about 30 families, 29 of them black, lived in the area.[145] In 1961, the city received Federal funds to plan an urban renewal project. The city's plan was to attract industry to the black residential area. The residents of the area were to be displaced to public housing in a neighboring area outside Olivette and within the city of St. Louis.[146] Nine years later, no relocation housing had been provided by Olivette, and as residents saw the inevitability of industrial redevelopment and residential displacement, they moved out, reducing the population of the area to five or six families.[147] After pressure from HUD, Olivette set aside land in the urban renewal area for 24 units of relocation housing, but as of May 1971 none had been built.[148]

Exclusion of Minorities

The National Committee Against Discrimination in Housing (NCDH) has characterized suburban policy goals in the New York metropolitan area as follows:

> The objective is to create a community that is as trouble free an island as human ingenuity can make it in a troubled urban sea, by regulating land use and building construction to provide homes for those deemed desirable, and to do it as cheaply as possible by attracting non-residential uses that pay taxes but require few services.[149]

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[139] *Baltimore Hearing* at 278. *See* Yale Rabin, *The Effects of Development Control on Housing Opportunities for Black Households in Baltimore County, Maryland*, in *Baltimore Hearing* at 698.

[140] *Id.* at 279–80.

[141] *Id.* at 280.

[142] *Id.* at 278.

[143] *Id.* at 717–719.

[144] For a discussion of the displacement effects of the Federal highway program see ch. 5, p. 44, below.

[145] Testimony of Herman Davis, *St. Louis Hearing* at 386.

[146] Staff of U.S. Commission on Civil Rights, *Housing in St. Louis*, *id.* at 564.

[147] *Id.* at 386.

[148] Testimony of Michael Farris, executive vice president, Urban Programming Corporation, and project director, Olivette Land Clearance Program, Transcript of Open Meeting of the Missouri State Advisory Committee to the U.S. Commission on Civil Rights, St. Louis, vol. I at 19–36 (May 7, 1971). It should be noted that responsibility for the delay in the construction of the 24 units is as much HUD's as Olivette's.

[149] National Committee Against Discrimination in Housing, *Jobs and Housing, Final Report* 26 (1972).

This policy, implemented through the use of zoning, is making suburban housing for lower-income families practically unavailable. A survey of the New York metropolitan region by NCDH found that almost all suburban municipalities with significant amounts of vacant land zoned it for single-family construction only.[150] The exclusion of multifamily construction in suburban communities not only has reduced the supply of rental (and less expensive) housing in the suburbs but has also resulted in an unbalanced distribution of such units.

The exclusion of apartments from a municipality tends to exclude lower-income families, who cannot afford the higher cost of a single-family house. This exclusion is found in many suburban communities. In the four suburban New Jersey counties which ring the predominantly black city of Newark, for example, only one half of one percent of the land is zoned to allow apartment construction.[151]

While some suburban jurisdictions prohibit apartment construction altogether, others limit the number of bedrooms apartments can have, in an attempt to minimize the number of school-age children who move into the jurisdiction. For example, in the four suburban New Jersey counties more than 80 percent of the land zoned for apartments is subject to bedroom restrictions. In the areas so restricted, usually about 80 percent of the units can have no more than one bedroom.[152]

Larger house sizes have increased the cost of housing, thus limiting the choice for lower-income families. In 1948 the average size of an FHA-insured house was 972 square feet. By 1970 this average had increased to 1,235 square feet.[153] While some of this increase was due to consumer demand, much of it resulted from zoning requirements. In the four counties discussed above, for example, about 80 percent of the land is zoned for houses of at least 1,200 square feet.[154]

In the earlier part of this century, a lot which measured 60 feet by 100 feet (or 6,000 square feet) was considered ample for a detached, single-family house. Row houses had lots less than half this size. In many suburban communities today, lots of 20,000 square feet to one acre (43,560 square feet) are common. Seventy-seven percent of the total land in the four New Jersey counties above is zoned for lots of one acre or more.[155] The prevalence of large lots forces the price of housing higher. Small lots or land zoned for apartments increase in value because of their scarcity, making what is supposed to be low- or moderate-income housing prohibitively expensive on much of the land which is appropriately zoned.[156] Low density residential areas are of necessity automobile oriented, since shopping and other facilities cannot economically be located within walking distances of many families and since the cost of an effective public transportation system becomes prohibitive. This acts as an additional barrier to lower-income families.

In Baltimore County restrictive zoning prevented the growth of housing for workers from keeping up with the growth of employment opportunities in the central part of the county. Yale Rabin testified:

> I am of the opinion that the zoning process has not kept up with the tremendous growth in employment, particularly as it has taken place in the Cockeysville area, and there would appear to be a serious shortage of zoning for high density housing in an area like that where over 16,000 new jobs have developed during the past 10 years.
>
> The zoning pattern in the county is one which does not reflect at all the tremendous growth in employment in that area, nor does it adequately reflect the growth which is taking place in the Reisterstown area.[157]

He characterized low-income exclusion as considerable, although not total:

> The traditional suburban device of totally excluding low-cost housing by preventing all high density development is not a factor; however, over 65 percent of the land designated for residential use in the portion of the county that we are talking about is zoned for two houses to the acre or less, and if one considers the residentially zoned land which is yet to be developed, about 90 percent of that is zoned for one house to the acre.[158]

[150] *Id.* at 32.

[151] Williams & Norman, *Exclusionary Land Use Controls: The Case of North-Eastern New Jersey*, 22 *Syr. L. Rev.* 475, 485 (1971) (hereafter referred to as *Williams & Norman*). The four counties surveyed are Morris, Somerset, Middlesex, and Monmouth.

[152] *Id.* at 481–484.

[153] L. Sagalyn & G. Sternlieb, *Zoning and Housing Costs: The Impact of Land-Use Controls on Housing Price* ii (1972).

[154] *Williams & Norman*, *supra* note 151, at 489.

[155] *Id.* at 495.

[156] For a general discussion of the relation between zoning and housing costs in New Jersey, the State whose land use has been the most studied, *see Sagalyn & Sternlieb*, *supra* note 153.

[157] *Baltimore Hearing* at 279.

[158] *Id.* at 278.

Those who would preserve exclusionary practices often argue that their desire is to minimize local taxes, not to exclude persons because of their race. But that argument fails to explain much of the exclusion which is practiced. Recent research indicates that zoning practices are as restrictive in areas where local governments do not bear the cost of new residents as in areas in which they do,[159] which suggests that suburbanites are as concerned about the character and complexion of their community as they are about the cost in taxes which new residents will add.

The primary purpose of the zoning power, under most State enabling acts, is to regulate land use, and not to regulate the racial or economic composition of the population. Yet the result, as one witness pointed out, is often the same:

> . . . frequently it is sort of a combination of decisions, none of which were intended to have discriminatory effects which somehow has this effect, and therefore, it's very hard to find a clear, morally reprehensible or clear-cut discriminatory act to put your hands on. Everything is very murky, everything is very obscure, and yet if you see it in its overall pattern it is in some ways more discriminatory than things that were consciously set forth to create racial segregation. . . .[160]

While many local governments would object to any diminution of their control over the use of land, the present system of zoning controls is in clear need of modification. Suburban zoning has had the effect both of displacing and of excluding low-income and minority families, and its use toward this end has often been intentional.

Failure to Provide Low-Income Housing

Local government approval is required before either public housing or rent supplement housing—the two major Federal housing programs which reach poor people—will be allowed.[161]

Public housing is built, purchased, or leased and is managed by local housing authorities, which must be created by local governmental action.[162] This local action can be taken only if the State has passed appropriate enabling legislation,[163] which, as of 1971, every State except Wyoming had done.[164] HUD will not approve an application for public housing subsidy unless the local government first approves the application[165] and agrees to exempt the project from local property taxes.[166] The authority in return agrees to pay a specified portion of its gross rents from the project in lieu of taxation.[167]

Between 1949 and 1969, the period during which the character of many suburban communities was established, an additional requirement of eligibility for public housing was imposed. Such housing could not be approved until a community had developed a "workable program for community improvement," defined as a plan for meeting (among other things) the community and housing needs of lower-income families.[168] Middle-class communities generally felt no need to have such a "workable program." The requirement, therefore, served as an additional barrier to public housing.

Consequently, the governing bodies which are often most receptive to public housing are those in areas with large minority and low-income populations. Communities with few minority or low-income residents may be neither motivated by nor receptive to the idea of establishing public housing authorities to approve individual project applications.

The idea behind the rent supplement program[169] is to increase the housing choice of low-income families by enabling them to live in housing designated for rent supplement, as an alternative to public housing projects. Unlike public housing, the tenant whose income increases is not required to leave rent supplement housing, but may remain, although with a reduced subsidy.[170] The rent supplement program can reach persons whose income approximates that of persons eligible for public housing by supplementing the rents of persons who are already benefiting from liv-

[159] E. Branfan, B. Cohen & D. Trubek, *Fiscal and Other Incentives for Exclusionary Land Use Controls* 21 (Center for the Study of the City and its Environment, Institution for Social and Policy Studies, Yale Univ., Mar. 1972).

[160] Testimony of David Trubek, *Washington Hearing* at 282.

[161] *See generally* Henry J. Aaron, *Shelter and Subsidies: Who Benefits from Federal Housing Policies?* (Brookings Institution, 1972) (hereinafter cited as *Aaron*).

[162] 42 U.S.C. §§1401–35 (1964), *as amended* (Supp. V, 1965–69).

[163] 42 U.S.C. §1402 (11) (1964), *as amended* (Supp. V, 1965–69).

[164] *Aaron, supra* note 161, at 111.

[165] 42 U.S.C. §1415 (7) (1964), *as amended* (Supp. V, 1965–69).

[166] 42 U.S.C. §1405 (d).

[167] 42 U.S.C. §1410 (h).

[168] Housing Act of 1949, 42 U.S.C. §1451, Housing and Urban Development Act of 1969, 12 U.S.C. §1425; *see* U.S. Department of Housing and Urban Development, *Workable Program for Community Improvement*, HUD Handbook, RHA 7100.1 (Oct. 1968). Until 1969 a workable program was also required before housing under the 221(d)(3) moderate-income housing program would be approved.

[169] Pub. L. No. 89-117, 12 U.S.C. §1701s (1964).

[170] 12 U.S.C. §1701s.

ing in HUD-subsidized housing.[171] Up to 40 percent of the units of a federally-subsidized moderate-income rental project may receive rent supplement payments.[172] Although a local government is no more involved with rent supplement housing than it is with any other housing, Congress has given local municipalities the power to veto rent supplement housing.[173]

These requirements generally have frustrated the functioning of such programs in suburban areas. Most suburban areas have neither established housing authorities nor authorized rent supplement projects, even to take care of the housing needs of their own low-income residents, much less to meet the needs of residents of other parts of the metropolitan area.

The Commission heard testimony from several public officials from suburban communities concerning their unmet needs for public housing. Mary Cardillichio, housing director of the Baltimore County Community Action Agency, said that it was a daily experience to find poor families moving from the county to the city of Baltimore because of the absence of a public housing authority (and, consequently, of public housing) in the county. In a typical month, 67 families came to the Baltimore County Community Action Agency in search of housing. Of these, only the four who were not poor could be helped.[174] Even the city's public housing had a waiting list, of more than 2,700 names.[175] Yet the county government did not approve any public housing construction until 1972, when fewer than 500 units were funded by HUD.[176]

Even a suburban area such as Montgomery County, Maryland, which had an official policy of expanding both minority and low-income housing opportunities had only about 700 units of public housing in operation in June 1971.[177] The executive director of the county's housing authority estimated that at the time approximately 10,000 families in the county needed public housing.[178]

[171] Median income for families in rent supplement housing is $2,089 compared with a median of $3,636 for families in public housing (and less than 65 years old). Rent supplement families, however, tend to be smaller. *Aaron, supra* note 161, at 115, 135.

[172] 12 U.S.C. §1701s (h) (D) (1964), *as amended* (Supp. V, 1965-69).

[173] Local approval may be accomplished by inclusion of rent supplement in a community's workable program or by local government approval of the rent supplement program. *See* 42 U.S.C. 1451(c), 24 C.F.R. §5.15(c). Pub. L. No. 91-556, 84 Stat. 1459 (1970).

[174] *Baltimore Hearing* at 52.

[175] In 1969, according to Mrs. Cardillichio, 6 to 10 families a week were applying for public housing in Baltimore City from the surrounding counties. *Id.* at 53.

[176] *Washington Hearing* at 98.

[177] *Washington Hearing* at 67.

[178] *Id.* at 68.

The problems outlined above are exacerbated by the fact that in many States local officials are required to submit decisions to provide low- or moderate-income housing to popular vote. Such proposals often have been defeated in referenda. The Supreme Court, in *James* v. *Valtierra*,[179] held that a California State Constitution requirement that low-rent public housing be approved by the majority of those voting at a community election did not violate the equal protection clause of the 14th amendment. The case arose in San Jose, California, where the local government's plan to provide low-income housing was defeated at the polls. Mayor-elect Norman Mineta of San Jose testified at the Commission's Washington hearing concerning that decision's impact on the city.

The most recent study at the time had shown that the city's unmet need for low-income housing in 1969 was for 14,500 units.[180] About 85 percent of the persons who could not afford housing on the private market were members of minority groups. The city council had approved 1,000 units, on a scattered site basis, for construction. The voters subsequently defeated the proposal under the procedure which the Supreme Court refused to set aside. The families for whom the housing was intended continued to live in substandard units as of the time of Mayor Mineta's testimony.

Mayor Mineta said he believed that his city had a responsibility to promote the development of adequate housing for all of its citizens, including those of low income. However, meeting that responsibility was made more difficult by the referendum requirement which is applicable only to low-income housing. He felt that this burden was unfair:

> I am not a lawyer but to my mind this constitutes discrimination, not only against the poor, which is bad enough, but due to the correlation between being poor and being of a racial minority, it constitutes discrimination against our racial minority citizens as well.[181]

Referendum requirements raise the difficult issue faced by the Supreme Court in the *Valtierra* case: in a country dedicated to democracy, when does a requirement which promotes citizen participation constitute a deprivation of individual rights? Many decisions have

[179] 402 U.S. 137 (1971).

[180] *Washington Hearing* at 210.

[181] *Id.* at 211-212.

established the principle that constitutionally protected rights may not be submitted to majority vote.[182] In *Valtierra,* the Supreme Court did not reach the issue of whether a referendum such as the one at hand would be constitutional if it were shown that its purpose or effect was primarily racial, rather than economic. As the Court stated: ". . .the record here would not support any claim that a law seemingly neutral on its face is in fact aimed at a racial minority." [183]

Failure to Enact or Enforce Effective Fair Housing Laws

The claims of suburban officials that only economics prevents more minorities from living in their communities are often refuted by the failure of such communities to outlaw explicit racial discrimination in private housing. From the Commission's hearings, it is fair to conclude that action to prevent such racial discrimination is necessary to overcome the physical and psychological racial barriers in every community which is not already integrated. At the St. Louis hearing, witnesses from University City, one of the few integrated suburbs of St. Louis, emphasized the role played by governmental action in that community:

> In 1964 University City passed fair employment ordinances, public acommodation ordinances, and had had a human relations commission since 1960 with legal powers to enforce this.
>
> In 1965 there was a debate on an open housing law and while an ordinance was not passed there was a policy statement accepted by the council of the city which empowered the human relations committee to actively investigate all complaints on housing . . . a philosophy of open housing adopted by the government officials of University City. This, I think, also encouraged black persons to move.[184]

After a long history of racial discrimination, it is not surprising that black homeseekers believe they are not welcome in all-white areas and that they are more likely to move to a community which shows willingness to protect their right to fair housing.

Therefore, any community which wishes to be open in a practical sense to prospective residents without regard to race must make some affirmative showing to convince potential black home buyers that they are truly welcome there and that they will have no more difficulty in finding, purchasing, moving into, and enjoying a house there than they would in a predominantly black neighborhood. A platitudinous municipal fair housing ordinance without the teeth necessary for effective enforcement will do nothing to counteract the message that blacks have received over the decades that they are not welcome in the municipality. The municipality must be prepared to use testing to assure that whites and blacks are treated equally and to use sanctions against real estate agents who engage in discriminatory practices.

Ordinances which are passed but not enforced are of little more effect than no laws at all. St. Louis County passed a fair housing ordinance in 1968. It was to be administered by a county human relations commission which had no staff until one year later. As of 1970 the Commission had not developed a form on which complaints could be filed.[185] Baltimore County's Human Relations Commission had a total budget of $12,743 in 1970. Thomas Dawes, a member of the commission and its former chairman, testified that the commission has been unable to get adequate staff to do its legally required job since its founding in 1963. Mr. Dawes said the reason was that:

> . . . the . . . people in power have always felt that the Commission would be a [too] troublesome agency to give it adequate staff.[186]

The commission was unable to hire a black assistant because of the fear of officials that white extremists would "make hay" of the appointment.[187] George P. Laurent, director of a Baltimore fair housing group said that, although the commission had good intentions, his organization found it so ineffective that the group no longer wasted time working with it.[188]

Witnesses from other suburban areas felt a similar lack of confidence in their ability to obtain redress under similar housing ordinances. W. Fritz Hawkins, a black telephone company employee from Dayton, Ohio, noted a common problem: "Complaints take a long time. . .I wanted a home then. So I couldn't wait." [189]

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[182] Hunter v. Erickson, 393 U.S. 385 (1969). *See also* Lucas v. Colorado General Assembly 377 U.S. 713 (1964); West Virginia State Board of Education v. Barnette 319 U.S. 624 (1943).

[183] 402 U.S. at 137.

[184] A. J. Wilson, director, University City Human Relations Commission, *St. Louis Hearing* at 316.

[185] *St. Louis Hearing* at 222.

[186] *Baltimore Hearing* at 264.

[187] *Id.*

[188] *Id.* at 104.

[189] *Washington Hearing* at 17.

The Causes of Racial Polarization: The Federal Government

Federal influence has been particularly significant in the vast process of suburbanization which the country has experienced in recent decades. It has, in fact, furthered the extent to which metropolitan growth has led to racial separation. The Federal role has ranged from direct action which assured neighborhood segregation, through action for other purposes which produced segregation as a side effect, to a policy of inaction when actual discrimination occurred.

