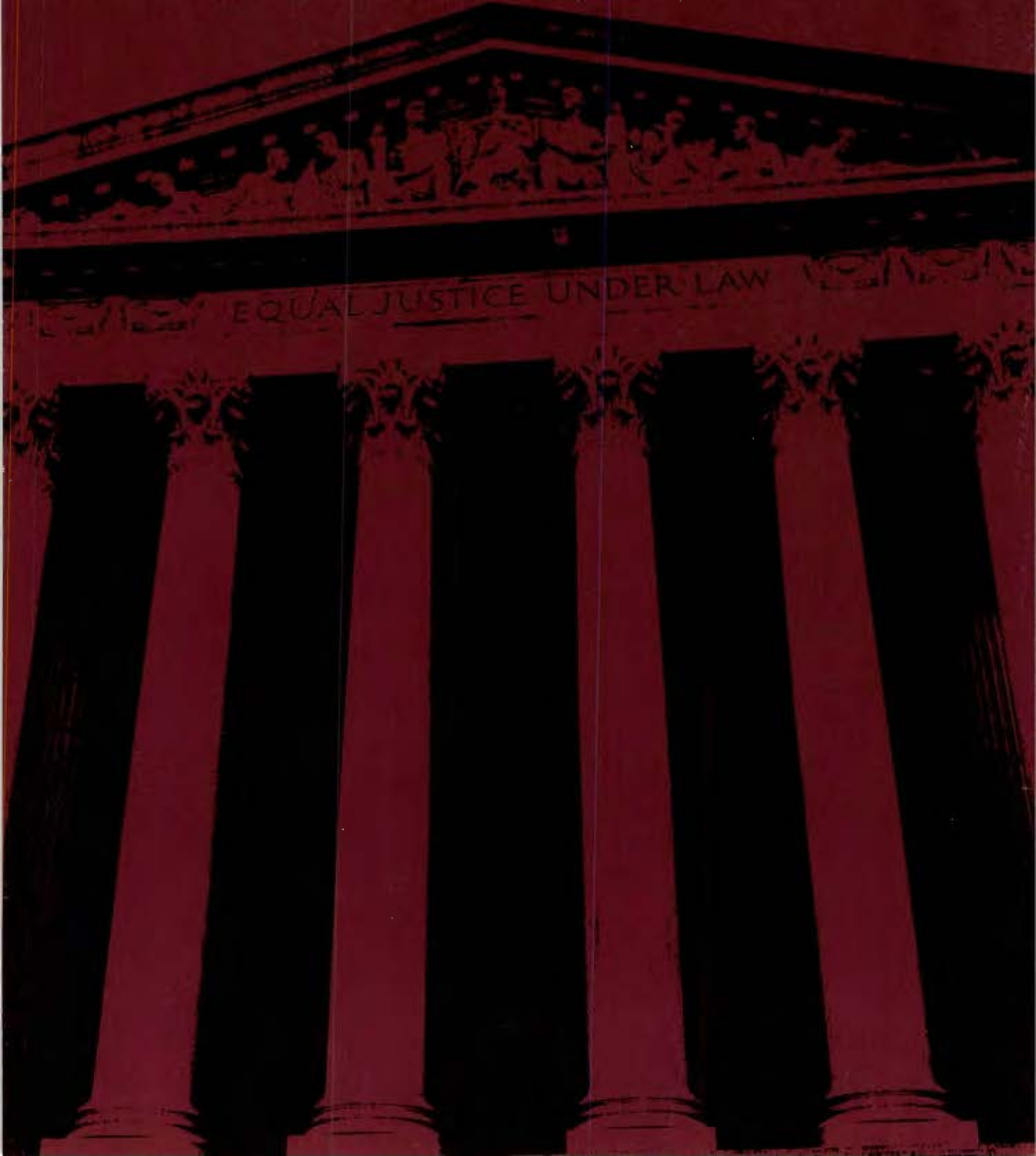
Twenty Years After Brown

A Report of the United States Commission on Civil Rights



U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their 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 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 in respect to denials of equal protection of the laws because of race, color, religion, sex, or national origin;
- Submit reports, findings, and recommendations to the President and the Congress.

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Twenty Years After Brown

A Report of the United States Commission on Civil Rights

PREFACE

On September 9, 1957, President Dwight D. Eisenhower signed into law the first Federal civil rights act in the United States in 82 years. Under part I, the U.S. Commission on Civil Rights was established as a temporary, independent, bipartisan, Federal agency. Former Secretary of State Dean Acheson hailed the entire piece of legislation as the greatest achievement in the field of civil rights since the 13th amendment,[1] and historian Foster Rhea Dulles described the Commission as "but one manifestation of the belated response of a conscience-stricken people to the imperative need somehow to make good the promises of democracy in support of equal protection of the laws regardless of race, color, religion, or national origin." [2]

In fact, both the Civil Rights Act of 1957 and the U.S. Commission on Civil Rights were primarily the result of *Brown v. Board of Education,* [3] the Supreme Court's landmark school desegregation decision in 1954. It was southern resistance to compliance with *Brown* which led to mounting civil rights pressure and the consequent decision of the Eisenhower administration to introduce the civil rights legislation.[4] And it was the same resistance which produced almost a 2-year delay in passage of the civil rights act and creation of the Commission.

The President, in his 1956 state of the Union message, had asked Congress to create a civil rights commission [5] to investigate charges "that in some localities. . .Negro citizens are being deprived of their right to vote and are likewise being subjected to unwarranted economic pressures." A draft of the administration's proposal then was sent to the Senate and House of Representatives on April 9, 1956. The bill was passed by the House in July but died in committee in the Senate after threat of a filibuster. President Eisenhower resubmitted the bill as he began his second term, and an acceptable compromise version of the legislation finally was approved despite southern attacks and characterization of the proposed Commission on Civil Rights as an agency "to perpetuate civil wrongs."

Initially established for a period of 2 years, the Commission's life has been extended continuously since then, most recently on October 14, 1972, for a period of 5-1/2 years.

Briefly stated, the function of the Commission is to advise the President and Congress on conditions that may deprive American citizens of equal treatment under the law because of their color, race, religion, sex, or national origin. (Discrimination on the basis of sex was added to the Commission's jurisdiction in 1972.) The Commission has no power to enforce laws or correct any individual injustice. Basically, its task is to collect, study, and appraise information relating to civil rights throughout the country and to make appropriate recommendations to the President and Congress for corrective action. The Supreme Court has described the Commission's statutory duties in this way:

> . . .its function is purely investigative and factfinding. It does not adjudicate. It does not hold trials or determine anyone's civil or criminal liability. It does not issue orders. Nor does it indict, punish, or impose any legal sanctions. It does not make determinations depriving anyone of his life, liberty, or property. In short, the Commission does not and cannot take any affirmative action which will affect an individual's legal rights. The only purpose of its existence is to find facts which may subsequently be used as the basis for legislative or executive action.[6]

[1] Dean Acheson, "A Word of Praise," *Reporter,* Sept. 5, 1957, p. 3.
[2] Foster Rhea Dulles, *The Civil Rights Commission: 1957–1965* (Lansing: Michigan State University Press, 1968), p. ix.
[3] 347 U.S. 483 (1954).
[4] Dulles, *The Civil Rights Commission,* p. 3.
[5] *To Secure These Rights,* the 1947 report of President Harry S. Truman's Committee on Civil Rights, previously had recommended creation of such a commission to study the whole civil rights problem and make recommendations for its solution.
[6] Hannah v. Larche, 363 U.S. 420, 441 (1960). Louisiana voting registrars sought to enjoin the Commission from conducting a hearing into discriminatory denial of voting rights. When the lower court held that the Commis-

Specifically, the Civil Rights Act of 1957, as amended, directs the Commission 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;

Submit reports, findings, and recommendations to the President and Congress.

The facts on which the Commission's reports are based have been obtained in various ways. In addition to its own hearings, conferences, investigations, surveys, and related research, the Commission has drawn on the cooperation of numerous Federal, State, and local agencies. Private organizations also have been of immeasurable assistance. Another source of information has been State Advisory Committees that, under the Civil Rights Act of 1957, the Commission has established throughout the country.

Since its creation, the Commission has issued more than 200 reports and made over 200 recommendations to the President and the Congress. These recommendations have encompassed the fields of voting, housing, employment, education, administration of justice, equality of opportunity in the armed forces, and Federal enforcement of civil rights laws. The majority of these recommendations eventually have been included in Federal Executive orders, legislation, and program guidelines. It has been reported that the "Civil Rights Act of 1964 and the Voting Rights Act of 1965 were built on the factual foundations of racial discrimination portrayed in the Commission's reports and in part they embodied these reports' specific recommendations for remedial action."[7]

Throughout its 18-year-history, the U.S. Commission on Civil Rights has "established national goals, conceived legislation, criticized inaction, uncovered and exposed denials of equality in many fields and places, prodded the Congress, nagged the Executive, and aided the Courts. Above all, it has lacerated, sensitized, and perhaps even recreated the national conscience."[8] The extent to which the Commission has achieved its results perhaps may be attributed in large measure to its continuing concern with specific constitutional rights on a nationwide basis and in all fields affected by race and ethnicity. "The interrelationship among discriminatory practices in voting, education, and housing made it impossible to think that equal protection of the laws could be maintained by action in one field alone; the overall problem had to be simultaneously attacked on all fronts."[9]

On the 20th anniversary of *Brown v. Board of Education,* then, it seems appropriate for the U.S. Commission on Civil Rights to commemorate the Supreme Court's decision with an examination of civil rights progress between 1954 and 1974. The Commission wishes to honor *Brown* by showing that it is a decision which continually affects one of the most vital areas in the life of our Nation. The Commission wishes to call to mind clearly the meaning and promise of *Brown* as intrinsic elements in the fulfillment of American ideals. The Commission wishes to commemorate *Brown* by relating the Supreme Court's judicial pronouncement to the lives of human beings.

The Commission, therefore, is publishing a series of concise reports summarizing the status of civil rights in education, employment, public accommodations, and housing. In which ways, and to what extent, have the lives of black Americans and members of other minority groups changed? Where has progress been made, where has it been limited, where has it been nonexistent, and why? How is *Brown* as yet largely unfulfilled? What must be done to bring about the racial equality affirmed by the Supreme Court 20 years ago?

The Commission seeks through these reports to commemorate *Brown v. Board of Education* as a landmark, a divide in American race relations—as

sion's procedural rules were not within its authority, the Commission appealed to the Supreme Court. The Court reversed the judgment below and held that the Commission's rules did not violate the due process clause of the fifth amendment.

[7] Dulles, *The Civil Rights Commission,* p. xi.

[8] Berl Bernhard, "Equality and 1964," *Vital Speeches,* July 15, 1963.

[9] Dulles, *The Civil Rights Commission,* p. 79.

the starting point for a second American revolution. If that revolution, within the limits of American law and based upon the law, has not been concluded, this is more a comment on those of us who have been called upon to complete the task than on the judgment which set the task in the beginning.

[The chapters of this report were first issued separately between June 1974 and December 1975. The letters of transmittal that accompanied them may be found in appendix B.]

ACKNOWLEDGMENTS

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Prologue

Linda Brown was only 7 years old when her father, the Reverend Oliver Brown, took her by the hand for the short walk to Sumner Elementary School in Topeka, Kansas. Their first steps in this unsuccessful attempt to enroll Linda in the second grade at the "white" school four blocks from their home marked the beginning of a long struggle to open segregated schools to black children everywhere. One year later, Reverend Brown filed suit against the school board of Topeka. After 3 more years, on May 17, 1954, Chief Justice Earl Warren announced the decision of the Supreme Court of the United States in *Brown v. Board of Education.*

Even though her family lived in an integrated neighborhood, Linda could not attend Sumner because she was black, and 24 years later Linda still recalls the hurt and bewilderment she felt each fall when she had to leave her white and Mexican American playmates and travel almost 2 miles to a "Negro" school. In describing the circumstances that led her father to press her case against Topeka's segregated school system, Linda now remembers:

> Both of my parents were extremely upset by the fact that I had to walk six blocks through a dangerous train yard to the bus stop—only to wait, sometimes up to half an hour in the rain or snow, for the school bus that took me and the other black children nearly 2 miles to "our school." Sometimes I was just so cold that I cried all the way to the bus stop. . .and two or three times I just couldn't stand it, so I came back home.[1]

It was her father's reaction to the news that Linda had returned home crying on one of those bitterly cold days that prompted him to act. Linda recalls: "Mother said that she had never seen him so angry. He was so fed up with the cruelty and injustice of it all that he decided then and there this was going to have to stop." Her memories of the day when her father confronted the principal at Sumner are still vivid:

> Daddy told me, "I know that they aren't going to accept you, but I'm going to try." I remember him going into the office with the principal. I don't know what they said, but they spoke very sharply. We walked home that morning very briskly. My father was holding my hand, and I could just feel the tension in him.

"Naturally," Linda's mother remembers, "the principal gave the expected excuse: there wasn't anything he could do about it—Negro children couldn't attend Sumner because of the school board's policies." But after the refusal, Reverend Brown contacted his friend and former classmate at Topeka High School, Charles Scott. Reverend Brown was a member of the Topeka branch of the National Association for the Advancement of Colored People, and Mr. Scott was the local NAACP attorney. They agreed that a suit against the school board was their best hope for relief.

Oliver Brown soon was joined in his suit by 12 other black parents acting in behalf of their children, and the case was taken to the United States District Court for the District of Kansas. A three-judge panel subsequently held that segregation impaired the development of black school children, but the judges said that, as long as school facilities and programs were substantially equal, no relief could be provided. The case was appealed to the Supreme Court.

Almost at the same time, the issues raised in the Kansas case were being raised in four other cases

[1] Unless otherwise indicated, quotations are taken from interviews with Linda Brown Smith and her mother, Leola Brown Montgomery, on December 7, 1973, Topeka, Kansas.

that eventually were decided on the same day as *Brown.* [2] These cases were from South Carolina, Virginia, Delaware, and the District of Columbia. In each case, school segregation was the basic complaint, and in each case testimony from social scientists was presented to show the psychological harm inflicted by such segregation. Not only were black children damaged, according to the evidence, but also the view was expressed that white children could not avoid the scars produced by racial exclusion. In various ways, each of these cases made its way to the Nation's highest court.

Although the five cases originated with different plaintiffs in different courts, one organization assisted in the direction of them all. The NAACP, through its Legal Defense and Educational Fund, had moved from courtroom victory to courtroom victory in its continuing battle to abolish racial discrimination. After obtaining a series of successful rulings dealing with higher education, the NAACP had reached the point where it felt that a direct attack on public school segregation was possible. In the cases coming before the Supreme Court with *Brown,* the NAACP prepared carefully for an historical moment.

In addition to the written argument filed with the Supreme Court by the NAACP in behalf of five sets of black litigants, 24 "friend of the court" briefs were submitted by civil liberties, labor, and Jewish organizations. A brief also was submitted by the Solicitor General of the United States in behalf of the United States Government.

The NAACP emphasized historical evidence to show that the 14th amendment to the Constitution was intended to rule out segregation in public schools. It related the cases before the Court to survival in the cold war with the Soviet Union, through the need for domestic racial harmony, and called attention to scientific findings. An appendix presented the statement of 32 noted social scientists who described the harm to blacks and whites under conditions of segregation and expressed the belief that desegregation could be accomplished without violence.

Oral argument in the school segregation cases began on December 9, 1952, but after 3 days the Court decided that it was in need of more information and set a further hearing for the following year. During the interim, Chief Justice Fred M. Vinson died, and President Dwight D. Eisenhower appointed Earl Warren, Governor of California, to the vacant position. Chief Justice Warren had not yet been confirmed by the Senate when reargument on the school cases concluded on December 9, 1953, 1 year after the initial hearing. More than 10 additional hours of argument had taken place, and now the Court would make its decision.

On May 17, 1954, Chief Justice Warren finally presented the unanimous opinion. He explained how the four cases involving school segregation in Kansas, South Carolina, Virginia, and Delaware had reached the Supreme Court. He discussed the issue raised by the lawyers for the plaintiffs—that "segregated public schools are are not 'equal' and cannot be made 'equal,' and that hence they are deprived of the equal protection of the laws." He pointed out that "education is perhaps the most important function of state and local governments," so important that "it is doubtful if any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."

Chief Justice Warren continued, saying: "We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does." He stated that to separate black children "from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." And then he said: "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

The decision of the Supreme Court in *Brown v. Board of Education* had taken less than 15 minutes to read, culminating in the final phrase, "It is so ordered."

Chief Justice Warren next delivered the Court's opinion in the District of Columbia case, using fewer than 600 words to deal with school segregation in the Nation's capital. Although adjudicated at the same time as *Brown, Bolling v. Sharpe* [3] involved the 5th amendment rather than the 14th amendment to the Constitution, inasmuch as the District of Columbia

[2] For a full description of the school segregation cases, see Daniel M. Berman, *It is So Ordered: The Supreme Court Rules on School Segregation* (New York: Norton, 1966), upon which this summary is based.

[3] 347 U.S. 497 (1954).

was governed by the Congress, and the 14th amendment applied only to the States.

Involving the same issues as *Brown,* and concluding with the same decision, the case alleged deprivation of the plaintiffs' liberty without due process of law. Chief Justice Warren stated simply that "the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive." He concluded:

> Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper govermental objective. Segregation in public education is not reasonably related to any proper governmental objective, and thus it imposes on Negro children of the District of Columbia a burden that constitutes an arbitrary deprivation of their liberty. . . .

The 1954 decisions made the finding that "separate but equal" education was unconstitutional, but they did not specify how dual school systems for black and white children were to be dismantled. Segregation was not merely a legal entity in the Southern and Border States, it was a way of life, a ritual performed hundreds of times daily. The Supreme Court was reluctant to set a legal edict against the strong and ingrained traditions of racial segregation when dire results were likely to flow from it. Consequently, it scheduled the school segregation cases for further arguments on proposed remedies.

The hearing in *Brown II* began on April 11, 1955, and involved not only the original litigants but also the United States Department of Justice.[4] The States, the black plaintiffs, and the Federal Government presented different plans for implementing the original decision, and each implored the Court to act in the interest of the respective parties. On May 31, 1955, 6 weeks later and almost exactly 1 year after *Brown I,* the decision on how to implement the original decree was handed down.

Brown II said that the cases were to be sent back to the Federal district courts because:

> Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal.

The Supreme Court also outlined the duties of the district courts in handling the cases:

> While giving weight to these public and private considerations, the courts will require that the defendants make a prompt reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date.

Since the decisions rendered in the *Brown* cases affected the parties directly involved and the classes of persons they represented in four States and the District of Columbia, the lower courts were to "take such proceedings and enter such orders and decrees consistent with this opinion. . .as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases."[5]

However, those States which were not directly affected by the *Brown* decision, and where no legal action to desegregate schools had been initiated, had no obligation to act, even with deliberate speed. And they did not.[6]

It is one of those ironies of history that when the formerly all-white elementary schools of Topeka opened their doors to black children for the first time in September 1954, Linda Brown was too old to enjoy the satisfaction of that four-block walk to Sumner. Instead, she entered the seventh grade at a previously integrated junior high school. Yet 20 years later, as Linda Brown (now Linda Brown

[4] 349 U.S. 294. The States of Florida, North Carolina, Arkansas, Oklahoma, Maryland, and Texas also filed briefs and participated in the oral argument.

[5] The phrase "all deliberate speed" apparently had great significance for Justice Felix Frankfurter, who wrote the opinion. It had been used by Sir Walter Scott, among others, and Oliver Wendell Holmes also employed it: "A question like the present should be disposed of without undue delay. But a state cannot be expected to move with the celerity of a businessman; it is enough if it proceeds, in the language of the English Chancery, with all deliberate speed."

[6] Even Topeka, Kansas, 20 years after *Brown,* apparently still remains a virtually segregated school system. In September 1973, on behalf of 10-year-old Evelyn Renee Johnson, Mrs. Marlene Miller, her maternal aunt, filed suit against the Topeka school board, basing her complaint on the precedent in *Brown.* The U.S. Department of Health, Education, and Welfare, also named in the action, has since ordered the school board to develop corrective remedies, and the case was pending in early 1974.

Smith) talks about the impact of the decision, she comments:

> Well, even though I didn't go to Sumner, at least my younger sisters benefited. They entered desegregated elementary schools that fall. In general, the transition was so smooth that you really couldn't believe it. There weren't any incidents. It was just as if black and white children had been going to school together all the time.

As the principal plaintiff in what has been termed "the case of the century," she summarizes the effect of *Brown* quite succinctly: "I think the decision was the whole turning point for black America. From this single decision to open schools to blacks, everything else has opened. So, after 100 years of bondage, this was the key to the beginning of freedom."

The Shadows of the Past

The decision in *Brown v. Board of Education* was "one of the great milestones in the history of the United States."[7] The effect of the decision was a "social upheaval the extent and consequences of which cannot even now be measured with certainty."[8]

If nothing is as powerful as an idea whose time has come, the impact of *Brown* would be quite understandable. Yet, in 1954, the "idea" in *Brown* was at least 178 years old, having been announced by the Declaration of Independence in 1776: "We hold these truths to be self-evident, that all men are created equal." Perhaps the interval between the Declaration of Independence and *Brown* and the response elicited by the Court's decision simply attest to the stubborn resistance of a society previously unable to resolve the root problem: race.

The Supreme Court itself had offered a contrary approach to this problem on several occasions during the interim. In 1857, for example, the Court described black Americans, then slaves, as a class of persons who were "regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect. . . ."[9] In 1896, 31 years after the end of the Civil War, the Court still declared: "If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane."[10]

Gunnar Myrdal later termed this conflict between the professed ideals of the American people and the reality of our behavior in race relations, often sanctioned by the judicial system, "an American dilemma."[11] *Brown* initiated the most vigorous legal assault on the dilemma in American history, thereby ensuring both social change and vigorous opposition. It is not yet clear whether the opposition has abated; the change has not.

From many quarters the *Brown* decision was greeted as "a pronouncement second in importance only to President Lincoln's Emancipation Proclamation," and the extensive shock it caused in the South was attributed to "its simple recognition of the fact that Negroes are citizens of the United States."[12] School segregation certainly represented a special symbol to white southerners; and, 1 year before the Court's decision, Hodding Carter of Mississippi wrote that "a Supreme Court ruling against segregation would be 'revolutionary' in character."[13] *Brown,* in fact, did evoke the anticipated reaction in the South, where the day of the Court's decision already had been labeled Black Monday.

The Southern Manifesto of 1956, signed by 101 Senators and Members of the House of Representatives, declared *Brown* "unwarranted," "a clear abuse of judicial power," and a substitution of "personal political and social ideas for the law of the land." Governor Stanley of Virginia, but one spokesman among many, said that it would result in a "destruction of our schools."[14] James J. Kilpatrick, a leader in "massive resistance" and "interposition," whose views apparently have changed since then, described black Americans in terms similar to those used in *Dred Scott* and *Plessy,* concluding that white and black cannot come together, as equals, in any relationship that is intimate, personal, and prolonged. In the public schools, he said, "the relation is keenly intimate—as intimate as two desks touching, as two toilets in a washroom."[15]

[7] Benjamin Muse, *Ten Years of Prelude: The Story of Integration Since the Supreme Court's 1954 Decision* (New York: Viking, 1964), p. 1.
[8] Robert Carter, "The Supreme Court and Desegregation," *The Warren Court: A Critical Analysis,* eds. Richard Sayler, Barry B. Boyer, and Robert E. Gooding, Jr. (New York: Chelsea House, 1969), p. 55.
[9] Dred Scott v. Sanford, 60 U.S. 393, 407 (1857).
[10] Plessy v. Ferguson, 163 U.S. 537, 552 (1896).
[11] See Gunnar Myrdal, *An American Dilemma* (New York: Harper, 1944).
[12] Muse, *Ten Years of Prelude,* pp. 1, 38.
[13] Cited in Anthony Lewis and the *New York Times, Portrait of a Decade: The Second American Revolution* (New York: Random House, 1964), p. 5.
[14] Ibid., p. 44.
[15] James Kilpatrick, *The Sovereign States: Notes of a Citizen of Virgina* (Chicago: Regnery, 1957), p. 281.

Yet *Brown* reached far beyond the South, bringing forth a repetitive tide of protest as its consequences impinged upon previously unrecognized northern racial policies and feelings. The issues sometimes were defined differently, and in many ways are as yet unresolved, but more careful and complicated language merely cloaked the same essential problem. The most important outcome of *Brown,* in retrospect, "may well have been the awakening of northern opinion to the meaning of racism."[16]

Brown, nevertheless, did not find unqualified praise even from those in the North who applauded it as an historic landmark. "The cruelty of segregation is so obvious," wrote Edmund Cahn, "that the Supreme Court could see it and act on it even after reading labored attempts to demonstrate it 'scientifically.'"[17] Indeed, said Robert Coles, "what was right—ethically, philosophically, religiously, *humanly* —had to prevail. It seemed almost (and literally) blasphemous that the court had to bulwark its decision with all sorts of psychological and sociological testimony."[18] Howard Moore, however, protested that *Brown* still was founded on the assumption that whites are superior to blacks and on a "factual showing of demonstrable injury" to black children in segregated schools, thereby making the decision susceptible to reversal if the facts someday were overturned.[19]

But, if the use of social science to justify the Court's argument was criticized by proponents of the verdict, the second *Brown* decision—in which the Court in 1955 loosely called for implementation of school desegregation "with all deliberate speed"—provided an even more vulnerable target. If the effect of segregation on black children is so monstrous as to affect "their hearts and minds in a way unlikely ever to be undone," as the Court had stated, then there was "no constitutional warrant for the gradual implementation of the Fourteenth Amendment ordered in 1955," said Moore.[20] "This decision to delay integration," Lewis M. Steel wrote, "was more shameful than the Court's 19th-century monuments to apartheid."[21]

Still, *Brown* rises above its critics. It gave momentum to the civil rights movement, Archibald Cox pointed out, which in turn "required that the Court preside over parts of a social and political revolution seeking accomplishment within the frame of constitutionalism, if possible, yet ready if necessary to burst the bonds of law." The decision "restated the spirit of America and lighted a beacon of hope for Negroes at a time when other governmental voices were silent," and later there was "no problem extending Brown's promise of racial equality throughout the realm of official actions. Any thought that only schools were affected was soon dissipated."[22]

In more recent years the reach of *Brown* has been extended to include ethnic groups that have suffered a more covert or less publicized discrimination. Those ethnic groups which have resisted cultural assimilation—especially groups of a darker color—indeed have been regarded as an alien race. Consequently, they have been confronted with problems similar to those facing black Americans, American Indians, and Asian Americans.[23] Mexican Americans and Puerto Ricans, for example, now are included in the Court's deliberations.[24]

If the ruling of "all deliberate speed" was "a grave mistake," Robert Carter, nonetheless, continued to declare that *Brown* "marks a divide in American life." In *Brown,* he said:

> the psychological dimensions of America's race relations problem were completely recast. . . . *Brown's* indirect consequences, therefore, have been awesome. It has completely altered the style, the spirit, and the stance of race relations. Yet the pre-existing pattern of white superiority and black subordination remains unchanged.[25]

"We are accustomed to thinking of the abolition of slavery as marking a sharp and complete break with the past," Loren Miller wrote. "The truth is that the long shadow of slavery still falls over the Negro and determines many present day attitudes toward him."[26] So it is with *Brown* and the abolition of segregation and racial inequality, however incom-

[16] Lewis, *Portrait of a Decade,* p. 9.
[17] Cited in Muse, *Ten Years of Prelude,* pp. 12-13.
[18] Robert Coles, *Farewell to the South* (Boston: Little, Brown, 1972), p. 273.
[19] See Howard Moore, *"Brown v. Board of Education," Law Against the People: Essays to Demystify Law, Order and the Courts,* ed. Robert Lefcourt (New York: Vintage Books, 1971).
[20] Moore, *"Brown v. Board of Education,"* p. 57.
[21] Lewis M. Steel, "Nine Men in Black Who Think White," *Race, Racism and American Law,* ed. Derrick Bell, Jr. (Boston: Little, Brown, 1973), p. 95.
[22] Archibald Cox, *The Warren Court: Constitutional Decision as an Instrument of Reform* (Cambridge, Mass.: Harvard University Press, 1968), pp. 25-26.
[23] See Nathan Glazer and Daniel P. Moynihan, *Beyond the Melting Pot* (Cambridge, Mass.: MIT and Harvard University Press, 1963).
[24] See Keyes v. School District No. 1, Denver, Colorado, 402 U.S. 182 (1971), where it was held that the lower court "erred in not placing Negroes and Hispanos in the same category since both groups suffer the same educational inequities when compared with the treatment afforded Anglo students."
[25] Carter, "The Supreme Court and Desegregation," p. 56.
[26] Loren Miller, *The Petitioners: The Story of the Supreme Court of the United States and the Negro* (New York: Pantheon, 1966), p. vii.

plete. The long shadows of segregation and racial inequality still fall over black Americans, and over us all.

The Roots of Slavery

The idea that blacks are racially inferior has been a persistent theme in American history. For over 300 years, the twin institutions of slavery and segregation have been justified by religious beliefs and allegedly scientific findings which describe whites as racially superior to blacks. Even today, new arguments are being found to undergird a "scientific" racism which is slowly entering the popular thought and literature of America. This latest version proclaims that black Americans are genetically inferior to white Americans.[27]

The tap roots of the mid-20th century genetic theory of racial inferiority are buried deep in American history. At different points in time, religion, physical anthropology, biology, and the social sciences have been used to develop a patchwork of theories "explaining" the "inferiority" of blacks. Consequently, the Nation developed a racial ideology in which the black American was the *persona non grata* of our society.

The historical consequence of that racial ideology has been the formation of social institutions structured on the racial beliefs of white citizens. Other racial and ethnic groups, particularly those of color—American Indians, Asian Americans, Mexican Americans, and more recently Puerto Ricans—have also been victims of racism.

A continuous conflict in race relations has scarred the stated equalitarian purposes of the United States. Therefore, when the Supreme Court held on May 17, 1954, that "separate educational facilities are inherently unequal," black Americans, for the second time in their struggle to achieve racial equality, were justifiably optimistic. Not since the end of the Civil War, when slavery was abolished, had black Americans had such an occasion for celebration. They believed they were witnessing the genesis of a new American society, a society in which segregation would be no more than an historical footnote.

But, to the generations of their ancestors who lived and died under the yoke of slavery and segregation, neither institution was a mere footnote. The core of racial beliefs structuring each institution was predicated upon their skin color, which signaled to other Americans that they were different. Because they were believed to be different, they were treated differently. It had been so from the beginning.

The ancestors of black Americans came to the United States in wooden slave ships that plied off the coast of Africa in the 17th century. They had been captured and kidnapped from their homelands and driven across the African continent, chained up on the African coast, and stacked in the holds of slave ships. Then they had been carted to the New World as merchandise to be purchased—first to the West Indies and then north and south into the British and Spanish colonial settlements of North and South America.

European contact with the western bulge of Africa occurred at least a half-century before the voyage of Columbus. To Europeans, and particularly to the English, the most striking physical feature of the African was his color. "Englishmen found in the idea of blackness," wrote an historian of the period, "a way of expressing some of their most ingrained values. Black was an emotional partisan color, the handmaiden and symbol of baseness, and evil, a sign of dangerous repulsion." To the Englishmen, he continued, "white and black connoted purity and filthiness, virginity and sin, virtue and baseness, beauty and ugliness, beneficence and evil, God and the Devil."[28]

The 20 Africans who were forcibly brought to American at Jamestown, Virginia, in 1619 and those Africans who were later brought to the other British colonies did not come as slaves but as indentured servants. Enslavement came later.

Virginia, like other British colonies, suffered from an acute labor shortage. Failure to exploit the Indian and the inability to hold white indentured servants in bondage for more than a few years led to the increasing importation of Africans to satisfy the colony's demand for a continuous supply of laborers. These black laborers fell into three categories: free men, indentured servants, and slaves. Gradually, however, even most black indentured servants were reduced to slavery.

In 1641, 22 years after the Africans arrived in the colony, Virginians adopted the practice of refusing to release them from their indentured contracts. The result was that the Africans were kept in a state of

[27] For a detailed discussion of this argument see I.A. Newby, *Challenge to the Court: Social Scientists and the Defense of Segregation, 1954–1966* (Baton Rouge: Louisiana State University Press, 1967).

[28] Winthrop D. Jordan, *White over Black: American Attitudes Toward the Negro, 1550–1812* (Chapel Hill: University of North Carolina Press, 1968), p. 7.

permanent servitude. Finally, in 1661, the Virginia legislature converted the practice into law, transforming the status of blacks from indentured servants to bondsmen for life. In 1663, Maryland followed Virginia's example.

The economic basis of slavery was buttressed by a curious mixture of beliefs, and, if only blacks were enslaved, their position in colonial society could be determined by their color. Furthermore, when a slave escaped from his master, he could be identified as a fugitive wherever he ventured in colonial America.

To those blacks who completed their bonded time, "free papers" were issued, attesting to their freedom. Nevertheless, they were restricted from participating fully in the life of the colonies.

The general assumption in 17th century America was that Christians could not be enslaved. An early publication discussing the "main ends" of Virginia'a settlement emphasized the religious thought of the colonist: "The Principle and Maine ends of Virginia," the colonists said, were "first to preach and baptize into Christian religion and by propagation of the Gospel, to recover out of the arms of the Divell, a number of poore and miserable soules, wrapt unto death, in almost invincible ignorance. . .and to add to our myte the Treasury of Heaven."[29] While the passage is a statement of the religious attitudes held by the colonists toward the Indians, how much more did the importation of "heathen" Africans into the colonies enable Virginians to "add to our myte the Treasury of Heaven"? Although a slave was baptized a Christian, his baptism did not change his class status. The colonists believed that by converting the "heathen" African to Christianity, they were indeed doing "God's work."

Not all colonists supported the institution of slavery. Of the many religious groups in colonial America, only the Quakers and Puritans openly opposed slavery and cautioned their members against holding blacks as property. They established schools for black children, opposed the African slave trade, and barred their members from entering it. It was the Quakers, in 1688, who organized the first protest against slavery in Germantown, Pennsylvania. But most colonists were indifferent to the plight of the blacks until the American Revolution, when they were forced to consider the hypocrisy of espousing freedom for themselves while denying freedom to their slaves.

Thomas Jefferson was aware of the injustice of slavery as he wrote the Declaration of Independence. Although Jefferson condemned the English for initiating and continuing the African slave trade, his personal belief in the inferiority of blacks is unquestioned. In 1786, in his *Notes on Virginia,* he described blacks as "ugly," with "a very strong and disagreeable odor." He cited the mental abilities of blacks as the final proof of hereditary inferiority. "In memory," Jefferson penned, "they are equal to the whites; in reason much inferior," and in "imagination they are dull, tasteless, and anomalous. . . . I advance it therefore, as a suspicion only, that. . .blacks, whether originally a distinct race or made distinct by time and circumstance, are inferior to the whites in the endowment of both body and mind."[30]

In the events preceding American independence from Great Britain, one of the first Americans to die was Crispus Attucks, a free black slain in the Boston Massacre of 1770. The colonists, however, initially could not bring themselves to arm blacks in the quickening hostilities with Great Britain. Notwithstanding the arguments of George Washington against the use of black troops, over 5,000 blacks later were enlisted into the ranks of the Revolutionary Army. After the war, many of them were freed while others were returned to slavery.

The task of forming a new government was the next challenge to the former colonists. The Articles of Confederation, drawn up in 1781, proved inadequate to meet the political demands of the new nation, and in 1787 delegates from the new States met in Philadelphia to revise them. But the problems were too overwhelming to be handled by a revision. The result was a new instrument of government—the Constitution of the United States.

Slavery was a foremost concern for the delegates to the Constitutional Convention. While the word slave does not appear in the Constitution, careful analysis illustrates how deeply ingrained the problem of slavery was. When the work of the delegates was completed, the final draft of the Constitution, Article I, Section 2, contained the infamous "three fifths of all other Persons" clause.

Both Northern and Southern States argued over how their populations were to be counted for

[29] Thomas F. Gossett, *Race: The History of an Idea in America* (Dallas: Southern Methodist University Press, 1963), p. 18.

[30] Cited in Gossett, *Race,* p. 42.

purposes of representation in Congress and for taxation. Northern delegates opposed the counting of slaves for the purpose of representation but favored their inclusion in the whole population when taxes of the respective States were levied. The Southern States held the opposite view: they said slaves should be counted for representation in Congress but not for the levying of taxes. A compromise was agreed upon: three-fifths of all slaves in a State were to be counted with the free population to determine the basis for representation and taxation.

The Southern States urged the delegates to incorporate another provision into the Constitution whereby slaves would continue to be imported into the United States. To that end, Article I, Section 9, approved the continuation of the African slave trade, which some delegates wanted ended. "The Migration or Importation of such Persons as any of the States now existing think proper to admit," the Constitution stated, "shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight. . . ." Congress, therefore, was prohibited from interfering with the slave trade for 20 years.

The South insisted upon another provision which forced each State to return any slave who escaped from bondage and prevented Federal interference. Article IV, Section 2, stated: "No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due." Later, in the 1830s, antislavery advocates would point to the Constitution as a proslavery document.

The Politics of Slavery

The first census of the United States, in 1790, showed that there were 757,181 blacks in the United States. Of that number, 59,557 were free, and 697,624 were slaves. But after 1800, slavery became deeply entrenched in the political, economic, and social life of the Nation. Between 1800 and 1860, the black slave population increased from 893,602 to 3,953,760.[31] Ninety percent of the slaves lived in the South Atlantic States of Virginia, North Carolina, South Carolina, and Georgia. In the Middle Atlantic States (Delaware, Pennsylvania, New Jersey, and New York) slavery was declining, and in the New England States it was almost nonexistent.

Most Americans thought that slavery was a dying institution, but events in England helped to weave the system of slavery even more tightly into the social fabric of the country. Steam was harnessed to power new spinning and weaving machinery. The new technology created an insatiable demand for cotton, and, aided by invention of the cotton gin, America rose to the challenge. Southern plantation owners shifted their crops from indigo, rice, and tobacco to "King Cotton." More land was put into the production of cotton than any other single crop, which, in turn, created a demand for more slaves to work the new money crop.

As new States entered the Union, each became part of a delicate political balance between those States that were free and those that maintained slavery. The question of how States were to enter the Union was settled, for the moment, by the Missouri Compromise of 1820, in which Congress decided that all States entering the Union south of 36°30' latitude were to be slave States and all States entering the Union north of 36°30' latitude were to be free States. The Compromise, therefore, threw the issue of slavery into Congress for the first time since the Constitutional Convention of 1787.

The triple demand for land, cotton, and slaves set into motion a great movement of people. Europeans swelled the population of the Western States. Within America, large groups moved from the Atlantic seaboard to the West, Southwest, and Gulf States. Mostly from the middle and lower classes, the migrants owned neither land nor slaves, and most wanted no involvement in slavery. Their religious beliefs were opposed to it, and they advocated equality for all. But others supported slavery and inequality, and the Southwestern and Western States became a battleground for the struggle between slavery and freedom. Emergence of the "cotton kingdom" added to the struggle. Migrants flocked to the Gulf States of Louisiana, Mississippi, Alabama, and eastern Texas between 1815 and 1840, and by the 1830s these States produced most of the cotton grown in the United States.

The first 60 years of the 19th century saw sectionalism growing in the United States. While cotton was taking over the South, the North was becoming industrialized. In an industrial economy,

[31] See *Negro Population in the United States, 1790–1915* (New York: Arno Press and The New York Times, 1968), p. 53.

the North maintained, there was no need for slavery because it was unprofitable. But in an agrarian economy, the South argued, slaves were needed to cultivate "His Royal Majesty, King Cotton." The balance of power between the slave and free States rested with the West for many years, and both North and South looked to the West for congressional support of their economic and political interests. The argument over slavery intensified, spurred by three events in particular.

In September 1829, David Walker, a free black in Massachusetts, published *An Appeal to the Colored People of America.* In it, he called upon the slaves to take arms against their masters and fight for their freedom. Published in pamphlet form, the *Appeal* was smuggled to the South in the linings of jackets worn by seamen. The South forbade reading of the pamphlet and offered a reward for Walker.

The second event, in August 1831, was the insurrection of Nat Turner, a peripatetic preacher, in Southhampton, Virginia. This sparked the fear of widespread slave rebellions throughout the South. The *Richmond Enquirer,* describing the slave revolt, said:

> They [the slaves] remind one of a parcel of blood thirsty wolves rushing from the Alps; or, rather like a former incursion of the Indians upon the white settlements. Nothing is spared: neither age nor sex respected—the helplessness of women and children pleads in vain for mercy. . . . The case of Nat Turner warns us. No blackman ought to be permitted to turn Preacher through the country.
>
> The law must be enforced—or the tragedy of Southhampton appeals to us in vain.[32]

The third event occurred when William Lloyd Garrison published the *Liberator* in 1830. The fiery abolitionist condemned the South and slavery in language that left no room for compromise. "My pen cannot remain idle, nor my voice suppressed," Garrison wrote, "nor my heart cease to bleed, while two million of my fellow beings wear the shackles in my guilty country."[33] He also said:

> I am aware that many object to the severity of my language; but. . .I will be as harsh as truth, and as uncompromising as justice. On this subject I do not wish to think or speak, or write with moderation. . .And I Will be Heard![34]

By 1850, political thought in the United States was seriously divided over the issue of slavery. The argument against slavery contained five elements. First, slavery was contrary to Christianity because man was created in the image of God. Second, human bondage was contrary to the American way of life because every individual had an inalienable right to freedom. Third, slavery was economically unsound because slave labor was less productive than free labor; moreover, the one-crop plantation system destroyed the productivity of the soil. Fourth, southerners suffered from slavery because the master-slave relationship caused men to act as if they were devoid of either morals or Christian ethics. And, finally, slavery was a menace to the peace and safety of the country as the South became an armed camp because of the fear of slave insurrections.

The proslavery argument, advanced to defend the South against its detractors, vehemently asserted that slavery was essential to the region's economic development. At the heart of the South's defense was the notion that blacks were inferior and were destined to serve their masters. In a speech on the admission of Kansas to the Union that typified the South's case, James Henry Hammond, Senator from South Carolina, advanced the "mudsill theory" of slavery. Said Hammond:

> In all social systems there must be a class to do the menial duties, to perform the drudgery of life. That is, a class requiring but a low order of intellect and but little skill. Its requisites are vigor, docility, fidelity. Such a class you must have, or you would not have that other class which leads progress, civilization, and refinement. It constitutes the very mudsill of society and of political government; and you might as well attempt to build a house in the air, as to build either the one or the other, except on this mudsill. Fortunately for the South, she found a race adapted to that purpose at her hand. A race inferior to her own, but eminently qualified in temper, in vigor, in docility, in capacity to stand the climate, to answer all her purposes. We use them for our purpose, and call them slaves. [35]

[32] Cited in George W. Williams, *History of the Negro Race in America, 1619–1880,* vol. II, (New York: Arno Press and the New York Times, 1968), p. 90.
[33] Cited in John L. Thomas, ed., *Slavery Attacked: The Abolitionist Crusade* (New York: Prentice Hall, 1965), p. 10.
[34] Cited in Williams, *History of the Negro Race,* p. 42.
[35] Cited in Eric L. McKitrick, ed., *Slavery Defended: The Views of the Old South* (Englewood Cliffs, N.J.: Prentice Hall, 1963), p. 22.

In 1850, Congress was driven by the intense arguments between North and South to agree to yet another compromise over slavery which many believed would end the heated sectional debate. Nevertheless, agitation continued, aggravated by the Fugitive Slave Law, which was part of the Compromise of 1850.

Then either by accident or intent, "the great issue was presented to the Supreme Court in 1856 by the celebrated Dred Scott Case."[36] Dred Scott was a slave residing in Missouri with his master. Previously, he lived in Illinois, where slavery was forbidden by the Missiouri Compromise of 1820. When Scott returned to Missouri, he sued for his freedom in the belief that his residency in Illinois had made him a free man.

The Dred Scott case was interminably intertwined with the politics of the period. One constitutional lawyer, in fitting the Dred Scott case into the jigsaw puzzle of national development in the 1850s, pointedly stated:

> Dred Scott's case grew so much bigger than Dred Scott that his personal fortunes were forgotten in the midst of a furious and nation-shaking debate over great constitutional issues. If Scott, who couldn't read or write, was like most litigants, he never understood the complex legal and constitutional questions that shaped the outcome of his case. What he could understand was that on March 6, 1857—exactly ten years and eleven months after he filed his first suit seeking freedom—word came from Washington that he, Harriet, Lizzie, and Eliza were still slaves in the eyes of the law.[37]

Historians have advanced theories other than slavery as causative factors of the American Civil War. Some believe that the propaganda and publications of the abolitionists created an atmosphere damaging to the Union and thus a climate for secession. Other historians point to sectionalism as the genesis of the Civil War, while others think that sectionalism was developing anyway and could not have been the deciding factor. Differences in the economic development between the industrial North and the agrarian South are advanced by yet other historians as causing the war.

But whether historians are in agreement or not, one point is clear: The issue of slavery, and the status of blacks, was an integral part of the political, economic, and social development of the United States from the earliest colonial settlement in Virginia, through the writing of the Constitution of the United States, and into the antebellum years. The slavery question was ended only on the field of battle. While the restoration of the Union following secession of the Southern States was stated as the war aim of the North, postwar events show that the underlying issue of the Civil War was slavery.

Civil War and Reconstruction

The immediate event that precipitated the War of the Rebellion was the firing upon the Federal battery at Fort Sumter, off the coast of South Carolina, in 1861. From the beginning, as in the Revolutionary War, there was general opposition to the use of black troops. Nevertheless, they were enlisted into the ranks of the Union Army after Lincoln signed the Emancipation Proclamation, on January 1, 1863, as a war measure. Two years later, on April 9, 1865, at Appomattox, Virginia, the South surrendered. By then, over 38,000 blacks had given their lives on the battlefield in their devotion to freedom.

The Emancipation Proclamation did not free all the slaves. Slavery did not end until the cannons were stilled, and even then there was no immediate constitutional recognition that slavery was erased from the Republic. The 13th amendment to the Constitution, proposed in February 1865 and ratified on December 18, 1865, terminated slavery in the Nation. "It was added to the basic document to place the constitutional seal upon the Emancipation Proclamation, and by so doing, to consign any dispute over its legality to the realm of purely academic controversy."[38] But if the 13th amendment put the "constitutional seal upon the Emancipation Proclamation," the South was intent upon circumventing the freedom of the ex-slaves by enacting laws to control them as they were controlled in slavery.

The central political, economic, and social problems after the Civil War centered on the readmission of States to the Union and the civil status of 4 million former slaves. Lincoln's reconstruction plan was premised on the belief that the Civil War was a revolt of the citizens and not the States and, therefore, was not a congressional problem. He would grant amnesty to all southern citizens with the

[36] Charles and Mary Beard, *The Rise of American Civilization*, vol. II (New York: Macmillian, 1930), p. 61.
[37] Miller, *The Petitioners*, p. 61.
[38] Bernard Schwartz, *Statutory History of the United States: Civil Rights*, vol. I (New York: McGraw-Hill, 1970), p. 19.

exception of high Confederate officials. When one-tenth of the voters who voted in 1860 signed a loyalty oath affirming their support of the Constitution of the United States, according to his plan, they could form a State government which he would recognize.

But Lincoln never had an opportunity to see his plan through. He was assassinated on April 14, 1865, and Andrew Johnson became President. Johnson's plan of reconstructing the South was, at first, more stringent than Lincoln's. But, in the meantime, one by one, the Southern States passed the infamous Black Codes, interpreted by Congress as a covert design to reenslave the freedmen legally.

The Black Codes varied from State to State, but their purpose was the same—to restrict the freedom of the ex-slaves. The freedmen were not allowed to enter a town without a permit, nor could they own firearms or purchase liquor. They could serve as witnesses in court against other freedmen but not against whites. They could not purchase land within city limits, and an early curfew was imposed on them. Under the guise of vagrancy laws, former slaves were arrested if they could not prove they had visible means of support. Then they were hired out to work off their fines, thereby bringing revenue to the city and to the State. This practice eventually led to the convict lease system, in which blacks were leased by civil authorities to white citizens, who in turn used them as laborers.

By enacting the Black Codes, the South was making a last attempt to control blacks legally as it had under slavery. Blacks were not enfranchised, nor did southerners give any evidence to Congress or the President to suggest that the freedmen would be allowed to vote. On the contrary, violent physical abuse, long used to control the slaves, was perpetrated against the freed blacks in every Southern State. Organizations were formed to intimidate them, the most notorious being the Ku Klux Klan.

Receiving evidence of beatings, lynchings, and the maiming of blacks by southerners, Congress ordered an investigation. The Reconstruction Committee, known as the Committee of Fifteen, held hearings in each of the former Confederate States, and Washington, D.C. As a result of the Committee's report, the Reconstruction Act of 1867 was enacted, dividing the South into five military districts occupied by Federal troops.

[39] Ibid., p. 99.

Prior to the Reconstruction Act, Congress had passed the Civil Rights Act of 1866, which, according to its proponents, "was to carry into effect the 13th amendment by destroying the discrimination against the Negro that existed in the laws of the southern States."[39] Senator Lyman Trumbull, Republican of Illinois and Chairman of the Senate Judiciary Committee, made it plain that the basis of the whole bill was its first section. This provided that there should be no discrimination in civil rights on account of race, and that inhabitants of every race would have the same right to contract, sue, take and dispose of property, bring actions and give evidence, and to enjoy equal benefits of all laws for the security of person and property.

Included in the 1866 act was a clause that conferred citizenship upon all persons born in the United States. It was included to remove any doubts about the citizenship status of blacks which persisted because of the decision in *Dred Scott.* But Congress, in the wake of repeated reports of violent acts against the ex-slaves, was not content with a single civil rights law.

During the congressional debates on the 1866 act, serious questions were raised as to its constitutionality, and the meaning of the term "civil rights" was questioned. Senator Trumbull said that political rights were not to be understood as a part of civil rights. This narrow interpretation of civil rights did not accord with the views of other Members of Congress. The 14th amendment to the Constitution settled the question.

Up to this time American constitutional law had developed from conflicts between the Federal Government and the States. The 10th amendment to the Constitution declared, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." This amendment, in effect, created constitutional problems in which "Nation and States all too often appeared to confront each other as equals and all was overshadowed by the danger that centrifugal forces would tear the Nation apart,"[40] and they did in 1861. But the Civil War ended that danger and put to rest the notion of Federal and State equality. The Federal Government was supreme.

Prior to the Civil War, American citizens had no national protection of their civil rights. The fifth

[40] Ibid., p. 9.

amendment protected American citizens against Federal infringement of civil rights, but it had no effect on the States. Under the Constitution, each State was empowered to act as it pleased regarding the civil rights of its citizens. "It was after the Civil War that a demand arose for national protection against alleged abuses of state power. . . . From a constitutional point of view, the adoption of the 14th amendment was of cardinal consequence. . . ."[41]

The 14th amendment called on the national government to protect the citizens of a State against State action. Thenceforth, the safeguarding of civil rights was to become primarily a Federal function. But,

> when the 14th amendment began to be given effect as a restraint upon state power, its impact was almost entirely confined to the economic sphere. . . . The result was that [it] was converted into a Magna Carta for business in place of the Great Charter for individual rights which its framers had intended. For the next half century property rather than personal rights were the primary concern of the courts.[42]

That interpretation was put tersely by a Federal judge 52 years ago. "It should be remembered that of the three fundamental principles which underlie government and for which government exists—the protection of life and liberty and property," he said, "the chief of these is property."[43]

The last of the constitutional amendments directed to laying the foundation for equality of the freedmen was the 15th, whose

> significance is to be found in the crucial position of the right to vote as the most important attribute of citizenship in a system of representative government. For a racial minority like the Negro. . .the right of suffrage is more than a symbol of its role in a democracy. In a system such as ours, political action is a principal instrument for the protection of individual and group rights.[44]

In the 12 years following the Civil War, blacks were elected to high political office in the former Confederate States and in the national Congress, and black citizens were enfranchised. Blacks sat in the State conventions that wrote new State constitutions required by the Reconstruction Act of 1867. These State constitutions abolished property qualifications for holding elective office, terminated imprisonment for debt, eliminated racial distinctions in the possession of property, extended the ballot to *all* male residents, and established some of the first public school systems in the South. While criticized by southern whites, those State constitutions stand today in tribute to the black legislators who helped write them.

But this progress toward securing the rights of blacks was aborted after 1877. Southern State constitutions were revised again to disfranchise the former slaves. Voting by blacks was made difficult, if not impossible, by the intimidation of the Ku Klux Klan and other groups that organized to prevent blacks from exercising their rights at the ballot box. In some districts at election time, ballot boxes were placed great distances from where blacks lived, and separate boxes were designed for separate elective offices. The poll tax became law, and political districts were gerrymandered to prevent blacks from exercising combined power at the polls.

Second-Class Citizenship and Segregation

By 1886, blacks were politically impotent in the South. Disfranchisement of black citizens continued. Mississippi disfranchised those citizens who could not read, write, and interpret the State constitution. Admittedly, this excluded many whites, but the main effect of the law was to reduce the political strength of blacks to a negligible factor in any election. Grandfather clauses were added to the constitutions of some States, providing voting eligibility only for those males whose fathers and grandfathers were qualified to vote in 1866. No blacks were eligible to vote in any State election by the turn of the century. (Grandfather clauses were eventually struck down by the Supreme Court in 1915.)

The 1875 Civil Rights Act was Congress's last legislative effort for 82 years to raise black citizens to equality with white citizens. In 1873, President Ulysses S. Grant, in his annual message to Congress, supported new civil rights legislation "to better secure the civil rights which freedom should secure but has not effectively secured, to the enfranchised slave." [45] The 1875 act consequently prohibited discrimination by railroads, steamboats, public con-

[41] Ibid., pp. 181–82.
[42] Ibid.
[43] Childrens Hospital v. Adkins, 284 Fed. 613, 622 D.C. Cir. (1922), aff'd. 261 U.S. 525.
[44] Schwartz, *Statutory History of the United States*, p. 367.
[45] Ibid., p. 658.

veyances, hotels, restaurants, licensed theaters, juries, and church organizations.

Eight years later, however, the Civil Rights Act of 1875 was declared unconstitutional. The Supreme Court used the doctrine established in a previous case when Chief Justice Morrison R. Waite had asserted, "The 14th amendment adds nothing to the rights of one citizen as against another. It simply furnished a Federal guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of a society."[46]

The 1883 opinion, in language calculated to emasculate the legislative intent of the 14th amendment, boldly asserted that the 14th amendment was "prohibitory upon state action," but "in cases of discrimination it did not prohibit one citizen from privately discriminating against another citizen. Individual invasion of individual rights is not the subject matter of the amendment."[47] Historians note that the

> opinion served notice that the Federal Government could not lawfully protect the Negro against the discrimination which private individuals might choose to exercise against him. This was another way of saying that the system of "white supremacy" was mainly beyond Federal control, since the Southern social order rested largely upon private human relationships and not upon state-made sanctions.[48]

Discriminatory "state-made sanctions" subsequently were given constitutional approval by the Supreme Court in *Plessy v. Ferguson* in 1896. Louisiana, in 1890, passed a law

> requiring railway companies carrying passengers in their coaches, to provide equal but separate, accommodations for the white and colored races, by providing two or more passenger coaches for each passenger train, or by dividing the passenger coaches by a partition so as to secure separate accommodations; and providing that no person shall be permitted to occupy seats in coaches other than the ones assigned to them, on account of the race they belong to. . . .

The Court rejected the argument of Plessy, the black plaintiff, that to be forced to ride in separate railroad cars stamped him with a "badge of inferiority." Not so, said the Court:

> We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it.

In a stinging dissent, Justice Marshall Harlan observed:

> The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education and in power. So, I doubt not, it will continue to be for all time, if it remains true to its heritage and holds fast to the principles of constitutional liberty. But in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is colorblind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is, therefore, to be regretted that this high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a State to regulate the enjoyment of citizens of their civil rights solely upon the basis of race. . . .
>
> But it seems that we have yet, in some of the States, a dominant race—a superior class of citizens, which assumes to regulate the enjoyment of civil rights, common to all citizens, upon the basis of race. The present decision, it may well be apprehended, will not only stimulate aggressions, more or less brutal and irritating, upon the admitted rights of colored citizens, but will encourage the belief that it is possible, by means of state enactments, to defeat the beneficent purposes which the people of the United States had in view when they adopted the recent amendments of the Constitution, by one of which the blacks of this country were made citizens of the United States and of the States in which they respectively reside, and whose privileges and immunities, as citizens, the States are forbidden to abridge. Sixty million

[46] Cited in Alfred Kelly and Winfred A. Harbison, *The American Constitution: Its Origins and Development*, 3rd ed. (New York: Norton, 1963), p. 491.

[47] Ibid., pp. 491–92.

[48] Ibid.

> whites are in no danger from the presence here of eight million blacks. The destinies of the two races in this country are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law. What can more certainly arouse race hate, what more certainly create and perpetuate a feeling of distrust between these races, than state enactments, which, in fact, proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens? The. . .sure guarantee of the peace and security of each race is the clear, distinct, unconditional recognition by our governments, National and State, of every right that inheres in civil freedom, and of the equality before the law of all citizens of the United States without regard to race.

To 8,500,000 black Americans 31 years removed from slavery, the *Plessy* decision provided official commentary on an entire group's alleged racial inferiority. The "separate but equal" doctrine in *Plessy* was used to justify two societies in America—one white and one black. Separate neighborhoods, schools, hospitals, churches, and labor unions were established, creating a world symbolized by a large black bird—"Jim Crow." Wherever blacks and whites ventured in the public life of the Nation, the color line was drawn tight.

In courts of law, separate Bibles were used for white and black witnesses. In public places, "white" and "colored" signs dictated which restrooms or water fountains were to be used. Public parks were opened for a "Colored Day." In movies and the theaters, blacks had a special section, the "peanut gallery," reserved for their use. Blacks sat in the rear of streetcars and buses. In restaurants, blacks could buy their food only if they came through the back door and returned outside to eat.

In department stores, black men and women could not try on hats or clothes. An injured person could not be taken to a hospital other than the one dictated by his or her race, and both blacks and whites died as a result. In social etiquette, blacks were "Caroline" or "Sam," while whites were "Mr.," "Mrs.," and "Miss." When blacks traveled across the country—whether by automobile, bus, or train—they packed their food in brown bags, so as not to be humiliated by going in the back door or having a curtain drawn around them on the train as they dined. They could not reserve a pullman berth on the train; and, if they were going long distances, they rode upright in coaches which had had no sleeping accommodations.

There were "Negro jobs," all menial, reserved for blacks no matter how much education a man or woman had—maid, janitor, elevator operator, cook, butler, handyman, garbage and trash man. In the Federal Government, there were no black clerks, typists, or professionals—just messengers. On construction projects, blacks dug ditches supervised by whites. Even in death the color line survived: whites were buried by white undertakers, blacks by blacks undertakers, and they were buried in separate cemeteries. Even the pets of blacks and whites were buried separately. From the cradle to the grave, the front doors of America were open to whites and the back doors were used by blacks.

When the public was invited to the opening of a store, an amusement park, a new housing development, blacks were not expected to attend. Black soldiers served in labor battalions, while blacks in the Navy served as messmen. In the Marine Corps, they did not serve at all. Each day that blacks entered the public world of America, they were reminded that America had condemned them as inferior beings and second-class citizens. They were indeed separate, but they were not equal.

In the first decade of the 20th century, the United States was shaken by race riots. In Statesboro, Georgia, in 1904, a white mob went on a rampage and wrested from court authorities two black men sentenced to death for the alleged murder of a white farmer and his family. The blacks were dragged from the courthouse and burned alive.[49]

Two years later, in Atlanta, Georgia, a climate of racial hatred was generated by a movement to disenfranchise the blacks. In the fall of 1906, the flames fanned by the newspapers finally resulted in a race riot in which property was destroyed, factories were closed, and transportation services within the city came to a halt.

But as a prominent black historian would later record:

> The South was not the only land in America which was hostile to the Negro in the early years of the new century. Crowds of white hoodlums frequently attacked Negroes in large

[49] See John Franklin, *From Slavery to Freedom: A History of American Negroes*, 2nd ed. (New York: Knopf, 1956), p. 432.

> Northern cities such as Philadelphia and New York. On several occasions white citizens dragged Negroes off the street cars of Philadelphia with cries of "Lynch him! Kill him."[50]

The race riot in the North that had most symbolic significance to blacks occurred in Springfield, Illinois, in 1908. It took place on the 100th anniversary of Abraham Lincoln's birth and in his hometown. "Negroes were actually lynched within a half a mile of the only home Lincoln ever owned and within two miles of his final resting place."[51] Oswald Garrison Villard, grandson of the abolitionist, William Lloyd Garrison, was president of the *New York Evening Post,* and he "spoke out indignantly against the outbreak in Springfield, calling it the climax of a war of crime and lawlessness that was flooding the country."[52]

In these years of violent attacks on blacks, the National Association for the Advancement of Colored People (NAACP) was formed. The first organizational meeting of the NAACP was held in New York in 1909, and by 1910 the first legal engagements of the association were underway, "involving peonage, extradition and police brutality."[53] Forty-four years later the NAACP would win its greatest victory against racism in *Brown v. Board of Education.*

"The Shame of America," an advertisement placed in major newspapers throughout the Nation on November 23, 1922, by the NAACP, publicly asked, "Do you know that the United States is the *Only Land on Earth* where human beings are *Burned at the Stake?*" It listed the alleged crimes for which blacks were most often lynched and calculated that 3,436 people had been lynched between 1889 and 1922.[54] The advertisement was used to support the Dyer antilynching bill that was then before the Congress. The bill did not pass.

Segregated schools continued. In 1927 the Chief Justice of the Supreme Court, former President William Howard Taft, speaking for a unanimous Court in *Gong Lum v. Rice,* [55] held that segregated school systems were "within the constitutional power of the State legislatures." Segregated schools, consequently, were a State and not a Federal problem, and the South continued to emphasize separation of black and white pupils and ignore the "equal" half of the formula.

By 1930, the NAACP was putting into effect the recommendations of Nathan Margold, an attorney who prepared "a comprehensive. . .study of the legal status of the Negro and of possible legal strategy" to be used for "constructive change" in the legal system in the United States.[56] At the same time, Charles Houston headed the Howard University Law School. He reorganized the curriculum to educate a generation of young black lawyers steeped in constitutional and civil rights law, students who would be the vanguard of the NAACP's legal attack on the status of blacks. Houston later became the chief counsel of the NAACP, and slowly a growing group of black lawyers were "employed or retained to represent litigants whose cases seemed likely to contribute to an effective systematic attack upon the racist features of the law."[57]

In the 1930s, then, the NAACP initiated a "concerted drive to change the racial character of the American legal order."[58] The organization brought suit to establish voting rights for blacks and also attacked residential segregation and Jim Crow schools. Here, in education, the NAACP would win its first courtroom victories. As the strategy of the NAACP unfolded, it became apparent that the "undertaking in the field of public education would be a major enlargement of [an] ongoing effort to combat racism in legal order."[59] Between 1938 and 1954, the NAACP's legal staff, under Thurgood Marshall, the chief counsel and director of the NAACP Legal Defense and Educational Fund, went to court to establish the rights of blacks to an equal education, and in 1954 the legal strategy of the NAACP, initiated 24 years earlier, culminated in *Brown.* [60]

An Activist Civil Rights Movement

The events following the *Brown* decision in 1954 had a significant impact on the development of an activist civil rights movement in the United States.

[50] Ibid., p. 435.
[51] Ibid., p. 436.
[52] Charles Flint Kellogg, *NAACP: A History of the National Association for the Advancement of Colored People, 1909–1920,* vol. I (Baltimore: John Hopkins Press, 1967), p. 9.
[53] Ibid., p. 57.
[54] Franklin, *From Slavery to Freedom,* p. 430.
[55] 275 U.S. 78 (1927).
[56] William H. Hastie, "Toward an Equalitarian Legal Order, 1930–1950," *Annals of the American Academy of Political and Social Sciences,* vol. 407 (May 1973), p. 21.
[57] Ibid.
[58] Ibid., p. 22.
[59] Ibid.
[60] For a brief chronology of the NAACP's court cases during this period, see Jessie Guzman, *Twenty Years of Court Decisions Affecting Higher Education in the South: 1938–1958* (Tuskegee, Ala.: Tuskeegee Institute Press, 1960).

Black Americans were jubilant over the *Brown* decision, believing that their Jim Crow existence in the United States was drawing to a close.

Brown was the culmination of political, economic, and social pressures for change in the 1930s. During this period and spilling into the war years, the decisions of the Supreme Court—in housing, voting rights, transportation, and finally the public schools—so eroded the institutional structure of segregation that a new legal foundation for racial progress was emerging. These pressures continued during the Second World War and were accelerated during the mid-century cold war.

On the eve of American entry into World War II, President Franklin D. Roosevelt headed off a proposed "March on Washington" by signing an Executive order banning discrimination in employment by the Government contractors who produced the Nation's war materiel. This, in effect, placed the Government behind a fair employment practices program.

Labor shortages created by the war enabled blacks to be hired in skilled positions and to join labor unions once closed to them. Like white Americans, blacks generally improved their economic position. By the end of the war, blacks had attained positions in Government, private industry, and within the general economy, an achievement that had seemed impossible before the war. Segregation in the armed forces also was attacked during the war years. By the end of the period experimental integrated units of combat troops were on the front lines of the Allied drive against the Axis.

During the war, scores of southern blacks migrated to the North and West seeking better economic opportunities. An urban political base resulted which blacks used to advance a national attack against segregation. "By 1945, this movement had become too powerful to be halted," says one historian, "and it swept forward in a revolutionary new tide of social, political and constitutional change in the Negro's status. Taking advantage of new-found economic and political power, the Negro now staged a massive assault upon the citadels of segregation,"[61] particularly in the Southern States.

In the decades following the Second World War, the United States was aligned against the Soviet bloc of communist nations that was challenging the Western democracies. European imperialism and colonialism were swept away in the aftermath of the war as the peoples of color in India, Southeast Asia, and Africa struggled to determine their own national destinies. In the cold war,

> . . .a great many Americans [believed] that the United States, the home of constitutional democracy, could no longer afford to present to the world the ironic and contrasting spectacle of a Negro population segregated by law and deprived of first class citizenship. Racial segregation and discrimination, in short, now appeared to be dangerous and expensive social anachronisms which the Republic could no longer afford if it were to compete effectively in the great world struggle for the minds of men.[62]

In 1946, President Harry S. Truman, by Executive order, established the President's Committee on Civil Rights. A year later, the Committee reported to the President. Pointing out what America's minorities had long known, the Committee found that civil rights was not simply a regional problem, confined to the South and to blacks, but was indeed a problem of national proportions encompassing the lives of American Indians, Mexican Americans, Asian Americans, and Puerto Ricans.[63] Differing in cultural background, these groups shared a common attribute which singled them out as victims of segregation, prejudice, and discrimination—they were all "people of color."

The beginning of an activist civil rights movement was marked by an event on the evening of December 1, 1955, in Montgomery, Alabama. Mrs. Rosa Parks, tired and weary from her day's work as a seamstress, boarded the evening bus, as was her usual custom, in downtown Montgomery. It was later recorded that Mrs. Parks,

> . . .tired from long hours on her feet. . .sat down in the first seat behind the section reserved for whites. Not long after she took her seat, the bus operator ordered her, along with three Negro passengers, to move back in order to accommodate boarding white passengers. This meant that if Mrs. Parks followed the driver's command she would have to stand while a white male passenger, who had just boarded the bus, would sit. The other three Negro passengers immediately complied with

[61] Alfred H. Kelly and Winfred A. Harbison, *The American Constitution: Its Origins and Development*, 3rd ed. (New York: Norton, 1963), p. 926.
[62] Ibid., pp. 924–25.
[63] For the committee's recommendations, see *To Secure These Rights: The Report of the President's Committee on Civil Rights* (New York: Simon and Schuster, 1947).

the driver's request. But Mrs. Parks quietly refused. The result was her arrest.[64]

History often pivots on what, at the time, is a seemingly insignificant action. The arrest of Mrs. Parks was such an event. It ignited a flame of protest in Montgomery's black community. With grim determination, blacks initiated a boycott of the city's buses and walked to their destinations in dignity and freedom rather than ride buses in segregation and humiliation. For a year, the tramping feet of Montgomery's black population in their "stride toward freedom" symbolized to black Americans that their sufferance of segregation was over.

An elderly woman described best the spirit of the Montgomery bus boycott. When asked if she was tired of walking so long, her reply was pointed and direct: "My soul has been tired for a long time: now my feet are tired, and my soul is resting."[65] But if her soul was resting, the "souls of black folk" in America were becoming increasingly restless.

Two events in 1957, one designed to accelerate the progress of civil rights and the other calculated to defy *Brown,* pushed the struggle for social justice by black Americans to the forefront of the moral consciousness of the American people. Congress, at first slow in responding to the civil rights efforts of the executive and judicial branches of the Federal Government, now moved. It passed the first civil rights law enacted in the Nation since 1875.

The 82-year gap in civil rights legislation came to an end almost 9 months after President Dwight D. Eisenhower, in his state of the Union message, had indicated that while "we are moving closer to the goal of fair and equal treatment of citizens without regard to race or color,. . .much remains to be done." [66] He then outlined the provisions of what later became the Civil Rights Act of 1957. It established the U.S. Commission on Civil Rights, provided an Assistant Attorney General for Civil Rights in the Department of Justice, protected the right to vote, granted trial by jury to those accused of criminal offenses in denying citizens their civil rights, and amended the judicial code for the qualifications of Federal jurors.

In the same month that the Civil Rights Act of 1957 became law, however, the attention of the Nation was drawn to Little Rock, Arkansas. The nine black high school students who braved a screaming mob of segregationists at Central High School in the autumn morning of September 3, 1957, were the first of thousands of black students who would later commit themselves across the South to the abolition of a Jim Crow society. A shocked America watched as their television sets showed American citizens, their faces contorted in hatred, screaming and shouting at these children.

Elizabeth Eckford, one of the "Little Rock Nine," was photographed surrounded by a taunting and jeering mob as she walked to school. Following a face-to-bayonet encounter with the Arkansas National Guard, ordered by Governor Orville Faubus to prevent the enrollment of the nine students, she described the mob that September morning:

> They glared at me with a mean look and I was very frightened and I didn't know what to do. I turned around and the crowd came toward me. They moved closer and closer. Somebody started yelling. "Lynch her! Lynch her!"[67]

Seeking the safety of a bench at the bus stop she made her way towards it. "I tried to see a friendly face some where in the mob," she said, "someone who maybe would help. I looked into the face of an old woman and it seemed a kind face, but when I looked at her again, she spat on me."[68]

Not everyone in Little Rock that day was venting their hatred upon blacks, however. As she reached the "safety" of the bench at the bus stop, Elizabeth Eckford sat down:

> When I finally got there, I don't think I could have gone another step. I sat down and the mob crowded up and began shouting all over again. Someone hollered, "Drag her over to this tree! Let's take care of the nigger!" Just then a white man sat down beside me, put his arm around me and patted my shoulder. He raised my chin and said, "Don't let them see you cry." Then a white lady—she was very nice, she came over to me on the bench. . . . She put me on the bus and sat next to me. She asked me my name and tried to talk to me, but I don't think I answered.[69]

Under court order, the Arkansas National Guard soon was withdrawn from Little Rock, but continu-

[64] Martin Luther King, Jr., *Stride Toward Freedom: The Montgomery Story* (New York: Harper, 1958), p. 43.
[65] *Time,* Jan. 16, 1956, p. 20.
[66] *Public Papers of the Presidents of the United States, Dwight D. Eisenhower, 1957,* Item 8, "Annual Message to the Congress on the State of the Union," Jan. 10, 1957, p. 23.
[67] Daisy Bates, *The Long Shadow of Little Rock* (New York: David McKay, 1962), p. 74.
[68] Ibid.
[69] Ibid.

ing violence led President Eisenhower to federalize the State forces and send in paratroopers to restore order and escort the black students to school. The Supreme Court refused to delay integration, and the Little Rock schools later were closed for a year before reopening on a desegregated basis.

The *Brown* decision was barely 3 years old in 1957, but the September of each school year to come was looked upon with anxiety and suspense. There were to be other cities in which mobs formed to prevent black children from going to school with white children. In Texarkana and Mansfield, Texas; Clinton and Nashville, Tennessee; and the North Carolina cities of Charlotte, Winston-Salem, and Greensboro the September story was the same: resistance to desegregation. Schools were bombed, citizens attacked and beaten, and in the middle were local school boards caught between the edict of the Nation's highest court and the sentiment and customs of local white segregationists.

In the post- *Brown* years, few voices were heard urging compliance with the decision. As one southern observer noted, clergymen who spoke out were rare.