Federal Housing Programs

Since the 1930's the Federal Government has supported a variety of programs to increase the supply of housing and to facilitate urban development or redevelopment. Through these activities, the Federal Government has played a primary role in contributing to our segregated housing patterns. President Nixon, in his June 1971 statement on equal housing opportunity, emphasized the responsibility which the Federal Government bears:

> Policies which governed FHA mortgage insurance activities for more than a decade between the middle thirties and the late forties recognized and accepted restrictive covenants designed to maintain the racial homogeneity of neighborhoods. . . . [The Federal urban renewal program] was designed to help clear out blighted areas and rejuvenate urban neighborhoods. All too often, it cleared out but did not replace housing which, although substandard, was the only housing available to minorities. Thus, it typically left minorities even more ill-housed and crowded than before.[190]

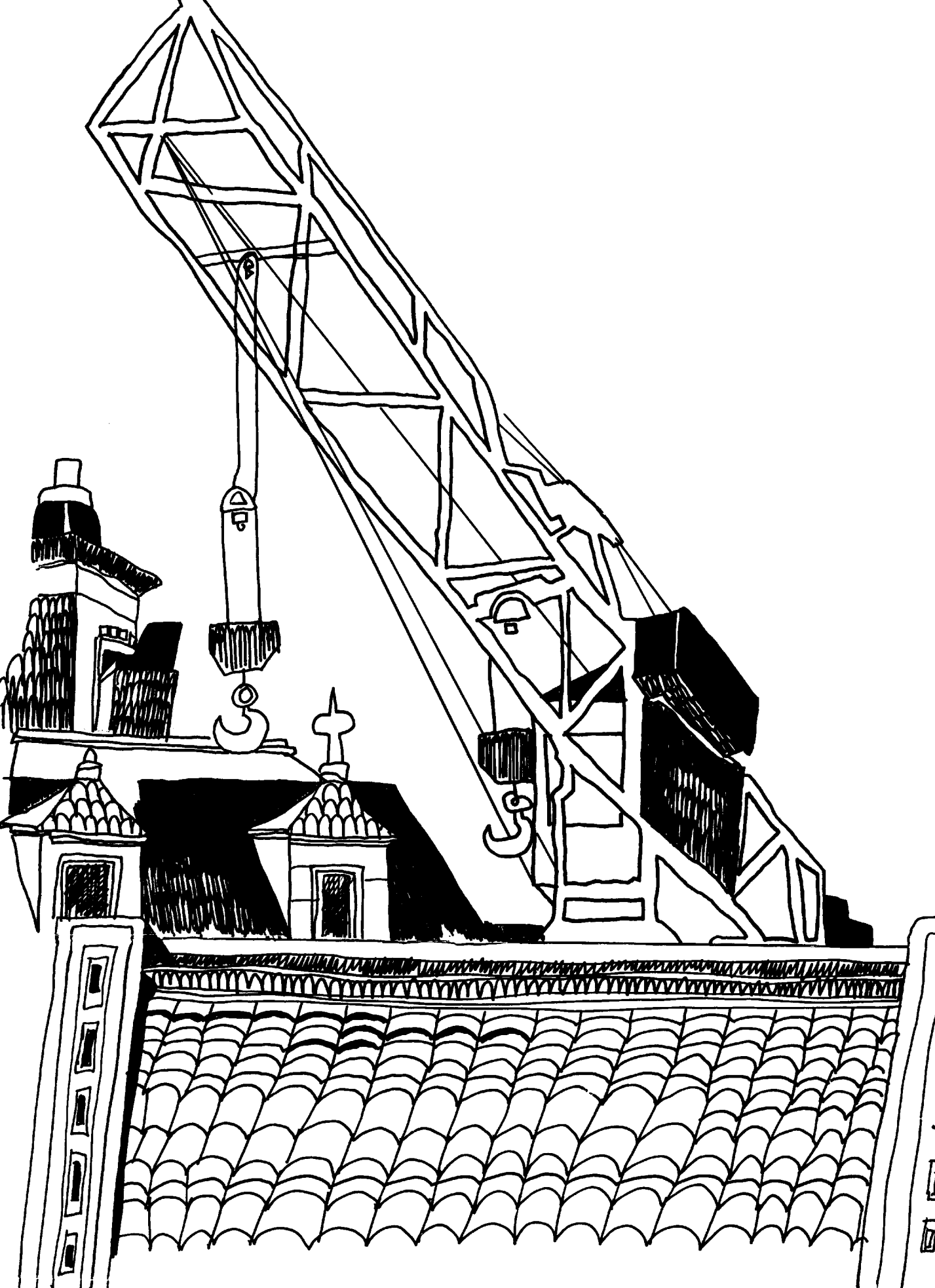
The policy of the Federal Government falls into three chronological phases.[191] The first phase began in the early 1930's when the Federal long-range involvement in housing and urban development first began, and lasted until approximately 1947, shortly after the Second World War. It was during this period that the principal Federal agencies and programs, still with us today, were established. Among these agencies are the Federal Housing Administration with its mortgage insurance programs and the Federal Home Loan Bank Board which provides assistance to our principal mortgage finance institutions, the savings and loan associations. The Federal Government during this period was an active exponent of racial discrimination and racial segregation in housing.

The second phase, which began around 1950, can be characterized as one of official neutrality but discriminatory impact. The third and present phase began in November of 1962 with the issuance of Executive Order 11063 prohibiting discrimination in federally-assisted housing. It is a period in which Federal agencies have been subjected to increasingly stringent mandates for equal housing opportunity. After the Executive order came Title VI of the Civil Rights Act of 1964, which prohibited discrimination in any federally-assisted programs or activities, including housing programs.[192] Title VIII of the Civil Rights Act of 1968 prohibited discrimination in most

[190] Statement by the President on Federal Policies Relative to Equal Housing Opportunity, June 11, 1971, 2-3, printed in *Washington Hearing* at 573-574. This statement, which had long been promised and delayed, was issued just 3 days prior to the beginning of the Commission's Washington, D.C., hearing on Federal policy concerning equal housing opportunity.

[191] *See* Martin E. Sloane. *Federal Policy and Equal Housing Opportunity*, in *Washington Hearing* at 730 and U.S. Commission on Civil Rights, *1961 Report: Housing.*

[192] 42 U.S.C. §2000(d) (1964).



of the Nation's housing,[193] and was bolstered by the Supreme Court's decision in *Jones* v. *Mayer*, which prohibits all racial discrimination in any housing, public as well as private.[194] Yet, as testimony and census data show, the commitment of the Federal Government to equal housing opportunity has been too recent and too limited to undo the deeply entrenched racial segregation created by earlier policies. For example, changes in FHA policy from an active policy of racial segregation to "officially approving" open housing had little effect prior to the passage of the 1968 fair housing provisions. According to a 1968 FHA survey, slightly more than 3 percent of all FHA subdivision housing had gone to black families during the period between the issuance of the Executive order on equal opportunity in housing and the end of 1967. The zeal with which Federal officials carried out policies of racial discrimination in the early days of Federal involvement has not been matched by similar enthusiasm for implementing equal housing opportunity. This lack of zeal was documented by the Commission's extensive study of the racial impact of the Section 235 program for home ownership for low-income families. The Commission concluded that:

> Officially, FHA officials have taken little note of racial residential patterns under the 235 program, but, unofficially, many FHA staff members have expressed awareness of the segregated and unequal 235 buying pattern. No local FHA insuring office, however, has been willing to undertake affirmative action to prevent such a pattern from occurring in the absence of specific directives from Washington. No such directives have been forthcoming. FHA staff members in Washington also have been aware of the discriminatory 235 buyer patterns but have allowed them to continue without instituting corrective or preventive measures.[195]

Thus, the Commission found that the 235 program as it was operating to subsidize the purchase of housing in four major metropolitan areas showed the very same pattern that exists in the housing market generally—new housing provided mainly in the suburbs and purchased largely by white families, with existing housing in the central cities purchased by minority families. This pattern recurs despite the fact that the usual economic rationale used to explain who can afford to buy in a particular location has no application to the 235 program which was designed to equalize purchasing power for the low-income family.

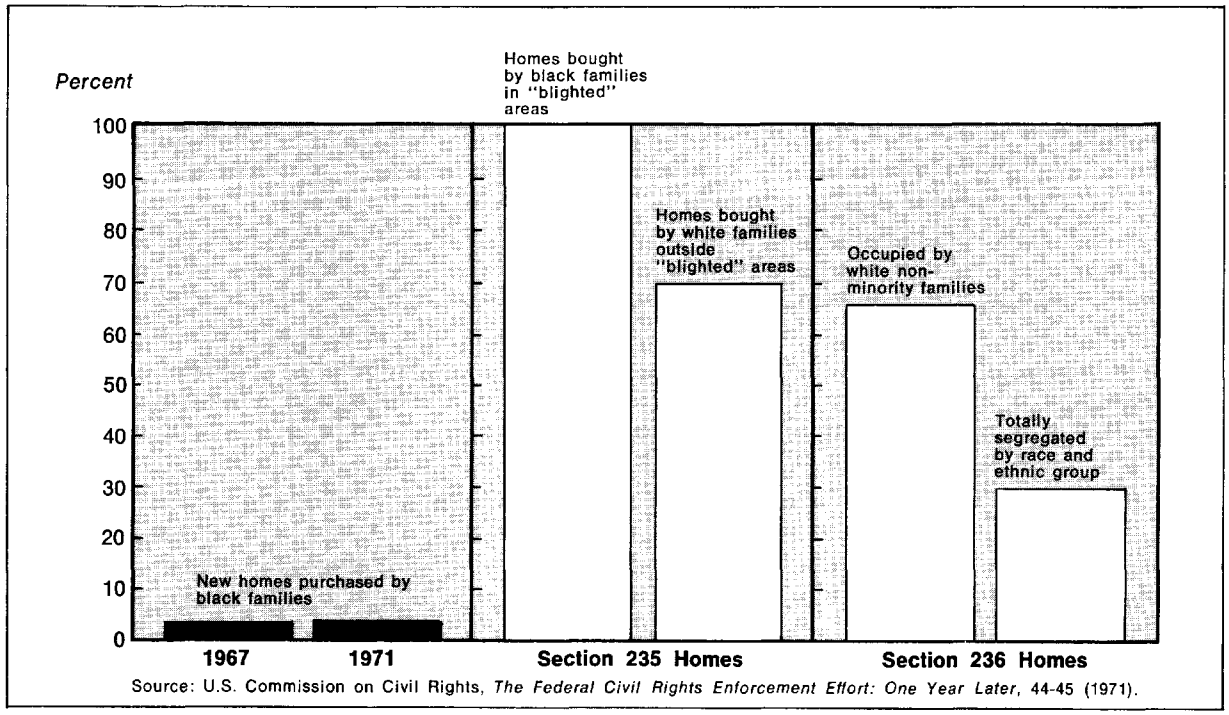
The principal reason the Commission found for this phenomenon in the 235 program was that the Federal Housing Administration, which administered the program, had virtually abdicated its responsibility. It provided little in the way of counseling to eligible families or to civic groups that sought to assist them. It had, in effect, turned over operation of the program to members of the private housing and home finance industry. As the report stated in summary: "Despite HUD's legal obligation to assume an affirmative role in preventing discrimination. . .the agency continues to play a passive role." [196]

A similarly passive role, contributing even more to the growth of racial polarization, has been played by HUD in the long-standing program of FHA mortgage insurance—and in other, more specialized programs of mortgage insurance[197]—as well as in the more recently established Section 236 program designed to provide low- to moderate-income rental housing.[198]

Until 1971, HUD did not collect racial and ethnic data on the beneficiaries of its programs. As yet, no tabulations of existing data have been made on a regional or national basis. However, preliminary analysis made of data collected in July 1971 shows that there is a high degree of segregation in HUD programs. These findings were summarized in a Commission publication in November 1971:

> [T]he data shows that under HUD's basic home mortgage program, Section 203(b), only 3.5 percent of new homes are being purchased by black families. This is exactly the same percentage as was found by FHA in its 1967 survey of FHA-insured subdivisions. The data for Section 235 program . . . shows that all new 235 homes constructed in "blighted" areas are being purchased by black families, while 70 percent of new 235 homes con-

[193] 42 U.S.C. §§3601–31 (1970).
[194] 392 U.S. 409 (1968).
[195] *Home Ownership* at 87.
[196] *Id.* at 87.
[197] The best known of these is the FHA-insured mortgage for the purchase of one-to-four family housing, either new or existing. Section 203(b) of the National Housing Act (Pub. L. No. 73–479: 12 U.S.C. §§1709, 1715(b) (1964), *as amended* (Supp. V, 1965–1969)). Other insurance programs operated by the Department of Housing and Urban Development include insured mortgages for rental and cooperative housing, §221(d)(3) National Housing Act, 12 U.S.C. §1715 *l*(d)(3) (1964), *as amended* (Supp. V 1965–1969), rehabilitated housing, Section 221(h) (Pub. L. 89–754; 12 U.S.C. §1715(h) (1964), *as amended* (Supp. V, 1965–1969)) and housing for the elderly (Pub. L. No. 86–372, 73 Stat. 654, 667, 12 U.S.C. §1701q (1964), *as amended* (Supp. V, 1965–1969))
[198] 12 U.S.C. §1715z–1 (1964), *as amended* (Supp. V, 1965–1969). The program was suspended by HUD on Jan. 5, 1973, along with all other subsidized housing programs; *see* note 102 *supra*.



Source: U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort: One Year Later*, 44-45 (1971).

structed outside "blighted" areas are being purchased by white non-minority families. The data for the Section 236 program . . . shows that two-thirds of the units are occupied by white non-minority families and that 120 out of 389 projects reporting (30 percent) are totally segregated by race and ethnic group. Eighty projects are all white, 38 are all black, and two are all Spanish American. Of the 269 projects remaining, only 100 are more than 15 percent integrated. That is, 142 projects are more than 85 percent white and 27 projects are more than 85 percent black.[199]

Two relatively new initiatives by HUD should be noted. These are "project selection criteria" and "affirmative marketing" requirements.

New project selection criteria promulgated by HUD[200] for low- and moderate-income subsidized projects are designed to increase housing opportunities for lower-income families and to assure that such housing is not all located in areas which already have high unemployment and a high minority concentration. Priority is given to funding projects located outside of areas of minority concentration and near employment opportunities. HUD hopes that the new criteria will encourage the adoption of metropolitan plans for the provision of low- and moderate-income housing.[201]

Affirmative marketing guidelines adopted by HUD late in 1971 and applicable to all FHA programs require developers of new FHA subdivisions, multifamily projects, and mobile home parks to adopt affirmative programs to assure marketing of housing to all persons.[202] Developers must submit an affirmative marketing plan indicating how they will carry out an affirmative program which "shall typically involve publicizing to minority persons the availability of housing opportunities through the type of media customarily utilized by the applicant, including minority publications or other minority outlets which are available in the housing market area." Advertising for the project must include either the HUD equal housing opportunity logo or slogan;[203] any advertising depicting persons must show persons of both majority and minority races. The applicant is also required to maintain a nondiscriminatory hiring policy by recruiting from minority and majority races for staff engaged in the sale or rental of properties.

While these regulations in many respects are a new departure for HUD in its enforcement of equal hous-

[199] U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort: One Year Later* 44-45 (1971) (hereafter referred to as *One Year Later*).

[200] 37 Fed. Reg. 203-09 (Jan. 7, 1972) 24 C.F.R. §200.700.

[201] 37 Fed. Reg. 204.

[202] 24 C.F.R. §§ 200.600-200.640, 37 Fed. Reg. 75 (Jan. 5, 1972).

[203] These are contained in HUD's Advertising Guidelines for Fair Housing, 36 Fed. Reg. 9266-67 (May 21, 1971).

ing opportunities, they were not made as strong as they might have been. Their coverage is limited to future housing provided under FHA programs, leaving unaffected the several hundred thousand units which have already been constructed but which are still covered by FHA mortgage insurance. Furthermore, the regulations establish no mechanism to guarantee that the affirmative marketing plans will actually be carried out.

It is safe to conclude that Federal housing programs, now administered by the Department of Housing and Urban Development, are no longer an active stimulus to the creation of segregated residential patterns. Nevertheless, it is apparent that HUD's actions to date have been wholly inadequate to counteract the polarization brought on by earlier administration of the programs, and even less effective against the tide of polarization produced by all the causes discussed in preceding and subsequent sections of this report. To the extent that HUD's recent initiatives can prove effective, they must depend on three factors: the location of federally-assisted housing in places which will further minority housing opportunities, the strict enforcement of affirmative marketing requirements to assure that such housing in fact becomes available to minority centers and purchasers, and the continuation of programs which improve the market position of families who would otherwise be financially unable to find housing outside of ghetto neighborhoods.[204]

Remedying Housing Discrimination: HUD and the Justice Department

The Federal Government has authority to prohibit housing discrimination under a range of laws which require that almost all housing, both federally-assisted and private, must be made available on an equal opportunity basis.

Executive Order 11063,[205] issued in November 1962, and Title VI of the Civil Rights Act of 1964 [206] prohibit discrimination in federally-assisted housing. Title VIII of the Civil Rights Act of 1968 [207] extends that prohibition to private housing.

These three provisions carry with them a variety of enforcement mechanisms. Executive Order 11063 provides for the following remedies to be applied in cases where discrimination is found and conciliation and persuasion fail to bring about compliance: cancellation or termination of agreements or contracts with offenders, refusal to approve a lending institution as a beneficiary under any program which is affected by the order, and revocation of such approval if previously granted.[208] Under Title VI, a finding of discrimination can result in suspension or termination of Federal financial assistance, or refusal to grant or to continue such assistance.[209]

Compliance with Title VIII can be brought about through conciliation by HUD,[210] through action by a State or local enforcement agency,[211] or through private litigation. Where there are patterns of discriminatory practices, or issues of general public importance, compliance can be enforced through lawsuits brought by the Attorney General.[212] Monetary damages may be awarded under Title VIII.[213]

The Departments of Justice and Housing and Urban Development have primary responsibility for enforcing these fair housing provisions. The Commission has found that neither Department has enforced these laws vigorously or effectively.