> Some newspaper editors sought cautiously to combat [the hostility of local citizens] but most either avoided the subject or urged the extremists on in inflammatory editorials. Those politicians who called for calm and respect for the law of the land spoke so softly that their voices were hardly heard in the anti-integration din.[70]

The anti-integrationists were to have something new to complain about. On February 1, 1960, in Greensboro, North Carolina, four students from North Carolina Agricultural and Technical, a black college, walked into a dime store. They purchased some articles and then walked to the lunch counter, sat down, and waited to be served. They were refused. Less than a month later, the South was stunned as thousands of black and white students "sat-in" at lunch counters within the borders of the former Confederacy.

The Growth of Noviolent Protest

The sit-in movement, like the Montgomery bus boycott 5 years earlier, announced to the Nation that this generation of blacks, and whites also, was committed to end racial segregation. In support of the southern students, the northern stores F.W. Woolworth and S.H. Kress, both student targets, were picketed, and shoppers were urged not to patronize them so long as they continued the segregation of lunch counters in their southern stores. Officials of both chains said it "was company policy to let local managers decide whom to serve and to avoid interfering with 'local customs'."[71]

But the sit-in technique of the student civil rights activists was directed toward changing local customs where race determined who could sit at a lunch counter. As early as 1942, the Congress of Racial Equality (CORE) had adopted the sit-in technique in Chicago after a restaurant refused to serve black students attending the University of Chicago. In 1960, CORE's field secretaries helped the southern students conduct workshops in nonviolent protest techniques. Unknown nationally until the sit-ins, CORE now was in the forefront of the civil rights movement. CORE's adherence to the Gandhian philosophy of nonviolent direct action differed from the legal and educational approach of the NAACP, but both groups shared a common objective—eliminating racial segregation in American life.

As the demonstrations spread into the Deep South, student representatives from the southern black colleges, from whose ranks came the largest number of sit-in participants, met in Raleigh, North Carolina. The conference, sponsored by the Southern Christian Leadership Conference (SCLC), an organization formed by Dr. Martin Luther King, Jr., in 1958, sought a method of coordinating the demonstrations now taking place in libraries, bus stations, and any other public facilities deemed segregated.

The conference organized the Student Nonviolent Coordinating Committee (SNCC) to give the sit-in movement regional coordination. SNCC formed what some writers characterized as the "shock troops" or the "new abolitionists" of the civil rights movement. As 1960 closed, the NAACP, in the struggle for racial freedom for 51 years and whose Supreme Court victories were building a legal framework for a desegregated society, was joined by three new organizations: CORE, SNCC, and SCLC.

Emerging from the protracted civil rights demonstrations of 1960 was new legislation enacted by Congress to expand the 1957 Civil Rights Act. The 1960 act broadened the powers of the Federal Government to protect the voting rights of black

[70] Muse, *Ten Years of Prelude*, p. 48.

[71] Lester A. Sobel, ed., *Civil Rights 1960–1966* (New York: Facts on File, Inc., 1967), p. 7.

citizens in the South. The U.S. Commission on Civil Rights, in its first report in 1959, had recommended the use of Federal registrars to register qualified voters who were refused registration by State registrars because of race, color, religion, or national origin. Under this proposal, citizens were to be registered by Federal officials designated by the President until State officials acted on a nondiscriminatory basis, but Congress substituted the use of referees under the jurisdiction of the courts to register any voter denied the right to vote.

On January 20, 1961, John F. Kennedy became the 35th President of the United States and less than 2 months later signed an Executive order establishing a Committee on Equal Employment Opportunity.[72] The Committee investigated employment discrimination, required Government contractors and labor unions to file compliance reports on nondiscriminatory employment and union membership practices, and advocated cancellation of contracts with contractors who failed to comply with the Executive order and barring of these contractors from future Government business. Meanwhile, the U.S. Commission on Civil Rights, in a five-volume report, offered a wide range of recommendations in areas where Federal action was necessary to protect civil rights: voting, education, employment, housing, and the administration of justice.

As spring came, the protests against segregation were renewed in the South. In May 1961 CORE dramatized the fact that a journey into the deep South was perilous. Integrated teams bought tickets, boarded interstate buses, sat together in the front seats, and, arriving at their destinations, jointly used the bus terminal facilities, waiting rooms, lavatories, and lunch counters. Mobs formed at some of the bus terminals along the route and in Alabama these "freedom riders" were set upon with violence. Severe beatings were sustained by some of the participants.

Jim Peck, editor of CORE's newsletter and a veteran of the 1947 "journey of reconciliation," an earlier integrated bus ride through the upper South, described the aftermath of his assault:

> Was the Freedom Ride worth it? Would you do it again? These questions were tossed to me by reporters, as I lay on an operating table in Hillman Clinic, Birmingham, Alabama, waiting for the doctor to finish sewing fifty-three stitches in my face and head. It was Mother's Day 1961. I had been beaten almost to death by a Birmingham mob for the "crime" of trying to eat with a Negro at the Trailways terminal lunchroom.[73]

Although 1961 was a year of violence for the freedom riders, it was also a year of victories against segregation. A vast portion of the South was still segregated, but barriers to desegregation were falling. The widespread sit-ins resulted in desegregation of lunch counters and other public facilities. In Louisiana, courts upset the State's school closing laws, while in Georgia "massive resistance" laws were repealed and the State university was desegregated. Georgia's Governor refused to defy "lawful authority" but, nevertheless, admitted he would use "every means to halt desegregation."[74]

The U.S. Commission on Civil Rights urged Congress to ban all voter qualifications other than age, residence, confinement, or conviction for a felony. President Kennedy ordered a strengthening of the machinery to promote equal employment opportunity. And the Supreme Court ruled that a privately owned restaurant using space leased from a State agency could not refuse to serve blacks.

But while the Nation was moving ahead to eliminate segregation in American life, Mississippi State and Federal forces clashed over the admission of *one* black student to the University of Mississippi. James H. Meredith was a 29-year-old Air Force veteran who applied for admission to the University of Mississippi. Legal maneuvering by State authorities, including the Governor, succeeded in halting his entry until September 20, 1962, when the university was ordered by the courts to enroll Meredith.

For 2 days, September 30 and October 1, 1962, the American public again witnessed the spectacle of riots accompanying the admission of a black student to a southern school. Federal troops were ordered to the campus to quell a 15-hour "uprising" of students and segregationists intent upon stopping Meredith's

[72] The development of equal employment opportunity had its origins in the administration of President Franklin D. Roosevelt. He established a Fair Employment Practices Commission (FEPC) to assure minority groups that they would be employed by Government and private industry on a nondiscriminatory basis during the Second World War. President Harry S. Truman strengthened the Federal Government's commitment to a national fair employment practices program when he urged Congress to pass an FEPC law. Although Congress responded in 1950 with such a law, it provided no enforcement powers. In 1953, President Dwight D. Eisenhower continued the Federal Government's interest in nondiscriminatory employment by creating a Committee on Government Contracts and in 1955 he created a Committee on Government Employment Policy.

[73] James Peck, *Freedom Ride* (New York: Simon and Schuster, 1962), p. 14.

[74] Sobel, *Civil Rights 1960–1966*, p. 87.

admission to the university. In the clash between Federal and State power, two persons were killed and scores of others were either injured or arrested. Guarded continuously by Federal marshals and troops of the United States Army, Meredith subsequently was to be the first black graduated from the University of Mississippi.

In the aftermath of this incident, public officials both praised and condemned the actions of State officials. Former President Eisenhower described Mississippi's refusal to admit Meredith as "absolutely unconscionable and indefensible."[75] Governor S. Ernest Vandiver of Georgia denounced the Mississippi Governor, saying he was "dead wrong" and "should stop playing Custer's last stand."[76] Other State and congressional representatives of Mississippi praised the futile effort to deny Meredith's admission to the university. The Meredith imbroglio, however, made it clear that no State could defy court orders and that the authority of the Federal Government was committed to the demise of segregation.

Although the South was the national center of demonstrations against segregation, rioting to prevent desegregation, and calculated defiance of the law by State officials, the North was not without its own racial problems. The NAACP announced that 32 northern communities were operating segregated schools. In Englewood, New Jersey, a few hundred black students for 3 days refused to attend a school they charged was segregated. Alleging racial segregation, the NAACP filed a petition in which it argued that the school board was "maintaining a separate school without equal educational opportunity."

Similar charges by the NAACP were leveled at school boards in Newark, Orange, and Montclair, New Jersey. In New York City, "racial quotas" of blacks and Puerto Ricans were the basis of a suit filed by the NAACP in the Federal district court on behalf of the allegedly segregated students. In Queens, a junior high school was boycotted by blacks who said the school board gerrymandered attendance zones for the purposes of racial division. And in the West, the San Francisco school board reversed its plans to establish a school under conditions alleged by Negro groups to constitute *de facto* segregation.

In Congress, the Kennedy administration's first civil rights bill to eliminate literacy tests as a precondition for voting registration was introduced but then defeated by a Senate filibuster. Despite this defeat, a constitutional amendment to abolish the poll tax was introduced and passed by both houses. Elsewhere in the Nation, in Alabama, Georgia, Louisiana, and Mississippi, litigation arising from State denial of the rights of blacks to vote was taken to Federal courts.

Spurred by the 1957 and 1960 Civil Rights Acts, blacks conducted voter education and registration drives for black citizens who had never cast a ballot. By November 1962, additional blacks were elected to Congress. In Massachusetts, Edward W. Brooke, Jr., was elected State attorney general. Connecticut elected Gerald Lamb State treasurer, while in Illinois Ms. Edith Sampson was the first black woman elected to a judgeship in the State. Atlanta elected Leroy Johnson its first black State representative since Reconstruction.

Discrimination in Federal housing was barred by President Kennedy through Executive order in 1962, thereby fulfilling a pledge made in the 1960 election. But, again, turmoil in the South headlined the news as demonstrations against segregation were mounted in Albany, Georgia.

By now the scene was familiar. Civil rights activists pressing to end segregated public facilities encountered Albany citizens opposed to desegregation, and law enforcement officers arrested insistent demonstrators against segregation. In Albany alone, 1,446 protestors were arrested in 1961.

The unrest in Albany finally ceased, but the throwing of rocks and bottles at police by some demonstrators not trained in nonviolence had serious implications for the civil rights movement. Heretofore, civil rights activists had not responded to violence with more violence. Their nonviolent tactics had elicited the moral sympathy of the Nation and turned public opinion against the segregationist mobs that were using physical force to deter the struggle for equality.

Birmingham

A year later, in Birmingham, Alabama, Albany was repeated. In Albany, Chief of Police Laurie S. Pritchett and his police force, much to their credit, had not retaliated with excessive force to the missiles

[75] Ibid., p. 123.

[76] Ibid., p. 132.

thrown by the demonstrators. Birmingham in April of 1963 was a different story.

The objectives of the civil rights demonstrations in Birmingham were threefold: first, elimination of the discriminatory employment practices of the city's commercial community; second, desegregation of lunch counters; and, finally, desegregation of all public facilities in the city. As the demonstrations continued into June, over 3,000 persons were arrested on charges of parading without a permit, trespass, and loitering, while the sustained 2-month campaign was met with violence by those opposed to equality. Firemen using high pressure hoses directed streams of water at the demonstrators. The streams were so powerful that they tore the bark off trees behind which demonstrators sought refuge. Photographs showed demonstrators pinned to buildings as the water, in some instances, ripped their clothing. Others rolled along the ground as they were struck by jets from the high pressure hoses.

Police dogs bit some of the demonstrators. Even children, some as young as 6 years old, were arrested. Some demonstrators, incensed by the spectacle of men, women, and children being victimized by police dogs and high pressure hoses, retaliated with bricks and bottles. When 2,000 blacks assembled in a park, police dogs and fire hoses were used against them, and rocks and bottles were thrown in return. Reverend James Bevel pleaded with the crowd to disperse. "If you are not going to demonstrate in a non-violent way," he said, "then leave."[77]

Reverend Martin Luther King and his associates finally agreed, in an uneasy truce, to call off demonstrations after the rock and bottle throwing incidents. A tentative agreement was reached by the city's commercial interests and the desegregationists. The accord called for desegregation of all lunch counters, restrooms, sitting rooms, and drinking fountains in the stores of the city. Discriminatory employment practices were to be discontinued, and a fair employment practices committee was to be appointed. All jailed demonstrators were to be released on personal bond. A biracial committee was to be formed to resolve the city's problems in race relations.

Martin Luther King called the negotiated agreement "the most significant victory for justice that we have seen in the Deep South."[78] "We must now move," he said, "from protest to reconciliation." The agreement was hailed by Attorney General Robert F. Kennedy "as a great lesson in the importance of getting a dialogue going." But Public Safety Commissioner Eugene (Bull) Conner urged white citizens of Birmingham "to boycott the business establishments that honored the agreement."

Both the truce and the accord were shattered on May 11 when a bomb demolished the front of the home of Reverend A.D. King, the brother of Martin Luther King. No one was injured at the King home, but shortly thereafter a second bomb exploded at the A.G. Gaston Motel, injuring four persons, none seriously. This renewed violence generated rioting in the black community.

Finally, President Kennedy sent Federal troops to the outskirts of Birmingham to "protect the lives of its citizens and to uphold the law of the land." Referring to the agreement made between the business and black communities, Kennedy firmly avowed that the "Federal government will not permit it to be sabotaged." State troopers subsequently were able to bring some measure of peace to the community, but racial feeling was still volatile. The *New York Herald Tribune* reported that after the rioting ceased, "the State troopers began clubbing Negroes sitting on their porches." According to news accounts those blacks who were beaten had taken no part in the fight.

In April, after his arrest for participating in the demonstration, Martin Luther King had answered the charges of eight white clergymen who called for cessation of the Birmingham demonstrations. King wrote what one author chose to call an "American *J'Accuse.*"[79] King entitled his answer, "Letter from Birmingham Jail." It became a classic response to those Americans who counseled patience and gradualism, and who cautioned that it would take time to eradicate the evils of segregation from American life. King declared:

> We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed. Frankly, I have yet to engage in a direct-action campaign that was "well timed" in the view of those who have not suffered unduly from the disease of segregation. For years now I have heard the word "Wait!" It rings in the ear of every Negro with piercing familiarity. This "Wait" has al-

[77] Ibid., p. 181.

[78] See Sobel, Civil Rights 1960–1966, for an account of these events.

[79] David L. Lewis, *King: A Critical Biography* (New York: Praeger, 1970), p. 187.

most always meant "Never." We must come to see, with one of our distinguished jurists, that "justice too long delayed is justice denied." We have waited for more than 340 years for our constitutional and God-given rights. The nations of Asia and Africa are moving with jet-like speed toward gaining political independence, but we still creep at horse-and-buggy pace toward gaining a cup of coffee at a lunch counter. Perhaps it is easy for those who have never felt the stinging darts of segregation to say, "Wait." But when you have seen vicious mobs lynch your mothers and fathers at will and drown your sisters and brothers at whim; when you have seen hate-filled policemen curse, kick and even kill your black brothers and sisters; when you see the vast majority of your twenty million Negro brothers smothering in an airtight cage of poverty in the midst of an affluent society; when you suddenly find your tongue twisted and your speech stammering as you seek to explain to your six-year-old daughter why she can't go to the public amusement park that has just been advertised on television, and see tears welling up in her eyes when she is told that Funtown is closed to colored children, and see ominous clouds of inferiority beginning to form in her little mental sky, and see her beginning to distort her personality by developing an unconscious bitterness toward white people; when you have to concoct an answer for a five-year-old son who is asking: "Daddy, why do white people treat colored people so mean?"; when you take a cross-country drive and find it necessary to sleep night after night in the uncomfortable corners of your automobile because no motel will accept you; when you are humiliated day in and day out by nagging signs reading "white" and "colored"; when your first name becomes "nigger," your middle name becomes "boy" (however old you are) and your last becomes "John," and your wife and mother are never given the respected title "Mrs."; when you are harried by day and haunted by night by the fact that you are a Negro, living constantly at tiptoe stance, never quite knowing what to expect next, and are plagued with inner fears and outer resentments; when you are forever fighting a degenerating sense of "nobodiness"—then you will understand why we find it difficult to wait. There comes a time when the cup of endurance runs over, and men are no longer willing to be plunged into the abyss of despair. I hope, sirs, you can understand our legitimate and unavoidable impatience.[80]

As racial strife in Birmingham subsided, the struggle for equality continued at the University of Alabama in Tuscaloosa. On June 5, 1963, the United States District Court for the Northern District of Alabama enjoined the executive officers of the State and others from interfering with enrollment of two black students, James Hood and Vivian Malone. The Governor of Alabama declared publicly that it was his intention to block their entrance.

On June 11, 1963, President Kennedy federalized the Alabama National Guard. Deputy Attorney General Nicholas B. Katzenbach, with the President's proclamation ordering State officials and other persons engaged "in unlawful obstructions of justice to desist and cease," approached Governor George Wallace as he "stood in the schoolhouse door" to prevent the young black students from registering at the university. Following an exchange between the Governor and Mr. Katzenbach, Governor Wallace was asked to step aside. He refused. Mr. Katzenbach told him: "From the outset, Governor, all of us have known that the final chapter in this history will be the admission of these students."[81]

The two black students were taken to their dormitories. Later the federalized Alabama National Guard, commanded by Brigadier General Henry V. Graham, conferred with Governor Wallace and Mr. Katzenbach. General Graham ordered the Governor to step aside; he did, and the two black students were registered.

President Kennedy, in an unprecedented presidential television address on civil rights to the American people, on the evening of June 11, 1963, explained why Federal action was necessary at the University of Alabama:

> This afternoon following a series of threats and defiant statements, the presence of Alabama national guardsmen was required on the University of Alabama campus to carry out the final and unequivocal order of the United States District Court of the Northern District of Alabama. That order called for the admission of two. . .young Alabama residents who happened to be Negro. That they were admitted peacefully on campus is due in good measure to the conduct of the students of the University of

[80] Cited in George Ducas, ed., *Great Documents in American History* (New York: Praeger, 1970), pp. 281–82.

[81] Sobel, *Civil Rights 1960–1966*, p. 218.

Alabama, who met their responsibilities in a constructive way.[82]

President Kennedy underscored the status of black American citizens in the United States and called upon Congress to enact legislation to right the wrongs of over 98 years of segregation and second-class citizenship:

> We preach freedom around the world, and we mean it, and we cherish our freedom here at home, but are we to say to the world, and much more importantly, to each other that this is a land of the free except for the Negroes; that we have no second-class citizens except Negroes; that we have no class or caste system, no ghettoes, no master race except with respect to Negroes? Now the time has come for this Nation to fulfill its promise. The events in Birmingham and elsewhere have so increased the cries for equality that no city or State legislative body can prudently choose to ignore them. The fires of frustration and discord are burning in every city, North and South, where legal remedies are not at hand. Redress is sought in the streets, in demonstrations, parades, and protests which create tensions and threaten violence and threaten lives. We face, therefore, a moral crisis as a country and as a people. It cannot be met by repressive police action. It cannot be left to increased demonstrations in the streets. It cannot be quieted by token moves or talk. It is a time to act in the Congress, in your State and local legislative body and above all, in all of our daily lives.[83]

The President's speech was acclaimed by civil rights workers and acknowledged as a firm commitment on the part of the Federal Government to end segregation and discrimination in American life. Two months later, on August 28, 1963, over 200,000 black and white Americans would assemble at the foot of the Lincoln Memorial for an historic "March on Washington for Jobs and Freedom."

The March on Washington

The 1963 march was suggested by A. Philip Randolph, president of the Brotherhood of Sleeping Car Porters and the only black vice president of the AFL-CIO, who had been prepared to organize a similar demonstration more than 20 years before. Government supporters of civil rights believed a mass demonstration in the Nation's capital would hurt the civil rights movement, but representatives of the National Urban League, NAACP, CORE, SCLC, and SNCC disagreed. It was their unanimous opinion that the proposed demonstration would prod congressional action on the President's civil rights message to the American people and to Congress. Martin Luther King assured the President and congressional leaders that the march would be nonviolent and peaceful.

As reported by the *New York Times*, "No one could remember an invading army as gentle as the 200,000 civil rights marchers who occupied Washington today."[84] By bus, automobile, train, and plane, thousands of Americans began assembling at the Washington Monument grounds. An eyewitness described the events:

> At midday the mass of humanity began to move down Constitution and Independence Avenues, nearly a mile, for a ceremony and speeches. Marchers carried banners and signs with various slogans, many calling for FREEDOM NOW, DECENT HOUSING NOW, and JOBS AND FREEDOM NOW. Placards urging NO MORE DOUGH FOR JIM CROW were aimed at government support of segregated activities. They were singing most of the time—hymns and spirituals, patriotic airs, improvised chants of protest. Fervent voices joined repeatedly in the Battle Hymn of the Republic—"Mine eyes have seen the glory of the coming of the Lord. . ." Rising at all times from some section of the throng were the slow cadences of an old hymn now familiar to millions as the anthem of the nonviolent revolution. "We Shall Overcome" had none of the fires of the "Marseillaise," nor the jaunty swing of "Giovinezza." Though thousands had sung it in the face of angry police, and in patrol wagons on the way to jail, it was not a song with which to charge any enemy in battle. The "someday" schedule for triumph was hardly consistent with the "NOW" of the placards the marchers carried. The song had a plaintive note: "We shall overcome. we shall overcome. Oh deep in my heart I do believe we shall overcome someday." It was not a hymn of hatred of the white man. . ."Black and white together we'll walk hand in hand."[85]

[82] *Public Papers of the Presidents of the United States, John F. Kennedy, January 1 to November 22, 1963*, Item 237, "Radio and Television Report to the American People on Civil Rights," June 11, 1963, p. 468.
[83] Ibid., p. 469.
[84] Quoted by Benjamin Muse, *The American Negro Revolution: From Nonviolence to Black Power, 1963–1967* (Bloomington: Indiana University Press, 1968), p. 1.
[85] Ibid., p. 2.

The marchers were festive, but their purpose was serious. The white marbled columns of the Memorial stood above the steps leading to the pensive figure of Abraham Lincoln. One hundred years ago he had signed the Emancipation Proclamation that freed the South's 4 million black slaves. Now, their descendants assembled at his Memorial to place a moral crisis before the Nation.

Leaders of the major civil rights organizations spoke: Roy Wilkins of the NAACP, John Lewis of the Student Nonviolent Coordinating Committee, Whitney Young of the National Urban League, and Martin Luther King, Jr., of the Southern Christian Leadership Conference. James Farmer, national director of the Congress of Racial Equality, was absent. He was isolated in a jail cell in Plaquemine, Louisiana, arrested for leading a march in that segregated city. Speaking for CORE in his absence was Floyd McKissick, who noted the number of white participants in the march and told a reporter this was "the end of the Negro protest and the beginning of the American protest."[86]

Many who spoke that day were eloquent, but it was Martin Luther King whose deep baritone voice vibrated across the landscape of America's history, echoing the infinite injustices suffered by black Americans from their forced immigration in the 17th century to their segregated lives in the 20th century. Nine others, both black and white, had spoken before him. Now the young preacher, who had led the Montgomery bus boycott and become the "apostle of nonviolence," stood before a strangely quiet crowd and painted his dream:

> I have a dream that one day this nation will rise up and live out the true meaning of its creed: "We hold these truths to be self-evident, that all men are created equal. . ."
>
> I have a dream that one day on the red hills of Georgia the sons of former slaves and the sons of former slaveholders will be able to sit down together at the table of brotherhood.
>
> I have a dream that one day even the state of Mississippi, a state sweltering with the people's injustice, sweltering with the heat of oppression, will be transformed into an oasis of freedom and justice.
>
> I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin, but by the content of their character.
>
> I have a dream today.
>
> I have a dream that one day the state of Alabama, whose Governor's lips are presently dripping with the words of interposition and nullification, will be transformed into a situation where little black boys and black girls will be able to join hands with little white boys and white girls and walk together as sisters and brothers.
>
> I have a dream today.
>
> I have a dream that one day every valley shall be exalted, every hill and mountain shall be made low, the rough places will be made plains, and the crooked places will be made straight, and the glory of the Lord shall be revealed, and all flesh shall see it together.
>
> This is our hope. This is the faith with which I return to the South. With this faith we will be able to hew out of the mountain of despair a stone of hope. With this faith we will be able to transform the jangling discords of our nation into a beautiful symphony of brotherhood. With this faith we will be able to work together, to pray together, to stand up for freedom together, knowing that we will be free one day.
>
> This will be the day when all of God's children will be able to sing with new meaning, "My country 'tis of thee, sweet land of liberty, of thee I sing. Land where my fathers died, land of the pilgrim's pride, from every mountainside, let freedom ring."
>
> And if America is to be a great nation this must become true. So let freedom ring from the prodigious hilltops of New Hampshire. Let freedom ring from the mighty mountains of New York. Let freedom ring from the heightening Alleghenies of Pennsylvania!
>
> Let freedom ring from the snowcapped Rockies of Colorado!
>
> Let freedom ring from the curvaceous peaks of California!
>
> But not only that; let freedom ring from Stone Mountain of Georgia!
>
> Let freedom ring from Lookout Mountain of Tennessee!

[86] Ibid., p. 1.

> Let freedom ring from every hill and mole hill of Mississippi. From every mountainside, let freedom ring.
>
> When we let freedom ring, when we let it ring from every village and every hamlet, from every state and every city, we will be able to speed up that day when all of God's children, black men and white men, Jews and Gentiles, Protestants and Catholics, will be able to join hands and sing in the words of the old Negro spiritual, "Free at last! free at last! thank God almighty, we are free at last![87]

Eighteen days later, on a Sunday morning, a bomb exploded in the 16th Street Baptist Church in Birmingham, Alabama. Four little girls were killed and 20 others injured in the explosion. Black and white Americans would remember the dream of Dr. King, but the bombing of the church reminded the Nation that there were some Americans who neither cared nor shared the dream of a country in which black citizens were respected as human beings. In his "Eulogy for Martyred Children," Reverend King said that the children "died nobly" and in their death carried a message for the living:

> They have something to say to every Negro who passively accepts the evil system of segregation and stands on the sidelines in the midst of a mighty struggle for justice. They say to each of us, black and white alike, that we must substitute courage for caution. They say to us that we must be concerned not merely about WHO murdered them, but about the system, the way of life and the philosophy which PRODUCED the murderers. Their death says to us that we must work passionately and unrelentingly to make the American dream a reality.[88]

On November 22, 1963, President John F. Kennedy was assassinated in Dallas, Texas. As a memorial to the slain President, President Lyndon B. Johnson committed his new administration to press Congress for enactment of a civil rights bill. In his first state of the Union message, President Johnson declared, "We have talked long enough in this country about equal rights. We have talked 100 years or more. . . .it is time now to write the next chapter—and to write it in the books of law. . .Let this session of Congress," he continued, "be known as the session which did more for civil rights than the last hundred sessions combined."[89]

Civil Rights as a National Issue

The 1964 Civil Rights Act was enacted on July 2, 1964, 10 years after the *Brown* decision and 101 years after the Emancipation Proclamation. To black Americans, the law fulfilled many objectives of the civil rights movement: It provided more protection of their voting rights, and it called for equal opportunity in employment, equal access to public accommodations, and desegregated education. The 1964 act did not provide for open housing. (This civil rights goal, however, was to be reached in the 1968 Fair Housing Act.)

To many Americans, the 1964 Civil Rights Act appeared to end the protests, parades, sit-ins, and demonstrations of the civil rights movement, since most of its objectives were now a part of the legal structure. But southern violence soon flared up again. Three civil rights workers were murdered in Mississippi. The young men, two white and one black, were members of CORE working to register black voters. In Georgia, a black Army reservist, a lieutenant colonel who was an assistant superintendent of schools in Washington, D.C., was killed as he was returning home after 2 weeks of duty at Fort Benning. In other Southern States, civil rights workers were beaten, and the churches and homes of both blacks and sympathetic whites were bombed.

Federal authorities acted swiftly, but State and even some Federal officials in the South were reluctant to uphold the law. A U.S. commissioner dismissed conspiracy charges against those allegedly responsible for the deaths of the three civil rights workers in Mississippi. And a U.S. district judge dismissed Federal indictments against the white men accused in the death of the Army reservist.

The 1964 Civil Rights Act had provided for securing the voting rights of blacks, under Title I, in connection with voting qualifications, registration procedures, literacy tests, Federal elections, and suits by the Attorney General of the United States. Selma, Alabama, became the focal point of black voting registration drives, but they ended in racial violence. Congress, intent upon terminating discrimination in the elective process, enacted the Voting Rights Act

[87] Leon Freedman, ed., *The Civil Rights Reader: Basic Documents of the Civil Rights Movement* (New York: Walker, 1968), pp. 112–13.
[88] Noel N. Marder, comp., *A Martin Luther King Treasury* (Yonkers, N.Y.: Educational Heritage, Inc., 1964), p. 139.
[89] *Public Papers of the Presidents of the United States, Lyndon B. Johnson, 1963–1964,* Item 91, "Annual Message to the Congress on the State of the Union," Jan. 8, 1964, pp. 112–18.

of 1965 to affect those Southern States which persisted in unlawfully circumventing the voting rights provisions in the Civil Rights Acts of 1957, 1960, and 1964.

Meanwhile, racial strife in the North caused concern in an area that had considered itself free of racial segregation and discrimination. In July 1964, violence had flared in New York. The turmoil in Harlem resulted from the death of a 15-year-old black, killed by an off-duty white police officer who said the boy threatened him with a knife. Black leaders charged New York police with "police brutality" and urged dimissal of the officer who shot the youth. Shops of white merchants were looted and destroyed in the melee which followed.

In Rochester, New York; Philadelphia, Pennsylvania; Jersey City, Paterson, and Elizabeth, New Jersey; and in the Chicago suburb of Dixmoor, Illinois, racial riots flared in almost open warfare between black citizens and the police. The causal factors in each of the disturbances, allegedly, were white police officers, whom black citizens charged with "brutality" whenever an encounter took place between them.[90]

Americans least expected that a violent civil disorder would occur in Watts, a predominantly black section of Los Angeles, California. But, in the evening hours of August 11, 1965, an encounter between a California highway patrolman and a black citizen, arrested for alleged speeding and intoxication, set off the Nation's worst civil disorder. The Kerner Commission Report described what happened:

> As a crowd gathered, law enforcement officers were called to the scene. A highway patrolman mistakenly struck a bystander with his billy club. A young Negro women, who was erroneously accused of spitting on the police, was dragged into the middle of the street.
>
> When the police departed, members of the crowd began hurling rocks at passing cars, beating white motorists, and overturning cars and setting them on fire. The police reacted hesitantly. Actions they did take further inflamed the people on the streets.
>
> The following day the area was calm. Community leaders attempting to mediate Negro residents and the police received little cooperation from the municipal authorities. That evening the previous night's pattern of violence was repeated.
>
> Not until almost 30 hours after the initial flareup did window smashing, looting, and arson begin. Yet the police utilized only a small part of their forces.
>
> Few police were on hand the next morning when huge crowds gathered in the business district of Watts, two miles from the location of the original disturbance, and began looting. In the absence of police response, the looting became bolder and spread into other areas. Hundreds of women and children from five housing projects clustered in or near Watts took part. Around noon, extensive firebombing began. Few white persons were attacked; the principal intent of the rioters now seemed to be to destroy property owned by whites, in order to drive white "exploiters" out of the ghetto.
>
> The chief of police asked for National Guard help, but the arrival of the military units was delayed for several hours. When the Guardsmen arrived, they, together with police, made heavy use of firearms. Reports of "sniper fire" increased. Several persons were killed by mistake. Many more were injured.
>
> Thirty-six hours after the first Guard units arrived, the main force of the riot had been blunted. Almost 4,000 persons were arrested. Thirty-four were killed and hundreds injured. Approximately $35 million in damage had been inflicted.
>
> The Los Angeles riot, the worst in the United States since the Detroit riot of 1943, shocked all who had been confident that race relations were improving in the North, and evoked a new mood in the ghettos around the country.[91]

From 1965 to 1968, as each summer approached, the Nation was to become apprehensive. Civil disorders in black ghettos across America—in Detroit, Newark, and elsewhere—were violent reminders that the country faced continuing racial conflict.

In 1965, Daniel P. Moynihan, an Assistant Secretary of Labor, issued a controversial report entitled *The Negro Family: The Case For National Action.* The report "focused attention on a new dimension of the civil rights revolution—the breakdown of the Negro family as a social unit within much of the Negro

[90] For an extended discussion of the civil disorders that occurred in the late 1960s, see *Report of the National Advisory Commission on Civil Disorders* (New York: Bantam Books, 1968), hereafter referred as the *Kerner Commission Report.*

[91] *Kerner Commission Report,* pp. 37–38.

community." The report suggested that only through concerted planning and action could a "new crisis in race relations" be forestalled.

Many civil rights leaders deplored the report. They claimed that it placed responsibility for the failure of black Americans in American society on blacks, and not on the American social system, which had perpetuated segregation through a century of institutionalized racism. President Johnson's speech at Howard University on June 4, 1965, was partially premised upon the Moynihan report. In that speech, the President said:

> . . .the family is the cornerstone of our society. More than any other force it shapes the attitudes, the hopes, the ambitions, and the values of the child. And when the family collapses, it is the children that are usually damaged. When it happens on a massive scale the community itself is crippled.
>
> So, unless we work to strengthen the family to create conditions under which most parents will stay together—all the rest: schools and playgrounds, and public assistance, and private concern will never be enough to cut the circle of despair and deprivation.
>
> There is no single easy answer to all of these problems. Jobs are part of the answer. They bring the income which permits a man to provide for his family. Decent homes in decent surroundings and a chance to learn—an equal chance to learn—are part of the answer.[92]

The President proposed a White House Conference on Civil Rights—to be composed of "scholars and experts, and outstanding Negro leaders, men of both races and officials of government at every level,"[93] ostensibly to resolve America's civil rights problems. The major thrust of the conference was to "develop new methods of bringing a larger proportion of the nation's economy and society into the civil rights efforts. Specific proposals. . .were aimed at. . .'immediate practical steps to enlist in this cause the great mass of uncommitted, uninvolved Americans'."[94]

Nevertheless, no new civil rights legislation was passed by Congress in 1966 because the proposed bill contained a section prohibiting racial discrimination in the sale and rental of all housing. In 1967, Congress enacted some of the Johnson adminstration's civil rights proposals, but open housing was not one of them. However, President Johnson did appoint the first black Associate Justice to the Supreme Court, Thurgood Marshall, Solicitor General of the United States and former director of the NAACP Legal Defense and Educational Fund.

By late 1966, a national controversy had developed over two words: "black power." [95] The slogan was first used in Mississippi by civil rights activists continuing a march initiated by James H. Meredith. Meredith had been hospitalized for wounds received from shotguns blasts fired from an ambush as he walked through the State. After the attempt on Meredith's life, civil rights workers surged into Mississippi to continue his "freedom march." Stokely Carmichael and other SNCC leaders "repeatedly called for black power during the march and their cry was taken up by many marchers."[96]

The black power controversy, as it developed, drew a mixed response from civil rights leaders and supporters of the civil rights movement. Carmichael, to whom the use of the term was first attributed, said in an interview, "I'm not anti-white." He noted, however, that where blacks were in the majority, "We're going to elect sheriffs," and that his strategy did not differ from that of other ethnic groups in America in their climb to political power. Martin Luther King declared, "It is absolutely necessary for the Negro to gain power." But he emphasized that political power should be shared with whites and that "the term black power is unfortunate because it tends to give the impression of black nationalism."

At its annual convention in Los Angeles in 1966, the NAACP "disassociated itself from the black power doctrine." But the Reverend James Jones, a

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[92] *Public Papers of the Presidents of the United States, Lyndon B. Johnson, 1965,* Vol. II, Item 301, "Howard University Speech," June 4, 1965, p. 639.

[93] Ibid.

[94] Congressional Quarterly, *Revolution in Civil Rights: 1945–1968,* 4th ed. (Washington, D.C.: 1968), p. 27.

[95] In later years, the phrase "black power" was the subject of numerous interpretations, meanings, descriptions, and definitions. For extended interpretations of the term, see Robert Allen, *Black Awakening in Capitalist America: An Analytic History* (New York: Doubleday, 1969); Stokely Carmichael and Charles V. Hamilton, *Black Power: The Political of Liberation in America* London: Cape, 1968); James V. Cone, *Black Theology and Black Power* (New York: Seabury Press, 1969); James A. Geschiwender, *Black Revolt: The Civil Rights Movement: Ghetto Uprisings and Separatism* (Englewood Cliffs, N.J.: Prentice Hall, 1971); Lewis M. Killian, *The Impossible Revolution? Black Power and the American Dream* (New York: Random House, 1968); August Meir, *Black Protest in the Sixties* (Chicago: Quadrangle Books, 1970); Charles Freeman Sleeper, *Black Power and Christian Responsibility* (Nashville: Abingdon Press, 1968); Chuck Stone, *Black Political Power in America* (New York: Bobbs Merrill, 1968); C.T. Vivian, *Black Power and the American Myth* (Philadelphia: Fortress Press, 1970).

[96] See Sobel, *Civil Rights 1960–1961,* pp. 376–79, in connection with this discussion and the quotations which follow.

member of the Los Angeles school board, declared that "the NAACP must accept the challenge of defining black power and making it an honorable and a factual part of the total power spectrum in America." While the NAACP and SCLC stressed moderation, CORE's national director, Floyd McKissick, nevertheless supported the "black power" notion and stated that it was "a movement dedicated to the exercise of American democracy in its highest tradition. . .A drive to mobilize the black communities of this country in a monumental effort to remove the basic causes of alienation, frustration, despair, low self-esteem, and hopelessness."

Soon, newspaper columnists, civil rights supporters, and leaders of the civil rights movement were engaged in a national debate over the term. To some it was equated with reverse racism; to others it meant pride in being a black American. Still others saw it as black nationalism, political and economic power, and cultural pluralism. But, whatever the interpretation of black power, one point was clear: the image of the American "Negro" had changed. Blacks shed the definitions ascribed to them by a predominantly white society. They rejected the word "Negro" as a racist definition and embraced the word "black" as a description of themselves and their experience. The manner in which they now viewed themselves in a society from which they felt historically alienated created changes within the black population ranging from new hair styles to an avid interest in the "black experience" in America.

Black youths argued for a revision of American history in which their ancestors' journey would be recognized as an integral part of the American past. Black studies curricula—which included courses in literature, sociology, economics, political science, folklore, and history taught by black instructors and offering an interpretation of the black experience in America by black scholars—were incorporated into educational institutions throughout the country. American history, as it was written at the time, was seen as a racist interpretation casting blacks as the "drawers of water and hewers of wood."

To young black Americans, black history was a tragedy. In the words of one black scholar:

> . . .tragedy has been the keystone of the arch of the Negro's sojourn and the bedrock of his experience (in America). The sheer unique need for him, in comparison with his fellow human beings, to squeeze from life outlets of individuality and particles of meaning and satisfaction is itself a reflection of the tragic dimension of history. For even his most moving achievements—and they have been many and varied—have been built on the scaffold of a broken heart and disconsolate spirit. . . . Evil has been pursued for the sake of an alleged good. That is why so much injustice has been inflicted upon the Negro not only with easy conscience but with a sense of pride and moral duty. All suffering is bitter. . .but unjust suffering is doubly bitter. If that is true then unjust suffering in the name of justice is ineffably bitter.[97]

The year 1968 was one of tragedy and mourning for the American people. Martin Luther King was assassinated in Memphis, and 2 months later Robert Kennedy was assassinated in Los Angeles. The Nation's cities once again became centers of racial violence. Congress passed a civil rights act that included an open housing provision.

It also was an election year. The country was deeply divided over the Vietnam war, and President Johnson unexpectedly chose not seek reelection. On January 20, 1969, Richard M. Nixon was inaugurated as the 37th President of the United States. In his inaugural address, President Nixon said:

> No man can be fully free while his neighbor is not. To go forward at all is to go forward together. . .This means black and white together as one Nation, not two. The laws have caught up with our conscience. What remains is to give life to what is in the law: to insure at last that as all are born equal in dignity before God, all are born equal in dignity before man.[98]

The central theme of civil rights at the national level from 1969 to 1974 was contained in a memo prepared for President Nixon by Daniel Moynihan:

> . . .the time may have come when the issue of race could benefit from a period of "benign neglect." The subject has been too much talked about. The forum has been too much taken over by hysterics, paranoids and boodlers on all sides. We may need a period in which Negro progress continues and racial rhetoric fades. The administration can help bring this about by paying close attention to such progress—as we are doing—while seeking to avoid situations in which extremists of either race are given opportunities

[97] Samuel Dubois Cook, "A Tragic Conception of Negro History," *The Journal of Negro History*, vol. 25, no. 4 (1960), pp. 223–25.

[98] *Public Papers of the Presidents of the United States, Richard M. Nixon, 1969*, Item 1, "Inaugural Address," Jan. 20, 1969, p. 3.

for martydom, heroics, histrionics or whatever. Greater attention to Indians, Mexican Aemricans and Puerto Ricans would be useful.[99]

When the "benign neglect" memo was disclosed in 1970, some supporters of civil rights called "Moynihan's letter symptomatic of a calculated, aggressive and systematic effort in the present national administration to wipe out all the civil rights gains" made in the 1950s and 1960s.[100] They pointed out that one of the first steps taken by the new administration in 1969 was to seek a delay in implementing the Department of Health, Education, and Welfare's plans to step up the pace of school desegregation. They also said that the administration had attempted to weaken the 1965 Voting Rights Act when it was being extended.

The administration did support measures to increase the employment of black workers in the segregated construction industry through what was known as the "Philadelphia plan." President Nixon also created the Office of Minority Business Enterprise to assist in the development and expansion of small business opportunities and ownership by minority groups. Federal funding was substantially increased for various civil rights activities.[101]

On March 24, 1970, President Nixon issued a statement on elementary and secondary school desegregation. He affirmed his belief that the 1954 *Brown* decision was "right in both constitutional and human terms." He assessed the progress of the post-*Brown* period and discussed "some of the difficulties encountered by courts and communities as desegregation. . .accelerated." President Nixon declared that he wanted "to place the question of school desegregation in its larger context, as part of America's historic commitment to the achievement of a free and open society," but he also expressed his "opposition to any compulsory busing of pupils beyond normal geographic school zones for the purposes of achieving racial balance."

The President's statement was indicative of a more general decline of interest in the field of civil rights. For many years racial discrimination had been seen as a peculiarly regional problem, focused primarily on the South, when in fact the racial problem was nationwide. During the 20th anniversary year of the *Brown* decision, however, legislation to curb busing for school desegregation was initiated by Congressmen from the North as well as the South. If President Nixon's statement seemed to reflect withdrawal from a national commitment to civil rights progress, congressional interest also appeared to be declining.

While civil rights leaders increasingly argued that support for racial equality as a national goal had waned, the administration contended that progress was continuing while rhetoric was fading and that the Nation's conscience was now catching up with its laws.

Toward Racial Equality

In 1974, the American public and those who interpret contemporary social affairs are accustomed to pointing to the 1954 *Brown* decision as the beginning of the civil rights movement. Indeed, it was a watershed in American race relations.

But, to black Americans, the struggle for civil rights began with slavery—with racial prejudice, with racial segregation, and with racial discrimination. The court decisions that preceded *Brown* were steps toward equality. The final recognition by *Brown* that black Americans were full citizens, as a principle of constitutional law, was the end of a movement whose roots are over 300 years old. To blacks, 1954 was the "Year of Jubilee," 58 years overdue since *Plessy v. Ferguson* in 1896, 91 years overdue since the Emancipation Proclamation in 1863, and 293 years overdue since blacks were reduced to slavery in America in 1661.

The quickening pace with which black Americans attended to the testing of their rights after the *Brown* pronouncement resulted in an acceleration of civil rights activity which the public and social observers misunderstood as the genesis of a movement. But from the perspective of blacks, the 20-year period was "catch up time" as they attempted to reap the benefits of first class citizenship. The question today is to what extent these benefits have been achieved, to what extent racial equality has been made real.

[99] Congressional Quarterly, *Civil Rights Progress Report 1970*, p. 24.

[100] Ibid.

[101] Total outlays for Federal civil rights enforcement rose from approximately $100 million in fiscal year 1970 to a requested $604 million in fiscal 1975. In addition, almost 25,000 minority employees were added to the Federal service between November 1969 and May 1972, and minority increases in the middle and upper grade levels occurred at much faster rates than for nonminorities. For an analysis of Federal civil rights activities during the administration of President Richard M. Nixon, see *Special Analyses of the Budget of the United States Government, Fiscal Year 1975*, pp. 171–88.

Chapter Two

Equality of Educational Opportunity

The Law Since Brown

In the 20 years prior to *Brown v. Board of Education,* the Supreme Court rendered decisions that whittled away at the doctrine of "separate but equal," thereby preparing for the sweep of the 1954 pronouncement. An examination of the cases leading to *Brown* provides perspective on both *Brown* itself and the decisions following from it.

The duty of the States to provide equal educational opportunity is a constitutional imperative which did not arise for the first time in 1954. Numerous earlier decisions of the Supreme Court and lower Federal courts held that inequalities between black and white schools in physical facilities, course offerings, duration of school terms, extracurricular activities, and the like violated the equal protection clause of the 14th amendment.[1]

In 1938[2] and again in 1948[3] the Supreme Court invalidated school segregation when tangible facilities provided for blacks were found unequal to those provided for whites. In 1950, however, the Court made clear that equality in physical structures and other tangible aspects of a school program was not the only consideration in determining equality in educational opportunity. The totality of the educational experience needed to be considered, the Court said.

In *Sweatt v. Painter,* [4] the Court ruled that Texas could not provide black students with equal educational opportunity in a separate law school. The fact that the facilities at the University of Texas Law School were superior to those at the black law school was not the key factor upon which the decision turned. Instead, the crucial point was the fact that the University of Texas "possesses to a far greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school."[5]

Among the items considered by the Court in its evaluation of the two law schools was their comparative "standing in the community." In addition, the Court said:

> Moreover, although the law is a highly learned profession, we are well aware that it is an extremely practical one. The law school, the providing ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned. The law school to which Texas is willing to admit petitioner excludes from its student body members of the racial groups which number 85 percent of the population of the State and include most of the lawyers, witnesses, jurors, judges, and other officials with whom petitioner will inevitably be dealing when he becomes a member of the Texas bar. With such a substantial and significant segment of society excluded, we cannot conclude that the education offered petitioner is substantially equal to that which he would receive if admitted to the University of Texas Law School.[6]

[1] See, e.g., Sipuel v. Board of Regents, 332 U.S. 631 (1948); Missouri ex rel Gaines v. Canada, 305 U.S. 337 (1938); Gong Lum v. Rice, 275 U.S. 78 (1927); Carter v. School Board, 182 F. 2d 531 (4th Cir. 1950); Davis v. County School Board, 103 F. Supp. 337 (E.D. Va. 1952), *rev'd sub nom.* Brown v. Board of Education of Topeka, 347 U.S. 483 (1954); Butler v. Wilemon, 86 F. Supp. 397 (N.D. Tex. 1949); Pitts v. Board of Trustees, 84 F. Supp. 975 E.D. Ark.. 1949); Freeman v. County School Board, 82 F. Supp. 167 (E.D. Va. 1948), *aff'd,* 171 F. 2d 702 (4th Cir. 1948). See also Leflar and Davis, "Segregation in the Public Schools—1953," *Harvard Law Review,* vol. 67 (1954), pp. 377, 430-35; Horowitz, "Unseparate but Unequal—The Emerging Fourteenth Amendment Issue in Public School Education," *UCLA Law Review,* vol. 13 (1966), pp. 1147, 1149.

[2] Missouri ex rel Gaines v. Canada 305 U.S. 337 (1938).

[3] Sipuel v. Board of Regents 332 U.S. 631 (1948).

[4] 339 U.S. 629 (1950).

[5] Ibid. at 634.

[6] Ibid.

In another case the same year, *McLaurin v. Oklahoma State Regents for Higher Education,* [7] the Court required that a black student be treated like all other students and not be segregated within the institution. Engaging in discussions and exchanging views with other students, the Justices declared, are "intangible considerations" indispensable to equal educational opportunity.

These cases led to the *Brown* ruling, where it was held that school segregation, which the Court had invalidated in *Sweatt* and *McLaurin* because of the particular harm demonstrated in those cases, was universally detrimental to black children. The Court quoted those passages from *Sweatt* and *McLaurin* in which it had stressed intangible considerations affecting equal educational opportunity, declaring:

> such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.[8]

Brown was a consolidated opinion covering cases arising in four States: Kansas, Delaware, Virginia, and South Carolina. A common issue justified their consideration together and resulted in a ruling that legally-compelled segregation of students by race is a deprivation of the equal protection of the laws as guaranteed by the 14th amendment. Although the holding in *Brown* clearly was directed against legally-sanctioned segregation, language in *Brown* gives support to a broader interpretation. The Court expressly recognized the inherent inequality of all segregation, noting only that the sanction of law gives it greater effect.

Finding that Topeka, Kansas, operated a dual school system with separate schools for whites and blacks, the Court said: "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. *Separate educational facilities are inherently unequal*" (emphasis added). Here, *Brown* reflected concern for segregation resulting from factors other than legal compulsion. For those drawing a sharp distinction between *de facto* and *de jure* segregation, a critical thrust of *Brown* is, therefore, ignored, although the Supreme Court has not yet ruled that racial imbalance or *de facto* segregation is unconstitutional and, therefore, illegal.

De jure segregation refers to deliberate, official separation of studnts on the basis of race, as in the school districts covered by the *Brown* cases and in other school systems operated under State laws requiring separation. *De facto* segregation refers to racial separation that arises adventitiously, without official action or acquiescence. Such "accidental" segregation has often been said to exist in northern and western school districts where no history of legal compulsion or State action has been found. However, illegal segregation may be caused by actions of school officials—for example, through gerrymandering of attendance boundaries—even though such segregation is not officially recognized.

One year after *Brown I,* the question of a remedy for segregation was argued before the Supreme Court. The standard for implementation of desegregation then established by *Brown II* required a "good faith" start in the transformation from a dual to a unitary system, under the jurisdiction of district courts, "with all deliberate speed." The Court also permitted limited delays in achieving complete desegregation if a school board could "establish that such time is necessary in the public interest."

On the level of higher education, however, the Court made no such concessions, ruling in *Hawkins v. Board of Control of Florida* [9] that "all deliberate speed" was applicable only to elementary and secondary schools. The immediate right to equal education remained intact at all levels of education beyond secondary school.

Post-Brown Cases in the South

Despite the slow pace of desegregation under "all deliberate speed," fierce and concerted resistance followed the implementing decree. Black plaintiffs had to return to the courts repeatedly to secure implementation of *Brown.* The doctrine of "all deliberate speed" provided a mechanism for delay, but the Supreme Court *did* make clear in *Cooper v. Aaron* [10] that unequivocal resistance would be firmly condemned.

In that case, the Little Rock, Arkansas, school board requested a stay of its 1958 integration plan because of pervasive public hostility. The Governor had dispatched National Guard units to prevent black students from entering the high school, and

[7] 339 U.S. 637 (1950).
[8] 347 U.S. at 494.
[9] 350 U.S. 413 (1956).
[10] 358 U.S. 1 (1958).

President Eisenhower subsequently had federalized the Guard and sent paratroopers to make it possible for the black students to attend school. The school board argued that school activities could not be conducted in the atmosphere *caused by the black students.*

The Court, in a unanimous unsigned opinion, reaffirmed *Brown,* denying the requested delay despite recognition of chaotic conditions during the 1957–58 school year. Finding that the tension had been caused by behavior of State officials, the Justices declared that those conditions could be brought under control by State action. The Court cited *Buchanan v. Warley,* [11] saying:

> the constitutional rights of [black children] are not to be sacrificed or yielded to the violence and disorder which have followed upon the actions of the Governor and the Legislature. Thus, law and order are not here to be preserved by depriving the Negro children of their constitutional rights.[12]

The Court rejected the position of the Governor and legislature that they were not bound by the holding in *Brown,* citing Article 6 of the Constitution, which makes the Constitution the supreme law of the land. Under *Marbury v. Madison,* [13] the Court stated,

> The Federal judiciary is supreme in the exposition of the law of the Constitution. . . .no state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it. . . .[14]

Other efforts to delay school desegregation included passage of numerous State antidesegregaion laws, including "interposition acts."[15] Although the Supreme Court declared interposition acts unconstitutional, the measures permitted evasion for a time.[16]

Another form of evasion and delay involved the use of pupil assignment and freedom-of-choice policies. These included elaborate processes that black parents generally had to comply with to secure transfers or assignments of their children to formerly all-white schools. The use of pupil assignment was generally upheld by the Court, as in the *Shuttlesworth* case,[17] where the district court held that the Alabama pupil placement statute was not unconstitutional on its face. Under that law in determining eligibility standards for transfers, there was provision for consideration of psychological qualifications of pupils, possibility or threat of friction or disorder among pupils, and maintenance or severance of established social or psychological relationships with parents and teachers.

In *Goss v. Board of Education,* [18] a 1963 case involving pupil transfer, the Supreme Court held unanimously that plans for two Tennessee counties ran counter to *Brown.* The provisions permitted students, assigned to schools without reference to race, to transfer from their assigned school if a majority of students in that school, or in their grade, were of a different race. It is apparent that the proposed transfer system perpetuated segregation. Indeed, there was no provision whereby students might transfer upon request to a school in which their race was in a minority. Classifications based on race for purposes of transfer between public schools, as here, violate the equal protection clause.

Another 1963 case, *McNeese v. Board of Education,* [19] eliminated the necessity for exhausting administrative remedies before seeking redress in the courts. This halted the continued use of bureaucratic procedures to delay implementation of constitutional rights under *Brown.*

An even clearer indication that the Supreme Court was becoming impatient with school board tactics designed to delay or evade school desegregation came in a reexamination of *Griffin v. County School Board of Prince Edward County, Virginia.* [20] In this case (which had been consolidated in the original *Brown* decision in 1954) the Court rejected continued delay in achieving desegregation: "The time for mere 'deliberate speed' has run out, and that phrase can no longer justify denying these Prince Edward County school children their constitutional rights to an

[11] 245 U.S. 60 (1917).
[12] 358 U.S. 16.
[13] 1 Cranch 137 (1803).
[14] 358 U.S. 18.
[15] The interposition concept concludes that the United States is a compact of States, any one of which may impose sovereignty against the *announcement* within its border of any decision of the Supreme Court or act of Congress, irrespective of the fact that the constitutionality of the act has been established by decisions of the Supreme Court. The doctrine denies the constitutional obligation of the States to respect decisions of the Supreme Court with which they do not agree.
[16] Bush v. New Orleans Parish School Board, 188 F. Supp. 916 (E.D. La.), *aff'd,* 365 U.S. 569 (1961).
[17] Shuttlesworth v. Birmingham Board of Education, 162 F. Supp. 372(N.D. Ala. 1958), *aff'd,* 358 U.S. 10 (1958).
[18] 373 U.S. 683 (1963). In Knoxville, Tenn., East High School, a formerly black school desegregated under geographic assignment, became all-black within 5 years under this transfer policy. The school was renamed Austin East, the name it had carried as a segregated school. The Reverend Frank Gordon, former president, Knoxville NAACP, and Mrs. Nannie Roberts, mother of Patricia Roberts, one of the first blacks to attend East High together with Josephine Goss, interviews in Knoxville, Oct. 23, 1973.
[19] 377 U.S. 668 (1963).
[20] 377 U.S. 218 (1964).

education equal to that afforded by the public schools in the other parts of Virginia."[21]

Prince Edward County, a fervent supporter of Virginia's "massive resistance" stance, had closed its public schools rather than permit any black and white children to attend schools together. The Court held that the action of the county school board in closing the public schools while, at the same time, contributing to the support of private segregated schools, resulted in a denial of the equal protection of the laws to black children.

The Court said:

> A State, of course, has a wide discretion in deciding whether laws shall operate statewide or shall operate only in certain counties. . . .But the record in the present case could not be clearer that Prince Edward's public schools were closed and private schools operated in their place with State and county assistance, for one reason, and one reason only: to ensure, through measures taken by the county and State, that white and colored children in Prince Edward County would not, under any circumstances, go to the same school. Whatever nonracial grounds might support a State's allowing a county to abandon public schools, the object must be a constitutional one, and grounds of race and opposition to desegregation do not qualify as constitutional.[22]

The Supreme Court affirmed the lower court order enjoining "the county officials from paying county tuition grants or giving tax exemptions and from processing applications for state tuition grants so long as the county's public schools remained closed."[23] In a similar Louisiana case, Judge John Minor Wisdom framed the issues: "Has the state, by providing tuition grants to racially discriminatory academies, significantly involved itself in private discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment?"[24] His answer was yes, and the Supreme Court upheld his decision.

Another delaying tactic was the use of the stair-step or grade-a-year plan for school desegregation. Such plans were usually developed in conjunction with freedom-of-choice policies or, as in *Rogers v. Paul,* [25] with pupil assignment plans. The Court, in a unanimous unsigned opinion, held that a school district whose grade-a-year plan had not reached high school was compelled to honor the requests of black high school students for admission to desegregated schools so that they could take courses not offered at the all-black schools to which they were initially assigned. The Court also held that faculty desegregation was part of the relief required by *Brown.*

The decade following *Brown,* then, was characterized both by the failure of the "all deliberate speed" doctrine and by veiled as well as open resistance to desegregation, reflected in "massive resistance" activities, procedurally complicated pupil assignment procedures,[26] grade-a-year plans used in conjunction with pupil assignment or free choice, and tuition grant devices permitting escape from desegregating public school systems. These techniques permitted evasion and delay until black plaintiffs exhausted leisurely legal processes. The result, despite consistent victories by black plaintiffs in the courts, was that only 1.2 percent of black students in the 11 Southern States attended schools with whites in 1963–64. That figure had increased to only 2.2 percent in the following school year[27] when the Civil Rights Act of 1964 was passed by the Congress.

Progress in the first decade following *Brown,* consequently, was frustratingly slow. Resistance to desegregation placed great pressures on Federal judges in States having constitutionally impermissible dual systems of public education. Generally, however, these men transcended the sanctions applied by their communities and met their responsibilities as Federal officers courageously and honorably.[28]

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[21] Ibid. at 229.
[22] Ibid. at 231.
[23] Ibid. at 232.
[24] Poindexter v. Louisiana Financial Commission, 275 F. Supp. 833 (E.D. La. 1967), *aff'd.* per curiam, 389 U.S. 215 (1968).
[25] 382 U.S. 198 (1965).
[26] Pupil assignment plans generally followed two formats. One directed that assignment of pupils to particular schools was to be graded by: orderly and efficient administration of the school; effective instruction; and health, safety, and general welfare of the pupils. A second format provided for detailed criteria which did not include race. These criteria fell generally into the following classifications: available school plants, staff, and transportation; school curricula in relation to each pupil's academic preparation and scholastic abilities; the pupil's morals, conduct, health, personal standards, and home environment; and effect of admission of the pupil on other pupils and the community. For a detailed disscussion of pupil assignment plans, see U.S., Commission on Civil Rights, *1961 Report,* vol 2, *Education,* pp. 22–31.
[27] U.S. v. Jefferson County Board of Education, 372 F. 2d 836, 903 (5th Cir. 1966); and U.S., Commission on Civil Rights, *Southern School Desegregation, 1966–67,* pp. 5–6 (hereafter cited as *Southern School Desegregation).*
[28] For a detailed account of the performance of the judges charged with implementing Brown, see J.W. Peltason, *Fifty-eight Lonely Men, Southern Federal Judges and School Segregation* (New York: Harcourt, Brace and World, 1964). Also see a forthcoming book on the Fifth Circuit Court of Appeals by Thomas Reid of Duke University Law School analyzing this

Then, shortly after passage of the Civil Rights Act of 1964, the Supreme Court stated categorically that "delays in desegregating school systems are no longer tolerable."[29] While the Court appeared to have had enough of delay, however, ineffective desegregation persisted, and the lower courts continued to accept techniques which postponed full realization of constitutional rights.

The Civil Rights Act of 1964 provided additional support for the desegregation process through Titles IV and VI. Under Title IV, technical assistance may be given to applicant school boards in the preparation, adoption, and implementation of plans for desegregation of public schools. The title also provides for grants or contracts to institutes or university centers for training to improve the ability of teachers and other personnel to deal with special educational problems occasioned by desegregation. The Commissioner of Education may also make grants to local school boards, upon their request, to pay for staff training to deal with problems accompanying desegregation and for employment of desegregation specialists.

If efforts to secure a school district's voluntary desegregation failed, administrative enforcement proceedings under Title VI would be initiated. Title VI compliance procedures begin with a review of districts where data indicate substantial segregation or where complaints of discrimination have been filed. If deficiencies are found, letters of probable noncompliance which define the deficiencies then are sent to the districts involved. Negotiations subsequently are initiated with each district to secure correction of the deficiencies and development of a desegregation plan, although there are no time schedules for such negotiations or for followup reviews. If satisfactory results are not obtained through negotiations, enforcement action may be taken—through either administrative enforcement proceedings or referral to the Justice Department for litigation. The administrative enforcement proceedings include a hearing, a decision by an administrative judge, and an appeal process. If noncompliance with Title VI is found, Federal funds may be terminated. In short, Title IV represents the carrot and Title VI the stick.

An additional section of Title VI permits suits by the Attorney General, upon receipt of meritorious written complaints from parents that their children, as members of a class of persons similarly situated, are being deprived by a school board of the equal protection of the laws. A similar provision covers college admission and retention, authorizing the Attorney General to intervene in equal protection suits of public importance.

Following approval of the Civil Rights Act, with the Title VI provision for administrative enforcement, progress in desegregation accelerated as school districts sought to avoid termination of Federal assistance. Section 601 of Title VI provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Both the threat and the fact of termination helped to secure compliance from wavering districts so that funds made available under such legislation as the National Defense Education Act and the Elementary and Secondary Education Act of 1965 would not be lost.

Between 1964 and 1968, freedom-of-choice plans were the principal means school districts used to desegregate under U.S. Department of Health, Education, and Welfare (HEW) voluntary plans and court-ordered plans. Such plans permitted a parent or a child (if 14 years of age or older) to select any school in the district for attendance in the ensuing school year.

The HEW guidelines of 1965[30] required desegregation of at least four grades by September 1965. In 1966 the guidelines were amended to include specific percentages of desegregation for measuring plan effectiveness.[31] The Title VI guidelines were again modified in 1968, providing that, if "under a free choice plan, vestiges of a dual school structure remain. . .additional steps are necessary to complete the desegregation of its schools," including the use of geographic attendance zones, reorganization of

active court, which has handed down many important opinions on school desegregation.

[29] Bradley v. School Board of Richmond, 382 U.S. 103, 105 (1965).

[30] U.S., Department of Health, Education, and Welfare, *General Statement of Policies under Title VI of the Civil Rights Act of 1964 Respecting Desegregation of Elementary and Secondary Schools* (1968).

[31] U.S., Department of Health, Education, and Welfare, *Revised Statement of Policies for School Desegregation Plans Under Title VI of the Civil Rights Act of 1964* (1966).

grade structures, school closings, consolidation, and construction.[32]

Although resistance remained strong, particularly to statistical guidelines developed to assess the effectiveness of the freedom-of-choice plans, recalcitrant school districts eventually complained less about these plans inasmuch as few students exercised their right to choose. Freedom-of-choice plans, always considered a transitional device by HEW officials, basically were a starting mechanism for most desegregation efforts. Rarely under such HEW plans was desegregation of 25 percent of all pupils achieved. More often than not, actual desegregation was less, although even this desegregation technique accomplished more than had been secured previously. Some formerly white schools were minimally desegregated, but black schools remained, leaving intact the dual character of the school systems.

Many reasons are advanced for the failure of freedom-of-choice plans. Since most whites chose to have their children attend a predominantly white school, the burden of desegregation fell on black students. Further, as the U.S. Commission on Civil Rights reported in 1967:

> During the past school year, as in the previous year, in some areas of the South, Negro families with children attending previously all-white schools under free-choice plans were targets of violence, threats of violence and economic reprisal by white persons, and Negro children were subjected to harassment by white classmates notwithstanding conscientious efforts by many teachers and principals to prevent such misconduct. . . .[33]

The Commission concluded that such activities led many black families to keep their children in all-black schools.

Harold Howe II, U.S. Commissioner of Education, stated in testimony before a congressional subcommittee:

> When our fieldworkers investigate free-choice plans which are not producing school desegregation they find that in almost all instances the freedom of choice is illusory. Typically the community atmosphere is such that Negro parents are fearful of choosing a white school for their children.[34]

Another important reason for reluctance of black children to attend traditionally all-white schools (particularly high schools) was the feeling that extracurricular participation available at black schools would not be available at white schools. Some additional pressures came from black teachers and administrators who feared the loss of jobs if complete desegregation occurred.[35]

The HEW guidelines on school desegregation were soon upheld and adopted by the courts.[36] This lessened the protest by school officials damaged by the alleged stringency of the guidelines.

Another example of leadership came in an April 1968 memorandum to chief State school officers.[37] HEW directed that, where freedom-of-choice plans had not effectively eliminated dual school systems, the systems should adopt plans that would accomplish this task. The memorandum supported the March 1968 guidelines in stating that complete desegregation should not be delayed beyond the 1969–70 school year.

It was not until *Green v. County School Board of New Kent County* [38] in 1968, however, that the Supreme Court undergirded this HEW position. The Virginia county in *Green* had only two schools, one black and one white, and no residential segregation. Under the county's freedom-of-choice plan over 3 years, no white child had chosen to attend the black school, and only 15 percent of the black children had chosen to attend the formerly white school. The issue was whether, under these circumstances, a freedom-of-choice plan was adequate to meet the command of *Brown* "to achieve a system of deter-

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[32] U.S., Department of Health, Education, and Welfare, *Policies on Elementary and Secondary School Compliance with Title VI of the Civil Rights Act of 1964* (1968).

[33] *Southern School Desegregation,* p. 88. The U.S. Commission on Civil Rights often was critical of HEW desegregation enforcement during the 1964–68 period, citing the ineffectiveness of free-choice plans, the small number of districts subjected to enforcement action, failure to monitor districts that had provided assurances of compliance, and generally inadequate enforcement standards. In *Racial Isolation in the Public Schools* (1967), the Commission also pointed out the failure to treat school segregation as a northern as well as a southern problem.

[34] Testimony of Harold Howe II, United States Commissioner of Education, in U.S., Congress, House, Committee on the Judiciary, *Hearing Before the Special Subcommittee on Civil Rights,* 89th Cong., 2d sess., 1966, ser. 23, p. 24.

[35] For a detailed discussion of the ineffectiveness of freedom of choice, see U.S., Commission on Civil Rights, *Federal Enforcement of School Desegregation* (1969), pp. 20–23.

[36] U.S. v. Jefferson County Board of Education, 372 F. 2d 836 (5th Cir. 1966).

[37] Ruby Martin, Director of the Office for Civil Rights, U.S. Department of Health, Education, and Welfare, "Publications of Choice Periods," memorandum to Chief State School Officers with Districts Operating Under Voluntary Free Choice Plans, HEW files, Apr. 22, 1958.

[38] 391 U.S. 430 (1968).

mining admission to public schools on a nonracial basis."[39]

The Court found continued existence of an illegal dual school system and stated:

> Brown II was a call for the dismantling of well-entrenched dual systems tempered by an awareness that complex and multifaceted problems would arise which would require time and flexibility for a successful resolution. School boards such as the respondent then operating state-compelled dual systems were nevertheless clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch. . . .The burden of a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now. . . .It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state imposed segregation. It is incumbent upon the district court to weigh that claim in light of the facts at hand, in light of any alternatives which may be shown as feasible and more promising in their effectiveness. Where the court finds the board to be acting in good faith and the proposed plan to have real prospects for dismantling the state imposed dual system "at the earliest practicable date," then the plan may be said to provide effective relief.[40]

The Court concluded that what the school board had done through its freedom-of-choice plan was

> simply to burden children and their parents with a responsibility which Brown II placed squarely on the School Board. The Board must be required to formulate a new plan and, in light of other courses which appear open to the Board, such as zoning, fashion steps which promise realistically to convert promptly to a system without a "white" school and a "Negro" school, but just schools.[41]

Although the Supreme Court did not expressly rule out the use of freedom-of-choice plans, the effect of the *Green* decision was to do so, since freedom-of-choice plans did not result in prompt conversions to a system without black or white schools "but just schools." By requiring the development of a plan that promised realistically to work immediately, HEW's position that terminal desegregation plans be implemented no later than the 1969–70 school year was reinforced. There is evidence that HEW was prepared to recede, and in fact did recede, from this position under certain circumstances. Nevertheless, on balance it is clear that with the use of the guidelines and threatened or actual cutoff of Federal funds, desegregation increased for 5 years after passage of the 1964 Civil Rights Act, especially in the South.

Despite cautious use of the enforcement mechanism, HEW had made more progress toward desegregation than had been achieved through litigation in the 10 years following *Brown.* But the emphasis in Government enforcement of desegregation soon shifted as the policy of the new national administration, in 1969 and thereafter, apparently was to move away from the "administrative fund cutoff requirements and return the burden, politically as well as actually, to the courts for compliance. . . ." [42]

On July 3, 1969, the Attorney General and the Secretary of Health, Education, and Welfare reported that the Government was minimizing use of administrative enforcement under Title VI in favor of a return to litigation. In conformity with the statement, a change in Federal efforts to secure desegregation at the elementary and secondary level occurred.

The joint statement also declared that desegregation plans for school districts "must provide for full compliance now—that is, the 'terminal date' must be the 1969–70 school year." Yet, the statement continued, "limited delay" might be permitted: "In considering whether and how much additional time is justified, we will take into account only *bona fide* educational and administrative problems. Examples of such problems would be serious shortages of necessary physical facilities, financial resources or faculty."[43] The two Cabinet members said that "additional time will be allowed only where those requesting it sustain the heavy factual burden of proving that compliance with the 1969–70 time schedule cannot be achieved; where additional time

[39] Brown v. Board of Education, 349 U.S. 294, 300–301 (1955).
[40] 1 U.S. 430, 464 (1968).
[41] Ibid. at 466.
[42] Marian Wright Edelman, "Southern School Desegregation, 1954–1973; A Judicial-Political Overview," *Blacks and the Law, Annals of the American Academy of Political and Social Science,* May 1973, p. 40.
[43] Statement by Robert H. Finch, Secretary of the Department of Health, Education, and Welfare, and John N. Mitchell, Attorney General, Press Release, July 3, 1969, p. 8.

is allowed, it will be the minimum shown to be necessary."[44]

In the same statement, however, more than a year after the Supreme Court's decision in *Green,* freedom of choice was declared an acceptable means to desegregate if the school district could "demonstrate, on the basis of its record, that. . .the plan as a whole genuinely promises to achieve a complete end to racial discrimination at the earliest practicable date."[45]

The changed policy on enforcement of school desegregation was illustrated in the case of 33 Mississippi school districts. In July and August 1969, the Office of Education in HEW had drafted "terminal" desegregation plans for implementation in fall 1969. This was in accordance with a July 3, 1969, court of appeals' order which directed these school districts to cooperate with HEW in developing desegregation plans.[46] The plans were to be submitted to the district court by August 11, ruled on September 1, and plans adopted by the court were to be implemented in the 1969–70 school year.

The plans were submitted on August 11, as required. They called for an end to freedom of choice and, in almost all cases, complete desegregation in the 1969–70 school year. Later in August, however, the Secretary of Health, Education, and Welfare wrote to the three district court judges of the Southern District of Mississippi, who were to decide which plans to adopt, and to a judge on the court of appeals. The Secretary requested that the submitted plans be withdrawn from consideration and that HEW be given until December to submit new plans. On August 28, 1969, the court of appeals suspended its previous order and postponed the date for submission of the new plans to December 1, 1969.

The Secretary's letter stated that the major reasons for requesting withdrawal of the plans were that "the time allowed for the development of these terminal plans has been much too short" and that implementation of the plans "must surely, in my judgment, produce chaos, confusion, and a catastrophic educational setback." The court of appeals noted, however, that the timetable established had been proposed by the Government and the Government witnesses had stated unequivocally that the timetable was reasonable.

Although, as a condition of the delay granted, school districts were to take "significant action" to desegregate in 1969–70, the districts continued to operate under their ineffective freedom-of-choice plans. Private plaintiffs sought to vacate the postponement order, but Supreme Court Justice Hugo Black denied the request, at the same time inviting the applicants to "present the issue to the full court at the earliest possible opportunity." The petition for a hearing by the Supreme Court was granted on October 9, set down for argument on October 23, and decided October 29, 1969.[47]

In the hearing before the full Court in *Alexander,* a case in which the Department of Justice intervened *against* black students, the Supreme Court refused to accede to the Government's request for delay, stating in a unanimous unsigned decision:

> The question presented is one of paramount importance, involving as it does the denial of fundamental rights to many thousands of school children, who are presently attending Mississippi schools under segregated conditions contrary to the applicable decisions of the Supreme Court. Against this background the Court of Appeals should have denied all motions for additional time because continued operation of segregated schools under a standard of allowing "all deliberate speed" for desegregation is no longer constitutionally permissible. Under the explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools.[48]

The Court held that local school systems are constitutionally required to desegregate first and litigate later. By staying the implementation of plans for full desegregation, the court of appeals had illegally frozen the status quo of past discrimination, even if for a short period.