The Department of Justice is assigned a key role in the enforcement of Title VIII. In *The Federal Civil Rights Enforcement Effort: Seven Months Later,* the Commission found that the Department was attempting to take effective action in this area but was hampered by lack of resources.[214] The housing section of the Civil Rights Division which has responsibility for Title VIII has approximately 25 lawyers to enforce the law nationwide. With so few lawyers, the Department is sharply limited in its task of discovering and eliminating patterns and practices of housing discrimination across the country.[215]

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[204] For a recent study of the Federal housing assistance programs, *see Aaron, supra* note 161, at 127-144.

[205] 27 Fed Reg. 11527 (Nov. 1962).

[206] 42 U.S.C. 2000(d) (1964).

[207] 42 U.S.C. §§3601-31 (1970).

[208] 42 Fed. Reg. 11527, Part III.

[209] 42 U.S.C. 2000(d)(1) (1964).

[210] 42 U.S.C. 3609 (1968).

[211] 42 U.S.C. 3610(c) (1968).

[212] 42 U.S.C. 3613 (1968).

[213] 42 U.S.C. 3612(c) (1968). A victim of discrimination has two separate courses of action under Title VIII of the Civil Rights Act of 1968. He may file a complaint with HUD and attempt to have the matter settled by "informal methods of conference, conciliation, and persuasion." Section 810(a) 42 U.S.C. 3610(a). If these methods are not successful, the complainant may file an action in Federal court. Section 810(d) 42 U.S.C. 3610(d). Secondly, the 1968 act permits an individual to file an action for damages without first complaining to HUD. Section 812 42 U.S.C. 3612. These two remedies have been interpreted as being complementary, and may be pursued simultaneously. Johnson v. Decker 333 F. Supp. 88 (N.D. Cal. 1971).

[214] *Federal Civil Rights Enforcement Effort: Seven Months Later* 37 (1971).

[215] In 1973, however, the division initiated 58 lawsuits, as opposed to 13 in 1972.

Donald Miller, associate director of a Baltimore fair housing group, charged in response to a question from Commission counsel that the Department's response to complaints is also frustrating:

> Mr. Powell. Do you feel the Justice Department has been effective in moving against housing discrimination in the Baltimore area?
>
> Mr. Miller. No, definitely not. I have had to make personal trips to Washington to get them to even give me a little bit of information. I made repeated telephone calls on how they file correspondence, and yet I get very wishy-washy answers. Well, to the point where originally first the evidence is submitted. They said: "Oh, yes, good case. We will take action immediately." It just means a form letter going. It takes a month—it took one particular case a whole month to get out of our local U.S. attorney's office.
>
> Once it got on its way, it was lost at the Department of Justice in Washington. Then it took several more months trying to get any information out of them.[216]

The Department has also been slow to challenge the exclusionary use of land use controls, one of the primary causes of patterns of suburban racial isolation. Such a challenge, if successful, could assist in resolving the housing problems of countless individuals. In June 1971 the Justice Department filed its first suit against exclusionary land use practices.[217] It was filed on the day the U.S. Commission on Civil Rights opened public hearings in Washington, D.C., to examine the role of the Federal Government in the suburbs. That case challenged the rezoning by Black Jack, Missouri, officials of a certain tract of land from multiple to single-family dwellings on the grounds that the area was rezoned to exclude a proposed federally-subsidized housing project which would be open to minority groups.[218]

At the Washington hearings, Attorney General Mitchell was questioned about the Department's action in the Black Jack case and asked if further actions would be filed in similar situations and in situations where the racially exclusionary purpose of rezoning was not as clearcut as in Black Jack. The Attorney General replied:

> Obviously, each case will have to be looked upon and examined on its own standing or merits or demerits. And this, of course, we propose to do. You can't generalize in that area.
>
> But I would say, as the President's statement has said, that where there is any vestige at all of racial discrimination, we can move against it regardless of the other factors involved.[219]

Mayor Carl B. Stokes of Cleveland gave another view of the Department's litigation on land use controls at the Commission's Washington hearing:

> I am not at all impressed by the law suit against the Black Jack, Missouri, situation. I'm not impressed. I just don't know how much more blatant, how flagrant a situation could be, than the Black Jack, Missouri, case. My goodness, if a case such as that in which you literally almost have working drawings on a project, and then a community moves openly, deliberately, to rezone to stop it, well, my goodness, if a Government couldn't move under those kind of circumstances, then in fact there is no chance at all. It is not [action in the face of] this outrageously flagrant violation of people's rights that would assure me about the Administration's policy in this regard.[220]

As of January 1, 1974, the Department had initiated only one other suit against exclusionary land use practices.[221]

Neither has the Department of Housing and Urban Development adequately enforced its fair housing responsibilities.[222] In November 1971 the Commission found that:

> HUD continues to have a staff grossly inadequate to deal with the complaints it receives under Title VIII of the Civil Rights Act of 1968, Title VI of the Civil Rights Act of 1964, and Executive Order 11063. A total field staff of 42 people handles the full volume of Title VIII complaints for the entire country. HUD has stated that the average time taken to process a complaint is between five and six months. This Commission, however, in referring complaints to HUD, has noted at least one instance

[216] *Baltimore Hearing* at 246.

[217] United States v. City of Black Jack, Civil No. 71C-372(1) (E.D. Mo.).

[218] The Federal Black Jack case was filed after much delay in June 1971. The Justice Department had the matter pending for months while considering whether to file and in the interim a private action was filed in Jan. 1971. The private action was dismissed by the trial court, but the decision was reversed on appeal and the case was ordered to trial. Park View Heights Corp. v. City of Black Jack, 467 F. 2d 1208 (8th Cir. 1972), reversing 335 F. Supp. 899 (E.D. Mo. 1971). Both the Federal and private cases are presently awaiting trial.

[219] *Washington Hearing* at 366.

[220] *Id.* at 219.

[221] United States v. City of Parma, Civil No. 439 (N.D.Ohio, 1973).

[222] U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort: A Reassessment* 98-100 (1973) (hereafter cited as *Reassessment*).

in which nearly a year passed from the date of the original filing of a complaint to its conciliation.[223]

Complaint handling did not improve in fiscal year 1972. The average time for processing a complaint was still 5½ months. HUD referred 1,057 complaints to State and local fair housing agencies during the fiscal year.[224] Investigations were completed in only 164 of these cases.[225] Of the 1,474 complaints which HUD handled itself, at least 238 were still pending at the end of the fiscal year.[226]

Until late 1971, HUD's Title VIII activities consisted almost exclusively of handling individual complaints of discrimination. This, in the Commission's view, makes it unlikely that significant changes in the policies and practices of the housing industry can be brought about in the reasonably foreseeable future. Neither is the growing trend toward racial residential segregation likely to be reversed, although Title VII gives HUD broad authority for taking strong measures to promote fair housing. Two significant provisions in the statute are 808(d) which provides that,

> All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purpose of this title, and shall cooperate with the Secretary to further such purposes.[227]

and 808(d)(5) which reads,

> [The Secretary of Housing and Urban Development shall] administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title.[228]

The Department has done little, as coordinator of Federal agency fair housing efforts, to assure a cooperative effort among Federal agencies subject to Section 808(d).[229] HUD's efforts have consisted mainly of a few formal coordinating activities.[230] HUD was also instrumental in devising uniform site selection criteria for location of Federal facilities.[231]

Under Section 808(d)(5),[232] HUD has the authority to take strong measures to promote fair housing through administration of its own programs. Recently-adopted project selection criteria and affirmative marketing guidelines, discussed above, are a step in this direction. HUD has mentioned the necessity of conducting "community investigations to identify patterns of housing discrimination," but its plans to meet this need have not progressed beyond the discussion stage.[233]

Remedying Housing Discrimination: Financial Regulatory Agencies

There are four Federal agencies (Federal Home Loan Bank Board, Comptroller of the Currency, Federal Reserve Board, and Federal Deposit Insurance Corporation) which supervise and benefit lending institutions responsible for most of the conventional financing of housing. The lending institutions which they supervise are savings and loan associations, commercial banks, and mutual savings banks. The Federal agencies act as regulatory bodies rather than as administrators of programs, but their policies have had a role in perpetuating racial polarization. Although required by Title VIII to take affirmative action "to further the purposes of this title" [234] the regulatory agencies have adopted a more passive policy. They might have, for example, required lenders to include nondiscrimination clauses in mortgage contracts with builders and developers, a requirement which would provide an extra-statutory cause of action. However, the agencies have done little to enforce the Title VIII provisions beyond informing their member institutions of their existence and of possible sanctions for violations.[235]

Only the Federal Home Loan Bank Board has published regulations to enforce the nondiscrimination requirements of Title VIII.[236] The FDIC, the Comptroller of the Currency, and the Federal Reserve

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[223] *One Year Later, supra* note 199, at 41.

[224] *Reassessment* at 111. Title VIII requires HUD to refor complaints to States with fair housing laws "substantially equivalent" to Title VIII. In August 1972 HUD published new regulations for the recognition of substantially equivalent laws. 37 Fed. Reg. 16540 (Aug. 1972).

[225] *Id.*

[226] *Reassessment* at 112.

[227] 42 U.S.C. 3608(c).

[228] 42 U.S.C. 3608(d)(5).

[229] *Id.*

[230] *Reassessment* at 121.

[231] See section beginning on p. 47, below.

[232] 42 U.S.C. 3608(d)(5).

[233] Commission on Civil Rights' HUD questionnaire (1972) (in USCCR files).

[234] *See* U.S. Commission on Civil Rights, *1961 Report: Housing*; also, *The Federal Civil Rights Enforcement Effort* 165 *et seq.* (1971).

[235] Section 808(d) of the Fair Housing Law provides: "All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this title and shall cooperate with the Secretary to further such purposes. 42 U.S.C. §3608(c).

[236] 37 Fed. Reg. 8436 (April 27, 1973), 12 C.F.R. Part 528.

Board have required the use of an equal housing logo in advertising and the posting in bank lobbies of a notice of nondiscrimination in lending, but these agencies have adopted no substantive regulations to end discrimination.[237] While the FHLBB regulations prohibit discrimination in lending and in the acceptance of loan applications by member institutions, the regulations do not provide for the collection of data by race on loans and loan applications. Such data collection is the only method—other than the complaint process—which would allow the FHLBB to determine whether a member institution is in compliance with the regulations. The regulations also fail to prohibit lenders from unduly discounting certain kinds of income in determining whether a family will be granted a mortgage loan. Lenders are free, for example, to exclude all or part of a working wife's income and income from overtime and part-time jobs. In addition, lenders can reject potential borrowers because of such things as isolated credit difficulties. The use by lenders of standards of this type has a substantial adverse effect on the ability of minority and low-income families to obtain credit for the purchase of a house.[238]

Federal Assistance: In General

Many different Federal agencies provide financial assistance for community development. Hospitals, schools, roads, sewers—all are provided with the help of Federal dollars. Title VI of the Civil Rights Act of 1964[239] prohibits discrimination in any program or activity receiving Federal financial assistance, on grounds of race, color, or national origin. Thus HUD, the Department of Transportation, the Department of Health, Education, and Welfare, the Environmental Protection Agency, and other Federal departments and agencies all have the duty to enforce Title VI with respect to their programs.

The Department of Justice is charged with coordinating Federal enforcement of Title VI of the Civil Rights Act of 1964, but it has exercised little leadership in this area. The Attorney General himself appeared to take a narrow view of the Department's coordinating function when questioned at the Washington hearing.

> Chairman Hesburgh. . . . Do you think of any way we might get a common approach across to all the government agencies on Title VI?
>
> Attorney General Mitchell. I would not believe so, Father, other than the fact that the law requires it, and of course the contracts and other documents require it, I think it is a matter of enforcement and policing by the different Departments and Agencies that do business in this field.[240]

A great number of Federal assistance programs benefit suburban communities by providing assistance for such things as highways, parks, education, and sewage treatment. Coordinated enforcement of Title VI guarantees would help assure equal access for all to the suburbs. Although uniform amendments to the Title VI regulations of 20 Federal agencies were published in the *Federal Register* in December 1971,[241] these amendments, as of September 1972, had not been formally adopted.

Thus, agencies now operate under separate Title VI regulations and often under differing interpretations of the meaning of Title VI. Furthermore, Title VI enforcement by individual agencies tends to ignore the broad impact which the totality of federally-funded programs may have on the development of a metroplitan area. A highway funded through the Department of Transportation, water and sewer grants from HUD, and a host of other federally-funded programs may combine to play a major role in the development of a suburban community. If minorities are excluded from living in that community, they may be denied the benefits of these federally-funded programs.

The coordination function of the Justice Department is hindered, furthermore, by the fact that, as of September 1972, the Title VI section had only nine attorneys,[242] three fewer than it had in November 1971.

HUD's Title VI enforcement also has been minimal. Not until 1971 did the Department even have written instructions for handling Title VI complaints and conducting compliance reviews of Title VI programs in operation. Until 1971, reviews were made only when a complaint of discrimination was received. In fiscal

[237] On Sept. 20, 1972, the Federal Deposit Insurance Corporation published proposed regulations on fair housing lending practices. 37 Fed. Reg. 19385. On Dec. 29, 1971, the Comptroller of the Currency and the Federal Reserve System—as well as FHLBB and FDIC—published policy statements on nondiscrimination requirements. 36 Fed. Reg. 25167–68.

[238] *See* testimony of Daniel W. Spaulding, chairman, National Public Affairs Committee, National Association of Real Estate Brokers, *Washington Hearing* at 128.

[239] 42 U.S.C. §2000(d).

[240] *Washington Hearing* at 374.

[241] 36 Fed. Reg. See index at 23000 (Dec. 1971).

[242] Memorandum from David L. Norman. Assistant Attorney General, Civil Rights Division, to Theodore M. Hesburgh, Chairman, U.S. Commission on Civil Rights. Sept. 15, 1972.

year 1972 HUD conducted 110 preaward and 186 postaward onsite reviews. There are, however, about 12,000 local government agencies funded by HUD, as well as uncounted numbers of private builders, developers, and nonprofit sponsors subject to Title VI requirements.[243] To date, HUD has not terminated any funds because of discrimination in violation of Title VI.[244]

Federal Assistance: The Impact of Federal Highway Grants

The annual expenditures of the Federal aid highway program—$5,425 million was authorized in 1971[245]—have a great impact on housing opportunities and residential patterns. Highways may be more than mere access routes. They may displace families from their homes, lead to a movement of job opportunities and a resulting change in residential patterns, and separate one area of a city from another.

As the Douglas Commission stated in its 1968 report:

> Probably there is no more important single determinant of the timing and location of urban development than highways. Highways in effect "create" urban land where none existed before by extending the commuting distance from existing cities. The low-density pattern found in most of the Nation's surburban areas would never have been possible without the effect of high-speed highways in reducing the importance of compact urban development.[246]

Across the country, the Douglas Commission found evidence that Federal funds were being expended for highways without sufficient attention to the effect of these highways on residential patterns. The Commission report summarized the situation:

> [I]n the zeal of engineers, highway planners, and administrators to get on with the important job of accommodating traffic needs, social and esthetic values have sometimes been shockingly overlooked. The routing of highways through existing neighborhoods, unless carefully planned with a range of goals and values in mind, can mean the quick demise of neighborhood character and viability and lasting bitterness on the part of those affected. Furthermore, it can effectively separate various parts of the city from other parts, and the claim has been made in various cities that highways have been used to separate Negro and White neighborhoods.[247]

Robert Segal, chairman of the Civil Rights Commission's Massachusetts State Advisory Committee, commented on the effect of Boston's outer beltway on residential patterns in the Boston area:

> Well, we have had a tremendous amount of industry come in and a lot of residential development. We have had a great deal of movement of manufacturing units from the city of Boston out into the suburban areas . . .
>
> [B]y and large over the years there was a tremendous growth in industry out there.[248]

A survey of 309 Boston firms, conducted by the Boston Economic Development and Industrial Commission, found that 40 percent either had decided to move or were seriously considering it. This represented a potential loss to Boston of up to 11,500 manufacturing jobs—40 percent, that is, of all jobs held by minorities and paying more than $5,000 a year. As for the number of minorities living in the suburbs which developed along the outer beltway, Mr. Segal said: "If you find minority group members, we would like very much to know about them." [249]

In Baltimore, where approximately $13 million of Federal highway money was spent in 1971, city planner Yale Rabin discussed the effect of these expenditures on development patterns:

> And this tendency has often caused us to overlook the far more significant and far more long-range effect of highways which are to generate a great change in industrial and commercial uses, and more specifically the kind of decentralization of industry in which Baltimore County has been no exception. So that during 1969, for example, some 35 industrial firms, I believe, moved from Baltimore City and relocated in the county.
>
> The decentralization of these firms has a marked effect on employment opportunities in the city and when that effect is combined with the absence of housing opportunities in the areas to which those

[243] Commission on Civil Rights questionnaire, directed to HUD, July 5, 1972.
[244] *Id.*
[245] U.S. Dep't of Transportation, *Federal Laws, Regulations and Material Relating to Federal Highway Administration* II-91 (1970).
[246] *Douglas Commission Report* at 231.
[247] *Id.*
[248] *Washington Hearing* at 104.
[249] *Id.*

plants relocate, then there is a very substantial and very far-reaching effect on black residents.[250]

Highway construction has had the further effect of displacing minorities. Urban freeways have cut through ghettos to facilitate white suburbanites' travel from suburban homes to central city jobs. And the new roads also have uprooted suburban minority communities, forcing minority suburbanites to relocate in the central city.[251]

These problems were pointed out in further testimony by city planner Rabin. Using the Baltimore County guideplan, he described the effect of proposed freeways on two black communities, Edgemere and Turners Station:

> [Edgemere] is very small. But a new freeway is proposed to come down and sweep directly through the area, which is now a low income black community. In Turners Station a whole network of freeways, three of them apparently, will completely isolate the area, although it is relatively well isolated now . . . the construction of a new freeway along the shoreline on the east and the proposed construction of a new crossing . . . would wipe out the beach at the southern end of the Turners Station community.[252]

August Schofer, regional administrator of the Federal Highway Administration, was asked about the effect of Department of Transportation regulations which prohibit discrimination in the location or design of a highway:[253]

> Mr. Glickstein. One of the purposes of these regulations is to guarantee in planning these highways the project doesn't unfairly impinge upon any racial group; is that correct?
>
> Mr. Schofer. It doesn't say that in those words. We don't locate a highway purposely to move a particular group, white, black, Polish, Norwegian, or what-have-you. We don't deliberately locate it to do these things. There is no discrimination if we avoid selecting a location that takes out a group purposely.
>
> There is nothing in there that says we may not do these things. The facts show that our locations up to date have been predominantly white areas.
>
> Mr. Glickstein. One other provision of the regulations provides that the State shall not locate, design, or construct a highway in such a manner as to deny reasonable access to and use thereof to any persons on the basis of race, color, or national origin. What does that provision mean?
>
> Mr. Schofer. Well, our interchanges are free to anybody that has a car. Wherever there is an entrance, color doesn't determine his right to use that.
>
> Mr. Glickstein. You think that provision means that you just can't keep people off the highways because of race, color, religion, or national origin?
>
> Mr. Schofer. Well, I would so interpret. The facilities that we are building on these roads for rest areas, there is no discrimination there. There is no white or black facilities on there. It's completely integrated facilities. What one has, the other has.[254]

Mr. Schofer's testimony ultimately prompted Commission Chairman Hesburgh to state:

> I think the trouble with you is that you are thinking about roads as roads. I am thinking about roads as serving human beings who have certain rights in a community in a Nation.[255]

At the Washington hearing, the Commission further expressed its concern about DOT's policies to Transportation Secretary John Volpe. Secretary Volpe summarized the broader implications of highways and other forms of transportation for housing patterns:

> Beyond the service aspect of transportation, we recognize that transportation development is a major factor in residential patterns and community

[250] *Baltimore Hearing* at 281.

[251] Commission research for the Baltimore hearing also found that there was no requirement that those displaced by Federal-aid highways be relocated in the same community from which they were displaced, or that there be relocation housing outside of areas of minority concentration. The Department of Transportation and the Federal Highway Administration did not require that State highway departments even keep track of racial composition of neighborhoods where relocation housing was located. During the past few years there have been legislative and regulatory attempts to deal with the problem of minority displacement. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 provides that no person may be displaced by a federally-assisted project unless adequate replacement housing is available to him. Section 206, 42 U.S.C. §4626 (b), 84 Stat. 1898. *See* HUD, Last Resort Housing Replacement by Displacing Agency Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 24 CFR §§43.1–43.16, 37 Fed. Reg. 3624 (Feb. 18, 1972). A proposed amendment to FHWA Policy and Procedure Memorandum (PPM) 20–8 would require State highway departments to consider a proposed highway's impact on minority community cohesion. 37 Fed. Reg. 8398 (April 26, 1972).

[252] Transcript of Open Meeting of the Maryland State Advisory Committee to the U.S. Commission on Civil Rights 14 (Jan. 5, 1971).

[253] 35 Fed. Reg. 10080–85 (June 18, 1970).

[254] *Baltimore Hearing* at 376.

[255] *Id.* at 379.

development. The accessibility of effective transportation has a profound effect on community growth and demographic alignment. This is a responsibility that we do not take lightly.

Transportation planning in a Nation of over 200 million people must be related to more than simply getting from point A to point B. Indeed, the law requires that transportation planning be consistent with comprehensive planning.[256]

Secretary Volpe was then questioned about DOT's adherence to Federal laws requiring nondiscrimination in federally-funded programs and affirmative action by Federal executive agencies to promote fair housing. He referred the question to Federal Highway Administrator Frank Turner:

Mr. Turner. I don't believe that I can think of a particular project that would meet the specifications that you have set out. All of our projects, we believe, contribute generally to transportation needs, open to all users, regardless of location, economic means, race, color, creed, religion or anything else.

Secretary Volpe. How about the housing, are there any projects . . . even a hypothetical one, as Mr. Glickstein said, that you think of where we might apply the kind of analysis that we have talked about, that would enable us to deny funds if we felt that this was required in order to permit the fair and decent housing that we intend for them to provide.

Mr. Turner. I think that it might only be reached through the provision that governs the relocation of people displaced from a highway, in which the requirement is that before the project can be approved, a State must submit to us a relocation plan which we approve. This must include provision for fair housing.[257]

Mr. Turner failed to note any obligation on the part of the Department of Transportation to withhold Federal funds in cases where the benefits of highway programs would not be available on a nondiscriminatory basis, or where highway programs would contribute to forced concentration of minorities.[258]

Despite this alleged lack of authority to take into account the impact of transportation programs, Department of Transportation officials indicated to the Commission that DOT planned to revise its policies to take housing availability into account. Mr. Volpe's prepared statement, submitted for the record at the Washington hearing, indicated that DOT was considering requiring applicants for significant projects in metropolitan areas to provide:

a specific analysis as to whether a proposed project would have a positive impact on any existing patterns of racial concentration in the area involved . . . For those projects having a positive impact, there would be a followup evaluation of the extent to which the project succeeded in encouraging the goal of fair housing. Both steps would include the collection and analysis of racial-ethnic data pertinent to the area involved.[259]

Proposed Highway Administration guidelines, issued in April 1972,[260] represent a step in this direction. The guidelines provide for consideration of adverse economic, social, environmental, and engineering effects of a proposed highway, but fall far short of requiring the detailed analysis, breakdown of housing patterns, and extensive data collection which Secretary Volpe stated was under consideration.[261]

Federal Contractors and Housing Availability

We have seen that when large employers move their installations to suburbia this may sharply curtail access by minority persons to job opportunities with the employer.[262] This section reviews enforcement of the requirement, applicable to Federal contractors, that affirmative action be taken to avoid the discriminatory consequences of suburban facility location by an employer.

Under Executive Order 11246, and OFCC Revised

[256] *Washington Hearing* at 330.

[257] *Id.* at 337.

[258] Title VI of the Civil Rights Act of 1964 prohibits discrimination in programs or activities receiving various types of Federal funds. Section 808(d) of the 1968 Civil Rights Act requires Federal executive agencies having programs relating to housing or urban development to administer those programs to affirmatively promote fair housing. The implications of Title VI and Title VIII for Federal-aid highway programs have been a continuing controversy between the Commission and the Federal Highway Administration. There is no disagreement about the applicability of these provisions to highway programs. Despite apparently far reaching DOT regulations, however, FHWA officials, as evidenced by the quoted testimony, have taken the position that the law prohibits only intentional discrimination in such areas as who is allowed to drive on a highway and in relocation housing. The Commission has argued that, beyond this, Title VI and Title VIII prohibit all discrimination, intentional and unintentional, in locating highways and displacing and relocating individuals. *See, e.g.*, Staff of U.S. Commission on Civil Rights, *The Civil Rights Implications of Suburban Freeway Construction*, in *Baltimore Hearing* at 807, and August Schofer, Regional Federal Highway Administrator, *Clarification and Rebuttal of Staff Report, id.* at 824.

[259] *Id.*, exhibit 40 at 955.

[260] 37 Fed. Reg. 8398 (1972).

[261] These guidelines are discussed further in ch. 4.

[262] See ch. 3, p. 24, above.

Order No. 4,[263] Federal contractors are required to analyze deficiencies in employment, identify the reasons for such deficiencies, and develop programs to correct them. At the Washington hearing, the Commission inquired about the corrective action which the Office of Federal Contract Compliance, which administers these provisions, required of Federal contractors when lack of suitable housing was a barrier to minority employment. Gerald Paley, Associate Solicitor for Labor Relations and Civil Rights, Department of Labor, testified that OFCC did not even attempt to keep track of the location and movement of contractors in order to promote site selection in areas where housing was available and to encourage affirmative action to overcome housing barriers. He testified that he did not know of an instance "where OFCC was forewarned that a Government contractor was moving to an area where housing would be a problem for minorities." [264]

Arthur A. Fletcher, Assistant Secretary of Labor for Work Place Standards, added:

> . . . if let's say, a defense contractor were changing communities, it would be the Defense Department's compliance agent [who] would know that first and, in fact, unless we devised a way—which we will be doing—that will require that he puts us on notice that the company has moved, there's a real chance that information would never get to us.[265]

Mr. Fletcher further testified that, even if OFCC did know that a contractor was about to relocate in a restrictive area, OFCC does not have the right to impose upon the contractor a requirement that it take affirmative action in the housing area as a condition of doing business with the government.[266]

Section 808(d) of the Civil Rights Act of 1968 requires executive agencies having programs relating to housing and urban development to take affirmative action to promote fair housing. Because of the relationship between employment opportunities and housing, this provision appears applicable to the Department of Labor and therefore to OFCC.

Under questioning, Mr. Fletcher stated that he would have no problem with a directive that all Government contracting agencies henceforth consider the availability of low- and moderate-income housing in the area of a particular company and give preference to those companies located in areas where low- and moderate-income housing is available. He did, however, indicate that lawyers at the Department of Labor had doubts as to whether Executive Order 11246 provides authority for the issuance of such a directive. No such directive has been issued.[267] The problem of corporate relocation to restrictive suburbs continues unabated.

Senator Abraham Ribicoff, in response to this situation, introduced legislation which would impose upon Federal contractors an obligation to consider the availability of low-income housing prior to selecting a site. Legislation introduced in 1970 and again in 1971—S. 1282, the proposed Government Facilities Location Act of 1971—would have tied the location of Government and Government contractor facilities to the provision of low- and moderate-income housing.[268] The bill would have prohibited Federal agencies from locating facilities in communities which failed to develop an acceptable plan for the provision of an adequate supply of housing for lower- and middle-income employees. The bill would also have required Federal contractors and federally-assisted State agencies to obtain such plans from communities in which they intended to locate. Violations by Federal contractors would result in the termination of their contracts. The legislation would have provided for financial assistance to reimburse communities for the expense of developing plans and for payments to local educational agencies in those communities. Thus, communities would be able to meet the additional costs of education caused by the increase in the number of children living in lower- and moderate-income housing in the community.

The Federal Government as Employer

Just as the location of a facility by a Federal contractor has an impact on the employment opportunities of people living in different parts of the metropolitan area and the pattern of metropolitan growth generally, so does the location decision of the Federal Government itself as employer. The Federal Government is a major employer in many metropolitan areas and the dominant employer in one, the Washington, D.C., area. Unlike private employers, however, the Federal Government in its location decision need not be so constrained by market considerations, but can

[263] 41 C.F.R. 60-62.
[264] *Washington Hearing* at 194.
[265] *Id.* at 195.
[266] *Id.* at 192.
[267] *Id.* at 208-09.
[268] The bill, which was vehemently opposed by both southern conservatives and northern liberals in the Congress, has not been reintroduced.

choose to take into account the effect of its decision on, for example, its minority work force or potential minority work force.

In a 1970 report, the Commission found that although "equal employment opportunity and equal housing opportunity are cornerstones of national policy, the Federal Government has been inadequately concerned with the impact of its site selection policy in achieving these related goals." [269]

In 1969 the General Services Administration (GSA) had adopted policies designed to deal with the problems of lower-income and minority Federal employees. Under these policies GSA was to avoid locations lacking adequate housing within reasonable proximity for low- and middle-income employees, and locations not readily accessible from the nearest urban center. The Commission found, however, that these policies were not implemented and GSA continued to locate installations in areas which did not have an adequate housing supply.

In February 1970, against a background of persistent criticism of GSA's site selection policies, President Nixon issued Executive Order 11512, establishing policies which GSA must follow in acquiring and assigning office space.[270] Among the factors prescribed by the Executive order for GSA's consideration are:

(1) the impact a selection will have on improving social and economic conditions in the area, and

(2) the availability of adequate low and moderate income housing, and adequate access from other areas of the urban center.[271]

In evaluating these factors, GSA is directed by the order to consult with HUD and other relevant agencies.[272] Civil rights groups, as well as the Commission, criticized the order for not specifically requiring that housing be available on a nondiscriminatory basis in areas slated for Federal facilities.[273]

A May 1970 open meeting of the Commission's District of Columbia Advisory Committee further emphasized the shortcomings of GSA's program. Employees of several Federal agencies which planned to relocate testified about the inadequate provisions which were made for housing in the new location and the responsibility of the Federal Government toward the city and its residents. William Jenkins, an employee of the Department of Health, Education, and Welfare, described his feelings concerning the pending move of HEW from Washington, D.C., to Rockville, Maryland:

> Well, I feel that these moves are in a sense a violation of my civil rights in that if I am an employee of the Federal Government in a so-called human rights agency, so-called social action agency like HEW which supposedly is the watchdog of the nation's social conscience, and I am a participant to or an observer of my agency's indiscriminate, inconsiderate, ill-planned moves to the suburbs which have an adverse effect not only on the employees' well being but to me have no demonstrable good effect on the areas into which they are moving, I think that's a violation of my civil rights.[274]

In a July 1971 report based on that meeting, the District of Columbia committee outlined the dimensions of the city-to-suburbs movement of Federal facilities in the Washington area:

> The Federal Government is the largest single employer in the Washington Metropolitan Area and its actions affect almost every facet of the area's life. Ever since the move of the Atomic Energy Commission to Germantown, Maryland, in 1958, there has been a steady movement of Federal employment away from the central city into the Virginia and Maryland suburbs. From 1963 to 1968, at least 42 components of 18 agencies employing some 14,000 workers have moved out of the District. Another 12,000 were involved in the Navy Department move to Arlington, Virginia, 5,000 in the Public Health Service (Department of Health, Education, and Welfare-HEW) transfer to Rockville, Maryland in 1970, and 2,200 in the planned move of the U.S. Geological Survey to Reston, Virginia.[275]

In light of the criticism of GSA site selection policies, the Commission invited GSA to testify at its June 1971 hearing concerning its role in remedying racial polarization in the Nation's metropolitan areas. Shortly before the hearing GSA announced that it had entered into an agreement with HUD for its cooperation in selecting sites for Federal facilities which have an adequate supply of nondiscriminatory, low- and

[269] U.S. Commission on Civil Rights, *Federal Installations and Equal Housing Opportunity* 21 (1970).
[270] 35 Fed. Reg. 3979 (1970).
[271] 35 Fed. Reg. 3979, Sec. 2.
[272] *Id.*
[273] U.S. Commission on Civil Rights, *Federal Civil Rights Enforcement Effort*, ch. VIII, part 2(E).
[274] *D.C. SAC Transcript* at 99.
[275] District of Columbia Advisory Committee, U.S. Commission on Civil Rights, *The Movement of Federal Facilities to the Suburbs* iv (1971).

moderate-income housing. Arthur F. Sampson, Commissioner of Public Buildings, described this agreement at the Washington hearing:

> The system we will use is to involve HUD in the early process when we have a request for space. For example, if we are contemplating constructing a new building, rather than waiting until we have selected certain sites, we will bring HUD people in and use their expertise in the selection of sites to give us advice on housing and also other aspects of the Executive order that they are involved in.
>
> When we are talking about leasing of buildings we will get [HUD] involved in the delineation of the geographical area that we will use to go out and advertise for space, we will seek their advice and expert help at the earliest possible stage.
>
> In addition, should we both find, as we process our requests for space that there is a need for more housing than is available at that time, we will work together to arrive at what is now called an affirmative action plan to see that housing becomes available. This is very specific in our agreement, that housing becomes available at the time Federal employees will occupy that space or within a short period of time thereafter.[276]

GSA officials were questioned about GSA's plans for implementing the HUD/GSA agreement and about the scope of the affirmative action plans authorized by the agreement. Herman W. Barth, Deputy General Counsel of GSA, testified concerning his interpretation of the type of commitment which a community must make in order to be selected for a Federal facility:

> I think it would basically have to include a sitting down and negotiating with the broad spectrum, . . . to get them to remove any obstacles, and I think if there is an obstacle such as zoning, then you are going to talk to them about removing that.
> Now, how far you can go and how far you can go to enforce something like that, is something that we are going to have to wait and see. Obviously, this is a new agreement. We have no experience under it. We're going to proceed with it, we are going to try to do the best we can under it. If we find, as the agreement says, that it is going to need changing or re-enforcing at the end of a year, we'll do that.[277]

[276] *Washington Hearing* at 311–312.

[277] *Id.* at 316–317.