On December 1, 1969, following the Supreme Court's order in *Alexander,* the court of appeals, in *Carter v. West Feliciana Parish School Board,* [49] ordered the Louisiana school board to adopt plans

[44] Ibid.
[45] Ibid.
[46] United States v. Hinds County School Board 417 F. 2d 853 (5th Cir. 1969).
[47] Alexander v. Holmes County Board of Education, 396 U.S. 1218 (1969).
[48] 396 U.S. 19 (1964). The Mississippi case was not unique. In 1969, for example, HEW also acquiesced in delaying desegregation in Alabama and South Carolina. See U.S., Commission on Civil Rights, *Federal Enforcement of School Desegregation* (1969), pp. 52, 56. Alexander, however, also has been cited by HEW as a reason for unwillingness to use its single sanction, fund termination, based on an interpretation of the "at once" mandate as incompatible with its own administrative enforcement proceedings. Taylor Co., Fla. v. Finch also has been noted in this regard. Peter E. Holmes, Director, Office for Civil Rights, letter to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Sept. 25, 1974.
[49] 396 U.S. 290 (1970).

for desegregating faculty completely but authorized a delay in pupil desegregation until September 1970. Further review by the Supreme Court resulted in a January 14, 1970, unanimous unsigned opinion that stated:

> Insofar as the Court of Appeals authorized deferral of student desegregation beyond February 1, 1970, that court misconstrued our holding in Alexander. . . . the judgments of the Court of Appeals are reversed, and the cases remanded for further proceedings consistent with this opinion. The judgments in these cases are to issue forthwith.[50]

Although the Mississippi plans and those covered in *Carter* were implemented, HEW soon began to place primary emphasis on the first step in the enforcement process, namely, negotiation with school districts to secure voluntary compliance. However, few enforcement proceedings were initiated when compliance was not secured, and those proceedings already underway did not result in termination of Federal financial assistance, even after a determination of noncompliance. As a result, HEW failed to use its authority to achieve the objective established by *Alexander,* which was to eliminate dual school systems at once. In only 15 school districts have funds been terminated since 1968.

The Office for Civil Rights (OCR), which handles Title VI compliance for HEW, reports that no aggregate data are available on results achieved through the emphasis on negotiation to secure voluntary compliance. Such data may be compiled in the near future. National statistics on desegregation since 1968, provided later in this report, sometimes are cited as measures of the effectiveness of negotiation. These statistics, however, reflect not only the contribution of this emphasis, but also the contribution of other policies initiated and followed prior to 1968. The only way in which a judgment can be made on the impact of negotiation as a separate and distinct process is for the Office for Civil Rights to provide specific data on the results of negotiation.

In fact, between May 1969 and February 1971, the files of 60 school districts were transferred by HEW to the Justice Department for legal action, yet between February 1971 and June 1973 no files were transferred.[51] An independent study of HEW data on northern desegregation, secured after months of negotiation and litigation, cites a total of 84 compliance reviews between 1965 and 1973 in more than 5,000 northern and western school districts.[52] From a peak of 23 reviews in 1968, there was a steady decline to no reviews in 1973.

Of the 84 reviews, only 32 had been closed by the end of fiscal year 1973. In three districts, discriminatory practices were changed immediately, while four cases were closed when private litigants successfully obtained court relief. The Justice Department acquired jurisdiction in four cases, and two cases were brought to an administrative hearing.

For the 52 districts where compliance reviews were still open in 1973, in 37 cases a letter of probable noncompliance had not yet been sent. In 10 cases, the letter had been sent, but only 2 had reached the stage of administrative hearing. In 5 cases, the investigation had been stayed pending private litigation.

In these 84 northern districts, HEW found discrimination and sent letters of probable noncompliance to 22, involving 513,000 pupils. In contrast, in 20 of 32 northern districts where cases were initiated by private litigants, the courts found discrimination affecting 921,000 pupils.

Comparable data are not yet available for the South.

Following *Alexander* and *Carter,* on March 24, 1970, the President issued a statement on elementary and secondary desegregation in which the question of busing was raised. The President cautioned that desegregation must proceed with the least possible disruption and emphasized the desirability of maintaining the neighborhood school principle.

Subsequently, in 1971, the President disavowed an HEW desegregation plan which included the transportation of children and restated his positon. The President said that he "consistently opposed busing of our nation's school children to achieve racial balance" and that he was "opposed to the busing of children simply for the sake of busing." Finally, the President said that he had instructed the Attorney General and the HEW Secretary "to hold busing to the minimum required by the law."[53]

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[50] Ibid.

[51] From a forthcoming report by the U.S. Commission on Civil Rights that fully examines the role of OCR as one aspect of Federal civil rights enforcement.

[52] This material is based on Center for National Policy Review, School of Law, Catholic University of America, *Justice Delayed and Denied: HEW and Northern School Segregation* (Washington, D.C.: September 1974).

[53] Statement by the President, White House Press Release, Aug. 3, 1971.

The Supreme Court dealt with these issues the same year, in *Swann v. Charlotte-Mecklenburg Board of Education.* [54] The Charlotte-Mecklenburg, North Carolina, school system is a consolidated one, including the city of Charlotte and surrounding Mecklenburg County. The plan approved by the district court and upheld by the Supreme Court in *Swann* attempted to desegregate the system by distributing students throughout the 107 schools of the district so that the schools' compositions reflected the overall racial pattern of the system.

In *Swann,* the Court noted that busing of students is "a normal and accepted tool of educational policy"[55] and announced that "desegration plans cannot be limited to the walk-in school."[56] The Court, in effect, placed its approval on busing as an appropriate remedy for use in school desegregation. The Court carefully recognized that busing may be validly objectionable "when the time or distance of travel is so great as to risk either the health of the children or significantly impinge on the educational process."[57] The Court also discussed appropriate limits on transportation, stating, "limits on time of travel will vary with many factors, but probably none more than the age of the students."[58]

In eliminating illegally segregated school systems, the Justices pointed out, the neighborhood school or any other assignment plan "is not acceptable simply because it appears to be neutral." The Court also said:

> All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. The remedy for such segregation may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to elimiate the dual systems. . . .[59]

The Court also concerned itself in *Swann* with remedies generally, outlining the following techniques, in addition to transportation, which were permissible and appropriate:

> "a frank—and sometimes drastic—gerrymandering of school districts and attendance zones," resulting in zones "neither compact nor contiguous; indeed they may be on opposite ends of the city."
>
> "'pairing', 'clustering', or 'grouping' of schools with attendance assignments made deliberately to accomplish the transfer of Negro students out of formerly segregated Negro schools and transfer of white students to formerly all-Negro schools."

The Court found that the use of a mathematical ratio of white to black students (71 percent to 29 percent) in the schools was "no more than a starting point in the process of shaping a remedy, rather than an inflexible requirement."[60] The Court continued: "Awareness of the racial composition of the whole school system is likely to be a useful starting point in shaping a remedy to correct past constitutional violations."[61] If the ratio has been read as requiring "any particular degree of racial balance or mixing," the Court said, "that approach would be disapproved and we would be obliged to reverse."[62]

Reactions to *Swann* have varied. One commentator found four advances enunicated in the case:

(1) the rejection of geographic proximity (neighborhood schools) as a criterion for school assignments where such policy fails to bring about a "unitary nonracial school system";

(2) the creation of an evidentiary presumption that segregated school patterns are the result of past discriminatory conduct;

(3) the requirement that school boards take all feasible steps to eliminate segregation, including massive, long distance transportation programs;

(4) The validation of using race in student assignments to achieve school desegregation.[63]

A different and more pessimistic view held:

> . . .the Court seemed unwilling to take a vigorous antisegregation stand. It stressed it would not condone the strict use of mathematical ratios by courts to ensure racial balance throughout a school system since "[t]he consti-

[54] 402 U.S. 1 (1971).
[55] 402 U.S. 1, 29 (1971).
[56] Ibid. at 30.
[57] Ibid. at 30–31.
[58] Ibid. at 31.
[59] Ibid. at 28.
[60] Ibid. at 25.
[61] Ibid.
[62] Ibid. at 24.
[63] Owen Fiss, "The Charlotte-Mecklenburg Case," cited in Derrick A. Bell, Jr., *Race, Racism and American Law* (Boston: Little Brown, 1973), p. 509.

tutional command to desegregate schools does not mean every school in every community must always reflect the racial composition of the school system as a whole." Furthermore the Court indicated that the continuation of an indefinite but small number of one race schools within a district would not be viewed as evidence of continued *de jure* segregation. . . .Finally, although Swann ruled that the busing of students to achieve racial balance was permissible within the confines of the case, there was a strong implication that at some point busing might become violative of the Constitution.[64]

Following the *Swann* decision, HEW remained inactive despite the mandate provided.[65] *Swann* required, for example, appropriate affirmative steps to correct constitutional abuses by use of such techniques as noncontiguous zoning and transportation of students. The Court also had indicated that, although precise racial balance was not required to dismantle dual school systems:

> in a system with a history of segregation the need for remedial criteria of sufficient specificity to assure a school authority's compliance with its constitutional duty warrants a presumption against schools that are substantially disproportionate in their racial composition.[66]

In addition, the Court placed the burden upon the school district to justify the continued existence of any schools that are "all or predominately of one race."

After *Swann* was decided, HEW attempted to ascertain which school districts had "racially identifiable" schools. Ultimately, 650 were identified, of which 300 were under HEW's primary jurisdiction. HEW then analyzed its data on these districts:

> A school system which is 45 percent black, and which has only one majority black school which is 52 percent black, [was] eliminated from the group subject to potential enforcement. . . .Of the initial 300 districts, about 75 were eliminated on this basis alone at first review, leaving the balance for further analysis.[67]

In the remaining 225 school districts having one or more predominantly minority schools, HEW did not shift the burden of proof to the school districts. It was unnecessary to satisfy HEW that the composition of the schools was not the result of the district's present or past discriminatory action, despite the fact that the racial composition of these schools could not satisfy the requirements of the Court.

Letters relating to *Swann* were sent to 91 school districts.[68] In only 37 of these districts did HEW secure desegregation plans. In three instances administrative enforcement proceedings were initiated, and in nine *Swann* was found applicable. The remaining 42 districts remained "under review" well after the commencement of the 1971–72 school year, several months subsequent to the decision in *Swann.* The Office for Civil Rights director described the situation:

> In other words, in those cases where we didn't get plans that met Federal standards, we did not accept what was proposed. Instead, we held tight and are currently in the process of continuing our negotiations and law enforcement action against those districts.[69]

The immediate desegregation mandate of *Alexander* and the insistence in *Swann* that schools having disproportionately minority enrollment were presumptively in violation, thus, were not acted upon by HEW, which permitted these districts to remain "under review." In 134 other districts, HEW did not even send a letter requesting an explanation of racially disproportionate schools. HEW attempted to secure compliance through persuasion and negotiation, and the Title VI enforcement mechanism fell

[64] "School Busing and Desegregation: The Post Swann Era," cited in Bell, *Race, Racism and American Law,* p. 509.

[65] Although HEW enforcement is discussed here in the context of Swann, HEW had been criticized for failing to: stop grants to segregated institutions at the elementary, secondary, and higher education levels; begin a single enforcement proceeding in higher education; use Title VI against noncomplying districts either as a threat or in actuality; prevent racial discrimination and segregation in vocational and other schools operated by State departments of education with Federal financial assistance; assure that school districts operating under judicial desegregation orders are in compliance with Title VI; and in districts where HEW formerly prosecuted enforcement proceedings against school districts, its failure to exercise and its disavowal of full remedial power to suspend or recapture aid from the defaulting districts. See Civil Action No. 3095–70 Plaintiff's Points and Authorities in Support of Motion for Summary Judgment in Adams v. Richardson, 4–5; and see decision in Adams v. Richardson, 356 F. Supp. 92 (1973).

[66] 402 U.S. 1, 26 (1971).

[67] Stanley Pottinger, "HEW Enforcement of Swann," *Inequality in Education,* no. 9 (Aug. 3, 1971), p. 8. Stanley Pottinger was Director of the Office for Civil Rights of the Department of Health, Education, and Welfare and is now Assistant Attorney General for Civil Rights.

[68] See, for example, J. Stanley Pottinger, Director, Office for Civil Rights, U.S., Department of Health, Education, and Welfare, letter to Dr. Carl W. Hassel, Superintendent, Prince George's County Public Schools, HEW files, June 23, 1971.

[69] Pottinger transcript in Adams v. Richardson suit, Tr. 766, quoted in Plaintiff's Points and Authorities in Support of Motion for Summary Judgment, Civil Action No. 3095–70 at 44.

into disuse. These conditions led to the initiation of *Adams v. Richardson.* [70]

This suit alleged that HEW had defaulted in the administration of its responsibilities under Title VI of the Civil Rights Act of 1964. The district court stated on February 16, 1973, that, where efforts to secure voluntary compliance with Title VI failed, the limited discretion of HEW officials was exhausted. Where negotiation and conciliation did not secure compliance, HEW officials were obliged to implement the provisions of the Title VI regulation: provide for a hearing; determine compliance or noncompliance; and, following a determination of noncompliance, terminate Federal financial assistance.

The district court's decision was modified and affirmed by the court of appeals.[71] Essentially, the district court order requires that HEW properly recognize its statutory obligations, ensuring that the policies it adopts and implements are consistent with those duties and not a negation of them.[72]

A final post- *Brown* case[73] of note in the South involved Richmond, Virginia. To desegregate the Richmond city schools, the district court, on January 5, 1972, ordered the merger of the Richmond school system of 43,000 pupils, 73 percent black, with the system in two surrounding counties—Henrico County with 34,000 pupils, 92 percent white, and Chesterfield County with 24,000 pupils, 91 percent white.

The order would have created a metropolitan school system covering 752 square miles and containing 101,000 pupils, with a ratio of 66 percent white to 34 percent black. Each school was to have a black minority of between 20 and 40 percent. Only 10,000 additional pupils would have been bused, making a total of 78,000 children bused in the larger school system. Some significant distances would have been involved because of the rural areas in which some white children lived.

The court of appeals stayed the order, accelerated the appeal, and then reversed the order. The court of appeals overruled the district court judge on the grounds that "in his concern for effective implementation of the Fourteenth Amendment he failed to sufficiently consider a fundamental principle of federalism incorporated in the Tenth Amendment and failed to consider that the *Swann v. Charlotte-Mecklenburg* decision established limitations on his power to fashion remedies in school cases."[74]

The 10th amendment provides that powers not specifically delegated to the Federal Government or specifically prohibited to the States by the Constitution are reserved to the States or to the people. One of these powers reserved to the States is the power to structure their internal governments. If the exercise of this power resulted in a direct conflict with the 14th amendment's equal protection clause, then the 14th amendment would prevail. However, the court of appeals stated:

> The facts of this case do not establish, however, that state establishment and maintenance of school districts coterminous with the political subdivisions of the city of Richmond and the counties of Chesterfield and Henrico have been intended to circumvent any federally protected right. Nor is there any evidence that the consequence of such state action impairs any federally protected right, for there is no right to racial balance within even a single school district but only a right to attend a unitary school system.[75]

The Supreme Court divided 4 to 4 on the issue. (Justice Lewis F. Powell, a former Richmond City and Virginia Board of Education member, disqualified himself from the case.) Hence, the court of appeals' decision remains in effect.

Post-Brown Cases in the North

In 1967 the U.S. Commission on Civil Rights issued *Racial Isolation in the Public Schools,* a report that discussed the extent of "racial isolation," evaluated its deleterious effects on young people, and assessed existing and proposed remedies. Sometimes, but not consistently, the terms segregation and racial isolation now are used interchangeably, but the former is a legal description and the latter is perhaps more prevalent in the social sciences.

Black parents in various northern cities had begun filing lawsuits, similar to those in the South, in order to move their children from racially isolated schools into desegregated schools so that they might receive a better education. Although there were some victories in the courts, these northern suits were generally unsuccessful,[76] perhaps because of the basic theory behind the suits. The lawyers who

[70] 356 F. Supp. 92 (1973).
[71] 480 F. 2d 1159 (D.C. Cir. 1973).
[72] Ibid. at 1163–64.
[73] Bradley v. School Board of City of Richmond 462 F. 2d 1058, 1061 (4th Cir. 1972).
[74] Ibid. at 1061.
[75] Ibid. at 1069.
[76] See Bell, *Race, Racism and American Law,* p. 532 ff.

handled the early northern cases argued that racial isolation in the public schools, whether caused directly by school officials or not, unconstitutionally deprived black children of equal educational opportunity.[77] In more recent cases that have proved successful, NAACP Legal Defense and Educational Fund staff and other lawyers have set out to show that existing school segregation is a result of State action by school authorities that, although not arising from segregation laws, has similar effect and intent.

Keyes v. School District No. 1, Denver, Colorado [78] was the first northern school desegregation case decided by the Supreme Court. The outcome of *Keyes,* both in the lower court and in the Supreme Court, lay in the carefully detailed proof of intentional actions by the Denver school board that resulted in segregation. Both courts ruled that, despite the fact that Colorado had never had a school segregation law, and in fact had a specific antidiscrimination clause in its constitution, the actions of the school authorities were sufficient to establish *de jure* segregation.

Justice Brennan, writing for the majority, explained that the Denver school system:

> has never been operated under constitutional or statutory provision that mandated or permitted racial segregation in public education. Rather, the gravamen of this action. . .is that respondent School Board alone, by use of various techniques such as the manipulation of student attendance zones, school site selection and a neighborhood school policy, created or maintained racially or ethnically (or both racially and ethnically) segregated schools throughout the school district, entitling petitioners to a decree directing desegregation of the entire school district.[79]

The case arose when a newly elected school board rescinded three resolutions passed by the old board, which were designed to desegregate schools in the northeast portion of the school district. The new board replaced the resolutions with a voluntary student transfer program. An injunction against the new board's action was granted in district court. But the petitioners, recognizing that segregation was not limited to one segment of the city, also requested an order directing that all schools in the system be desegregated.

The lower court, however, required that a fresh showing of *de jure* segregation be made for each section for which the plaintiffs sought additional relief. The district court also held that its finding of intentional segregation in the area where it granted relief was not material to the question of intent to segregate in other areas of the city.

The Supreme Court, however, held that the school district could not be divided in such a manner. The Court noted how specific actions directed to a portion of a school system have "reciprocal" effects throughout the entire system. The Court wrote:

> . . .where plaintiffs prove that the school authorities have carried out a systematic program of segregation affecting a substantial portion of the students, schools, teachers and facilities within the school system, it is only common sense to conclude that there exists a predicate for a finding of the existence of a dual school system. Several considerations support this conclusion. First, it is obvious that a practice of concentrating Negroes in certain schools by structuring attendance zones or designating "feeder" schools on the basis of race has the reciprocal effect of keeping other nearby schools predominantly white. Similarly, the practice of building a school. . .to a certain size in a certain location, "which (sic) conscious knowledge that it would be a segregated school" has a substantial reciprocal effect on the racial composition of other nearby schools. So also, the use of mobile classrooms, the drafting of student transfer policies, the transportation of students, and the assignment of faculty and staff, on racially identifiable bases, have the clear effect of earmarking schools according to their racial composition, and this, in turn, together with the elements of student assignment and school construction may have a profound reciprocal effect on the racial composition of residential neighborhoods within a metropolitan area, thereby causing further racial concentration within the schools.

Thus, the Supreme Court held that school authorities had the burden of proving that the other segregated schools within the system were not the result of intentional actions, even if it were determined that the different sections of the system could

[77] Robert L. Herbst, "The Legal Struggle to Integrate Schools in the North," *Blacks and the Law, Annals of the American Academy of Political and Social Science,* May 1973, p. 43.

[78] 413 U.S. 189 (1973).

[79] 413 U.S. 192 (1973).

be viewed as independent entities. On return of the case to the lower court, it was decided on December 11, 1973, that the Denver school district was segregated by the action of the school board or, in effect, had been operated as a dual school system. The court then set a schedule for the development of a desegregation plan by the fall of 1974, and it was implemented successfully and without incident.

Another important finding by the Supreme Court in *Keyes* was that the lower court erred in not placing "Negroes" and "Hispanos" in the same category for purposes of defining "segregated" schools, since both groups suffer the same educational inequities when their treatment is compared with the treatment afforded "Anglo" students.[80] Denver's school population is about 66 percent Anglo, 14 percent Negro, and 20 percent Hispano. The lower court had said that only schools which were predominantly Negro or predominantly Hispano could be called segregated and that only those schools with a 70 to 75 percent concentration of one of these groups would be a school considered likely to provide an inferior education.

The Supreme Court had held in several earlier cases that Hispanos constituted an identifiable class for purposes of the 14th amendment. Since both Negroes and Hispanos suffer "economic and cultural deprivation and discrimination,"[81] educational inequities, and discrimination in treatment when compared to Anglos, the Supreme Court concluded that schools with a combined predominance of the two groups should be included in the category of segregated schools.

The issue of northern metropolitan desegregation was considered by the Supreme Court for the first time in *Milliken v Bradley.* [82] Although reaffirming previously established constitutional principles, including the use of transportation to overcome segregation, the decision represented a setback in efforts to desegregate urban school districts, particularly in the North but apparently in the South as well.

In this case, the Court majority, in a 5 to 4 judgment on July 25, 1974, found that a district court order for metropolitan desegregation was not supported by evidence that acts of suburban school districts, or acts of the State in these districts, had any effect on the discrimination found to exist in the Detroit city schools. Imposition of a multidistrict, areawide remedy was denied on grounds that such evidence was lacking.[83]

On April 7, 1970, the Detroit Board of Education had adopted a voluntary plan for partial high school desegregation. Three months later, the Michigan legislature passed a statute, known as Act 48, that delayed implementation of the plan. Subsequently, a successful recall election removed four board members who had favored the plan, and the new board members, together with those who originally opposed desegregation, rescinded the plan altogether.

On August 18, 1970, the Detroit branch of the NAACP and individual parents and students filed a complaint against the Governor of Michigan, the attorney general, the State board of education, the State superintendent of public instruction, and the Detroit Board of Education, its members, and its former superintendent of schools. The complaint alleged that the Detroit school system was racially segregated as a result of the official policies and actions of the defendants, challenged the constitutionality of Act 48, and called for implementation of a plan that would "maintain now and hereafter a non-racial school sytem."[84]

In response to plaintiff's motion for an injunction to restrain enforcement of Act 48, the district court denied the motion, did not rule on Act 48's constitutionality, and granted motions of the Governor and attorney general of Michigan for dismissal of the case against them. The court of appeals subsequently ruled that Act 48 was an unconstitutional interference with 14th amendment rights and that the State officials should not have been dismissed as defendants. The case was returned to the district court for trial on the merits of the substantive allegations of segregation in the Detroit schools.

In a decision on September 27, 1971,[85] the district court held that the Detroit public school system was racially segregated as a result of the unconstitutional practices of the Detroit Board of Education and the State defendants. The district court ordered the

[80] These are the racially descriptive terms used by the parties in Keyes and in the Supreme Court opinion.

[81] Language of lower court quoted in Keyes, 413, U.S. 189, 197–98 (1973).

[82] 42 U.S.L.W. 5249 (U.S. July 25, 1974).

[83] Following the Supreme Court's decision in Milliken, on July 31, 1974, the Congress completed action on a compromise school assistance measure authorizing $25 billion over a 4-year period. The bill placed restrictions on busing for desegregation but did not go as far as the House originally proposed. The restrictions would not apply where courts find that correction of a constitutional violation requires busing, and a proposed provision for the reopening of past busing cases also was dropped in the compromise. Busing under voluntary desegregation plans is not restricted.

[84] 42 U.S.L.W. at 5251.

[85] Ibid. at 5251, quoting Bradley v. Milliken 338 F. Supp. 582 (E.D. Mich. 1971).

Detroit Board of Education to submit desegregation plans limited to the city and directed State defendants to submit desegregation plans for a three-county metropolitan area encompassing 85 separate school districts.

After consideration of the plans submitted, the district court rejected all Detroit-only plans, stating that "relief of segregation in the public schools of the City of Detroit cannot be accomplished within the corporate geographical limits of the city." The district court held that "it must look beyond the limits of the Detroit school district for a solution to the problem" and that "district lines are simply matters of political convenience and may not be used to deny constitutional rights."

On June 14, 1972, the district court designated 53 of the suburban school districts plus Detroit as the "desegregation area." The court appointed a panel to design a desegregation plan in which no school, grade, or classroom in the area would be "substantially disproportionate to the overall pupil racial composition." The district court stated clearly that it had "taken no proofs" on the issue of whether the 53 districts had "committed acts of *de jure* segregation."[86]

The court of appeals subsequently held that the record fully supported the findings of racial discrimination and segregation in Detroit, and that the district court was authorized and required to take effective measures to desegregate the school system. Further, it agreed that "any less comprehensive a solution than a metropolitan area plan would result in an all black school system immediately surrounded by practically all white suburban school systems."[87]

An effective desegregation plan, the court held, had to include nearby school districts, and it reasoned that such a plan would be appropriate because of the State's violations in Detroit and because of the State's authority to control local school districts. The court of appeals expressed no views on the composition of the "desegregation area" but said that districts which might be affected must be given an opportunity to be heard with respect to the scope and implementation of the remedy.[88]

The Supreme Court decision in *Milliken* reaffirmed as the meaning of the Constitution and the controlling rule of law the finding in *Brown* that "separate educational facilities are inherently unequal."[89] While noting that the task in *Milliken* was acknowledged to be desegregation of the Detroit public schools, the Supreme Court held that both "the District Court and the Court of Appeals shifted the primary focus from a Detroit remedy to the metropolitan area only because of their conclusion that total desegregation of Detroit would not produce the racial balance which they perceived as desirable."[90] Desegregation in dismantling a dual school system, the Court said, does not require any particular racial balance in each school, grade, or classroom.

The Court went on to hold that school district "lines may be bridged where there has been a constitutional violation calling for inter-district relief, but the notion that school district lines may be casually ignored or treated as a mere administrative convenience is contrary to the history of public education in our country." However, the Court continued, "School district lines and the present laws with respect to local control are not sacrosanct and if they conflict with the Fourteenth Amendment federal courts have a duty to prescribe appropriate remedies."[91]

The Court also affirmed *Swann,* including the use of pupil transportation to overcome constitutional inequities. But the Court held that "the scope of the remedy is determined by the nature and extent of the constitutional violation," and:

> Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there had been a constitutional violation within one district that produces a significant segregative effect in another district. Specifically it must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of inter-district segregation. Thus an inter-district remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race. In such circumstances an inter-district remedy would be appropriate to eliminate the inter-district segregation directly caused by the constitutional violation. Conversely, without an inter-district violation and

[86] Ibid. at 5254.
[87] Ibid., quoting 484 F. 2d 215, 242 (CA 6 1973).
[88] Ibid. at 5255, quoting 484 F. 2d. at 251–52.
[89] Ibid., quoting Brown v. Board of Education, 347 U.S. 483, 495 (1954).
[90] Ibid. at 5256.
[91] Ibid. at 5257–58.

inter-district effect, there is no constitutional wrong calling for an inter-district remedy.[92]

The record in *Milliken* contained evidence only of *de jure* segregation in Detroit, according to the Court's majority opinion, with no showing of significant violation by the 53 suburban school districts and no evidence of interdistrict violation or effect. Indeed, there was no evidence covering the schools outside of Detroit except for their racial composition, according to the ruling, and thus the lower courts went beyond the case framed by the pleading. Justice Stewart, in a concurring opinion, added that an interdistrict remedy would be appropriate were it shown that State officials had contributed to segregation by drawing or redrawing school lines, by transfer of school units between districts, or by purposeful and discriminatory use of State housing or zoning laws.

Based on these findings, the Supreme Court concluded that the relief ordered by the district court and affirmed by the court of appeals was based on an erroneous standard and was not supported by evidence of discriminatory acts by the suburban districts. The case was returned for prompt formulation of a desegregation plan for the schools within Detroit.

The minority opinion by Justice Marshall, joined by the other dissenting members of the Court, denied that racial balance was a primary focus in the case. The primary question, Marshall said, was the area necessary to "eliminate 'root and branch' the effects of state imposed and supported segregation and to desegregate the Detroit public schools."[93] Interdistrict relief was seen as a necessary part of any effort to remedy State-caused segregation within Detroit.

Evidence on the role of the State in supporting segregation was deemed adequate by Justice Marshall. He cited the Detroit school board's approval of attendance lines that maximized segregation, attendance zones that allowed whites to flee desegregation, transportation of black students from overcrowed schools past closer white schools with available space, grade structures and feeder patterns that promoted segregation, and school construction that promoted segregation. He also cited State action in the supervision of school site selection that exacerbated segregation, passage of Act 48, and discriminatory involvement in interdistrict transportation of black students.

Justice Marshall judged the Detroit school board decisions to be acts of the State, since the board was an agency of the State. He also noted direct State control over education in a variety of specific ways: teacher credentialing, curriculum determination, textbook and bus route approval. He concluded: "Indeed, by limiting the District Court to a Detroit-only remedy and allowing. . .flight to the suburbs to succeed, the Court today allows the State to profit from its own wrong and to perpetuate for years to come the separation of the races it achieved in the past by purposeful state action."[94]

In summary, disagreement between majority and minority in *Milliken* apparently was not on the issue of the basic constitutional command or on evidence of State-supported segregation in Detroit. Rather, it appeared to center on the relationship between the scope of the constitutional violation and the scope of the remedy. The Court finally held that the case presented did not contain adequate evidence of discrimination in the school districts affected by the proposed desegregation plan, adequate evidence of interdistrict discriminatory effects, or adequate evidence of discriminatory State action affecting districts other than Detroit.

The NAACP has already indicated an intent to return to the Court with just this kind of evidence, and previous study by the U.S. Commission on Civil Rights suggests that a direct relationship between governmental action and urban-suburban segregation is to be found in the Nation's major metropolitan areas.[95] School segregation cases pending in Hartford, Connecticut, and elsewhere will provide opportunity to make such a showing.[96]

Twenty Years of Desegregation Law

In the first 10 years after *Brown* school desegregation cases involved southern efforts to evade or delay the Supreme Court's mandate. Black plaintiffs returned to court on numerous occasions in efforts to obtain enforcement of their constitutional rights. It was not until 1964 that passage of the Civil Rights

[92] Ibid. at 5258.
[93] Ibid. at 5269.
[94] Ibid. at 5277.
[95] See for example, U.S., Commission on Civil Rights, *Equal Opportunity in Suburbia* (1974).
[96] On August 22, 1974, the court of appeals gave a Federal district court judge in Indianapolis approval to consider a metropolitan desegregation plan involving 11 autonomous districts in the area. The three judge panel, in its ruling, quoted language from Justice Stewart's concurring opinion in *Milliken.* U.S. v. the Board of School Commissioners in Indianapolis, Indiana, Nos. 731968-731984 (7th Cir., Aug. 22, 1974).

Act provided an administrative tool for enforcement of nondiscrimination in education.

During the next 5 years, the work of the Department of Health, Education, and Welfare, coupled with various court decisions, placed additional pressure on southern school districts to increase the pace of desegregation. In 1969, however, the use of administrative enforcement procedures under Title VI was sharply curtailed and persuasion largely replaced sanctions. After 1971, there was a further curtailment in desegregation suits by the Government. This change of policy produced delays in desegregation and a lack of results with which the Supreme Court soon expressed its impatience. In *Alexander,* the Court ruled that the constitutional right of children to a desegregated education could no longer be postponed and that the "all deliberate speed" standard for desegregation enunciated in *BrownII* was no longer constitutionally permissible.

The 1970s brought increasing recognition that segregated schools were not a regional phenomenon but a national problem. School systems in the North, thought to have *de facto* segregation not subject to redress by the courts under prevailing precedent, were found to have *de jure* segregated schools. Resistance to court-imposed remedies manifested itself in protests against busing, an integral part of the public education system prior to the desegregation issue.

But the Supreme Court remained undeterred in its commitment to constitutional principles, declaring in *Swann* that desegregation plans "could not be limited to the walk-in school." In *Keyes,* the Court said that intentional segregation in one area of a school system may have "reciprocal" effects throughout the system and that "Hispanos" suffer the same inequities as blacks and must be considered in identifying segregation. Ruling on *Milliken* in 1974, the Court continued to uphold the basic constitutional standards enunciated since *Brown,* yet now placed more stringent requirements on evidence necessary to support arguments for urban desegregation remedies. While sanctioning in principle the concept of crossing school district lines to achieve desegregation, including the use of pupil transportation, the Court indicated that the remedy must be appropriate to the violation and that evidence of discrimination must be clear for all districts affected.

[97] Raymond Mack, *Our Children's Burden: Studies of Desegregation in Eight American Communities* (New York: Random House, 1968), p. xiii.

Equal Educational Opportunity

The Southern Response to Brown

"Separate educational facilities are inherently unequal. . .such segregation is a denial of the equal protection of the laws." Thus did *Brown v. Board of Education* provide a new answer to the continuing question of race in America.

Traditionally, black parents had viewed education as the means by which their children would achieve a better life. The plaintiffs in *Brown* had identified equal education with desegregated education, and they saw both as providing access to economic prosperity and all other elements of the American dream.[97] Now the Supreme Court of the United States had legitimated their struggle for equality.

The post- *Brown* cases, then, were brought by black parents and children who sought to protect their rights through Federal courts that had been charged with bringing public education into line with constitutional requirements. Only in a few States were the schools desegregated without further prodding by the courts.

The District of Columbia public schools were ordered to begin desegregation by September 2, 1954. Although the board of education in Topeka had voted to abolish optional elementary school segregation in September 1953, desegregation was postponed while it waited for *Brown II* to implement *Brown I.* In Delaware, where blacks had won in the State courts, the *Brown* decision became an excuse for slowing down desegregation. Some Border States moved to comply without significant opposition, but the Southern States went to battle with Federal district judges over desegregation.

Some States, such as Florida, North Carolina, Tennessee, Texas, and sometimes Arkansas, reacted against the decision while supporting the Supreme Court's authority with limited desegregation. Virginia adopted a policy of "massive resistance" and allowed no desegregation for several years.[98] The greatest resistance was in the Deep South—Alabama, Georgia, Louisiana, Mississippi, and South Carolina.

The Southern States adopted three major forms of legislative resistance to desegregation: (1) pupil assignment laws, (2) school closing laws, and (3) laws providing tuition grants and other aid to private schools. Eleven States passed laws that set forth rules

[98] See Reed Sarratt, *The Ordeal of Desegregation* (New York: Harper and Row, 1966) for a detailed description of this period.

determining how students would be assigned to schools. In 10 of the 11 States, the assignment power was given to the local school board so that there could be no statewide decree to desegregate.

The Supreme Court subsequently ruled that, although pupil assignment laws were not unconstitutional on their face, they might be in application. The elaborate procedures for admission to schools established by the assignment laws, in fact, were designed to discourage black students from applying to all-white schools. With but a few exceptions, the laws worked successfully to prevent even token desegregation.

School closings were viewed by some as a last resort against desegregation. These people believed that it was better to have no public schools at all than to have blacks and whites in class together. Only South Carolina and Tennessee did not pass school closing laws. But even in the most recalcitrant States these laws were seldom, if ever, implemented, and the courts eventually struck down as unconstitutional the statutes that allowed school closings designed specifically to avoid desegregation.[99] However, laws directly related to the school closing legislation in purpose, effect, and constitutionality allowed States to cut off funds to schools or districts that went ahead with desegregation. Laws that terminated funds in such cases were passed by seven States but proved to be ineffective in prohibiting desegregation.

Another tactic to avoid desegregation was to provide indirect aid to private schools. Tuition grants usually equaled the per pupil share of State and local expenditure for public schools. Other aid to private schools took the form of "tax deductions or credits for donations made to such institutions, extensions of state retirement benefits to teachers employed by private schools, and even reimbursement for transportation expenses of pupils attending the school."[100] Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, Arkansas, and North Carolina adopted laws of this type following the *Brown* decision.

The Southern States also sought to curb the activities of the NAACP and its Legal Defense and Educational Fund. Every Southern State except North Carolina enacted a variety of anti-NAACP laws. Most of these laws were aimed at preventing NAACP lawyers from engaging in "barratry," a legal term for persistent incitement and solicitation of litigation. Southern officials felt that, as the NAACP was handling so many school cases, the organization must have solicited or "stirred up" the litigation, since southern blacks presumably "knew their places" too well to dare sue for school desegregation.