The Commission also sought to determine GSA's policies with regard to Federal facilities already located in communities lacking low- or moderate-income housing for their employees or where discriminatory housing practices prevailed. Harold S. Trimmer, Jr., Assistant GSA Administrator, was doubtful about GSA's power to take corrective action in such a situation:

> . . . in terms of correcting a past situation, when you look at the factor of leverage, our leverage exists primarily when we are going into a situation.
>
> Once we are already located there, in terms of the practical effect that we can have, I think it is limited. I think it is limited to the kind of thing that Mr. Sampson suggests, working with the community and suggesting that if you want more Federal facilities, you had better start moving in this direction.[278]

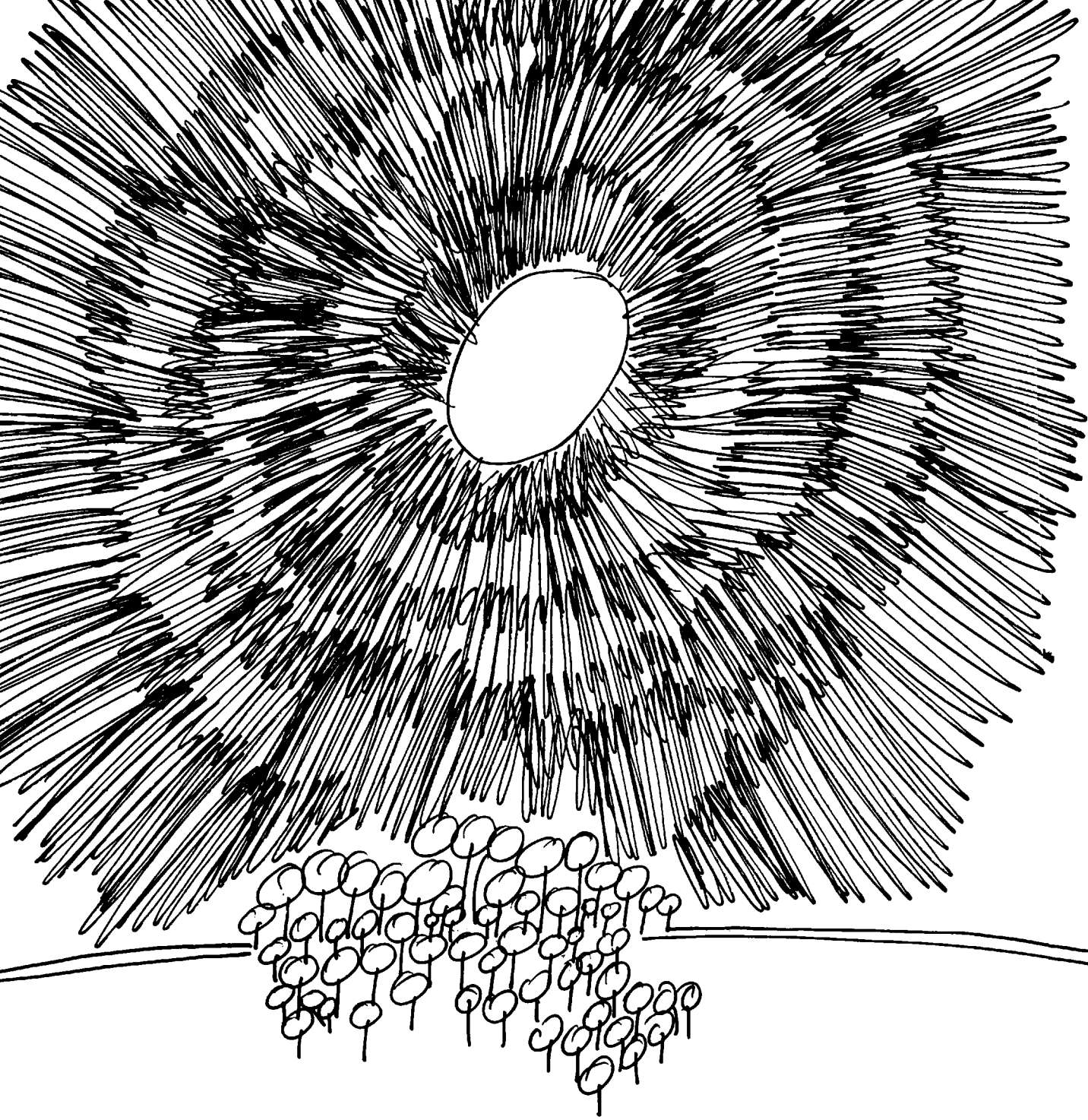
Finally, the Commission questioned GSA Administrator Robert Kunzig about GSA's obligation as a Federal agency to see that Federal policies of nondiscrimination were practiced in all housing in a given community selected as a Federal site. Mr. Kunzig made it clear that GSA, under HUD agreement, was concerned with taking affirmative action only to assure the availability of adequate, nondiscriminatory housing for Federal employees, and not to assure that an adequate supply of nondiscriminatory housing existed for others in the area.[279]

While GSA's affirmative action plan represents a step forward, a great deal of damage already has been done by GSA's past policies. GSA's failure to commit itself to take affirmative steps in communities which lack adequate low- to moderate-income housing to accommodate nonagency as well as agency personnel can only perpetuate the racial isolation.[280]

[278] *Id. at* 328.

[279] *Id.* at 315.

[280] Implementation of the HUD/GSA agreement, moreover, has not been satisfactory. GSA considers itself only obligated to "consider" the availability of low- and moderate-income housing for Federal employees, not to assure its availability. Further, the procedures adopted do not encuorage communities under consideration for Federal installations to improve housing opportunities for minority group members or low- or moderate-income families. *See Reassessment, supra* note 222, at 133–145. *See* the following regulations. GSA, Consideration of Socio-economic Impact When Selecting Locations for Federal Buildings, 37 Fed. Reg. 11323; HUD, New and Relocating Federal Facilities: Procedures for Assuring Availability of Housing on Nondiscriminatory Basis for Low and Moderate Income Employees, 37 Fed. Reg. 11367; and GSA, Selection of Sites for Federal Buildings: Consideration of Socioeconomic Impact, 37 Fed. Reg. 11371 (June 7, 1972).



Remedies for Racial Polarization

Previous chapters have traced the development of residential separation within the Nation's metropolitan areas and have explored the disastrous consequences for the country as a whole. In recent years there have been efforts by different levels of government to remedy the situation. Thus far these efforts must be characterized as inadequate.

This chapter will discuss solutions which have been tried or proposed. Some of these solutions have been discussed in preceding chapters and will be discussed only briefly here. It will be seen that virtually all of the obstacles to equal housing opportunity have been the target of proposed remedies; what each of the remedies lacks is thoroughness and rigorous application.

Elimination of Discrimination in Housing

A major cause—indeed one sufficient in itself—of the present system of residential segregation by race or color has been discrimination in the provision of housing. In recent years important underpinnings of the system of racial exclusion have been eliminated. The authority of the Federal Government, and many State and local governments, is now behind equal opportunity in housing rather than suppporting discrimination.

Title VIII of the Civil Rights Act of 1968 prohibits discrimination in the sale or rental of most housing,[281] and the Supreme Court has interpreted the Civil Rights Act of 1866[282] as prohibiting any other discrimination in housing.[283] Thirty-three States and more than 400 localities have enacted legislation or passed ordinances while private organizations have worked against discrimination in housing.[284]

Nevertheless, there are still two housing markets—one for whites and another for blacks, Mexican Americans, Puerto Ricans, or whatever racial or ethnic group comprises a large and subordinated minority in the particular metropolitan area. As long as people are treated differently in their search for housing, this dual market continues.

Chapter 5 has detailed the weaknesses in Federal enforcement of Title VIII and has offered recommendations for improving enforcement.

But while it is important for Government enforcement agencies to take effective action on complaints, a complaint-oriented enforcement system will not, in the long run, eliminate the dual housing markets. What the minority homeseeker wants is a place to live, not a lawsuit. The minority family wants a real estate market which works as easily and effectively for them as it does for majority families. They are reluctant to try to find housing in areas where they believe there will be discrimination and are reluctant to complain of discrimination, since it is easier to find housing elsewhere. Moreover, a person often does not know that he has been discriminated against. If a landlord says that an apartment is renting for $150 a month, how is one to know that prospective white applicants are quoted the price of $120 a month? If the mortgage lender says that one's credit is not good enough for a mortgage, how does one know that a white in the same position would receive the financing?

An essential requirement of an enforcement system based on complaints is that it be fair to the person against whom a complaint is made. Not everyone

[281] 42 U.S.C. §2000(d).
[282] 42 U.S.C. §1982.
[283] Jones v. Alfred H. Mayer & Co., 392 U.S. 409 (1968).

[284] *P–H Eq. Opp. in Housing* at 2319.

against whom a good faith allegation of discrimination is made has actually discriminated. A mechanism must exist for evaluating the complaints and making a just determination. Such a mechanism will necessarily be time-consuming and thus leaves a barrier to the goal of equal access to housing.

A complaint-oriented enforcement system, therefore, must be secondary to changes in the way the housing market operates. The market must be operated in a way which will minimize, beforehand, the chance of discrimination. It must perform in a manner which will convince minority homeseekers that they will not face discrimination.

If a complaint-oriented enforcement system is a backup for a policy of equal housing opportunity, the first line remedy for the dual housing market must be affirmative action to open the market. There are several tools available to do this.

First, an enforcement agency, by requiring racial data, can keep track of the number of minority group members seeking housing from various landlords, real estate agents, or builders, or seeking financing from mortgage lenders and the number who are successful in these pursuits. This will provide some indication of how well these sectors of the housing market are meeting their responsibility to the minority community and will reveal situations which might indicate systemic discrimination.

A second tool for an enforcement agency is to use testing to determine whether a particular company discriminates. In testing, minority and majority group customers, equal in all other relevant respects, are sent to a company to see whether they will be treated similarly.

Third, firms which are part of the housing marketing system can be required to take affirmative action to seek out minority clientele. Such action includes employing advertising which makes clear that there will be no discrimination and which appears in minority media. It also includes affirmative action on the part of such firms to employ minority group members, especially in positions in which there is customer contact and in decisionmaking positions.

Increasing the Housing Supply

An important remedy for unequal housing opportunities is to increase the supply of housing available to low- and moderate-income families. Unless there is housing available at a cost within reach of low- and moderate-income families, the best system to remedy housing discrimination will do little more than open opportunities which are economically unfeasible to many minority families.

Federal Subsidy Programs

The supply of new low-income housing today exists primarily through subsidies by the Federal Government. The principal Federal housing subsidy programs were Section 235 (homeownership), Section 236 (low-rent housing), rent supplement payments, and low-rent public housing. On January 5, 1973, all of these programs were suspended by the Secretary of Housing and Urban Development. In suspending the programs, HUD provided no alternative plan to fill the very crucial void it created.[285] The subsidy programs were aimed at closing the gap between the minimum cost of building a unit of housing and the low-income family's available income for housing expense. They were designed so that a limited-income minority family would not be consigned to living solely in undesirable or disadvantageous sections of the metropolitan area. Their success, however, depended upon the removal of barriers which prevented the programs from being used in many communities, as well as the enforcement of requirements that housing provided under Federal programs be available to minorities regardless of its location within the metropolitan area.

Chapter 4 discusses in detail how suburban jurisdictions have exercised their power to control the use of land to support the prevailing view that the community should be homogenous in its population, that housing patterns associated with big city slums should be avoided, and population groups which might cause an increase in community expenses, and therefore local taxation, should live elsewhere. In addition to their traditional police powers to enact zoning ordinances to regulate land usage, local governments possess ability to control overall community development

[285] *See* note 102 *supra*. One element of current Federal housing policy is HUD's experimental housing allowance program, which provides for a series of regular (generally monthly) payments to families or eligible individuals who are "unable to afford a decent home in a suitable living environment." Dep't of Housing and Urban Development, *First Annual Report of the Experimental Housing Allowance Program*, 3 (May 1973). The allowance amount is determined by family need in relation to the cost of a standard, *existing* house or apartment located in a modest neighborhood. *Id.* (Emphasis added.) Because it applies only to existing housing, the effect of the program is to increase the demand for modest, standard housing, without increasing the supply. *Id.* at 12. The resulting shift in the demand curve is likely to drive housing costs even higher. Moreover, the program, because it does not spur new housing, provides no access to newer suburban areas where little or no modest housing now exists.

through comprehensive planning. In addition, local government approval is required before either public housing or rent supplement housing will be allowed.

Several promising remedies have been developed to open suburban jurisdictions to low-income housing, particularly federally-subsidized housing. However, as will be noted, these remedies still leave substantial room for improvement.

New York State Urban Development Corporation

The New York State Urban Development Corporation is a State agency and public benefit corporation created in 1968 to develop low- and moderate-income housing, promote commercial development, and provide civic facilities.[286] It is specifically given the power to bypass local zoning ordinances, building codes, or subdivision regulations for the purpose of building housing projects for low- and moderate-income families. The agency also has the powers of eminent domain. It is probably the most powerful instrumentality yet devised to locate and construct housing for low- and moderate-income families.

Although the corporation is encouraged to work closely with local officials and to give consideration "to local and regional goals and policies as expressed in . . . local comprehensive land use plans," [287] it is empowered to override the requirements of local law "when in the discretion of the corporation, such compliance is not feasible or practicable." [288] So far, however, approximately 90 percent of UDC projects have had the approval of local government.

The UDC does not have the power to subsidize the cost of land or of housing. Preexisting Federal and State programs must be relied upon for this.

To date, the corporation, in the view of one observer, "has acted with extreme caution, placing projects where they will likely meet a high rate of local acceptability, rather than placing them where, if accepted, they would result in substantial economic integration. It would rather build than fight." [289] Occupancy of UDC-developed housing is 30 percent black and 10 percent "Spanish and other minorities." UDC's charter requires "affirmative marketing" to assure that minorities have equal access to the housing which it provides. UDC now has $1.5 billion in borrowing power granted by New York State and has completed 13 projects housing some 7,000 people. In addition, it has broken ground for 52 more projects and is planning another 51.[290]

The UDC has built relatively few low-income units, and it has not been active in suburban communities. Almost all of its developments contain a ratio of "70–20–10"—70 percent moderate-income units, 20 percent low-income, 10 percent elderly. Moderate income, moreover, is defined as $9,000 to $11,000 per year, a level which excludes many working-class families.[291] Approximately 95 percent of its units have been constructed in cities. The threat of exercising its power to override has been used to facilitate zoning negotiations, but has rarely been used against the wishes of local government.[292] Despite this restraint UDC lost much of its power in a recent amendment to the act (June 5, 1973), which allows any town or incorporated village to veto UDC projects.[293] The amendment appears to be a compromise in order to add $500 million to the UDC bonding authority.

As a State agency, the UDC cannot look at the housing and development problems of an interstate metropolitan area—such as the New York metropolitan area—as a whole, since its jurisdiction is limited to the single State of New York. Since some of the country's metropolitan areas cross State lines, the UDC type solution cannot be considered a complete one.

The principal advantage of the UDC approach is that it provides an instrument for producing low-income housing, instead of relying entirely on private initiative. The disadvantages were summarized as follows:

> When an agency is given two goals which must of necessity conflict with one another, it will tend to forget about the more difficult one. An operating agency like the UDC will have little hope to survive if it used its energies to fight local towns, and failed to build homes.[294]

Legislative Reform of Zoning

The Commonwealth of Massachusetts has pioneered in legislative reform of local zoning practices which

[286] N.Y. Unconsol. Laws §6254 (McKinney Supp. 1969).
[287] *Id.* §6266(1).
[288] *Id.* §6266(3). The corporation, however, must comply with the requirements of the State building code.
[289] Testimony of David M. Trubek, *Washington Hearing* at 877–878.
[290] *See Newsweek*, Nov. 6, 1972, at 88.
[291] Trubek testimony, *Washington Hearing* at 878.
[292] *Id.*
[293] §6266(5).
[294] *Id.* at 880.

tend to exclude low-income housing. The Massachusetts statute[295] seeks to stimulate construction of housing in the suburbs for low- and moderate-income families by providing streamlined procedures for local approval of such housing.

Under the statute any public agency, nonprofit sponsor, or limited dividend corporation proposing to build subsidized housing may submit a single application directly to the local board of zoning appeals in lieu of separate applications to various local boards.[296] The board of appeals holds a public hearing on the proposed plan. After receiving testimony, the board may: (1) approve the application and issue a comprehensive permit, which includes zoning, subdivision, and building permit approval; (2) approve the application with certain conditions and requirements; or (3) deny the application. If the board of appeals denies an application, the board must show, if there is an appeal, that its decision was "reasonable and consistent with local needs." Local needs are to be judged in terms of the regional need for low- and moderate-income housing. If the application is either denied or granted with certain types of conditions, the applicant may appeal the decision to a housing appeals committee of the Massachusetts Department of Community Affairs. Further appeal may be taken through the courts.

This procedure assists the developer seeking to appeal a denial of necessary zoning by providing a one-step procedure to obtain all his permits, if he prevails—including zoning approval, health certificate, and so forth.

The statute provides maximum quotas of low- and moderate-income housing for each locality. This is intended to allay local fears of large quantities of subsidized housing being built in a community.

Many questions have been raised concerning the Massachusetts approach to providing more suburban housing for low- and moderate-income families. The system established is a passive one—it depends in part on private nonprofit initiative to propose, sponsor, and build the housing. There is no guarantee that this altruistic initiative will be forthcoming or that it will lead to the construction of housing at the most appropriate locations. Housing built by traditional profit-making firms under the Federal Section 235 program for homeownership for moderate-income families is not aided by the Massachusetts statute because its provisions apply only to nonprofit sponsors, limited dividend corporations, and public agencies. The maximum goals set under the legislation are not related to such relevant factors as the present composition of the municipality's population or the job opportunities present in the area. Moreover, minimum housing goals are not set. If 10 percent of a town's dwelling units are already occupied by low- or moderate-income families, or if 1.5 percent of the residentially, commercially, or industrially zoned land in the community is already occupied by such housing, further applications for expedited action by the zoning board of appeals may be denied. Thus very little low- and moderate-income housing will be possible under the State's system.

The law also contains loopholes that may allow a locality to refuse to allow the construction of low-income housing within its jurisdiction. Permits may be denied if the denial is "consistent with local needs," for example, "to protect the health or safety of the occupants of the proposed housing or of the residents of the city or town," "to promote better site and building design in relation to the surrounding," or "to preserve open spaces . . .," [297] as long as the standards are applied equally to subsidized and unsubsidized housing. While the importance of such factors cannot be denied, these provisions give the obstructionist community enough ammunition to delay a proposed housing development for several years, a prospect which is likely to deter many developers from areas in which the shortage of housing for low- and moderate-income families is the most severe.

The basic approach of the Massachusetts statute is followed in the American Law Institute's "Model Land Development Code." The model codes are extremely influential in determining the kind of legislation most States adopt. Some States are considering bills which are based on the Model Land Development Code.

Two States, Wisconsin and Connecticut, have considered, but not enacted, proposals which improve upon the Massachusetts statute by including private building firms among those eligible to invoke the streamlined procedures of the statute.

Zoning reform is also possible at the local level. Fairfax County, Virginia, has passed an ordinance requiring in townhouse and apartment districts that a

[295] Mass. Gen. Laws Ann. Ch. 40B §20–23 (1971).

[296] Most municipalities require that all building applications be approved by several boards (e.g., town board of survey, board of health, board of subdivision control, planning board, and building inspector).