A South Carolina State representatives, Charles G. Garrett, described the antibarratry laws as designed "to protect our Negro citizens and colored public employees, most of whom are not members of the organization, from the intimidation and coercion of the NAACP, as well as to limit its activities against the best interests of our white citizens." Other laws designed to crippled the NAACP

> included racial lobbyist laws requiring NAACP officials to register with the State; laws making it a misdemeanor to employ a member of the NAACP, and making membership in an organization advocating integration ground for dismissal from public employment; laws saying that all public employees must list the organizations to which they belonged and to which they made contributions; laws requiring the NAACP to file a list of its membership which foreign corporations (those chartered in another state) could engage.[101]

The NAACP was investigated almost continously by various State committees and avidly persecuted as being part of the "Communist conspiracy," a significant public concern during this period. Unsuccessful attempts were made to get NAACP membership lists, which would have been invaluable in segregationist efforts to intimidate blacks further. In fact, the very segregated schools black children desired to escape were the recruiting grounds for student NAACP members.

Although the NAACP won all the cases [102] involving anti-NAACP laws in appellate courts and in the Supreme Court, the harassment hampered the organization in terms of time lost and money spent defending itself rather than fighting to desegregate schools. In addition to curtailing suits, however, another objective of the anti-NAACP legislation was to "discourage Negro teachers—the best-educated, the most articulate and the most valuable segment of

[99] For Virginia and Arkansas, for example, see U.S., Commission on Civil Rights, *1961 Report*, vol. 3, *Education*, p. 85.
[100] Ibid., p. 88.
[101] Sarratt, *The Ordeal of Desegregation*, pp. 36–37.
[102] See NAACP v. Button, 371 U.S. 415 (1963); NAACP v. Alabama, 357 U.S. 449 (1958); and Bates v. Little Rock, 361 U.S. 516 (1960).

the Negro community—from actively participating in the desegregation struggle." [103]

Federal Judge Constance Baker Motley, formerly associate counsel of the Legal Defense and Educational Fund, recalls that "those were frightening years to work for the NAACP, but there was work to be done."[104] So the NAACP desegregation effort was carried on and has continued to this day.

School Desegregation

Although there are few statistics reflecting the racial composition of the public schools in 1954, data gathered since then indicate the extent of desegregation progress. Prior to 1954, 17 Southern and Border States, in addition to the District of Columbia, had laws requiring segregated schools; several other States also supported such a system until after the Second World War. By 1964, however, despite *Brown,* the school situation in the South was virtually unchanged. Some improvement occurred after the Civil Rights Act of 1964 was passed. But it has been only since 1968 that substantial reduction of racial segregation has taken place in the South.

In 1964, 9.3 percent of 3.4 million black school children in the 17-State area attended desegregated schools. Of these children, 89.2 percent were in Border States (Delaware, Kentucky, Maryland, Missouri, Oklahoma, West Virginia) and the District of Columbia. With the exception of Delaware, there was the least resistance to desegregation in these States. Yet, even here, 45.2 percent of black children still attended segregated schools.[105]

In 1964, only 1.2 percent of almost 2.9 million black pupils in the South (Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia) attended school with whites, and over 50 percent of these pupils were in Texas. None of the almost 292,000 black pupils in Mississippi attended school with whites. In South Carolina, only 10 of nearly 259,000 black pupils attended school with whites. In Alabama, only 21 of more than 287,000 black pupils attended school with whites.

The number of black pupils attending school with whites in the 17 Southern and Border States had increased by an average of 1 percent a year until 1964. Then the rate accelerated somewhat with passage of the Civil Rights Act. By the end of the 1964–65 school year, 10.9 percent of black pupils were in biracial schools. In the 11 States of the South, this figure reached 2.2 percent in 1964–65 and 6 percent in 1965–66. In the Border States it was 58.3 and 68.9 percent in those years, respectively. [106]

Slow proportionate acceleration continued, but more than 2.5 million black pupils attended all-black schools in the South in 1966, a greater actual number than in 1954.[107] Moreover, the figures do not reflect the number of truly desegregated schools, since only one black pupil in a formerly all-white school caused the school to be considered desegregated.

National data compiled between 1968 and 1972 reflect significant changes in the South.[108] In 1968, 68 percent of black pupils attended all-minority schools in the 11 States of the South; but by 1970 this figure had been reduced to 14.4 percent, and by 1972, 8.7 percent. On the other hand, only 18.4 percent of black pupils in the South were in schools with less than 50 percent minority enrollment in 1968, but by 1970 this figure had increased to 40.3 percent and in 1972 stood at 46.3 percent. There had been more progress here than in the Border States, the North, or the West, and almost half of all black pupils in the South, 18 years after *Brown,* attended schools that were predominantly white.

In 1972 the percentage of black pupils in all-minority schools was 8.7 percent in the South, but 10.9 percent in the North and West, and 23.6 percent in the Border States. The proportion of black pupils in predominantly minority schools was 53.7 percent in the South, 68.2 percent in the Border States, but 71.7 percent in the North and West. In 1972, more than 3 million black pupils attended schools with more than 80 percent minority enrollment, but only some 865,000 of these pupils were in the South. On the other hand, 46.3 percent of black pupils in the South were in schools with less than 50 percent minority enrollment, compared to 31.8 percent in the Border States and only 28.3 percent in the North and West.

Between 1968 and 1972, the number of black pupils in schools with more than 50 percent white enrollment increased by almost 1 million. Yet, fewer than 174,000 of these pupils were in the 32 States of the North and West; and, in fact, total public school

[103] Sarratt, *The Ordeal of Desegregation,* p. 38.
[104] Interview in New York City, Nov. 11, 1973.
[105] The Southern Education Reporting Service is the primary source of the data summarized here; see Sarratt, *The Ordeal of Desegregation,* tables 1 and 2.
[106] *Southern School Desegregation,* pp. 5–6.
[107] Ibid., p. 8.
[108] See table 2.1 and charts 2.1 and 2.2. Unless otherwise indicated, the Office for Civil Rights, U.S. Department of Health, Education, and Welfare, is the primary source for the data summarized here.

Table 2.1

Black School Enrollment by Geographic Area

Geographic area	Total pupils	Black pupils Number	Black pupils Pct	Black pupils attending schools that are: 0–49.9% minority Number	0–49.9% minority Pct	50.0–79.9% minority Number	50.0–79.9% minority Pct	80–100% minority Number	80–100% minority Pct
Continental US.									
1968	43,353,568	6,282,173	14.5	1,467,291	23.4	540,421	8.6	4,274,461	68.0
1970	44,910,403	6,712,789	14.9	2,225,277	33.1	1,172,883	17.5	3,314,629	49.4
1972	44,646,625	6,796,238	15.2	2,465,377	36.3	1,258,280	18.5	3,072,581	45.2
(1) 32 North & West									
1968	28,579,766	2,703,056	9.5	746,030	27.6	406,568	15.0	1,550,440	57.4
1970	30,131,132	3,188,231	10.6	880,294	27.6	502,555	15.8	1,805,382	56.6
1972	29,916,241	3,250,806	10.9	919,393	28.3	512,631	15.8	1,818,782	55.9
(2) 11 South									
1968	11,043,485	2,942,960	26.6	540,692	18.4	84,418	2.8	2,317,850	78.8
1970	11,054,403	2,883,891	26.1	1,161,027	40.3	610,072	21.1	1,112,792	38.6
1972	10,987,680	2,894,603	26.3	1,339,140	46.3	690,899	23.8	864,564	29.9
(3) 6 Border & D.C.									
1968	3,730,317	636,157	17.1	180,569	28.4	49,417	7.8	406,171	63.8
1970	3,724,867	640,667	17.2	183,956	28.7	60,256	9.4	396,455	61.9
1972	3,742,703	650,828	17.4	206,844	31.8	54,749	8.4	389,235	59.8

(1) Alaska, Ariz., Calif., Colo., Conn., Idaho, Ill., Ind., Iowa, Kans., Maine, Mass., Mich., Minn., Mont., Nebr., Nev., N.H., N.J., N.Mex., N.Y., N.Dak., Ohio, Oreg., Pa., R.I., S.Dak., Utah, Vt., Wash., Wis., Wyo.

(2) Ala., Ark., Fla., Ga., La., Miss., N.C., S.C., Tenn., Texas, Va.

(3) Del., D.C., Ky., Md., Mo., Okla., W.Va.

Source: Office for Civil Rights, Department of Health, Education, and Welfare.

enrollment had increased by more than a million during this period. The proportion of black pupils in predominantly white schools had increased by 27.9 percent in the South, but only 3.4 percent in the Border States, and only 0.7 percent in the North and West. Even these figures often are viewed as deceptive,[109] since reporting by district or school had been found to mask the actual number of children within desegregated schools or classrooms.

Other data add to this picture. More than 1.36 million pupils of Spanish surname—almost 900,000 in five Southwestern States—remained in predominantly minority schools in 1972.[110] This reflected an increase in segregation of Spanish-surnamed pupils between 1968 and 1972, both nationally and in the Southwest.[111]

Much continuing or increasing segregation has resulted from economic restrictions, housing discrimination, white flight to the suburbs, and growth of minority populations in the central cities of the United States.[112] This is a pattern typical of the North and West but now extending into the South as well. In 1960, in 15 large metropolitan areas, more than 79 percent of the nonwhite public school enrollment was in central cities, while more than 68 percent of the white enrollment was suburban. [113]

Approximately 50 percent of all black pupils were enrolled in the Nation's 100 largest school districts

[109] See Southern Regional Council, *The South and Her Children: School Desegregation 1970–71* (Altanta: 1971) (hereafter cited as *The South and Her Children;* also "School Desegregation," *Civil Rights Digest,* vol. 4 (December 1971), p. 5.

[110] The data in this report have been collected for "Spanish-surnamed Americans," although the U.S. Commission on Civil Rights believes that the designation "Spanish-speaking background" is more accurate. See U.S., Commission on Civil Rights, *Counting the Forgotten: The 1970 Census Count of Persons of Spanish Speaking Background in the United States* (1974).

[111] See table 2.2 and chart 2.3.

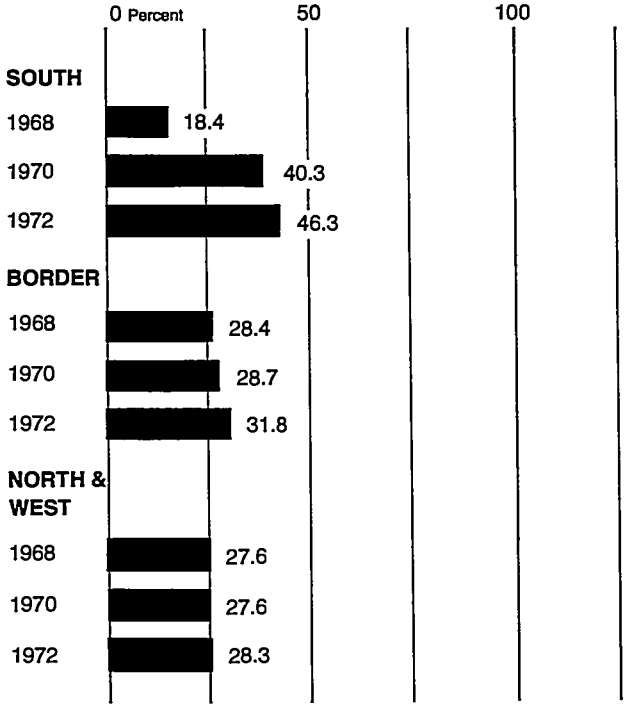
[112] See, for example, remarks of Senator Abraham Ribicoff in U.S., Congress, Senate, Select Committee on Equal Educational Opportunity, *Hearings on Metropolitan Aspects of Educational Inequality,* 92d Cong. 1st sess., 1971, p. 10907.

[113] U.S., Commission on Civil Rights, *Racial Isolation in the Public Schools* (1967), p. 3 (hereafter cited as *Racial Isolation).*

Chart 2.1

Regional Desegregation, 1968–72

Blacks attending schools with 50–99.9 percent white enrollment

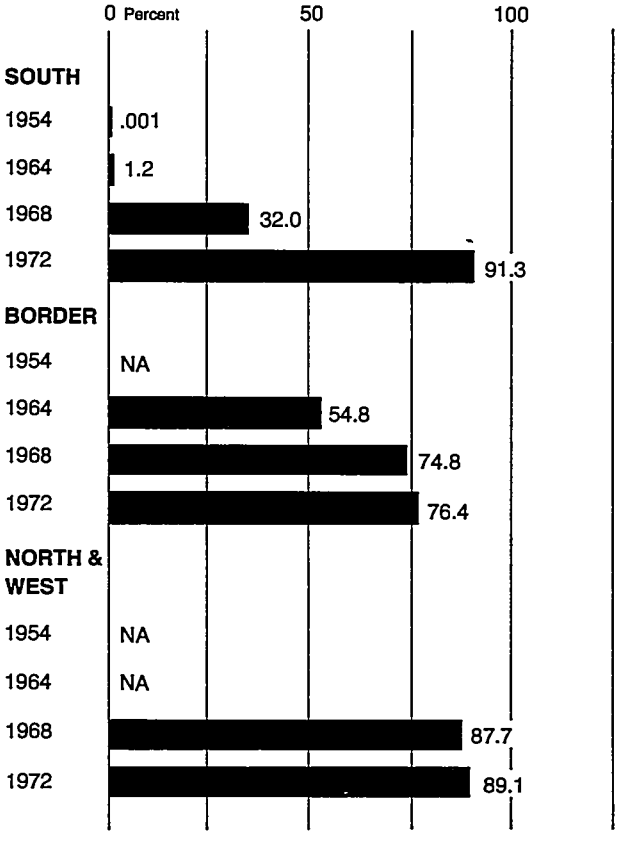


Source: Office for Civil Rights, Department of Health, Education, and Welfare.

Chart 2.2

Regional Desegregation, 1954–72

Blacks attending schools with whites*



*May include schools with only one black or one white pupil; excludes only all-white and all-minority schools.

NA = Not available.

Source: Southern Education Reporting Service and Office for Civil Rights, Department of Health, Education, and Welfare.

by 1968, and these were also the Nation's most segregated districts. Between 1970 and 1972, the enrollment of these 100 districts dropped by a total of 280,000 pupils, but there was a gain of 146,000 black pupils during the same period. A similar pattern was apparent in large school districts with heavy concentrations of Spanish-surnamed pupils.[114] The minority populations in these areas are younger and have more children of school age, resulting to an even greater extent in school enrollments which are largely black or Spanish speaking.[115]

In 1972, in the Nation's 100 largest districts, 79.8 percent of black pupils attended predominantly minority schools. However, despite increasing black enrollment, the proportion of black pupils in these segregated schools had actually declined from 83.9 percent in 1970, and 87 percent in 1968. New York, Los Angeles, Detroit, and Houston were among the cities reflecting less segregation in 1972 than in 1970, although segregation in New York and Detroit had increased between 1968 and 1972. On the other hand, in most of these cities gains were extremely small,

[114] See, U.S., Department of Health, Education, and Welfare, Office for Civil Rights, *Fall 1972 Racial and Ethnic Enrollment in Public Elementary and Secondary Schools.*

[115] "The Urban School Crisis: The Problems and Solutions Proposed by the HEW Urban Education Task Force," *Washington Monitoring Service,* Jan. 5, 1970, p. 32 (hereafter cited as "The Urban School Crisis").

Table 2.2

School Enrollment of Spanish-Surnamed Americans by Area of Significant Population

Geographic area	Total pupils	Spanish-surnamed Americans Number	Pct	Spanish-surnamed Americans attending schools that are: 0–49.9% minority Number	Pct	50.0–79.9% minority Number	Pct	80–100% minority Number	Pct
CONTINENTAL U.S.									
1968	43,353,568	2,002,776	4.6	906,919	45.3	460,966	23.0	634,891	31.7
1970	44,910,403	2,275,041	5.1	1,006,148	44.2	515,586	22.7	753,307	33.1
1972	44,646,625	2,414,179	5.4	1,050,700	43.5	568,056	23.6	795,423	32.9
ARIZ., CALIF., COLO., N.MEX., TEXAS									
1968	8,144,330	1,397,586	17.2	640,943	45.9	341,954	24.4	414,689	29.7
1970	8,449,550	1,544,938	18.3	701,976	45.4	375,115	24.3	467,847	30.3
1972	8,359,435	1,601,706	19.2	702,336	43.8	424,765	26.6	474,605	29.6
CONN., ILL., N.J., N.Y.									
1968	7,650,697	394,449	5.2	110,587	28.0	86,273	21.9	197,589	50.1
1970	7,926,170	473,785	6.0	117,858	24.9	107,588	22.7	248,339	52.4
1972	7,862,074	516,636	6.6	138,989	26.9	101,442	19.6	276,205	53.5
FLORIDA									
1968	1,340,665	52,628	3.9	26,287	49.9	16,862	32.1	9,479	18.0
1970	1,437,554	65,713	4.6	30,918	47.0	14,984	22.9	19,811	30.1
1972	1,494,730	80,115	5.4	36,138	45.1	17,929	22.4	26,048	32.5
39 OTHER STATES & D.C.									
1968	26,217,876	158,113	0.6	129,102	81.7	15,876	10.0	13,135	8.3
1970	27,097,129	190,605	0.7	155,397	81.5	17,897	9.4	17,311	9.1
1972	26,930,386	215,722	0.8	173,237	80.3	23,920	11.1	18,565	8.6

Source: Office for Civil Rights, Department of Health, Education, and Welfare.

and very few black pupils in 1972 actually attended predominantly white schools: in New York, only 16.5 percent of black pupils were in predominantly white schools; in Los Angeles, 8.1 percent; in Chicago, 1.7 percent; in Philadelphia, 6.7 percent. In large southern cities, the picture was little better: in Miami, 23.6 percent; in Houston, 8.8 percent; in Dallas, 15.0 percent; in New Orleans, 4.9 percent; in Atlanta, 6.2 percent.[116]

Between 1970 and 1972, in 49 school districts with large Spanish-surnamed populations, total enrollment declined by 14,000 pupils, but there was a gain of 5,000 Spanish-surnamed pupils. In 1972 some 73.7 percent of Spanish-surnamed pupils attended predominantly minority schools, up from 73.3 percent in 1970 and 72.4 percent in 1968. In New York, only 11.9 percent of Spanish-surnamed pupils attended predominantly Anglo schools; in Los Angeles, 26.5 percent; in Albuquerque, 28.4 percent; in San Antonio, 5.1 percent.[117]

Segregation of black pupils in New York, New Jersey, Michigan, Ohio, California, and other large States also had increased significantly in recent years.[118] Kenneth Clark, using New York in 1973 as an example of segregation in large northern urban communities, found "more black and Puerto Rican

[116] See table 2.3.
[117] See table 2.4.
[118] U.S., Congress, Senate, Select Committee on Equal Educational Opportunity, *Toward Equal Educational Opportunity*, 92d Cong., 2d sess., 1972, report no. 92-000, p. 111 (hereafter cited as *Toward Equal Educational Opportunity*).

children—and probably a higher percentage of these children—are attending predominantly minority segregated and inferior elementary and secondary schools today than in the 1950s."[119] In fact, the large cities in New York State have an expanding minority school population, and in 1972 almost 90 percent of minority pupils were in the six largest cities. Nearly 75 percent of black and Spanish-surnamed pupils in New York State public schools attended schools that were predominantly minority, while more than 50 percent of minority pupils attended schools that were 80 to 100 percent minority.[120]

In California, with decreasing total pupil enrollment, minority enrollment has increased in recent years. The number of minority pupils in predominantly minority schools has also increased, as has the number of segregated schools. More than 50 percent of black pupils in 1971 were in schools with a predominantly black enrollment, while more than 93 percent of white pupils were in heavily white schools.[121] Michigan has reported an increase of black pupils, and almost 50 percent of all black pupils attend schools with 95 to 100 percent black enrollment.[122] Both Oregon and Colorado, with relatively small minority enrollments, find that racial segregation is high and not decreasing, and that minority pupils are not receiving equal educational opportunity.[123]

There appear to be legitimate fears that the South is in a transitional stage and is moving toward duplication of northern residential segregation as desegregated schools are undercut by increasingly segregated neighborhoods and cities.[124] In 60 of the Nation's largest school districts, out of 76 surveyed, white enrollment dropped between 1970 and 1972. One-third of these districts were in the South.[125] In one recent reporting, Atlanta pupil enrollment had increased from 38.3 percent black to 51.3 percent black, while its suburbs increased from 91.3 percent white to 93.6 percent white. Houston's suburbs were 90.7 percent white; New Orleans suburbs were 87.2 percent white.[126] These are but examples of a more general trend.

There further appears to be a clear relation between the adoption of desegregation plans and the growth of private segregated academies.[127] Although private schools always have played a role in American education, never before have they been a major factor in the South. Yet, Mississippi alone had a threefold increase in private schools beeen 1969 and 1970, to well over 100 in all. Louisiana had over 150,000 pupils in private white schools in 1969, while South Carolina had at least one private academy in 31 of 46 counties. This movement seems common throughout the South, and private segregated schooling may not have reached its peak, since dual systems have not yet been completely abolished.[128]

By 1972 the southern academy movement had expanded to enroll between 450,000 and 500,000 white pupils.[129] Following a 1971 desegregation order, seven academies enrolling 1,850 pupils opened in Nashville, Tennessee. Savannah, Georgia, lost 5,000 white public school pupils in 1972 upon the announcement of a desegregation plan. In addition, the loss of middle-class white pupils to private and parochial schools is significant in other areas of the Nation. For example, some three-fifths of school-age children in Philadelphia and two-fifths of those in St. Louis and Boston attend nonpublic facilities.[130]

Desegregation, of course, raises the specters of busing and its attendant emotional impact on many white Americans. While 67 percent of American adults now say they favor integration, for example, 70 percent express opposition to busing.[131] However, residential segregation of urban minorities (owing to conditions noted earlier) apparently is not yet as serious a barrier to school desegregation as has been assumed—given a full commitment to desegregation and the resolution of busing fears.

[119] Kenneth Clark, "DeFacto Segregation in the North—Pious Lawlessness and Insidious Defiance," May 17, 1973. (Mimeographed.)

[120] State of New York, Education Department, and University of the State of New York, *Racial/Ethnic Distribution of Public School Students and Staff in New York State 1971–72* pp. 1–6 (hereafter cited as *N.Y. Racial Distribution).*

[121] State of California, Department of Education, *Racial and Ethnic Distribution of Pupils in California Public Schools, Fall 1971,* p. 6.

[122] State of Michigan, Department of Education, *School Racial-Ethnic Census, 1970–71, 1971–72,* pp. 9, 14, 16.

[123] State of Colorado, Department of Education, *Ethnic Group Distribution in the Colorado Public Schools 1971-72,* pp. 102, 103; and State of Oregon, Department of Education, *Racial and Ethnic Survey 1972,* p. 9.

[124] Abraham Ribicoff, "The Future of School Integration in the United States," *Journal of Law and Education,* January 1972, p. 1.

[125] Atlanta Council on Human Relations and others, *It's Not Over in the South: School Desegregation in 43 Southern Cities 18 Years After Brown* (Atlanta: 1972), p. 122 (hereafter cited as *It's Not Over in the South).*

[126] Ribicoff, "The Future of School Integration," p. 10.

[127] See *It's Not Over in the South* and James Palmer, Sr., "Resegregation and the Private School Movement," *Integrated Education,* June 1971. Also see Jerry DeMuth, "Public School Turnovers in the South," *America,* Nov. 7, 1970.

[128] U.S., Congress, Senate, Select Committee on Equal Educational Opportunity, *Hearings,* 91st Cong., 2d sess., 1970, pt. 3A, pp. 1195, 1196 (hereafter cited as *Senate Select Committee Hearings).*

[129] *The South and Her Children,* p. 16.

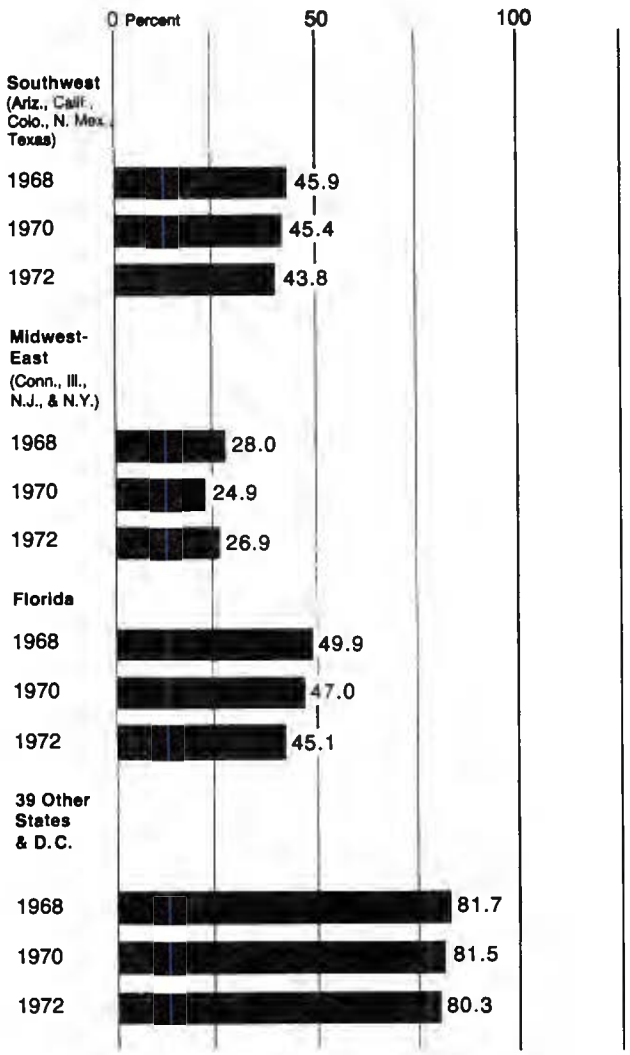
[130] *Senate Select Committee Heaings,* pt. 2, p. 747.

[131] Marvin Wall, "What the Public Doesn't Know Hurts," *Civil Rights Digest,* vol. 5 (Summer 1973), p. 25.

Chart 2.3

Regional Desegregation, 1968–72

Spanish-Surnamed Americans attending schools with 50–99.9 percent Anglo enrollment



Source: Office for Civil Rights, Department of Health, Education, and Welfare.

A recent analysis of 29 urban school systems indicates that, even in the largest cities, elimination of segregation is possible without exceeding practical limits for student travel time or economically reasonable limits on the number of pupils bused.[132] By examining alternative methods of school desegregation that rely on a minimum of busing, busing to provide almost complete desegregation can be as little as one-third to one-fourth of the amount estimated by conventional rule-of-thumb techniques. If busing were increased only 3 percent and school attendance areas rearranged to promote integration, even in the largest cities the number of black pupils attending majority-white schools would increase to over 70 percent.[133]

Total busing mileage, in fact, has decreased in many Southern States as desegregation has taken place,[134] since segregation required the extensive transportation of both black and white pupils to separate schools. Even today in many cases white pupils attending segregated private schools require more busing than those attending desegregated public schools. Although the percentage of pupils transported to school nationally increased steadily from 1920 to 1970, less than 4 percent of all pupils bused are bused for purposes of desegregation. Former Secretary of Transportation John Volpe has stated that less than 1 percent of the increase in busing in 1972 was attributable to desegregation.[135] Although some 43.5 percent of all school children ride buses to school, only 3.7 percent of all educational expenditures are allocated for transportation, [136] and less than 1 percent of the rise in busing costs is due to desegregation. [137]

Yet, these facts are generally unknown, and myths about busing often continue to dominate public discussion.[138] A national survey in 1973 revealed not only vast misinformation about busing but also a close relationship between erroneous beliefs about busing and opposition to it. Asked six questions covering court-ordered desegregation, bus safety, the educational effects of desegregation, and the cost and extent of busing, only 16 percent of the respondents answered more than half of the questions correctly. Those with most knowledge about busing

[132] See Lambda Corporation, *School Desegregation with Minimum Busing*, December 1971, p. 4.

[133] Eleanor Blumenberg, "The New Yellow Peril (Facts and Fictions about School Busing)," *Journal of Intergroup Relations*, Summer 1973, p. 37.

[134] See Leonard Levine and Kitty Griffiths, "The Busing Myth: Segregated Academies Bus More Children, and Further," *South Today*, November 1973.

[135] U.S., Commission on Civil Rights, *Your Child and Busing* (1972), p. 7 (hereafter cited as *Your Child and Busing*).

[136] NAACP Legal Defense and Educational Fund, *It's Not the Distance: It's The Niggers* (New York: 1972), p. 26.

[137] Blumenberg, "The New Yellow Peril," p. 38.

[138] See, *Your Child and Busing*.

Table 2.3

Blacks in 100 Largest School Districts, Ranked by Size, 1972

(Percentages)

District	Total blacks	Blacks attending schools with: 0–49.9% minority enrollment	Blacks attending schools with: 50–100% minority enrollment
New York, N.Y.	36.0	16.5	83.5
Los Angeles, Calif.	25.2	8.1	91.9
Chicago, Ill.	57.1	1.7	98.3
Philadelphia, Pa.	61.4	6.7	93.3
Detroit, Mich.	67.6	7.2	92.8
Dade Co., Fla.	26.4	23.6	76.4
Houston, Texas	39.4	8.8	91.2
Baltimore City, Md.	69.3	7.8	92.2
Pr. Georges Co., Md.	24.9	39.7	60.3
Dallas, Texas	38.6	15.0	85.0
Cleveland, Ohio	57.6	4.8	95.2
Washington, D.C.	95.5	0.4	99.6
Memphis, Tenn.	57.8	7.3	92.7
Fairfax Co., Va.	3.3	100.0	0.0
Baltimore Co., Md.	4.2	94.4	5.6
Broward Co., Fla.	22.8	83.9	16.1
Milwaukee, Wis.	29.7	15.4	84.6
Montgomery Co., Md.	6.4	96.3	3.7
San Diego, Calif.	13.2	32.5	67.5
Duval Co., Fla.	32.6	70.4	29.6
Columbus, Ohio	29.4	29.4	70.6
Hillsborough Co., Fla.	18.9	95.9	4.1
St. Louis, Mo.	68.8	2.5	97.5
Orleans Par., La.	74.6	4.9	95.1
Indianapolis, Ind.	39.3	25.1	74.9
Boston, Mass.	33.0	17.8	82.2
Atlanta, Ga.	77.1	6.2	93.8
Jefferson Co., Ky.	3.9	73.3	26.7
Denver, Colo.	17.2	45.5	54.5
Pinellas Co., Fla.	15.9	98.9	1.1
Albuquerque, N.Mex.	2.6	41.0	59.0
Dekalb Co., Ga.	9.7	51.2	48.8
Orange Co., Fla.	18.6	43.5	56.5
Nashville-Davidson Co., Tenn.	27.9	76.6	23.4
Ft. Worth, Texas	29.7	20.8	79.2
San Francisco, Calif.	30.6	5.2	94.8
Charlotte-Mecklenburg, N.C.	32.4	97.8	2.2
Newark, N.J.	72.3	2.3	97.7
Cincinnati, Ohio	47.3	11.6	88.4
Anne Arundel Co., Md.	12.6	88.7	11.3
Seattle, Wash.	14.4	44.4	55.6
Clark Co., Nev.	13.4	100.0	0.0
Jefferson Co., Colo.	0.2	100.0	0.0
San Antonio, Texas	15.8	8.1	91.9
Tulsa, Okla.	15.4	43.5	56.5
Pittsburgh, Pa.	41.8	22.7	77.3
Portland, Oreg.	10.6	67.5	32.5
E. Baton Rouge Par., La.	38.9	21.8	78.2
Palm Beach Co., Fla.	28.6	65.7	34.3
Mobile Co., Ala.	45.7	37.8	62.2
Jefferson Par., La.	21.2	93.0	7.0
Oakland, Calif.	60.0	6.8	93.2
Kansas City, Mo.	54.4	10.6	89.4
Buffalo, N.Y.	41.3	28.5	71.5
Long Beach, Calif.	11.1	45.4	54.6
Omaha, Nebr.	19.4	39.4	60.6
Tucson, Ariz.	5.2	35.5	64.5
Granite, Utah	0.2	100.0	0.0
El Paso, Texas	3.0	70.0	30.0
Brevard Co., Fla.	11.2	91.1	8.9
Toledo, Ohio	27.3	25.4	74.6
Minneapolis, Minn.	10.6	67.2	32.8
Oklahoma City, Okla.	26.3	77.1	22.9
Birmingham, Ala.	59.4	11.7	88.3
Wichita, Kans.	16.4	97.4	2.6
Polk Co., Fla.	21.9	76.3	23.7
Greenville Co., S.C.	22.3	98.7	1.3
Austin, Texas	15.0	38.0	62.0
Charleston Co., S.C.	48.5	27.4	72.6
Jefferson Co., Ala.	24.4	56.0	44.0
Fresno, Calif.	9.3	28.8	71.2
Akron, Ohio	28.9	34.8	65.2
San Juan, Calif.	0.6	100.0	0.0
Caddo Par., La.	49.8	26.7	73.3
Kanawha Co., W. Va.	6.4	89.6	10.4
Dayton, Ohio	44.6	14.8	85.2
Garden Grove, Calif.	0.4	93.2	6.8
Louisville, Ky.	51.0	14.7	85.3
Sacramento, Calif.	16.8	63.8	36.2
Norfolk, Va.	49.5	38.6	61.4
St. Paul, Minn.	6.8	66.8	33.2
Escambia Co., Fla.	28.1	46.1	53.9
Virginia Beach, Va.	10.1	100.0	0.0
Cobb Co., Ga.	2.8	100.0	0.0
Winston-Salem Forsyth Co., N.C.	30.3	95.2	4.8
Mt. Diablo, Calif.	0.9	100.0	0.0
Flint, Mich.	44.4	17.1	82.9
Corpus Christi, Texas	5.5	9.9	90.1
Gary, Ind.	69.6	4.1	95.9
Shawnee Mission, Kans.	0.4	100.0	0.0
Richmond, Va.	70.2	6.4	93.6
Rochester, N.Y.	37.9	31.0	69.0
Ft. Wayne, Ind.	16.1	51.3	48.7
Des Moines, Iowa	9.1	56.2	43.8
Rockford, Ill.	13.6	53.1	46.9
Spring Branch, Texas	0.1	100.0	0.0
Richmond, Calif.	30.3	41.1	58.9
Jersey City, N.J.	45.4	10.6	89.4
Calcasieu Par., La.	26.8	30.7	69.3
Muscogee Co., Ga.	34.2	78.5	21.5
Total (100) districts	33.7	20.3	79.8

Source: Office for Civil Rights, Department of Health, Education, and Welfare.

were least likely to support antibusing legislation and amendments.[139] Opposition to busing, in fact, seems

[139]See Wall, "What the Public Doesn't Know."

Table 2.4

Spanish-Surnamed Americans in Selected Large School Districts, Ranked by Size, 1972

(Percentages)

District	Total Span. Amer.	Spanish-surnamed Americans attending schools with: 0–49.9% minority enrollment	50–100% minority enrollment
New York, N.Y.	26.6	11.9	88.1
Los Angeles, Calif.	23.9	26.5	73.5
Chicago, Ill.	11.1	28.6	71.4
Philadelphia, Pa.	3.4	15.4	84.6
Detroit, Mich.	1.6	59.4	40.6
Dade Co., Fla.	24.9	32.0	68.0
Houston, Texas	16.5	28.6	71.4
Pr. Georges Co., Md.	0.7	91.7	8.3
Dallas, Texas	10.3	47.9	52.1
Cleveland, Ohio	2.0	90.1	9.9
Broward Co., Fla.	1.6	93.3	6.7
Milwaukee, Wis.	3.5	61.6	38.4
Montgomery Co., Md.	2.1	98.0	2.0
San Diego, Calif.	11.3	62.8	37.2
Hillsborough Co., Fla.	6.1	86.8	13.2
Orleans Par., La.	1.6	29.7	70.3
Boston, Mass.	5.3	29.1	70.9
Denver, Colo.	23.3	40.6	59.4
Albuquerque, N. Mex.	37.6	28.4	71.6
Orange Co., Fla.	1.3	93.0	7.0
Ft. Worth, Texas	10.7	43.1	56.9
San Francisco, Calif.	14.0	3.7	96.3
Newark, N.J.	15.3	17.0	83.0
Clark Co., Nev.	3.6	100.0	0.0
Jefferson Co., Colo.	2.5	100.0	0.0
San Antonio, Texas	64.3	5.1	94.9
Palm Beach Co., Fla.	4.1	65.4	34.6
Jefferson Par., La.	1.7	99.5	0.5
Oakland, Calif.	8.3	13.5	86.5
Buffalo, N.Y.	2.9	50.9	49.1
Long Beach, Calif.	7.3	83.9	16.1
Omaha, Nebr.	1.6	98.3	1.7
Tucson, Ariz.	25.7	33.1	66.9
Granite, Utah	2.8	100.0	0.0
El Paso, Texas	57.7	18.6	81.4
Toledo, Ohio	3.2	88.5	11.5
Wichita, Kans.	2.4	87.2	12.8
Austin, Texas	21.7	33.7	66.3
Fresno, Calif.	20.5	59.1	40.9
San Juan, Calif.	2.8	100.0	0.0
Garden Grove, Calif.	12.1	94.4	5.6
Sacramento, Calif.	12.8	64.1	35.9
St. Paul, Minn.	3.6	84.8	15.2
Mt. Diablo, Calif.	3.5	100.0	0.0
Corpus Christi, Texas	53.0	21.5	78.5
Gary, Ind.	8.1	22.1	77.9
Rochester, N.Y.	5.6	53.8	46.2
Richmond, Calif.	6.2	69.9	30.1
Jersey City, N.J.	17.9	19.1	80.9
Total (49) districts	14.7	26.3	73.7

Source: Office for Civil Rights, Department of Health, Education, and Welfare.

to center on busing for desegregation—not on busing for reasons of distance, safety, or other educational purposes.

Most objections to busing, finally, ignore the fact that not even "integrationists" are committed to busing as an end in itself. Rather, busing is but one means of implementing the law by dismantling segregated school systems and achieving the major goal of "putting the divisive and self defeating cause of race behind us."[140]

Integration

Equal educational opportunity itself is not fully attained even if busing and other tools are used to achieve desegregated school systems:

> There is a sharp distinction between truly integrated facilities and merely desegregated ones. A desegregated school refers only to its racial composition. It may be a fine school, a bad one, perhaps a facility so racked with conflict that it provides poor educational opportunities for both its white and black pupils.
>
> Desegregation, then, is the mere mix of bodies without reference to the quality of the interracial interaction. While it is a prerequisite for

[140] Reubin Askew, "Busing Is Not the Issue," *Inequality In Education*, March 1972, p. 3.

> integration it does not in itself guarantee equal educational opportunity. By contrast an integrated school refers to an integrated interracial facility which boasts a climate of interracial acceptance.[141]

Integration, then, is a realization of equal opportunity by deliberate cooperation without regard to racial or social barriers.[142] Integration, however, has not been realized in most schools with racially heterogeneous enrollments—schools which may have segregated educational programs, use conventional ability grouping, preserve white school traditions while excluding black traditions, practice discrimination in activities and discipline, displace black administrators, or lack minority staff.

Of 467 southern school districts monitored, according to a recent report, 35 percent of the high schools and 60 percent of the elementary schools had classroom segregation.[143] Such segregation is usually the result of tracking, grouping pupils on the basis of test results, and teacher evaluations, even though the Department of Health, Education, and Welfare has concluded that only grouping by subject is legitimate. The value of such tracking, indeed, has come under frequent attack, as studies have revealed that students considered bright because of IQ test scores do not necessarily benefit academically in homogeneous classes.[144] Rather, poor and minority students who are disproportionately placed in lower tracks are deprived of self-respect, stimulation by higher-achieving peers, and encouraging teacher expectations. In turn, white middle-class students are deprived of the educational benefits, inside the classroom and outside of it, which stem from racial and social class interchange.

Academic placement decisions, in fact, often are made informally, based on teacher recommendations that reflect the child's attitude, cooperation, and response to teacher expectations. Quite often, teachers and counselors expect low-income and minority children to be slower, less responsive, and have lower aspirations than their middle-class peers, and so put them in lower tracks. Consequently, these children are given different materials and treatment, achieve poorly in response to low expectations, and become the high school students whom the counselors advise against preparation for college or other post high school education.[145]

Just as ability grouping reinforces the effects of years of segregation in separate but unequal schools, persistent discriminatory discipline meted out to minority students has led many to believe that, despite *Brown,* another generation of black children is being "processed" through segregated schools which all too often do not educate but are mere custodial centers.[146] This frequently is manifested in the disproportionately high numbers of suspensions and expulsions of minority students. The Southern Regional Council, for example, has found that discriminatory and arbitrary actions by school authorities cause most of the problems which create "pushouts." These are "students who have been expelled or suspended from school, or because of intolerable hostility directed against them, finally quit school."[147]

Rejection of minority culture and language is often experienced by black, Spanish-speaking, and other minority students upon entering a formerly white school. Chastisement by teachers, exclusion from activities, separate lunch periods, antagonistic symbols, curricula which encourage belief in majority racial and cultural superiority—all provoke withdrawal or hostility. As a result, minority children are often seen as unruly or apathetic, rather than able, active, and curious.[148] In the high school years, confrontations, provoked by insensitive treatment or misunderstood behavior, result in increased student expulsions. Yet, this often is due to the inability of some teachers to cope with students they do not understand.[149]

Inherent in this problem is the shortage of minority educators. Ironically, southern school desegregation appears to be reducing professional opportunities for hundreds of black teachers and administrators. Typically, the reorganization from a dual to unitary system has been accomplished by consolidating black and white students in the previously all-white schools while partially or completely closing the all-black schools. "When schools are integrated through consolidation, principals of the Negro

[141] *Senate Select Committee Hearings,* pt. 2, p. 745.
[142] Meyer Weinberg, *Desegregation Research: An Appraisal* (Bloomington, Ind.: Phi Delta Kappa, 1970), p. 3.
[143] Winifred Green, "Separate and Unequal Again," *Inequality in Education,* July 1973, p. 15.
[144] *Toward Equal Educational Opportunity,* p. 134.
[145] Ibid., p. 135.
[146] Robert Carter, "Equal Educational Opportunity," *The Black Law Journal,* Winter 1971, p. 197.
[147] See Southern Regional Council and the Robert F. Kennedy Memorial, *The Student Pushout: Victim of Continued Resistance to Desegregation* (Atlanta: 1973).
[148] *Toward Equal Educational Opportunity,* p. 130.
[149] *It's Not Over in the South,* p. 6.

schools are likely to be demoted, if in fact retained; in many instances both teachers and principals are not reemployed."[150]

Several general conclusions concerning high displacement of black staff in the 11 Southern States have been drawn from the data available:

> Displacement is more widespread in small towns and rural areas than in metropolitan centers, in sections with medium to heavy concentration of black citizens than in predominantly white areas, and in the Deep South than in the Upper South.
>
> The number of black teachers being hired to fill vacancies or new positions is declining in proportion to the number of whites hired.
>
> Demotion is more prevalent than outright dismissal.[151]

Estimates show 12 to 14 percent of North Carolina's black teachers dismissed or demoted, while one-third of an estimated 10,500 black teachers in Alabama had been dismissed, demoted, or pressured to resign.[152] In Mississippi and Louisiana, displacement appears to be the practice.

Discriminatory hiring practices, however, probably are more significant for blacks. In areas where resistance to desegregation has been most intense, the number of black teachers in reporting districts decreased by 2,560 (6.8 percent) between 1968 and 1972, while the number of white teachers increased by 3,387 (4.8 percent).[153] In 108 districts surveyed in six Southern States, 3,774 white teachers (77 percent of the total leaving) and 1,133 black teachers left their school systems in the fall of 1970 alone. In turn, 4,453 whites (86 percent of the total hired) and 743 blacks were hired as replacements. [154] Between 1954 and 1970, in 17 Southern and Border States, the black teaching force decreased while the black pupil population increased.

Displacement methods vary from nonrenewal of contracts to forced transfers, but most cases involve demotion, which leads to resignation or firing. Black educators apparently are being systematically excluded from southern school systems, and the few remaining black staff are often assigned to all-black schools where desegregation has not occurred.[155] Desegregation, thus, appears to have resulted in reduced authority and professional status, menial responsibilities, and contact restricted to other blacks.

Hardest hit by demotion are black principals, whose ranks are rapidly diminishing:

> *Alabama* (1966 to 70)—The number of black high school principals was reduced from 210 to 57, black junior high principals from 141 to 54.
>
> *Arkansas* (1963 to 71)—The number of black high school principals was reduced from 134 to 14.
>
> *Florida* (1965 to 70)—The number of black high school principals was reduced from 102 to 13.
>
> *Georgia* (1968 to 70)—In 123 reporting school districts, 66 black principals were eliminated and 75 white principals added.
>
> *Kentucky* (1965 to 69)—The number of black principals was reduced from 350 to 36 (with 22 of the remaining 36 in Louisville).
>
> *Louisiana* (1968 to 70)—Sixty-eight black principals were eliminated and 68 white principals were added.
>
> *Mississippi* —Over 250 black administrators were displaced in a two-year period.
>
> *Maryland* —There were 44 black high school principals in 1954, 31 in 1968; 167 white high school principals in 1954, 280 in 1968.
>
> *North Carolina* (1963 to 70)—The number of black high school principals was reduced from 227 to 8.
>
> *South Carolina* (1965 to 70)—The number of black high school principals was reduced from 114 to 33.
>
> *Tennessee* —Black high school principals were reduced in number from 73 to 17.
>
> *Texas* —Although no statewide statistics are reported, one principal comments, "The black principal is rapidly becoming extinct in East Texas."
>
> *Virginia* (1965 to 70)—The number of black high school principals was reduced from 170 to 16.

[150] National Education Association, "Report of Task Force Appointed to Study the Problem of Displaced School Personnel Related to School Desegregation," December 1965, p. 55 (hereafter cited as "Report of NEA Task Force").

[151] Robert Hooker, *Displacement of Black Teachers in the Eleven Southern States* (Nashville: Race Relations Information Center, 1970), p. 3.

[152] Hooker, *Displacement of Black Teachers*, pp. 30, 18.

[153] Brief for National Education Association as amicus curiae, Willie McLaurin v. The Columbia Municipal Separate School District, No. 71-22 (U.S. Court of Appeals, 5th Circuit).

[154] Hooker, *Displacement of Black Teachers*, p. 116.

[155] See *Senate Select Committee Hearings*, pt. 10, pp. 4906-08.

> If elementary school principals were included in the data, the picture would be even worse. [156]

In the 11 Southern States, furthermore, few school systems have black administrators, and few State departments of education have black staff members with supervisory authority over whites.[157]

Though northern school systems are not yet faced with such dismissals, the number of minority educators is markedly small. Because of discriminatory hiring, placement, and promotion practices, the segregation found among black and Spanish-speaking students also is mirrored in the teaching staff.

Chicago, in 1966, reported approximately 54 percent black pupil enrollment taught by a 33 percent black teaching staff, with a 21 percent black administrative staff. [158] Spanish-surnamed pupils accounted for 16 percent of California school children in 1971, but only 2.7 percent of the total professional staff was of Spanish surname. Los Angeles County alone had 19.9 percent Spanish-surnamed pupils but only 3.1 percent Spanish-surnamed professional staff.[159] In 1972 in New York City, minorities accounted for 10.5 percent of the professional staff but 63.1 percent of the pupils.[160] The new minority educators are primarily in urban areas and minority schools.

Coupled with the lack of minority educators is the fact that many white teachers in predominantly minority schools are less experienced and less qualified by training or experience than those in predominantly white schools. Some of these teachers are not only unsure of themselves as teachers, but perhaps even more unsure of themselves when faced with pupils from different backgrounds. There often is hostility toward the pupils as well, if the teacher did not want to teach in a minority school and sees placement there as reflecting low status, the result of low seniority or disciplinary action. Such teachers also may come to their work with numerous racial stereotypes and have difficulty communicating with the class. Consequently, teacher loss is high in these schools, and those who remain often attempt to transfer as quickly as possible.[161]

The minority child suffers because classroom stability and adequate numbers of competent, understanding teachers are necessary for a good education. Moreover, an essential ingredient in equal educational opportunity for all pupils is exposure to teachers of varied backgrounds who can work together in an atmosphere devoid of racial or ethnic conflict. Thus, minority teachers are also needed in predominantly white schools to enhance the education of white pupils and faculty, as well as demonstrate that race and ethnicity are irrevelant to professional competence.

Of course, sensitive, experienced, and skilled white educators are needed in predominantly minority schools for the same reasons, and staffing problems in these schools do not negate the fact that many such teachers and administrators do exist. In fact, in many ways experience may be the least critical factor here, and many young and energetic staff members often relate to minority pupils as some experienced, more traditional, and perhaps more inflexible staff cannot.

The full achievement of equal educational opportunity has been described in terms of integration, not desegregation alone. Integration, in turn, "refers to an integrated interracial facility which boasts a climate of interracial acceptance."[162] What is suggested implies not assimilation of the minority by the majority but rather a pluralistic, multiracial society, reflected in the schools, in which individuals have the opportunity to learn from their own culture, other cultures, and other individuals, making personal choices without coercion and receiving recognition as human beings regardless of life or learning styles.

The Attack on Desegregation

Opponents of desegregation, and many proponents as well, often suggest that, if desegregation was ordered to achieve equal educational opportunity, then desegregation must be justified primarily by the academic achievement of majority and minority pupils in desegregated schools. Achievement, in such cases, frequently is defined as the outcome reflected in cognitive test scores. The controversy surrounding testing itself, its meaning and cultural and language bias, generally is discounted. Even on these

[156] John Smith and Betty Smith, "For Black Educators: Integration Brings the Axe," *The Urban Review*, May 1973, p. 7.
[157] "Report of NEA Task Force," p. 55.
[158] "The Urban School Crisis," p. 34.
[159] State of California, Department of Education, *Racial and Ethnic Distribution of Pupils in California Public Schools* (1972), table 3; and *Racial and Ethnic Distribution of Staff in California Public Schools* (1972), p. 2 and table 4.
[160] *N.Y. Racial Distribution.*
[161] See, "The Urban Crisis," for a description of these problems.
[162] *Senate Select Committee Hearings*, pt. 2, p. 745.

terms, however, the available data generally are supportive of desegregation.

There is some evidence that desegregation increases the academic achievement of blacks and other minority pupils, and the evidence is even more conclusive that there is no loss in achievement by white pupils under desegregation.[163] There is substantial evidence, of course, to show that minority pupils, conversely, are harmed by segregation:

> Negro children suffer serious harm when their education takes place in public schools which are racially segregated, whatever the source of such segregation may be. . . .Negro children who do attend predominantly Negro schools do not achieve as well as other children, Negro and white. Their aspirations are more restricted than those of other children and they do not have much confidence that they can influence their own futures. When they become adults, they are more likely to fear, dislike and avoid white Americans.[164]

The most comprehensive study of desegregation effects, "The Coleman Report,"[165] confirms the value of social class integration in raising academic achievement, and such integration for minority pupils generally cannot be accomplished without racial and ethnic integration. Critics of the Coleman study, while attacking problems in numerous aspects of his work, nevertheless generally support his major findings.[166]

Perhaps the most consistent contrary position is the one suggesting that schooling has little impact on educational achievement, a position generally taken by Coleman himself except in regard to the integration of pupils from different backgrounds. Yet, even here, the argument is not clear:

> Research has not identified a variant of the existing system that is consistently related to student educational outcomes. . . .We must emphasize that we are not suggesting that nothing makes a difference, or that nothing works. Rather, we are saying that research has found nothing that consistently and unambiguously makes a difference in student outcomes.[167]

There is disagreement with this interpretation, of course, and many view teacher background and racial attitude, educational programs and styles, level of racial tension, and numerous other factors as critical.[168] Those who support this view generally also consider measures of self-concept, aspiration, ability to relate to persons of other backgrounds, and similar noncognitive variables as necessary as academic achievement in assessing the impact of desegregation.

In the midst of what some researchers consider inconclusive and contradictory findings, a lack of evidence on minority attitudes toward desegregation, and a southern desegregation experience virtually untouched by research or systematic evaluation, what certainly appears clear to most scholars is that:

> Integration of a child from a low income background into a predominantly middle class school has more impact than any other factor in narrowing the gap in achievement scores, but the gap remains large.
>
> Newly desegregated school systems seldom show substantial increases in minority student performance during the first year of integration.
>
> The test scores of white students are not affected by the desegregation process.
>
> Social class integration is usually impossible for minority group students without racial integration.
>
> Racial and class integration are desirable objectives of national policy, everything else being equal.[169]

On the other hand, if social science research eventually demonstrates that measurable academic achievement is increased as a result of desegregation, so much the better. But conclusive evidence is not a prerequisite for desegregation.

The same argument obtains in another area. Perhaps as a consequence of the school desegregation controversy, and certainly contributing to it, is a renewed interest in the genetic aspects of intelli-

[163] See Weinberg, *Desegregation Research,* perhaps the most comprehensive summary in a lengthy, technical, and continuing debate.
[164] *Racial Isolation,* p. 193.
[165] James Coleman and others, *Equality of Educational Opportunity* (Washington, D.C.: U.S. Government Printing Office, 1966).
[166] See Gary Orfield, "School Integration and Its Academic Critics," *Civil Rights Digest,* vol. 5 (Summer 1973), p. 8.
[167] Harvey Averch and others, *How Effective is Schooling? A Critical Review and Synthesis of Research Findings* (Santa Monica, Calif.: The Rand Corporation, 1972), p. x.
[168] See David Cohen, "Policy for the Public Schools: Compensation or Integration?", U.S. Commission on Civil Rights, November 1967; *Toward Equal Educational Opportunity;* and "The Urban School Crisis."
[169] Orfield, "School Integration," p. 4.

gence. Discussions about racial differences, if not the alleged inferiority of blacks, have persisted.[170] More importantly, some recent evaluations of data on intelligence and achievement attempt to provide academic support for some of these arguments and for educational policy based on them.[171] The preponderance of scientific opinion obviously is contrary to such views, [172] which generally are considered racist regardless of source, yet increasingly it is possible to find serious discussion of them. In what way, however, would national policy be changed by findings in this regard? Indeed, would separate schools be provided for the allegedly more intelligent and less intelligent, as determined by test scores of limited meaning and disputed value?

All such considerations avoid the basic issue: the 14th amendment to the Constitution, not scientific findings, governs both desegregation of the public schools and the transportation, if required, to achieve it.[173] Decisions affecting desegregation rest on legal and moral grounds, rather than on scientific research, regardless of its results. The point is clearly made in a 1970 court opinion: " *Brown* articulated the truth *Plessy* chose to disregard: that relegation of blacks to separate facilities represents a declaration by the State that they are inferior and not to be associated with."[174] The same opinion goes on to deal with the argument that minorities should be placed in majority white schools for *educational* reasons:

> This idea, then, is no more than a resurrection of the axiom of black inferiority as justification for separation of the races, and no less than a return to the spirit of *Dred Scott.*
>
> The inventors and proponents of this theory grossly misapprehend the philosophical basis for desegregation. It is not founded upon the concept that white children are a precious resource. . .it is not that black children will be improved by association with their betters. Certainly it is hoped that under integration members of each race will benefit from unfiltered contact with their peers. But school segregation is forbidden simply because its perpetuation is a living insult to the black children and immeasurably taints the education they receive. This is the precise lesson of *Brown.* . . . This is no mere issue of expert testimony. It is no mere question of "sociology and educational theory." There have always been those who believed that segregation of the races in the schools was sound educational policy, but since *Brown* their reasoning has not been permitted to withstand the constitutional command.[175]

Educational Attainment

Regardless of racial segregation or isolation, during the past 20 years the gap between blacks and whites has narrowed significantly in terms of sheer educational attainment. Educational opportunity has been greatly expanded since *Brown,* and discrimination greatly reduced, in a variety of ways.

In 1950, for example, 37.8 percent of all whites in the United States had completed high school, compared to only 14.8 percent of all blacks.[176] By 1972, 63.8 percent of whites had completed high school, but 43.7 percent of blacks now were high school graduates. During this period, the proportion of whites who finished high school almost doubled, but the proportion of blacks almost tripled. Among persons 20 to 24 years of age, the gain was even greater: in 1972, 84.9 percent of whites and 67.9 percent of blacks in this age group had completed high school.

Similar advances were made among the college-educated population. In 1950, 6.4 percent of all whites had completed 4 or more years of college compared to only 2.2 percent of all blacks. By 1972, 12.6 percent of whites and 6.9 percent of blacks were college graduates. The proportion of whites had almost doubled, but the proportion of blacks had more than tripled. Among persons 25 to 29 years of age, 19.9 percent of whites and 11.6 percent of blacks had completed college in 1972.

The college undergraduate enrollment also reflected these advances. In 1950, 10.8 percent of all whites between 18 to 24 years of age were enrolled in

[170] See, for example, James J. Kilpatrick, *The Southern Case for School Segregation* (New York: Crowell-Collier, 1962), pp. 43–72; also John R. Baker, *Race* (New York: Oxford, 1973).

[171] See, for example, Arthur R. Jensen, "How Much Can We Boost IQ and Scholastic Achievement?" *Harvard Educational Review,* vol. 39, no. 1 (Winter 1969), pp. 1–123. Also see H.J. Eyseneck, *The IQ Argument* (Freeport, N.Y.: The Library Press, 1972).

[172] See, for example, Jerome S. Kagan and others, "Discussion: How Much Can We Boost IQ and Scholastic Achievement?" *Harvard Educational Review,* vol. 39, no. 2 (Spring 1969), pp. 273–356. Also see Margaret Mead and others, eds., *Science and the Concept of Race* (New York: Columbia University Press, 1968) and Melvin M. Tumin, ed., *Race and Intelligence* (New York: Anti-Defamation League of B'nai B'rith, 1963).

[173] Thomas Pettigrew and others, "Busing: A Review of 'The Evidence,'" *The Public Interest,* Winter 1973, pp. 113–14.

[174] Concurring opinion by Judge Sobeloff in Brunson v. Board of Trustees, 429 F. 2d 820, 825 (4th Cir. 1970).

[175] Ibid. at 824, 826.

[176] All data in this section are based on reports by the Bureau of the Census, U.S. Department of Commerce: *1950 Census of Population, 1960 Census of Population,* and *Current Population Reports,* various series.

college but only 4.4 percent of blacks. By 1972, however, 23.9 percent of young whites were enrolled, but now 18.3 percent of young blacks were enrolled. The proportion of whites had more than doubled, but the proportion of blacks had increased by over four times.

It is possible, of course, that these figures reflect schooling only and indicate little regarding quality of educational performance. There are some figures which point in this direction. In 1972, for example, only 0.8 percent of all black male pupils 6 to 9 years of age fell 2 or more years behind their modal grade level, the same proportion as among white male pupils in that age range.[177] Among 17-year-old black males, however, 15.7 percent fell 2 or more years behind their modal grade level, while only 5.2 percent of white males of that age were this far behind. (The figures for females are somewhat better but demonstrate the same black-white disparity.) Starting at approximately the same educational level, then, blacks are permitted to fall increasingly behind whites as they move through school.

Higher education affords another example. Blacks are more likely than whites to attend public and junior colleges and to attend college part time. Two of every five black college students are enrolled in black colleges, while almost half of black college students are in schools with less than 2,500 students, compared to a quarter of white students. They are more likely to attend poorly rated colleges (according to freshman aptitude scores), and less than 3 percent of the enrollment on the main campuses of State universities is black. Blacks are much less likely than whites to go on to graduate school.[178]

Apart from these important problems, however, black educational attainment obviously has increased over the last 20 years, both in public schools and in higher education. Significantly more blacks are in school at every grade level than in 1954. Questions about the quality of this advance, however, suggest that only integrated schools can provide full equality of educational opportunity.

Toward Educational Equality

The disparate data on school desegregation 20 years after *Brown* present a conflicting picture of success and failure. On balance, however, the picture is much at odds with the expectations of many American citizens who looked upon the decision as a turning point in the racial life of the Nation. For almost 14 years, there was little change in the schools, owing primarily to resistance in the South and apathy or self-congratulation elsewhere, where it was assumed that problems of segregation did not exist. For a few years after 1968, under the prodding of the courts and to a lesser extent the Federal Government, some progress was achieved.

In the South, particularly, total segregation gave way to a situation that, in 1972, found almost half of black pupils enrolled in predominantly white schools. In the North and West, however, change was minimal, and here more than 70 percent of black pupils still attend predominantly minority schools. In a number of large States, segregation is increasing in many cases, despite some significant progress in other areas, and there are indications that the urban-suburban racial divisions of the North are being duplicated in the South.

There has been substantial loss of black educators, in the South at least, and a segregated private school movement flourishes in some regions. In many situations, desegregation is yet to be followed by integration.

While a substantial proportion of all Americans publicly express support for school desegregation generally, there also is substantial opposition to the transportation of pupils in order to achieve it. Even though more than 43 percent of all pupils are bused to school, less than 4 percent of these children are bused for purposes of desegregation. In fact, desegregation has reduced busing in many areas of the South, and segregated private schools often are dependent on busing.

In contrast with this overall situation, however, school desegregation actually has proved successful in many areas of the Nation. Discouraging aspects of the desegregation picture over the last 20 years should not negate the results achieved and the lessons learned. Recent studies by the U.S. Commission on Civil Rights[179] indicate that desegregation remains the most certain guarantee of equal opportunity for all children, improved programs of public education, and constructive race relations throughout American society.

[177] The source of this material is unpublished Bureau of the Census data. The modal grade for a group of students of a given age is the grade in which the largest proportion of students at that age are enrolled.

[178] See Sar A. Levitan, William Johnston, and Robert Taggert, *Still a Dream: A Study of Black Progress, Problems and Prospects* (Washington, D.C.: Center for Manpower Policy Studies, 1973), pp. 144–50.

[179] See *Five Communities: Their Search for Equal Education* (1972); *The Diminishing Barrier: A Report on School Desegregation in Nine Communities* (1972); and *School Desegregation in Ten Communities* (1973).

Desegregated schools in Hillsborough County (Tampa), Florida; Jefferson Township, Ohio; Union Township, New Jersey; Riverside, California; Glynn County (Brunswick), Georgia; and numerous other districts—particularly smaller districts and districts in the South—provide a number of positive examples of progress since *Brown.* Their experience suggests that:

- School desegregation is working where it has been attempted, and most fears about desegregation have proved groundless. Desegregation can succeed not just in physically bringing pupils of different races together, but also in enabling them to understand and respect each other.
- In a number of communities, desegregation has contributed to substantial improvement in the quality of education.
- There is a need for careful and sensitive community preparation for desegregation.
- The technical problems of achieving desegregation—such as drawing up a specific desegregation plan and dealing with problems incident to desegregation—are far less formidable than previously believed.
- The needs of both majority and minority communities must be considered, including staff desegregation and the equitable distribution of transportation requirements among both majority and minority pupils.
- The way in which school officials, civic leaders, and news media respond to desegregation and racial incidents can serve either to preserve an atmosphere of calm or heighten tension.
- Most parents are satisfied with desegregation as it affects their children, although they may express general opposition to desegregation as a political issue.
- Controversy and confusion at the national level have fostered uncertainty at the local level.
- To some extent, each community must determine for itself what will work.

In addition to these conclusions, Commission findings from various sources also indicate that, for desegregation to be effective and for communities to move from desegregated to integrated school systems, other key elements are required:

- Educational officials must demonstrate clearly that the quality of education will not suffer from desegregation. Leadership must be exercised in using the occasion of desegregation to upgrade facilities, curricula, and staff. These officials—most importantly, the superintendent, principals, and school board members—must unequivocally demonstrate commitment to both desegregated and quality education.
- Student disciplinary practices must be firm but fair and equitable. Perceptions of discriminatory discipline, by both students and parents, blacks and whites, are a great source of tension in newly desegregated schools. Dealing adequately with this issue often becomes a major problem for administrators and faculty, and the involvement of parents and local citizens often is of considerable benefit.
- Special efforts to recruit more minority staff, and both minority and majority staff who are sensitive to the problems of students in a multiracial educational environment, become increasingly critical. In order to accomplish this, within the budget limitations of most school systems, particular attention to recruitment, transfer, and promotion policies often is required.
- There often will be a sharp difference between the reality of desegregation in the schools, and what the community, sometimes including school board members, mistakenly thinks is the reality. There is need for a continual exchange of information and public discussion of what is actually happening in the schools, including efforts to confront openly the problems that inevitably occur. School desegregation cannot bear the same silence under which education in this country traditionally has taken place.

During the 17 years of its existence, the U.S. Commission on Civil Rights has endeavored to bring to the attention of the President, the Congress, and the American people the problems involved in providing all citizens with the equal protection of the laws. To this end, the Commission has offered a variety of recommendations, both general and specific. Among the first recommendations presented by the Commission, and subsequently approved, was a recommendation that the Commission serve as a national clearinghouse to collect and make available information on school desegregation. The studies of school desegregation just cited represent examples of this function.

Among the other recommendations on school desegregation that were offered by the Commission, and subsequently enacted in various forms, were recommendations for a Federal racial census of school enrollment, authorization for the Attorney

General to initiate school desegregation suits, technical and financial assistance to school systems implementing desegregation plans, provision of educational programs designed to assist teachers and students who are handicapped professionally or scholastically as a result of inferior training and educational opportunity, teacher training programs for districts attempting to meet problems incident to desegregation, and the use of school construction in urban renewal areas in order to promote desegregation.

Other recommendations, however, have not been acted upon to date, and several of these recommendations, in revised form, serve as the basis for the recommendations which follow.

Even with those recommendations which were enacted, however, positive results have not been immediate. After the Supreme Court's 1954 decision, for example, many observers believed that, if desegregation were to be successful, a new and intensive effort would have to be made to change the racial attitudes of teachers and students. For this reason, the Commission recommended in 1961 that technical and financial assistance be provided to school systems involved in implementing desegregation plans. Title IV of the Civil Rights Act of 1964 offered such assistance, and grants subsequently were made available to institutions of higher learning for teacher and administrator training programs, development of curricula, and other purposes.

In a 1973 report,[180] the Commission pointed out that Title IV "offers help in meeting problems that are attitudinal and emotional as well as behavioral." However, that report also described Title IV as a "neglected" program, and the Commission concluded that the opportunity provided had been significantly lost. Several recommendations were made by the Commission to revitalize the program to deal with the problems of racial attitudes, which inevitably affect the success of such a major undertaking as desegregation. Any failure of desegregated schools to work successfully can be traced, in large part, to failures in the preparation of staff, students, and parents to deal effectively with each other across racial lines. Much of the previously mentioned misunderstanding about busing, and resistance to it, may be attributed to these same problems.

Where there is not outright despair, there are many who still look upon the 20 years since *Brown v. Board of Education* with mixed feelings in spite of the progress which has been achieved. It is small comfort to the present victims of segregation and discrimination to report that within several generations the members of their group will have achieved educational parity with their neighbors. It is small comfort to report that the members of their group have made more progress, proportionately, than their neighbors, when their neighbors still are enjoying significantly more benefits. It is small comfort to extol the limited areas of progress and urge continued patience when, after 20 years, members of minority groups still have not attained full equality. Kenneth B. Clark, for example, after participating in the work on *Brown* in 1954, now says:

> Social progress does not go in a straight line upward—there are ebbs and flows. After awhile—and certainly 20 years is a pretty long while—you not only become tired, but you have to struggle desperately against a serious cynicism tempered only by bullheadedness. This seems particularly true in looking at the North. The developments are not conducive to despair or cynicism because what you see in the South is a rate of social movement that is not fast but at least seems solid and honest and right. But when I look at the North, I see a depth of racism, and a coolness in racism, and an hypocrisy of racism, which does not seem characteristic of the South. And that is what bothers me. It is so insidious in the North.[181]

But there are many, unlike Dr. Clark, who have responded to the pace of the past 20 years with cynicism. In addition to the white segregationists of the South and more recently of the North, there now are black advocates of separate schooling. Dr. Clark says:

> Among the complicating factors in northern urban racial segregation is the fact that in the north educational racism is now supported by the rhetoric and manipulations of black nationalists and separatists. The separatist blacks argue successfully for their own segregated schools. White decision makers grant these demands with suspicious alacrity. Separatist blacks ask for segregation under the guise of racial control and black power. They insist that racial pride can be developed only within the context of racially segregated social and educational institutions.[182]

[180] U.S., Commission on Civil Rights, *Title IV and School Desegregation* (1973).

[181] Interview in New York City, Nov. 12, 1973.

[182] Clark, "De Facto Segregation in the North," pp. 10-11.

Dr. Clark disagrees with the rationale of these separatists. In his view,

> They refuse to answer the critical question: What magic now exists that will make racially segregated schools effective educational institutions when the entire history of American racism supports Gunnar Myrdal's contention that racial segregation in American life can exist only under conditions of clear inequality? Racially segregated schools attended by blacks are inevitably inferior whether they are imposed by white segregationists or demanded by black separatists. This is true because they exist in a history and in a context of racism and the function of racism is to impose inequality on the lower status groups. In a racist society the lower status minority group does not have and will not be given the ultimate power necessary to control the quality of its alleged "own" institutions.[183]

The Commission concurs.

But there also are some contemporary black advocates of separate schooling who, beneath their despair, cling to the goal of an integrated multiracial soceity. They find it difficult to live with half-measures. Twenty years after *Brown,* they still see their children, or grandchildren, attending segregated schools in the South and in the North. Or they see them attending desegregated but not as yet integrated schools, and they assess the costs of this effort.

Some black Americans now often equate desegregation with a plethora of disasters: school closings in the minority community so that white pupils need not attend classes in "the ghetto"; establishment of all-white private schools; busing that places a heavier responsibility on black pupils than on whites; dismissal or demotion of black teachers and administrators in the South and fruitless searches for reportedly nonexistent "qualified" minority staff in the North; failure to bring about integration in the school and the classroom; curricula inadequate to the needs of a multiracial society that nevertheless remain unchanged following desegregation.

The list is extensive and the complaints are specific. It is no wonder that there is cynicism, that some black Americans consequently feel it is legitimate to question whether, in the short run at least, the price paid for desegregation is too exorbitant.

Yet, progress has been made and much greater progress is possible. These conditions need not exist. Dr. Clark's argument is still cogent and convincing, and an additional argument should be identified: the longer the delay in implementing the constitutional principles announced in *Brown,* the more substantial will be the cost to the entire Nation in economic, social, and human terms.

School integration is critical not only to blacks and other minorities but also to white Americans. Separation is a denial of equal opportunity to white pupils who otherwise would "benefit from unfiltered contact with their peers."[184] The benefits of school integration accrue to all and they need to be evaluated in ways extending beyond the measurements of achievement tests.

School integration remains the touchstone of all racial equality in a pluralistic society—a society in which it is possible for the individual members of many racial and ethnic groups to maintain their distinctive identity or assimilate the majority culture, based on individual preferences; a society in which differences are valued and contribute to the national life of all citizens. Separate remains unequal. Integration must move forward for moral and legal reasons, irrespective of the difficulties along the way. Integration has not failed where there has been a genuine effort to achieve it. It still represents the Nation's only road to domestic tranquility. As Martin Luther King summed up his message to America:

> Men often hate each other because they fear each other; they fear each other becaue they do not know each other; they do not know each other because they cannot communicate; they cannot communicate because they are separate.[185]

[183] Ibid.

[184] 429 F. 2d 820, 824 (4th Cir. 1970).

[185] Quoted by Malcolm Boyd, "Martin Luther King: Man, Mystery," *Washington Post,* Jan. 20, 1974, p. C-3.

Chapter Three

Equality of Economic Opportunity

Employment

The *Brown v. Board of Education* decision in 1954 was the culmination of a quarter-century of litigation to end legal justification for segregation in public education.[1] In the 1930s, however, when civil rights lawyers began systematically developing the cases which eventually would lead to *Brown,* the executive and legislative branches of the Federal Government also began establishing national policy to end racial discrimination in employment.[2] Principles derived from these Federal actions and from *Brown* subsequently dovetailed in the provisions of Title VII of the Civil Rights Act of 1964.[3]

While *Brown* removed the legal sanction for segregation of races in public education, Title VII removed the legal sanction for race and sex discrimination in employment. Title VII declared it unlawful practice for an employer "to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of race, color, religion, sex, or national origin." [4] *Brown* subsequently has been cited in cases arising under Title VII, especially those involving discrimination in employment based upon race and sex.[5]

[1] 37 U.S. 483 (1954). For an historical account of the development of the legal attack upon racial segregation in educational institutions, see Jack Greenberg and Herbert Hill, *Citizen's Guide to Desegregation: A Study of Social and Legal Change in American Life* (Boston: Beacon Press, 1955).