[297] Mass. Gen. Laws Ann. Ch. 40B §20 (1971).

site plan must allocate 6 percent of the planned units to low-income housing and 15 percent to moderate-income housing. If the applicant is successful in obtaining a Federal subsidy for the units, or is willing to provide them without subsidy, he receives a "density bonus"—that is, one additional unit may be built for every two units of low- or moderate-income housing constructed.[298]

The Fairfax County approach will not open that county up to low- and moderate-income families overnight. The percentage of low-income housing required is minimal and the units need not be provided at the same site "as long as the substitution . . . will not result in an undue concentration of low and moderate income families in a particular geographical area." [299] Such a provision is subject to abuse. Finally, the requirement only applies to projects of 50 units or more, although smaller projects can qualify for the density bonus.[300]

Apart from these problems the more important question remains: What incentive does the typical suburban jurisdiction have to adopt an ordinance of this kind? Unless incentives are provided by a higher level of government it is doubtful that many jurisdictions will see such an ordinance as being in their self-interest.

Litigation with Respect to Land Use Controls

During the past few years numerous cases, both in the State and the Federal courts, have challenged a variety of discriminatory practices excluding minorities from suburban communities. This litigative approach is not expected to be more than a partial solution to the problem of opening up the suburbs. New legal rights and principles are established slowly, and case-by-case litigation is time-consuming and expensive. Nevertheless, there have been significant developments in the law in this area. Furthermore, in assessing the potential of the litigative approach one must keep in mind the limitations—political and otherwise—of alternatives.

Some courts have begun to take seriously the proposition that a local municipality may not frustrate the legitimate goals of the metropolitan area as a whole. The Ninth Circuit Court of Appeals, in *Southern Alameda Spanish Speaking Organization* v. *City of Union City*,[301] suggested that it might be "the responsibility of a city and its planning officials to see that the city's plan as initiated or as it develops accommodates the needs of its low-income families who usually—if not always—are members of minority groups." [302] Similar language can be found in a decision of the Second Circuit Court of Appeals, *Kennedy Park Homes* v. *City of Lackawanna*.[303] Both of those cases, however, involved discrimination against persons who were already residents of the city involved. In the more typical instance of suburban exclusion, those who seek redress will reside in a central city ghetto and thus have a more tenuous claim to a favorable zoning decision from the suburban jurisdiction. An explicit concern with extramunicipal interests has been shown by the Pennsylvania Supreme Court:

> The implication of our decision in *National Land Investment Co.* v. *Eastown Township Board of Adjustment*, is that communities must deal with the problems of population growth. They may not refuse to confront the future by adopting zoning regulations that effectively restrict population to near present levels. It is not for any given township to say who may or may not live within its confines, while disregarding the interests of the entire area. If Concord Township is successful in unnaturally limiting its population growth through the use of exclusive zoning regulations, the people who would normally live there will inevitably have to live in another community, and the requirement that they do so is not a decision that Concord Township should alone be able to make.[304]

A serious problem with litigation as a tool to counteract exclusionary practices, however, is the remedy which courts will fashion. In *Appeal of Girsh*,[305] for

[298] Amendments to Section 30–2.2.2. Fairfax County Zoning Ordinance, Jan. 22, 1973. However, the Virginia Supreme Court recently ruled in companion cases that these zoning ordinances were invalid because the State statute authorizing county zoning ordinances did not authorize such "socio-economic" zoning practices. DeGroff v. Board of Supervisors of Fairfax County, Record No. 8118 (Va. Sup. Ct., filed Aug. 30, 1973); Lukinson v. Board of Supervisors of Fairfax County, Record No. 8209 (Va. Sup. Ct., filed Aug. 30, 1973). The court also added, without hearing any argument or accepting briefs on the issue, that the zoning scheme violated the State Constitution's eminent domain "taking" provisions. A petition for rehearing was filed Oct. 1, 1973.

[299] Item 3a(5)(c).

[300] Item 3.

[301] 424 F. 2d 291 (9th Cir. 1970).

[302] *Id.* at 295–96.

[303] 436 F. 2d 108 (2d Cir. 1970); *see also* Crow v. Brown, 332 F. Supp. 382 (N.D. Ga. 1971) *aff'd per curiam*, 457 F. 2d 799 (5th Cir. 1972).

[304] Appeal of Kit-Mar Builders, Inc., 439 Pa. 466, 268 A. 765 (1970). A companion case is Appeal of Girsch, 437 Pa. 237, 263 A. 2d 395 (1970).

[305] 437 Pa. 237.

example, the court did not require the town to grant a permit for the project requested but simply declared that the town could not exclude all apartments. The town reportedly responded by zoning a quarry for apartment uses.[306] Furthermore, even if appropriate land had been zoned for apartments, there would be no guarantee that any apartments actually constructed would be available for low- or moderate-income families. A victory at the appellate level may be of little practical value:

> There are so many points during the process where local officials can cause delay and hamper a builder that a developer armed with a stunning victory at the appellate level has only begun the fight. For example, in one case where the State court threw out a four-acre minimum [lot size], it is reported that the town rezoned the land for two acres and in effect said to [the] developer "sue us." The time and money costs of litigation are tremendous, and if each small issue has to be litigated, developers will either stay out or acquiesce in local policies.[307]

Clearly, the courts cannot be relied on for a complete solution to the problem of suburban exclusion. Only a few of the Nation's courts have been active in this area in an affirmative way. Furthermore, remedies that will be effective will be difficult for courts to fashion and to supervise; they are better implemented by other branches of government.

New Communities

One approach to urban housing problems has been to build an entire new city from scratch. The idea is not a new one—"new towns" have been built in Europe since the early part of the century. New towns, or new communities, are large developments with employment, housing, and shopping and recreational facilities. Most of the new communities which have been built or planned in this country have either been in or within commuting distance of a metropolitan area. A new community differs from the typical suburban subdivision to the extent that it is larger in scale and provides, or attempts to provide, all facilities necessary for living, rather than housing alone.

There are numerous new communities at the planning or development stage but few which are actually operative. Reston, Virginia, and Columbia, Maryland, both in the Washington area, are two which are fairly well populated and are in advanced stages of development. The Commission on Civil Rights devoted a portion of its public hearings in Baltimore, Maryland, to testimony about Columbia. The experience of this new community seems a good indication of what type of solutions new communities offer to present metropolitan problems.

Columbia is located on approximately 15,000 acres, halfway between Baltimore and Washington. When completed in about 1980, it will have 110,000 people. Present population is roughly 20,000. There is a mixture of single family houses—both detached and row—and of apartments, in addition to shopping facilities, an industrial park, schools, health care facilities, and recreation of all kinds.

Approximately 15 percent of Columbia's residents are black, and these are blacks of various income levels. Columbia apparently succeeded in eliminating housing discrimination by announcing from the beginning that it would be an open community.

> We haven't been driving at interracial housing as a social crusade. We have believed that if you build a real city that the naturalness of the market could be accepted: black, white, rich, medium, poor, whatever the profession or business or religion or activity might be.[308]

This approach has resulted in Columbia's attracting minority group persons, and has also allayed white fears of "changing neighborhoods."

Columbia, nevertheless, has not been a complete success, and its relative success has come only at a high cost. There is little low-income housing. A few hundred subsidized units built under the 221(d)(3) program are for moderate, not low-income families. The industrial park does not provide enough jobs for Columbia residents, most of whom commute to Baltimore or Washington. Conversely, many of the employees working in the industrial park cannot afford to live in Columbia.[309]

A major problem faced by new town developers is financing land acquisition, the site development, and initial housing until return on the investment is realized. In the case of Columbia, Maryland, the cost of

[306] Testimony of David Trubek. *Washington Hearing* at 856, citing 22 Zoning Digest 100a (1970).

[307] *Id.* at 853-854.

[308] Testimony of James W. Rouse, developer of Columbia, in *Baltimore Hearing* at 451.

[309] In 1972, the least expensive apartment in Columbia was $92, for one bedroom.

the approximately 11,640 acres originally purchased was about $16.9 million.[310] Other initial costs include planning and market analysis, streets and sidewalks, sewer and water lines, shopping centers, and community centers. The cost of land and the initial improvements for Columbia required the Rouse Company to borrow $48.5 million. It was 5 years after the original acquisition of land before the first 100 houses in Columbia were sold and the first 262 apartment units were available for rent.[311]

The Federal Government has recently begun to provide limited financial support for new town development. Title VI of the Housing Act of 1968 and Title VII of the Housing Act of 1970 authorize the Government to guarantee the financing of land acquisition and development up to $50 million per new community.[312]

While new communities provide a method of meeting the housing needs of an expanding population during the decades to come in a way which will facilitate racial and economic integration, they do not reach more immediate problems. Those parts of our metropolitan areas which have already been developed can hardly be abandoned in favor of the new.

Metropolitan Area Acceptance of Low-Income Housing

In attempting to assure sound, orderly, and equitable development of metropolitan areas, coordination among the agencies which control the area's development is necessary. Planning must be coordinated among the Federal agencies which are responsible for such programs as highways and home financing, recreation and pollution control. Federal, State, county, and local programs must be coordinated. Finally, separate communities in the same metropolitan areas, with a variety of special interests, must be encouraged to work together for the benefit of the entire area. Lack of such coordination at all levels may lead to haphazard development and to the preservation of local interests at the expense of the metropolitan area, as already has been described.

In determining land use practices, each small political jurisdiction tends to protect its own fiscal base, its own narrowly conceived interests, and "zone out" low-income families. Under the prevailing use systems, there is no metropolitan-wide distribution of low-income housing, with the result that such housing is excluded from almost all suburban communities. Unless responsibility for certain land use controls is assumed or reviewed at a higher governmental level, it is difficult to foresee changes in existing practices. A variety of methods for assuring that a wider point of view prevails has been undertaken.

The Principle of the Planned Fair Share

The Miami Valley Regional Planning Commission in Dayton, Ohio, is one planning agency which has attempted to plan for housing in an innovative manner. The Dayton experience emphasizes both the potential and the limitations of metropolitan planning agencies today.

In September 1970, representatives from Dayton and some 40 other sections of the Dayton metropolitan area unanimously agreed on a regional formula for distributing 14,000 units of low-income housing throughout the area. Dale Bertsch, executive director of the Miami Valley Regional Planning Commission and the principal author of the Dayton Plan, described the plan at the Washington hearing:

> What we attempted to do is begin a process of evaluation of all the factors . . . which relate to housing, and not only the factors related to low and moderate income or to racial ghettoization, but the total housing market, the total misuse of land on a large scale, and everything else involved, and an attempt to identify need within our region, the need in terms of housing by breakdown and by geographic area, and all of the problems that are involved.
>
> The actual plan itself, at least the portion which appears to have been unique, was the development of a system whereby a fair share of an equal share system was developed for scattering low and moderate income housing opportunity throughout the region.
>
> It was felt by the Commission in the development of this particular plan that the housing disparities within the region had to be attacked on a total regional basis.[313]

The "fair share" principle involved determining the

[310] Advisory Commission on Intergovernmental Relations, *Urban and Rural America: Policies for Future Growth* 87 (April 1968). Other examples: Reston, Va., $13.6 million for 7,180 acres; New Orleans East, $27.68 million for 32,000 acres; Westlake Village, Calif., $29 million for 11,500 acres, *id.*

[311] *Id.* at 87–88.

[312] 73 Stat. 678 (1968); 84 Stat. 1791 (1970).

[313] *Washington Hearing* at 8–9.

need for low-income housing in the Dayton metropolitan area and the capacity of the five counties in the area to accommodate such housing. Analysis showed that the region needed some 14,000 additional low- and moderate-income housing units. The five counties were then broken down into 53 "planning units" and the needed dwellings were assigned to the planning units based on consideration of the following factors:

> In making its analysis of pertinent factors and ways of combining them, the staff considered three groups of elements. One was population, and included such things as number of people, number of households, household income distribution, number of persons over age 65 and number of welfare cases in each planning unit. Another category was *housing* itself and within this were number of dwelling units by type, age of dwelling units, the condition of housing in each planning unit, percentage of home ownership, average house value, and number of building permits issued during the last several years. The third category was *facilities*, and this included the availability of sewer and water, transportation, shopping facilities, recreational areas, schools, and proximity to employment and job centers.[314]

Development of the plan was followed by a 2-year period of education and discussion, including workshops, public hearings, and informal meetings.

To many, the Dayton Plan represents a promising step in a direction where few others have ventured. Former HUD Secretary George Romney is among the enthusiastic backers of the concept:

> . . . The time is past when city officials could afford to make decisions solely on the basis of their impact within the legal boundaries of the community. The future of our urban areas depends on an ecumenical approach to the real city.[315]

Yet, the plan is only a step. Each community which is covered by the plan still retains the power to block low-income housing through such devices as land use controls. Communities also retain their traditional reliance on property taxes for local revenue, which provides a rationalization for the exclusion of low-income housing. As Bertsch observed in speaking of the unanimous adoption of the Dayton Plan:

> I think also, very honestly, that there was a certain number of votes that were cast . . . with the full recognition that we really have no legislative power and that the ultimate decision would be left up to the local community anyway.[316]

In January 1970, there were in the Dayton area almost 300 units of federally-subsidized housing, virtually all of which were located in the city of Dayton. Since the Dayton Plan was adopted, more than 1,400 units of federally-subsidized housing have been built; about 850 of these units are in suburban jurisdictions. In addition, approval has been granted or application made for an additional 3,950 units of which about 3,700 are to be in suburban locations.[317]

Across the country, the need for a regional approach to urban problems is being increasingly recognized by planning agencies. In Raleigh-Durham, North Carolina, the Research Triangle Regional Planning Commission is analyzing all vacant parcels of land for appropriateness for low- and moderate-income housing.[318] Recommendations based upon this analysis will be linked to the regional land use plan and local government approval will be sought. In Chicago, the Leadership Council for Metropolitan Open Communities is studying the Dayton Plan and possible modifications to accommodate differing conditions in that area. The Metropolitan Washington Council of Governments has adopted a "fair share" formula for allocation of housing opportunities.[319] In Minnesota, the Metropolitan Council of the Twin Cities Area has a policy of giving high priority to applications for funding assistance from municipalities which provide for low- or moderate-income housing.[320]

One noteworthy aspect of the Dayton Plan was its approval by a commission dominated by suburban and rural interests. Witnesses at the Washington hearing, however, illustrated the tenuous nature of plans which seek voluntarily to unite local interests for the good of the metropolitan area. Although, as Bertsch

[314] D. Bertsch and A. Shafor, *A Regional Housing Plan: The Miami Valley Regional Planning Commission Experience*, American Institute of Planners, Planners Notebook 1:2 (April 1971) (emphasis in the original).

[315] Speech before U.S. Conference of Mayors, June 14, 1972.

[316] *Washington Hearing* at 13.

[317] Interview with Ann M. Shafor, principal planner, Miami Valley Regional Planning Commission, Jan. 11, 1973.

[318] NCDH, *Trends in Housing*, July–Aug. 1972, at 1, 3.

[319] Fair Share Housing Report presented at the regular meeting of the Metropolitan Washington Council of Governments and adopted by motion, Jan. 10, 1972.

[320] Metropolitan Development Guide: Housing Policy Plan Program, adopted by Metropolitan Council of the Twin Cities Area, June 1973.

described, the suburban reaction to the Dayton Plan often "ranged from ridicule to outright hostility," many suburbanites, along with their representatives on the planning commission, supported the plan. While suburban commissioners endorsed the Dayton Plan, Cleveland Mayor Stokes expressed some skepticism about the ability of regional planning bodies to represent the interests of city residents adequately:

> There is not a city or metropolitan unit in the United States in which the regional government unit has given the central city proportionate representation in this powerful planning unit that will determine every Federal dollar that will come into the city, and that will determine the future planning and development of that metropolitan statistical area. . . .
>
> Now it means . . . that throughout the United States regional governments have organized to discriminate against the central city in an organization which is going to go on and be the sole determinant of whether or not Federal funds come into the city . . .[321]

Mr. Stokes described the reaction of surrounding communities to Cleveland's proposal to build a racially and socioeconomically integrated community with 5,000 units for low-income families on a 1,200 acre suburban tract owned by the city:

> The Mayor of Beachwood notified our so-called regional government of his unequivocal opposition. He hadn't even read the six pages [describing the project]. The Village of North Randall, through its mayor, urged the regional council to refuse approval of our application for a detailed planning grant under the New Communities Act. The Warrensville Heights Board of Education adopted a resolution against the new town on grounds that it would have more children to educate. The village of Orange resolved in a resolution its "unalterable" opposition. The trustees of Warrensville Township urgently requested the regional government to deny our application for a planning grant. Not a one of them said anything about black people moving out there. Not a one of them said anything about poor people moving out there. But that was the unspoken reason, and Black Jack [a case of clearly racially motivated zoning] happens not to go to that kind of situation. And it is that Cleveland situation which I say is the day-to-day situation of an America which learns that it no longer talks about spics and wops and niggers, but rather talks about density and overcrowding of schools, et cetera, to achieve the same purpose.[322]

The city of Cleveland filed suit against its council of government, challenging the fact that the city, with one-fourth of the regional population, has only 3 of 52 votes on the planning body. Meanwhile, in the Dayton area, rural counties have considered withdrawing from the Dayton Plan, alleging that their interests were not being adequately taken into account. Dr. John Dyckman, professor of city and regional planning at the University of California, Berkeley, expressed a possible objection to the Dayton Plan concept:

> I don't think there is any intrinsic reason, any persuasive logical reason why the distribution has to be so scattered, and there may be social reasons why it ought not to be so scattered. That is, I think in many instances members of the minority communities would prefer that they not be so diluted and in such small pockets within so many different communities.[323]

A primary value of the Dayton Plan, however, is as a prototype for future solutions.

The Federal Role in Metropolitan Development

The underlying theme of the preceding sections of this chapter is that the problem of racial exclusion and separation must be looked at from the perspective of the metropolitan area as a whole. Individual municipalities acting alone can do only so much to help the situation. Indeed, a major source of the problem is that suburban communities have been able to act without having to consider the effect that their actions would have on other parts of the metropolitan area. This section considers ways in which the Federal Government can use its influence on metropolitan development in a way which will further the goal of equal opportunity.[324]

Comprehensive Planning: Assistance and Standards. Planning grants administered by the De-

[321] *Washington Hearing* at 219.
[322] *Id.* at 221–222.
[323] *Id.* at 175.
[324] Several specific means of Federal influence are discussed in ch. 5, e.g., HUD's project selection criteria, p. 39, and the proposed Government Facilities Location Act of 1971, p. 47.

partment of Housing and Urban Development provide one mechanism for sound, orderly, and equitable metropolitan development. Under what are known as "701" comprehensive planning grants,[325] the Secretary of Housing and Urban Development is authorized to make planning grants to State, metropolitan, and regional planning agencies in order to "facilitate comprehensive planning for urban and rural development." [326]

The Section 701 program has the following goals with respect to housing. It seeks to:

1. Assure that housing concerns and needs become an integral part of the community planning and management process;

2. Eliminate effects of past discrimination in housing based on race, color, religion, or national origin and provide safeguards for the future;

3. Develop housing growth policies which would insure the provision of an adequate supply of housing, a variety of housing types, and proximity of housing to jobs and daily activities; and

4. Provide a decent residential environment throughout the planning area by ensuring that all housing receives a proper and equitable delivery of public facilities and services.[327]

The 1966 Housing Act and subsequent HUD guidelines require that all recipients of Section 701 funds must prepare a housing element—a document describing the area's housing problems and how they are to be overcome. The housing element must specifically consider "the needs and desires of low-income and minority groups."[328]

According to Professor Dyckman, the Section 701 program could be useful in bringing into existence fair share plans such as that of Dayton:

> There is presently the requirement that all metropolitan planning which uses Federal funding under the 701 program, . . . must contain a housing element. It's possible, too, that if these metropolitan areas were to carry out the guidelines which are prescribed by HUD to make provision for moderate and low-income housing, that they could in practice develop the kind of proposal that is being made in the Dayton area.[329]

Yet, while encouraging comprehensive planning, 701 plans do not constitute enforceable local regulation but are merely advisory.

Project Evaluation: Mechanisms and Standards. When the Federal Government gives out money for various projects it generally sets standards for how the money is to be used, to assure that the money is used in a way which is consistent with the goals of the particular program involved and with broader Federal goals. As discussed in Chapter 5, some of those more general goals were established by legislation in the field of civil rights. Title VI of the Civil Rights Act of 1964 prohibits the denial of benefits under any program or activity receiving Federal financial assistance on the ground of race, color, or national origin.[330] Title VIII of the Civil Rights Act of 1968 requires that all Federal programs relating to urban development be administered in a way which furthers the goal of equal opportunity in housing.[331] Considered below are some of the relevant requirements with respect to two programs generally desired by suburban governments—the water and sewer program administered by the Department of Housing and Urban Development and the highway program administered by the Federal Highway Administration of the Department of Transportation.

Grants under the water and sewer facilities program of HUD[332] and also under HUD's open space program[333] are conditioned on requirements analogous to those for the comprehensive planning program discussed in the preceding subsection.

In evaluating applications for water and sewer facilities grants, HUD regulations provide for a point system by which different scores are given according to the extent to which various criteria are met. Applications receiving a greater number of points are given preference. The point system favors areas in which the median income is lower and areas in which housing "will be accessible on a nondiscriminatory basis to families and individuals with low and moderate income." [334]

As discussed in chapter 5, the development of a metropolitan highway system has facilitated the great

[325] Housing Act of 1954 §701, *as amended;* 40 U.S.C. §4610.
[326] 40 U.S.C. §461(g).
[327] HUD Handbook 1, Comprehensive Planning Assistance Requirements and Guidelines for a Grant 4–8 (Mar. 1972).
[328] HUD Circular, Areawide Planning Requirements (MPD 6415.1A, 7–31–70), Section III, Comprehensive Planning Certification.
[329] *Washington Hearing* at 175.
[330] 42 U.S.C. §2000(d).
[331] Sections 808(d) & (e)(5); 42 U.S.C. §3608(c) & (d)(5).
[332] Section 702 of the Housing and Urban Development Act of 1965, 42 U.S.C. §3101 (1964), *as amended* (Supp. V, 1965–1969).
[333] Section 702 of the Housing Act of 1961, 42 U.S.C. §1500a (1964), *as amended* (Supp. V, 1965–1969).
[334] 24 C.F.R. §556, *et seq.*

suburban growth of recent decades and thereby has contributed to the increasing residential separation between minority group members and the rest of the population. The Federal Aid Highway Act of 1970[335] attempts to force the highway program to take into account the unintended consequences of highway construction. In evaluating highway proposals DOT must consider "possible adverse economic, social, and environmental effects."[336] It must balance "the need for fast, safe and efficient transportation"[337] against possible adverse effects of highway construction such as:

1. Air, noise, and water pollution;
2. Destruction or disruption of manmade and natural resources, esthetic values, community cohesion, and the availability of public facilities and services;
3. Adverse employment effects and tax and property value loss;
4. Injurious displacement of people, businesses, and farms; and
5. Disruption of desirable community and regional growth.[338]

Each State highway agency is required to prepare an action plan for the implementation of the statute's requirements.[339] The plan must include alternatives in addition to increased highway construction. Alternatives should be considered which would "minimize or avoid adverse social, economic or environmental effects" especially in terms of their impact on "specific groups" in relation to the requirements of Title VI of the Civil Rights Act of 1964. DOT's Title VI regulations recognize, moreover, that a highway may be discriminatory because of whom it displaces or where it is located:

> The State shall not locate or design a highway in such a manner as to require, on the basis of race, color, or national origin, the relocation of any persons.
>
> The State shall not locate, design, or construct a highway in such a manner as to deny reasonable access to, and use thereof, to any persons on the basis of race, color, or national origin.[340]

Despite what seem to be far-reaching DOT regulations, however, the Federal Highway Administration has maintained that the law prohibits only intentional discrimination in such matters as relocation housing and who is allowed to drive on a highway.[341]

Enforcement of Metropolitan Planning. The lack of implementation power of regional planning bodies is a serious obstacle in dealing with local resistance to regional goals. One possible source of such influence is contained in Circular A–95 issued by the Office of Management and Budget. Circular A–95 establishes a system by which metropolitan "clearinghouses" receive notification of proposed applications for grants or loans under about 100 different Federal programs and distribute these proposals for review by concerned units of government agencies.[342] The clearinghouses are usually either councils of government or regional planning commissions and receive funding under the Section 701 program discussed above. This review before a formal application has been prepared allows agencies other than the applicant to influence the proposal while the applicant might still be open to making changes in it. If agreement of all concerned is not reached, the clearinghouse or other governmental units or agencies may prepare comments on the formal application which are sent along with it to the Federal agency.

Comments may be based on planning, environmental, or civil rights criteria. The clearinghouse may consider the extent to which the proposed project is consistent with or contributes to the fulfillment of comprehensive planning for the area and the extent to which the project contributes to more balanced patterns of settlement and delivery of services to all sectors of the area population, including minority groups.[343]

In most respects the A–95 early warning system is a voluntary one. While proposed applications for cov-

[335] 23 U.S.C. §109(a).
[336] 23 U.S.C. §109(h).
[337] *Id.*
[338] *Id.*
[339] DOT, Policy and Procedure Memorandum (PPM) 90-4 par. 6 (Sept. 21, 1972). State plans must be submitted by June 15, 1973. After Nov. 1, 1973, the Federal Highway Administration will not approve any project unless the State's action plan has been approved. *Id.*
[340] DOT, Nondiscrimination in Federal Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964, app. c, (a)(2)(vi) and (vii), 49 C.F.R. Part 21.

[341] *See* note 258 *supra.*
[342] Circulars are directives from the Office of Management and Budget to the various agencies in the executive branch designed to coordinate Federal administrative programs and policies. Statutory basis for Circular A-95 is Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, *as amended* (80 Stat. 1263, 82 Stat. 208), Title IV of the Intergovernmental Cooperation Act of 1968 (82 Stat. 1103), and Section 102(2)(C) of the National Environmental Policy Act of 1969 (83 Stat. 853). Covered programs are listed in the current Office of Management and Budget *Catalog of Federal Domestic Assistance.*
[343] Inclusion of civil rights considerations was added to A–95 in Mar. 1972. For the development of the civil rights concern with respect to A–95, see *Baltimore Hearing* at 318–327 and *Washington Hearing* at 7–36, 350–363, 435–522.

ered programs must be submitted to the clearinghouse and metropolitan clearinghouses are required to exist, neither the clearinghouse nor the other concerned governmental units or agencies is required to analyze the proposed application or to make comments upon the final application. Moreover, the Federal agency administering the program to which application has been made is not required to follow the comments it receives.[344]

Metropolitan Housing Agencies: A Legislative Proposal. Legislation introduced in Congress in 1971 but not enacted—H.R. 9688, the proposed Housing and Urban Development Act of 1971—attempted to provide a means for planning which addresses housing problems on a metropolitan basis.[345] Title V of the bill proposed metropolitan and State housing agencies which would create a 3-year program aimed at identifying area-wide housing needs, taking into account such factors as proximity to places of employment, income groups to be served, and local programs both to encourage new housing production and to preserve existing housing. Subsidized housing funds would no longer be provided to builders and sponsors without regard to the social and economic impact on the metropolitan area but would be funneled through centralized housing agencies with metropolitan-wide jurisdiction. Funds also would be made available under Title V to metropolitan housing agencies to be provided to local governments to help cover the difference between the cost of providing various community services and facilities to lower-income families and the amount of revenues received in the form of taxes or assessments from these families.

While the incentive grant provisions of this bill would have nullified the economic argument often raised to justify the exclusion of lower-income families from suburban communities, the proposed State and metropolitan agencies lacked sufficient authority and power to accomplish their stated objectives. The bill contained few incentives and even fewer sanctions which might overcome the opposition that many suburban jurisdictions have demonstrated to permitting lower-income families to reside within their boundaries.

The only inducement in the bill consisted of metropolitan incentive grants which would help relieve suburban communities of the financial burden which some of them claim they would have to bear if the poor lived among them. The only other provision in the bill seeking to meet this problem of suburban exclusion of the poor was one which provided for *encouragement* by State or metropolitan housing agencies, through "studies, technical assistance, and advisory information services," to eliminate "unreasonable restraints on the provision of housing for low- and moderate-income families." It is doubtful that this financial incentive is sufficient to overcome suburban opposition or that *encouragement* realistically could be expected to result in the elimination of suburban restraints on the provision of lower-income housing.

Title VI of this bill, covering community development block grants for activities such as water and sewer facilities, open space, and construction of utilities and streets, could have served as an inducement for suburban cooperation with State and metropolitan agencies. The bill as proposed, however, did not require full cooperation and participation in the metropolitan housing agency as a condition to receipt of benefits in the community development grants.

The bill indicates that all units of elected government should be represented in the metropolitan agency. The structure of these proposed metropolitan agencies should be based on population rather than equal representation of each jurisdiction within the metropolitan area. Problems such as those encountered in the composition of many existing area-wide planning agencies—such as combination of several suburban areas to thwart proposed housing for low-income minority city dwellers under consideration by councils of government—could be avoided.

Metropolitan housing agencies, established through Federal housing and urban development legislation, could solve many of the problems of suburban exclusion. Legislation, such as H.R. 9688, could provide an effective tool for opening housing opportunities provided it includes sufficient power and authority to metropolitan housing agencies to persuade suburban communities to cooperate.

Summary

The remedies which have been discussed in this chapter are all useful, but none of them has brought about a reversal of the patterns of residential separation which prevail in the country's metropolitan areas. Since the application of these remedies has been scat-

[344] For an analysis of the A–95 system see Melvin B. Moguloff, *Governing Metropolitan Areas: A Critical Review of Council of Governments and the Federal Role* (Urban Institute, 1971).

[345] The bill died in the Rules Committee.

tered and usually less than rigorous, it would be foolhardy to expect the continued pursuit of these remedies—by itself—to be more effective in the future than this pursuit has been in the past. There are several criteria which are useful in analyzing remedies which have been attempted as well as other remedies which might be suggested.

First, the remedy must be strong. The practices of decades—and the attitudes and residential patterns which have resulted from these practices—are not changed easily, as experience has shown. Many of the remedies which have been discussed have not been strong ones, especially as they have been applied. Title VIII of the Civil Rights Act of 1968, for example, has not transformed the housing marketing system but generally looks at the problem on a house-by-house basis.

Second, those responsible for implementing the remedy must have a strong incentive to make the implementation effective. Many of the remedies which have been tried have not had provision of equal access to housing as the primary goal. The success of some programs has been measured in terms of number of houses produced, regardless of the race of those occupying them. Other programs are aimed primarily at building roads or Federal facilities or at purchasing goods and services for the Federal Government. The people administering these programs often are judged according to how well they meet their program goal, without regard to how well they also meet a civil rights goal.

Third, an effective remedy must apply to the whole country. State legislation might accomplish much in one State, or a fair share plan might be productive in a few metropolitan areas, but a mechanism is needed to accomplish the same results in more than just a few scattered areas. An effective remedy will, therefore, necessarily involve the Federal Government.

Fourth, a remedy must look at the availability of housing in all parts of a metropolitan area. For one community to enforce a strong fair housing law and provide an ample supply of low- and moderate-income housing will not provide a solution to the problem of racial residential separation as long as the rest of the metropolitan area continues to be subjected to restrictive practices.

Fifth, a successful remedy will not be an exclusively Federal one. Decisions about community growth and housing eventually become local ones. Equal housing opportunity will not be achieved until these local decisions further the cause of equality.

Sixth, a remedy must both end discrimination in housing based on race, color, or national origin, and must increase and broaden the housing opportunities of low- and moderate-income families. The accomplishment of either goal by itself will result in the continuation of segregated housing.

Seventh, a remedy must not look at housing alone. Housing cannot be separated from the location of jobs, the transportation system, the provision of municipal services, and all the other dimensions of life in a metropolitan area.

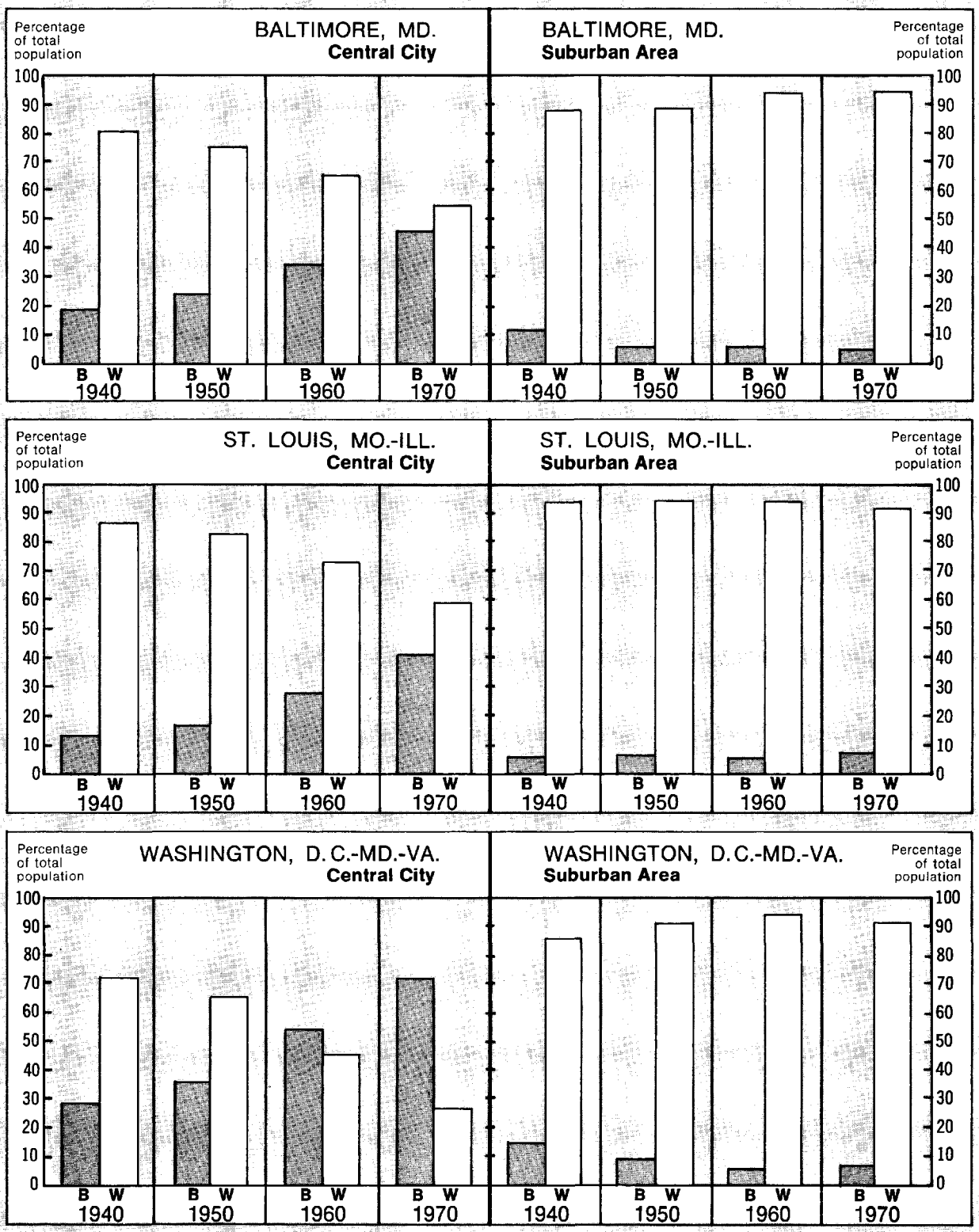
Conclusion

Despite a plethora of far-reaching remedial legislation, a dual housing market continues today in most metropolitan areas across the United States. Inadequate enforcement by Federal agencies and circumvention or, at best, lip-service adherence by local authorities, builders, real estate agents, and others involved in the development of suburban communities have helped to perpetuate the systematic exclusion of minorities and low-income families. The result has been the growth of overwhelmingly white, largely affluent suburbs, and the concurrent deterioration of central cities, overburdened by inordinately large and constantly increasing percentages of poor and minority residents.

The 1970 census shows a 94.3 percent white suburban population in metropolitan areas of 500,000 or more residents. In the same areas, the black population of the central city increased in 10 years from 18 to almost 24 percent.

Two of the sectors hardest hit by the extensive residential segregation which has accompanied rapid metropolitan growth have been education and employment. School desegregation has been thwarted and the separate school systems in the city and its surrounding suburbs are by no means equal. Although the central cities face more difficult education problems than the middle- and upper-income suburbs, they are forced by other economic considerations to spend proportionally less on schools and special programs. The city's cultural institutions and police, fire, and sanitation departments are just a handful of the competitors for its dwindling tax revenues. Ironically, suburbanites who visit or work in the city benefit from these city services, but the suburbs offer no reciprocal benefits to excluded urban minorities. Suburbanites, therefore, enjoy the best of both worlds, at the expense of the city dweller.

Black and White Populations in Central Cities and Suburban Areas of the SMSA's of Baltimore, Md.; St. Louis, Mo.-Ill.; and Washington, D.C.-Md.-Va.: 1940-1970



Note: Figures for all 4 years have been calculated to apply to central city and suburban areas as defined for the 1970 census.

Sources: Bureau of the Census, U.S. Dep't of Commerce, *Sixteenth Census of the United States: 1940*, vol. II, part 1, table 2; part 3, table 21; part 4, table 21; and part 7, tables 21, 30; *Census of Population: 1950*, vol. II, part 9, table 14; part 13, table 41; part 20, tables 34, 42; part 25, table 41, and part 46, tables 38, 40, 42; *U.S. Census of Population: 1960*, vol. I, parts 10, 22, 27, table 21; *Census of Population: 1970*, PC(1)-B10, PC(1)-B22, PC(1)-B27, table 23.

The urban employment picture has also been damaged by the lack of foresight or equitable planning in suburban growth. Major employers, including the Federal Government, have relocated thousands of jobs in suburban areas without consideration for the housing or transportation needs of low-income or minority employees. The testimony of numerous witnesses—employers as well as employees and unemployed—evidenced the fact that job opportunities in suburbia go unfilled while unemployment rolls in the central city grow longer. Costly, time-consuming, and otherwise inadequate transportation between city and suburb has proven no substitute for the opportunity to live reasonably close to one's place of employment.

The problem stems in large part from local zoning powers. While wooing industrial plants to suburban communities, local authorities have simultaneously applied land use controls to exclude or tightly limit low-cost homes and apartments. In some areas, existing black residential neighborhoods have been rezoned commercial to force their dissolution. Municipal veto power over rent supplement housing is another mighty weapon in the zoning arsenal. Because the exercise of these local powers affects other parts of the metropolitan area, the Commission sees a dire need for a supervening authority over community land use control.

One approach which the Commission recommends is the enactment by Congress of legislation establishing metropolitan-wide housing and community development agencies in every State. The agencies' purpose would be to guarantee the availability of housing at all income levels and without regard to race throughout the metropolitan area. (Details of that proposal are included in the recommendations.)

The Commission's other recommendations are addressed to the executive branch. Although the Federal Government has recognized the suburban problem, it has done little to solve it. Neither HUD nor the Department of Justice has enforced existing antidiscrimination laws vigorously or effectively. The housing section of the Justice Department's Civil Rights Divsion, which is responsible for enforcement of the Title VIII antidiscrimination provisions, has only 25 lawyers to handle what is supposed to be a nationwide effort. In 1971, HUD promulgated "affirmative marketing guidelines" requiring developers of new FHA subdivisions and multifamily projects to adopt affirmative programs, including the hiring of minority sales and rental agents, to assure the marketing of housing to all races. But the regulations established no mechanism to guarantee that such plans will actually be carried out.

Unless the Federal Government undertakes a determined effort to enforce Federal antidiscrimination laws, city-suburban polarization will continue and the cycle of urban poverty will perpetuate itself uninterrupted and unabated. While the time has long passed for assessing blame, it cannot be denied that Federal agencies share with local authorities, the housing industry, and its related professions a moral and legal responsibility for having created a problem which will never solve itself. The task now is to employ the tools suggested, and to make better use of the tools at hand, to break the suburban "noose" and put an end to America's increasing racial polarization.

Findings

1. Minorities, particularly blacks, have been largely excluded from the development of the Nation's suburban areas.
2. This exclusion was created primarily by explicit discrimination in the sale and rental of housing.
3. This exclusion is perpetuated today by both racial and economic discrimination. Economic discrimination is often intentionally directed at, and falls most heavily upon minorities, whose incomes generally are significantly below the national average.
4. Suburbanization has been accompanied by the movement of the affluent, primarily white population to the outer rings of the country's metropolitan areas, the so-called "white nooses" that now mark the point at which the city limits end and suburbia begins. Central cities often have been left racially and economically isolated and financially deprived. This process also has:
   a. prompted a movement of business and industry to suburbia—a movement which frequently results in minorities being excluded from suburban job opportunities, owing to their inaccessibility;
   b. caused cities increasingly to find themselves without financial resources to meet the needs and demands of their residents;
   c. led to decreasing economic resources in the city and a concomitant inability to devote sufficient resources to school financing;
   d. resulted in the continued growth of racially segregated school systems in metropolitan areas.
5. Since the bulk of new housing is being constructed in suburban areas, the exclusion of minorities from the suburbs diminishes their housing alternatives and often forces minorities to live in substandard inner city housing.
6. The private sector has been a major contributor to this racial and ethnic polarization.
   a. Private real estate practices continue to reinforce the existing dual housing market—an exclusionary device based upon racial and economic prejudice and aimed at minorities. Among these practices are steering, failure to admit sufficient black brokers to white real estate boards, control of listings, and reluctance of brokers to establish affirmative marketing procedures.
   b. Many financial institutions, such as banks and mortgage lenders, have discouraged integrated community development both by restrictive practices and by lack of affirmative programs in granting loans to minorities who desire housing in suburban areas.
   c. The homebuilding industry, on the whole, has not made an adequate attempt to market housing in a nondiscriminatory manner.
   d. Corporation officials generally have failed to consider the effect of corporate site selection upon low- and moderate-income employees, a practice which often results in disproportionately reducing minority employment.
7. Suburban governments have acted almost exclusively in their own economic interests, often to the detriment of the central city and of the metropolitan area as a whole. Such devices as exclusionary zoning, failure to enact or enforce fair housing ordinances, and failure to utilize Federal housing assistance programs have been the mechanisms for preserving insular suburban interests. Thus, white homeowners often were able to purchase moderately priced suburban homes in the 1940's and 1950's when such housing was denied to minorities. Today, this exclusionary pattern is perpetuated by those communities which seek to keep out further moderate-income development through these devices.
8. Past policies of the Federal Government, which openly encouraged racial separation, were instrumental in establishing today's patterns of racial polarization. Present policies of racial neutrality or of encouraging racial integration have failed to alter racially separate patterns.
9. Present Federal programs often are administered so as to continue rather than reduce racial segregation.
   a. Although Federal-aid highway programs have facilitated the movement of jobs and housing to the suburbs, responsible Federal highway officials have failed to use the leverage of their massive trust fund monies to alter exclusionary housing patterns in suburbs.
   b. Federal programs involving housing loans

and guarantees are creating even more widespread housing segregation, rather than promoting equal housing opportunities.

c. The Federal Government has failed to require that Federal contractors consider the availability of nondiscriminatory low-income housing for their employees prior to selecting a site for a new facility.

d. In selecting sites for Federal facilities, the Federal Government only recently has begun to give priority to communities with an adequate supply of nondiscriminatory housing for Federal employees.

10. Despite its past responsibility for today's racial polarization, the Federal Government has failed to take adequate measures to enforce fair housing laws.

a. The Department of Justice, whose function is limited in the enforcement of Title VIII, has been handicapped by inadequate staffing. The Justice Department has failed to take a sufficiently active role in coordinating Title VI enforcement among Federal agencies.

b. The Department of Housing and Urban Development has been similarly understaffed and confined in its activities to answering complaints. Until recently, HUD did not conduct systematic reviews of HUD-funded programs for compliance with Title VI of the Civil Rights Act of 1964. Further, HUD has failed to use its own programs adequately to promote fair housing, as required by Title VIII of the Civil Rights Act of 1968.

Recommendations

1. Metropolitan-Wide Residential Desegregation

Congress should enact legislation aimed at facilitating free housing choice throughout metropolitan areas for people of all income levels on a nondiscriminatory basis, thereby reducing racial polarization. This legislation should provide for the following requirements and conditions:

a. Establishment of Metropolitan Housing and Community Development Agencies

Each State should be required, as a precondition to the receipt of future Federal housing and community development grants, to establish, within 1 year, several metropolitan housing and community development agencies in each metropolitan area within its borders or to create a single State metropolitan housing and community development agency with statewide authority. Funds should be provided to the State to finance the planning, establishment, and operation of these agencies.

b. Representation on Metropolitan Housing and Community Development Agencies

Each political jurisdiction in a metropolitan area should be represented on a metropolitan housing and community development agency. Such representation should be based on population, with provisions for representation by minorities and economically disadvantaged groups.

c. Powers and Duties of Metropolitan Housing and Community Development Agencies

(1) Develop within 3 years a plan governing the location of housing at all income levels throughout the metropolitan area. Among the criteria which the plan must satisfy should be the following:

(a) Housing at various prices and rents will be readily accessible to centers of employment.
(b) There will be adequate transportation and community facilities.
(c) The plan will broaden the range of housing choice for families of all income levels on a nondiscriminatory basis.
(d) The plan will facilitate school desegregation.
(e) The plan will assure against placing a disproportionate share of lower-income housing in any single jurisdiction or group of jurisdictions.

HUD should be directed to review and approve each plan to determine consistency with the legislative criteria and feasibility in achieving them.

(2) The location of all housing—nonsubsidized as well as subsidized, conventionally financed as well as FHA or VA—should be subject to the metropolitan housing and community development agency plan.

(3) Metropolitan housing and community development agencies should be granted power to override various local and State laws and regulations, such as large lot zoning ordinances, minimum square footage requirements, and building codes, which impede implementation of the plan.

(4) Metropolitan housing and community development agencies should be authorized to provide housing pursuant to the metropolitan plan. They should be expressly authorized to act as local public housing authorities and should be made eligible for participation in federally-subsidized housing programs, as well as market-priced housing programs, both FHA/VA and conventionally financed. It should be specified that metropolitan housing and community development agencies may provide such housing only to the extent that the traditional housing producers (local public housing authorities, builders, nonprofit sponsors, etc.) are not doing so.

(5) Applications for funds under various community development programs which have housing implications, such as those administered by the Department of Transportation, the Department of Health, Education, and Welfare, and the Environmental Protection Agency, as well as the Department of Housing and Urban Development,[346] should be subject to approval by the metropolitan housing and community development agency for consistency with the metropolitan plan. Such approval should be made subject to review by the Department of Housing and Urban Development.

d. Reimbursement Costs

Funds should be provided to reimburse local jurisdictions, including central cities, for added costs, such as those involved in financing education for the increased number of children of low- and moderate-

[346] For example, the highway program of DOT, 23 USC §109; water and sewer program of HUD, 42 USC §3101 *as amended* (Supp. V, 1965–69), and open space program of HUD, 42 USC §1500 *as amended* (Supp. V, 1965–1969).

income housing in the community resulting from implementation of the metropolitan plan. Local jurisdictions claiming such reimbursement should be required to provide a detailed accounting of the amount of increased cost and how it has been incurred. This could be accomplished through extension of existing Federal programs which give financing aid to educational agencies which have sudden and substantial increases in pupils because of Federal action (example: Public Law 81–874, impact aid.)

e. Affirmative Marketing

Builders and developers of all housing—unsubsidized as well as subsidized, conventionally financed as well as FHA or VA—should be required to develop affirmative marketing plans for minority homeseekers and submit them to the agency. These plans should include the establishment of numerical goals for minority residence, based upon a realistic evaluation of minority housing need at different income levels.

f. Housing Information Centers

Each metropolitan housing and community development agency should establish offices readily accessible to neighborhoods with a high proportion of minority or lower-income households to provide information concerning the location of housing covering a wide range of income levels.

g. The local approval provisions governing the public housing and rent supplement program should be eliminated.

Continuing veto power at the local level could thwart the new agency's purpose.

2. Securing Employment Opportunities

The Office of Federal Contract Compliance should require contractors and subcontractors, as a condition of eligibility for Federal contracts, to demonstrate the adequacy of nondiscriminatory low- and moderate-income housing, in the communities in which they are located or propose to relocate, to meet current and prospective employee needs. In the event the supply of such housing is not adequate, contractors and subcontractors should be required to submit affirmative action plans, including firm commitments from local government officials, housing industry representatives, and civic leaders, that will assure an adequate supply of such housing within a reasonable time following execution of the contract. Failure to carry out the assurance should be made grounds for cancellation of the contract and ineligibility for future Government contracts.

3. Federal Enforcement Efforts

a. Department of Justice—The Civil Rights Division of the Department of Justice should increase its housing section staff and initiate more actions directed against restrictive land use practices and other forms of systematic denial of equal housing opportunity. The Department of Justice also should require all Federal agencies subject to Title VI of the Civil Rights Act of 1964 to adopt strengthened and uniform regulations.

b. Department of Housing and Urban Development—As the leader of the entire Federal fair housing effort, the Department of Housing and Urban Development should employ an adequate fair housing staff, expand programs to provide funding for groups working in the area of fair housing, and conduct increased reviews, including community-wide reviews, of the impact of its programs upon racial concentration.

c. Federal Financial Regulatory Agencies—All Federal financial regulatory agencies should require that supervised mortgage lending institutions take affirmative action to implement the prohibition against discrimination in mortgage financing in Title VIII of the Civil Rights Act of 1968. The agencies should require the maintenance of racial and ethnic data on rejected and approved mortgage loan applications to enable examiners to determine compliance with Title VIII. They should also require mortgage lending institutions to include nondiscrimination clauses in their contracts with builders and developers.

4. National Policy

In addition to the foregoing, the Commission recommends the adoption of a national public policy designed to promote racial integration of neighborhoods throughout the United States. To implement such a national public policy, the Congress should enact and the President should approve legislation designed to provide suitable subsidies, either through property tax abatements, income tax deductions, direct payments, or other such inducements to individuals and families of all races who voluntarily purchase homes in areas that will accomplish such an objective.

Additional Statement by VICE CHAIRMAN STEPHEN HORN

For a decade congressional hearings, Presidential commissions, and scholarly studies have delineated the plight of minority Americans as they have sought access to the burgeoning suburbs which increasingly surround our deteriorating central cities. The latest volume in this literature by the United States Commission on Civil Rights is testimony that what needs to be done has not been done.

In addition to the recommendations which my colleagues and I have made, at least two further points need emphasis. First, there is an immediate need to put the Federal administrative house in order if national policies which relate to adequate education, employment, and housing for our people are to be implemented effectively. To speak of this interrelated trilogy has become almost trite, but the interrelationships are nevertheless true.

Our hearings in St. Louis, Baltimore, Washington, D.C., and elsewhere are replete with evidence of the failure of both intra-agency and interagency coordination to achieve the goal of decent schooling, a paying job, and sufficient shelter for the low-income and minority citizen. If these real human problems are to be addressed by President, Cabinet officer, bureau chief, and civil servant, I would suggest that as a start they begin by reading portions of the transcript of the *Washington Hearing* held June 14–17, 1971 (see pages 153–155; 251–254; 306–307; 322–325; 341–345; 359–361; and 368–369, among others). There and in earlier hearings was revealed a trial of delay and inertia which confronts developer, financier, and builder, local, State, and Federal officials, and tenant and homeowner alike.

It is obvious that too often there is great resistance to proposals for increased Federal coordination from some vested interests in congressional subcommittees, the private sector, and the Federal bureaucracy itself.

But if the interrelations which must be addressed are to be defined and resolved so that houses and apartments can be built for those who are economically and culturally deprived, then casual Federal coordination must be replaced by vigorous Federal coordination in both Washington and the field.

The President's instincts were correct early in 1973 when he sought to designate a particular Cabinet officer to coordinate the activities of several departmental colleagues in related areas. There is also a need for a White House presence in the field so that Federal activities in a region can be brought together in accord with the President's policies. Congress should provide the President with sufficient authority to reorganize and bring together related functions which now exist in various departments and agencies so that he can do the job which the American people have elected him to do.

The second point which needs emphasis is that as we consider the tragic plight of millions of Americans whose only limit to access to suburban America in housing and jobs too often seems to be that the shade of their skin is less than lily white, we must also add another factor: the problems of simply being poor and lacking the cultural background and family impetus to secure an education with which one can attempt to get a job and earn the money to acquire adequate housing.

Testimony was received by the Commission that in the Miami Valley region of Ohio the major migration was by Appalachian whites, not blacks, and that it was more difficult to place the former than the latter.[347] Because of family pride and a lack of emphasis on problems of class as well as race, often the rural-oriented Appalachian white found it more difficult to secure aid than did the more urban-oriented black.[348]

These problems of race and class were noted by the mayor of Cleveland, Carl B. Stokes, who recalled the "great and fearsome resistance" when he sought "to put low-income housing into the white areas" of Cleveland. He added a point which is often overlooked: " . . . I faced not only resistance but some of the most personal vilification not one degree less, and in some respects much more, when I went to put low-income housing for black families in the middle-income black areas in Cleveland."[349] The latter was clearly a case of "class" not "racial" discrimination.

It is time that the Federal Government and Americans generally faced up to the need for economic and class desegregation in schools, jobs, and housing. In our zest to make up for the oversight of two centuries with regard to racial, color, and now sexual discrimination, we have ignored for too long the enormity of this task and the difficulties in achieving progress in school, employment, and housing desegregation if we do not recognize *all* the discriminatory factors which exist. The attempts to view the whole picture of economic and class discrimination have been few and have usually met with the same opposition as attempts at racial desegregation.[350] It is essential that we face up to this problem.

[347] *Washington Hearing* at 24.

[348] *Id.* at 33.

[349] *Id.* at 214.

[350] *See* D. Hubert, *Class . . . and the Classroom: The Duluth (Minnesota) Experience*, *Saturday Review*, May 27, 1972, at 49, 55–58.

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