[2] For more detailed information see chap. 2 of U.S., Commission on Civil Rights, *1961 U.S. Commission on Civil Rights Report,* vol. 3, *Employment* (hereafter cited as *Employment);* also The Potomac Institute, *Affirmative Action: The Unrealized Goal* (Washington, D.C.: 1973).

[3] 42 U.S.C. 2000e (1974). See George P. Sape and Thomas J. Hart, "Title VII Reconsidered: Equal Employment Opportunity Act of 1972," *The George Washington Review,* vol. 40 (1972), p. 827.

[4] 42 U.S.C. 2000e (1974).

[5] See below.

[6] *Employment,* pp. 7–8.

[7] (Civil Service Act), The Act of Jan. 16, 1883, ch. 27, 22 Stat. 403 (1883).

[8] U.S. Civil Service Commission, Rule VIII (1883); see U.S., Civil Service Commission, *(1st) Annual Report* (1884), pp. 7, 47.

Early Federal Efforts

The origins of the Federal policy of nondiscrimination in employment lie in the 1930s.[6] The principle of employment on the basis of "merit" had been adopted for Federal employees by the Pendleton Act of 1883,[7] but that measure was aimed principally at political discrimination and elimination of the "spoils" system. Religious discrimination in the Federal service was barred by an early regulation[8] under the act, but some 50 years were to pass before the first national declaration of equal job opportunity.

In enacting the Unemployment Relief Act of 1933, Congress provided "that in employing citizens for the purpose of this Act no discrimination shall be made on account of race, color, or creed."[9] Similar nondiscrimination provisions were included in legislation for many ensuing employment and training programs[10] of the thirties and early forties. Regulations of Federal agencies also prohibited employment discrimination in various federally-assisted programs;[11] and discrimination on the basis of race, color, or creed was barred from the Federal civil service and the armed forces in 1940.[12]

All these early Federal provisions for nondiscrimination in employment, however, had little practical effect for minorities. Without criteria to determine

[9] (Unemployment Relief Act), The Act of March 31, 1933, ch. 17, sec. I, 48 Stat. 22 [no longer in effect].

[10] For example, Emergency Relief Appropriation Act of 1935, sec. 9, 49 Stat. 118; Civilian Conservation Corps Act of 1937, sec. 8, 50 Stat. 320 [no longer in effect]; Nurses Training Act of 1943, sec. I, 57 Stat. 53 [no longer in effect].

[11] For example, 44 C.F.R. sec. 265.33 (1938), in public works program under National Industrial Recovery Act of 1933; 24 C.F.R. sec. 603.6 (1938), in public housing construction.

[12] (Ramspeck Act), The Act of Nov. 26, 1940, ch. 919, 54 Stat. 1211 (1940), for the Federal civil service; Selective Training and Service Act of 1940, sec. 4(a), 54 Stat. 885 [no longer in effect]. The Ramspeck Act carried the restrictions to Title II of the act and amended in the same respect the Classification Act of 1923 (42 Stat. 1488). The latter act was superseded by the Classification Act of 1949 (63 Stat. 954), which carried forward the restrictions, adding two more: nondiscrimination on the basis of sex and marital status.

discrimination, administrative machinery, and effective sanctions for enforcement, these legislative and executive provisions were declarations of policy and little else. In fact, by the early years of the Second World War, the employment situation of blacks had worsened:[13]

> The percentage of Negroes in manufacturing was lower than it had been 30 years before. Although every tenth American is Negro, only 1 Negro in 20 was in defense industry. Every seventh white American was a skilled craftsman; only 1 Negro in 22 had a skilled rating. Many trade unions had constitutional barriers to Negro membership. . . .[14]

Leaders in both the black and white communities worked to reverse this national trend.[15] At the suggestion of A. Philip Randolph, president of the Brotherhood of Sleeping Car Porters, they threatened to march on Washington unless the Government opened the job market to blacks. Faced with this possible embarrassment, President Roosevelt issued Executive Order 8802 on June 25, 1941, establishing a Fair Employment Practices Committee (FEPC) to administer nondiscrimination in all defense contracts, Federal employment, and Federal vocational and training programs.[16] Assorted difficulties caused the demise of this body early in 1943. It was replaced in May by a second FEPC, established by Executive Order 9346, whose scope was broadened to include employment by all Government contractors and discrimination in union membership.[17] It remained in existence until June 28, 1946.

The broad authority given to the two FEPCs was not matched by adequate enforcement powers. Although they investigated complaints and held public hearings, the FEPCs had to rely on negotiations, public opinion, and moral suasion to enforce their decisions. Also, the FEPCs never enjoyed full congressional support, partly as a result of differences between Congress and the executive over the creation of agencies without prior authorization of funds by Congress.[18]

Federal administrative machinery to implement a comprehensive policy of equal employment opportunity did not come into existence again for 15 years. Nor did Federal grant-in-aid legislation, from June 28, 1946, until March 6, 1961, include any provisions for nondiscriminatory training, recruitment, or employment.[19] Efforts to eliminate employment discrimination against minorities during those years were limited to Presidential initiatives.

On July 26, 1948, President Truman issued Executive Order 9980 establishing a Fair Employment Board within the Civil Service Commission.[20] This Board was given authority to review the decisions of department heads and make recommendations for appropriate action when there were complaints alleging discrimination based on race, color, religion, or national origin.

President Truman also initiated action to end segregation in the armed forces, issuing Executive Order 9981 on July 26, 1948, to assure equal treatment and opportunity for all persons in the military.[21] The Selective Training and Service Act of 1940[22] had prohibited racial discrimination, but the practice of maintaining "separate but equal" facilities and training had not been considered discriminatory.

These two Executive Orders signaled renewed interest in a policy of equal employment opportunity within the Federal Government. It was not until the Korean conflict, however, that efforts were made to deal with discrimination outside of direct Federal employment. Between February and November 1951, President Truman issued Executive orders[23] directing specified Government agencies to incorporate nondiscrimination clauses in their procurement contracts. To assess the effectiveness of these clauses, the Committee on Government Contract Compliance was created on December 3, 1951, by Executive Order 10308.[24] When the national administration changed in January 1953, the Committee, which had only begun operations in April 1952, was terminated.

[13] *Employment*, pp. 8–9.
[14] From a later report describing this period by the U.S. Fair Employment Practices Committee (*Final Report*, 1947, p. 1), cited in *Employment*, p. 9.
[15] See Louis Ruchames, *Race, Jobs and Politics: The Story of FEPC* (New York: Columbia University Press, 1953), pp. 13–21.
[16] 3 C.F.R. 957 (1941).
[17] 3 C.F.R. 1280 (1943).
[18] On problems over appropriations for FEPC, see Independent Offices Appropriation Act, 1945, Title II, sec. 213 (Russell Amendment), The Act of June 27, 1944, ch. 286, 58 Stat. 361 at 387 (1944), 31 U.S.C. sec. 696 (1954); National War Agency Appropriation Act, 1945, The Act of June 28, 1944, ch. 301, 58 Stat. 533 (1944); National War Agencies Appropriation Act, 1946, The Act of July 17, 1945, ch. 319, 59 Stat. 473 (1945).
[19] *Employment*, p. 12.
[20] 3 C.F.R. 720 (1948).
[21] 3 C.F.R. 722 (1948).
[22] Note 12 above, this chapter.
[23] E.O. 10227, 3 C.F.R. 737 (1951) to the GSA; E.O. 10231, 3 C.F.R. 741 (1951) to the TVA; E.O. 10243, 3 C.F.R. 750 (1951) to the Civil Defense Administration; E.O. 10281, 3 C.F.R. 781 (1951) to the Materials Procurement Agency; and, E.O. 10298, 3 C.F.R. 828 (1951) to the Department of the Interior.
[24] 3 C.F.R. 827 (1951).

On August 13, 1953, President Eisenhower issued Executive Order 10479 creating the President's Committee on Government Contracts. [25] This Committee was primarily advisory and consultative. It could receive complaints alleging discrimination and recommend ways to improve the compliance procedures of contracting agencies and the overall effectiveness of the national nondiscrimination policy. Primary responsibility for investigating complaints and taking appropriate action to obtain compliance, however, rested with the contracting agencies.

By January 18, 1955, President Eisenhower reported that there was an "urgent need to develop the maximum potential of the Nation's manpower" and "to guarantee fair treatment to all employees serving in the Executive branch of the U.S. Government and all seeking such employment."[26] He then issued Executive Order 10590 establishing the President's Committee on Government Employment Policy.[27] Each executive agency was directed to appoint an employment policy officer with responsibility to see that the agency's practices and actions were in compliance with Federal policies against discrimination. Decisions made by this officer, after receiving and investigating complaints, could be appealed to the Committee on Government Employment Policy, but its authority was limited to making advisory opinions to department heads.

The two Eisenhower administration committees were abolished on March 6, 1961, when President Kennedy issued Executive Order 10925, establishing the President's Committee on Equal Employment Opportunity.[28] Although it was an obligation of Federal contractors to provide equal employment opportunity, overall authority for assuring this, as well as equal opportunity in Federal Government employment, was placed with the new committee. The Committee was given authority to assume jurisdiction over any complaint alleging violation of the order and to conduct compliance reviews of Government contractors. It also had final authority over imposition of sanctions. Strong specific penalties for noncompliance were set out in the order, but they were never used.

Meanwhile, in 1959 the U.S. Commission on Civil Rights had initiated an evaluation of the Federal employment policies declared in President Eisenhower's Executive Order 10590. Executive Order 10925 was announced by President Kennedy shortly before the Commission published its findings and recommendations and was briefly considered in the Commission's evaluation report of 1961.[29]

The Commission found that by the late 1950s the Federal Government, through direct civilian and military employment and indirectly through contracts and grants-in-aid, had provided millions of employment opportunities that were not open on a nondiscriminatory basis. In view of this situation the Commission made the following recommendations to the President and Congress:

"1. That Congress grant statutory authority to the President's Committee on Equal Employment Opportunity or establish a similar agency

"(a) to encourage and enforce a policy of equal employment opportunity in all Federal employment, both civilian and military, and all employment created or supported by Government contracts and Federal grant funds;

"(b) to promote and enforce a policy of equality of opportunity in the availability and administration of all federally assisted training programs and recruitment services;

"(c) to encourage and enforce a policy of equal opportunity with respect to membership in or activities of labor organizations affecting equal employment opportunity or terms and conditions of employment with employers operating under Government contracts or Federal grant-in-aid.

"2. That the President issue an Executive Order providing for equality of treatment and opportunity, without segregation or other barriers, for all applicants for or members of the Reserve components of the armed forces, including the National Guard and student training programs, without regard to race, color, religion, or national origin; and directing that an immediate survey, and report thereon, be made regarding Negro membership in the armed forces, the armed forces Reserves, the National Guard, and student training programs, including data, where appropriate, on branch of

[25] 3 C.F.R. 961 (1953). The proper name was "The Government Contract Committee." It has always been known popularly as "The President's Committee on Government Contracts," and the latter is the name under which it issued its reports. E.O. 10479 was amended by E.O. 10482, 3 C.F.R. 968 (1953), in 1953, increasing the size of the Committee from 14 to 15 members.

[26] The President's Committee on Government Employment Policy, *Third Report* (1959), vol. I, p. 10.

[27] 3 C.F.R. 236 (1954).

[28] 3 C.F.R. 448 (1961).

[29] *Employment.*

service, rank, type of job or assignment, years of service, and rates of pay.

"3. That the President issue an Executive Order making clear that employment supported by Federal grant funds is subject to the same nondiscrimination policy and the same requirements as those set forth in Executive Order 10925 applicable to employment by Government contractors.

"4. That Congress and the President take appropriate measures to encourage the fullest utilization of the Nation's manpower resources and to eliminate the waste of human resources inherent in the discriminatory denial of training and employment opportunities to minority group members by—

"(a) expanding and supplementing existing programs of Federal assistance to vocational education and apprenticeship training;

"(b) providing for retraining as well as training and for funds to enable jobless workers to move to areas where jobs are available and their skills are in demand;

"(c) providing that, as a condition of Federal assistance, all such programs be administered on a nondiscriminatory, nonsegregated basis; and

"(d) amending present regulations regarding admission to vocational classes to provide that admission be based on present and probable future national occupational needs rather than, as presently interpreted, on traditional and local needs and opportunities.

"5. That, in order to encourage the fullest utilization of the Nation's manpower resources, Congress enact legislation to provide equality of training and employment opportunities for youths (aged 16 to 21), and particularly minority group youths, to assist them in obtaining employment and completing their education—

"(a) through a system of federally subsidized employment and training made available on a nondiscriminatory basis; and

"(b) through the provision of funds for special placement services in the schools in connection with part-time and cooperative vocational education programs.

"6. That the President direct that appropriate measures be taken for the conduct, on a continuing basis, of an affirmative program of dissemination of information—

"(a) to make known the availability on a nondiscriminatory basis of jobs in the Federal Government and with Government contractors; and

"(b) to encourage all individuals to train for and apply for such jobs, and particularly those jobs where there is currently a shortage of qualified applicants.

"7. That steps be taken, either by executive or congressional action, to reaffirm and strengthen the Bureau of Employment Security policy, in rendering recruitment and placement services, of encouraging merit employment and assisting minority group members in overcoming obstacles to employment and in obtaining equal job opportunities. In this connection, consideration should be given to changing the method utilized to determine Federal appropriations to State employment offices, presently keyed primarily to the number of job placements made, to reflect other factors (such as the greater degree of difficulty and time involved in placing qualified minority group workers), so that the budgetary formula used will encourage rather than discourage referral on a nondiscriminatory basis. In addition, regulations and statements of policy with respect to the operation of State employment offices should be reexamined to insure that such regulations and statements conform to the overall USES policy of discouraging employment discrimination and encouraging merit employment.

"8. That the President direct the Secretary of Labor to grant Federal funds for the operation of State employment offices only to those offices which offer their services to all, on a nonsegregated basis, and which refuse to accept and/or process discriminatory job orders.

"9. That Congress amend the Labor-Management Reporting and Disclosure Act of 1959 to include in Title I thereof a provision that no labor organization shall refuse membership to, segregate, or expel any person because of race, color, religion, or national origin."[30]

Although it is difficult to ascertain the direct influence of the 1961 Commission recommendations, it is noteworthy that the essence of all of these recommendations has been included in subsequent Executive orders and legislative acts.

[30] *Employment*, pp. 161–64.

Affirmative Action

Executive Order 11114, issued by President Kennedy on June 22, 1963, extended the jurisdiction of the President's Committee on Equal Employment Opportunity to cover employment resulting from use of Federal funds in construction projects.[31] The order called for contractors to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. . ."[32] Although Executive Order 11114 did not specify the meaning of "affirmative action" to overcome discrimination, it did provide that such action "include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship."[33]

The requirement for affirmative action also was incorporated in Executive Order 11246, issued by President Johnson on September 24, 1965, which extended coverage to Government contractors and subcontractors with contracts over $10,000.[34] The sanction of contract debarment for noncompliance, plus a strengthening of the Federal contract compliance program through Executive Order 11375, issued October 13, 1967,[35] and Executive Order 11478, issued August 8, 1969, [36] provided governmental agencies with much more authority and power than they had had previously.

Executive Order 11246 directed that the Secretary of Labor assume responsibility for contract compliance. In October 1965 the Secretary established the Office of Federal Contract Compliance (OFCC), which became the Federal agency most directly responsible for administering Federal affirmative action in connection with contract compliance efforts.[37] In 1968, 2 years after its establishment, OFCC issued guidelines for affirmative action that included steps to identify problems and analyze and measure the effectiveness of efforts taken to provide equal employment opportunities.[38] Basic to these guidelines was the requirement that goals and timetables be established to measure progress in increasing minority employment. [39] The approach of OFCC in carrying out its responsibilities for affirmative action was to rely on voluntary compliance.

The Equal Employment Opportunity Commission

To implement the employment provisions of the Civil Rights Act of 1964, the Equal Employment Opportunity Commission (EEOC) was established in 1966, under Title VII of the Civil Rights Act, with power to investigate complaints, conciliate, and recommend the initiation of civil action by the Department of Justice.[40] In addition, Title VII permitted a complainant to initiate suit in Federal court if EEOC conciliation failed. If the court found discrimination, it could order an appropriate remedy, including reinstatement and back pay.[41]

The Equal Employment Opportunity Commission's role as a "friend of the court" in private actions brought under Title VII, and its referral of cases to the Justice Department for legal action, has increasingly helped to define employment discrimination, as the EEOC's decisions have been given great weight by the courts. For example, the courts have upheld EEOC's statements that statistics alone may establish a prima facie case of unlawful exclusion or underrepresentation of minorities in certain jobs,[42] that testing procedures must be job-related,[43] that word-of-mouth recruitment among a substantially all-white work force constitutes discrimination in itself,[44] and that seniority systems must not perpetuate discrimination.[45]

The Equal Employment Opportunity Act of 1972 (which amended Title VII of the Civil Rights Act of 1964) broadened the coverage of Title VII to include employers and unions with as few as 15 employees or members, employees of State and municipal govern-

[31] 3 C.F.R. 774 (1963).
[32] Ibid., p. 777.
[33] Ibid.
[34] 3 C.F.R. 339 (1965).
[35] 3 C.F.R. 684 (1967).
[36] 3 C.F.R. 208 (1974).
[37] Secretary of Labor, Secretary's Order 26-5, Oct. 5, 1965.
[38] 41 C.F.R. 60-1.40 (1968).
[39] In an important case in this regard, Contractors Association of Eastern Pennsylvania v. Secretary of Labor, 442 F. 2d 159 (3rd Cir. 1971, the circuit court held that Government-imposed goals and timetables established for the employment of blacks in "The Philadelphia Plan" were constitutional.
[40] 42 U.S.C. 2000e et seq. (1974).
[41] 42 U.S.C. 2000e-5(q) (1974).
[42] For court rulings on statistical proof, see U.S. v. Sheet Metal Workers Local 36, 416 F. 2d 123 (8th Cir. 1969); Jones v. LeeWay Motor Freight, 431 F. 2d 245 (10th Cir. 1970); EEOC v. Plumbers Local 189, 311 F. Supp. 464 (S.D. Ohio 1970).
[43] Griggs v. Duke Power Co., 401 U.S. 424 (1971).
[44] Parham v. Southwestern Bell Telephone Co., 433 F. 2d 421 (8th Cir. 1970). See also Lea v. Cone Mills Corp., 301 F. Supp. 97 (M.D. N.C. 1969), aff'd in part and vacated in part on other grounds per curiam, 438 F. 2d (4th Cir. 1971); Clark v. American Marine Corp., 304 F. Supp. 603, 606 (E.D. La. 1969).
[45] Papermakers and Paperworkers Local 189 v. U.S., 416 F. 2d 980 (5th Cir. 1969); U.S. v. Sheet Metal Workers Local 36, 416 F. 2d 123 (8th Cir. 1969); Jones v. LeeWay Motor Freight, 431 F. 2d 245 (10th Cir. 1970).

ments, and employees of private and public educational institutions. [46] EEOC was also given authority to petition a court directly once a charge of discrimination has been substantiated and conciliation has not achieved an appropriate result.[47]

Moreover, organizations may now file charges of discrimination on behalf of aggrieved parties, and legal action is not restricted to individual applicants for jobs:[48]

> This right to sue means that the civil rights interest can no longer be ignored or subordinated in low visibility decisions by administrative officials. The individual right to sue is frequently exercised as a group right, expressing the group interest in elimination of discrimination. Under the statute as administered, the group interest of minorities is as equal with labor and management at the negotiating table and in the courtroom.[49]

The number of cases that can be tried by Federal courts or administrative tribunals is small compared to the number of cases involving employment discrimination. However, the absence of a court proceeding does not legitimate discriminatory employment practices. Furthermore, since continuation of discriminatory practices may eventually give rise to an EEOC action or to private litigation, with concomitant remedies such as reinstatement, back pay, affirmative recruitment, and proportionate hiring, it is sound legal and management practice for the employer to take steps to end discrimination rather than await court or administrative action.[50]

In cases arising under Title VII, the Federal courts have established that a presumption of discrimination arises where the proportion of minorities employed by the defendant employer is less than reasonably could be expected on the basis of the availability of qualified minority group members, and the defendant must demonstrate that such underutilization is not the product of discrimination.[51] If the court reaches a finding of discrimination, it may "order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay."[52]

The development of favorable judicial interpretation of Title VII has not resulted solely from the efforts of EEOC. Other factors, such as the experience of the courts in handling resistance to the implementation of *Brown,* have also played a significant role. In dealing with school segregation cases, the courts gradually became the major governmental institution calling for effective remedies to end the effects of racial discrimination. An authority on both civil rights and labor believes that the *Brown* decision had a direct impact on shaping judicial interpretation of Title VII:

> Cases arising under Title VII began appearing in the federal courts by the fall of 1966, and despite some early adverse decisions by district judges, it was clear from the beginning that Title VII plaintiffs were going to fall heir to a very favorable judicial climate generated by the litigation which developed out of the school segregation cases. The mood of the courts was expressed by the Court of Appeals for the Fifth Circuit in *Culpepper* v. *Reynolds Metal* . . . .where the court said:
>
> "Title VII of the 1964 Civil Rights Act provides us with a clear mandate from Congress that no longer will the United States tolerate this form of discrimination. It is, therefore, the duty of the courts to make sure the Act works. . ."
>
> Given the lack of enforcement power and the apparent weaknesses of the statute, the strong antidiscrimination decisions which have developed out of the Title VII litigation are surprising only if the significant changes in the perception of the courts on racial matters which developed after *Brown* v. *Board of Education* are ignored.[53]

In an earlier statement, however, the same authority observed that favorable judicial decisions and legal victories were being negated or nullified by social, economic, and governmental forces that kept racial discrimination intact:

> After the *Brown* decision we had a new hope—a hope rooted in the rather simplistic assumptions of nineteenth-century sociology that through the orderly progression of judicial decisions,

[46] 42 U.S.C. 2000e et seq. (1974).
[47] Ibid.
[48] Ibid.
[49] Alfred W. Blumrosen, *Black Employment and the Law* (New Brunswick: Rutgers University Press, 1971), p. 4.
[50] See U.S., Commission on Civil Rights, *Statement on Affirmative Action for Equal Employment Opportunities* (1973), for a brief review of some common examples of discriminatory barriers to equal employment opportunity as well as the Commission's position on affirmative action programs.
[51] United States v. Ironworkers Local 86, 443 F. 2d 554 (9th Cir. 1971), cert. den., 404 U.S. 984 (1971); United States v. Hayes International Corp., 456 F. 2d (5th Cir. 1972); United States v. United Brotherhood of Carpenters and Joiners, Local 169, 457 F. 2d 210, 214 (7th Cir. 1972).
[52] Title VII, Civil Rights Act of 1964, 42 U.S.C. 2000e-5(q) 1974.
[53] Herbert Hill, "The New Judicial Perception of Employment Discrimination, Litigation Under Title VII of the Civil Rights Act of 1964," *University of Colorado Law Review,* vol. 43 (March 1972), p. 251.

legislation and education, fundamental changes on race would be made in American society. Beginning with the decisions in the school segregation cases, a new body of law emerged that struck down statutes requiring the segregation of the races. The doctrine of "separate but equal" was held to be unlawful and at long last the constitutional sanction of racial segregation was voided. But the great potential of the law was never realized. The tragedy of American society lies in the persistence and complexity of racist traditions that have become deeply embedded in the culture and pervasively institutionalized. . .Extremely powerful social, economic, and political forces are acting to nullify the great judicial decisions. . .There is a terrible irony: as black Americans achieve equality in the law, patterns of job discrimination and indeed the entire continuing web of urban racism negate these legal victories. . .Quite clearly the most decisive factor in this context is administrative nullification of the law by agencies of government.[54]

Problems in Enforcement

As the 1960s ended, the U.S. Commission on Civil Rights published an evaluation of the ways more than 40 Federal departments and agencies, including OFCC, were fulfilling their responsibilities to guarantee equal rights under civil rights laws, Executive orders, and judicial decisions.[55] The report concluded that the great promise of civil rights laws had not been realized and that the Federal Government had not yet fully prepared itself to carry out the civil rights mandate. The study found that the inadequacies of civil rights enforcement mechanisms were not unique to a particular agency or program but, rather, were common throughout the entire Federal establishment. The most frequent problems cited in the report were:

- Lack of sufficient enforcement staff.
- Failure to afford agency civil rights officials sufficient status or authority to carry out their functions effectively.
- Failure of agencies to establish clearly defined goals for their civil rights activities.
- Isolation of civil rights programs from the substantive programs of agencies.
- Adoption of a passive role, such as reliance on assurances of nondiscrimination or complaint processing, rather than initiation of independent compliance investigations.
- Failure to make sufficient use of available sanctions.
- Inadequate governmentwide coordination and direction of civil rights enforcement efforts.[56]

Since 1970 the Commission has continued to assess the civil rights performance of the Federal establishment[57] to determine how it has responded to the report's findings and recommendations, which included the following:

> The Civil Service Commission [CSC] should. . .develop a governmentwide plan designed to achieve equitable minority group representation at all wage and grade levels within each department and agency. This plan should include minimum numerical and percentage goals, and timetables, and should be developed jointly by CSC and each department or agency. . . .
>
> CSC and all other Federal agencies should develop and conduct large-scale training programs designed to develop the talents and skills of minority group employees, particularly those at lower grade levels. . . .
>
> CSC should direct all Federal departments and agencies to adopt the new procedures it has developed for collection and maintenance of racial and ethnic data on Federal employment. . . .
>
> Increased efforts should be made to increase substantially the number of minority group members in executive level positions by recruiting from sources that can provide substantial numbers of qualified minority group employees, such as colleges and universities, private industry, and State and local agencies.[58]
>
> OFCC, with the assistance of the 15 compliance agencies, . . .should develop a comprehensive equal employment opportunity plan, on an industry-by-industry basis. . . [that] should include. . .establishment of numerical and percentage employment goals, with specific timeta-

[54] Herbert Hill, national labor director, National Association for the Advancement of Colored People (speech delivered at the Fifth National Conference on Civil and Human Rights of the National Education Association of the United States, Washington, D.C., Feb. 14, 1968).
[55] U.S., Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort* (1970).
[56] Ibid., p. 344.
[57] U.S., Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort: One Year Later* (1971); *Federal Civil Rights Enforcement Effort—A Reassessment* (1973); *The Federal Civil Rights Enforcement Effort—1974,* vol. I, "To Regulate in the Public Interest," vol. II, "To Provide. . .for Fair Housing," vol. III, "To Assure Equal Educational Opportunity," vol. IV, "To Provide Fiscal Assistance."
[58] U.S., Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort,* p. 358.

bles for meeting them. . .; [and] prompt imposition of the sanctions of contract termination and debarment where noncompliance is found and not remedied within a reasonable period of time. . . .[59]

Congress should amend Title VII of the Civil Rights Act of 1964 to authorize the Equal Employment Opportunity Commission (EEOC) to issue cease and desist orders to eliminate discriminatory practices through administrative action.

EEOC should emphasize initiatory activities, such as public hearings and Commissioner charges, . . .to facilitate elimination of industry-wide or regional patterns of employment discrimination.

EEOC should amend its complaint procedures to make more effective enforcement use of the complaint processing system. Priority [should be given] to complaints of particular importance. . .and emphasis should be placed on processing complaints involving classes of complainants rather than individuals.

. . .the contract compliance responsibilities of OFCC and the litigation responsibilities of the Department of Justice should be transferred to EEOC, so that all responsibilities for equal employment opportunity will be lodged in a single independent agency.[60]

All agencies with civil rights responsibilities should increase their compliance and enforcement activities significantly to assure adequate attention to the civil rights problems of such groups as Spanish surnamed Americans, American Indians, and women.[61]

Other studies, published in 1969, also pointed to weaknesses in Federal civil rights enforcement machinery, lack of clear guidelines for contract compliance, and fragmentation of enforcement efforts related to affirmative action in employment opportunities.[62] In March 1969, hearings were conducted by the Senate Judiciary Committee on Administrative Practice and Proceedings, which resulted in further questioning of OFCC's effectiveness. Specific data on the failure of Federal agencies to enforce legal prohibitions against employment discrimination, together with examples of Government subsidization of job bias, also were given in testimony before the Ad Hoc Congressional Hearings on Discrimination in Federal Employment and Federal Contractor Employment.[63]

Sex Discrimination in Employment

Federal laws and regulations to expand nondiscriminatory employment opportunities have traditionally been concerned with race, color, creed, and national origin—not sex. Although discrimination based on sex or marital status was forbidden in the Federal civil service in 1949,[64] few women have risen to positions of high status or responsibility in Federal employment—a situation paralleled in other employment.

In the 1960s laws and regulations specifically prohibiting sex discrimination began to emerge. In 1961 President Kennedy established the President's Commission on the Status of Women.[65] Among other areas, the Commission was charged with reviewing employment policies of the Federal Government and under Federal contracts and to make recommendations on steps to assure nondiscrimination on the basis of sex. In July 1962 the President directed Federal agencies to hire, promote, and train employees without regard to sex (except in unusual circum-

[59] Ibid., pp. 358–59. Philip J. Davis, Director, Office of Federal Contract Compliance, in a letter dated February 10, 1975, to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, stated that most of the recommendations in the Commission's followup reports to its *Federal Civil Rights Enforcement Effort* (1970) have been or are being implemented. On the basis of the Davis letter, two recommendations that were quoted in the text above have been deleted; namely, those relating to strengthening the capacity of OFCC to monitor performance of compliance agencies and developing uniform compliance review systems. However, two other recommendations continue to apply and have been retained, as set out below.
The OFCC states it "has considered setting ultimate goals by occupation within industry by revising a method initially developed by Bergmann and Krause. . . .Unfortunately, such broad sets of goals do not help individual compliance officers in specific cases. . . .Therefore, the OFCC is considering the possibility of setting ultimate goals by industry at some finer level, such as a labor market area. We are also reviewing alternatives to the use of educational attainment." It seems clear that the Commission's recommendation with respect to establishing numerical and percentage goals with specific timetables has not yet been implemented.
The Commission also recommended "prompt imposition of the sanctions of contract termination and debarment where noncompliance is found and not remedied. . ." On this point, the OFCC states that "To date. . .[it]. . .has debarred nine firms. While this is not a large number, we do expect to see more activity in this area in the future. . . ." This statement does not suggest that the Commission's recommendation has been implemented. The recommendation, therefore, has not been deleted.

[60] Ibid., p. 359.

[61] Ibid., p. 357.

[62] See Richard P. Nathan, *Jobs and Civil Rights: The Role of the Federal Government in Promoting Equal Opportunity in Employment and Training,* prepared for U.S., Commission on Civil Rights (Washington, D.C.: Government Printing Office, 1969); also, *Urban America and the Urban Coalition, One Year Later,* a joint publication of the Urban Coalition and The Potomac Institute (Washington, D.C.: 1969).

[63] See testimony of Herbert Hill, *Congressional Record,* vol. 116 (1970), pp. 36093–98.

[64] The Act of Oct. 28, 1949, ch. 782, 63 Stat. 954 (Oct. 28, 1949), Title XI, sec. 1103.

[65] Executive Order 10980.

stances found justified by the Civil Service Commission).[66] For non-Federal employees, a first step came with the Equal Pay Act of 1963, which prohibited pay differentials based on sex.

When Title VII of the proposed Civil Rights Act of 1964 was initially reported out of the House Judiciary Committee, it included prohibitions of employment discrimination based on race, color, religion, or national origin—but not sex. It was only 1 day before passage of the act that an amendment was offered to include a ban on sex discrimination in an apparent attempt to kill passage of the act. But the bill passed the House, and then the Senate, without substantive change, and the sex discrimination provisions in Title VII remained as a milestone for women seeking equal employment opportunities with men.[67]

Prior to the passage of Title VII, only Hawaii and Wisconsin had enacted laws against sex discrimination.[68] Furthermore, Federal laws, such as the National Labor Relations Act[69] and the Equal Pay Act of 1963, often did not provide women the legal standing they needed in order to challenge discrimination based on sex.[70]

Discrimination in employment related to sex did not elicit significant national concern, however, until Executive Order 11375[71] was issued in 1967. It amended Executive Order 11246 and required affirmative action to prohibit discrimination on the basis of sex by Federal contractors and subcontractors and on federally-assisted construction projects. Executive Order 11478, August 8, 1969, reaffirmed the equal employment policy for Federal Government employees, including women. [72] Until 1970, when the Justice Department brought suit in *U.S. v. Libbey-Owens-Ford Co.* (and United Glass and Ceramics Workers), [73] no Government suit complaining of sex discrimination had been initiated.[74]

Title VII has become important for women seeking equal employment opportunity with men. Its language is stronger than many Executive orders or other Federal and State laws prohibiting discrimination in employment. Moreover, the courts (including the Supreme Court of the United States) have gradually developed a body of law under Title VII that makes it easier for women to seek legal remedies. The landmark Title VII case for women of all races and minority men has been *Griggs v. Duke Power Company.* [75]

The court in *Griggs* established the principle that lack of discriminatory intent is not a defense to a claim of discrimination under Title VII. It also established the principle that any employment practice that results in a disproportionately higher percentage of minority persons or women being excluded from employment opportunities violates Title VII unless the practice can be justified as actually job-related or required by business necessity. This second principle involves not only testing but also any patterns of employment that continue the effects of past discrimination, such as seniority systems or union referral systems.

Women traditionally have been confined to occupations that included few men and were nonunion, such as clerical, sales, and service positions. Recent figures show that about 1 out of 8 working women are members of unions, compared to 3 out of 10 working men.[76] Title VII declared unlawful discriminatory exclusion from labor unions as well as discriminatory practices pertaining to seniority, job assignment and promotion, and training and apprenticeship programs, which frequently impede women and minorities after admission to union membership.

In the enforcement of Title VII, EEOC has given less priority to combating union discrimination than it has to eliminating employer discrimination. A recent U.S. Commission on Civil Rights report concluded that "sufficient EEOC resources have not been allocated to eliminate [discriminatory union] practices on a systematic basis, and inadequate attention appears to have been paid to this important aspect of EEOC's mandate." [77]

EEOC has maintained that unions segregated by sex violate Title VII. In *Evans v. Sheraton Park Hotel,* [78] the plaintiff argued that the maintenance of two

[66] President's Commission on the Status of Women, *American Women* (1963), p. 32.
[67] Robert Stevens Miller, Jr., "Sex Discrimination and Title VII of the Civil Rights Act of 1964," *Minnesota Law Review,* vol. 51 (1967), pp. 880–85.
[68] U.S., Department of Labor, Women's Bureau, *1969 Handbook on Women Workers,* Bulletin 294, pp. 269–70.
[69] 29 U.S.C. 151–166 (1973).
[70] Hartley v. Brotherhood of Railway and Steamship Clerks, Freight Handlers and Station Employees, 283 Mich. 201, 277 N.W. 885 (1938), is illustrative of earlier problems in this regard.
[71] 3 C.F.R. 684 (1967).
[72] 3 C.F.R. 207 (1974).
[73] 3 EPD par. 8052 (N.D. Ohio 1971).
[74] U.S., Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort,* pp. 301, 374.
[75] 401 U.S. 424 (1971).
[76] Lucretia M. Dewey, "Women in Labor Unions," *Monthly Labor Review,* vol. 94 (February 1971), p. 42.
[77] U.S., Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—A Reassessment,* p. 90.
[78] 85 EPD (D.C.D.C. 1972). However, some recent decisions by the National Labor Relations Board have held that maintenance of union locals

Table 3.1

Full-Time Total and Black Employment in Federal Agencies, 1963–72

Year	Total employees	Number of blacks	Black percentage of total
1963	2,298,808	301,889	13.1%
1964	2,270,195	299,164	13.2
1965	2,290,794	309,049	13.5
1966	2,303,906	320,136	13.9
1967	2,621,939	390,842	14.9
1968	NA*	NA*	NA*
1969	2,601,611	389,251	15.0
1970	2,571,574	391,173	15.0
1971	2,573,770	386,812	15.0
1972	2,542,067	389,762	15.3
1973	2,385,770	383,699	16.1

*NA = not available.

Source: For 1963, President's Committee on Equal Employment Opportunity, *Report to the President* (1963). For 1964–72, U.S., Civil Service Commission, *Minority Group Employment in the Federal Government*, annual issues. The information was not collected for 1968. For years prior to 1970, the information was collected for 1 month, June in 1963–66 and November in 1967 and 1969. Beginning in 1970, the information is collected for May and November. The figures in the table for 1970–72 are for the month of November.

locals, one for waitresses and the other for waiters, created an unequal employment situation based on sex discrimination and explained that because the locals were segregated it was possible for the hotel to favor waiters over waitresses in making job assignments. The Federal court agreed with the plaintiff's argument:

> The discrimination in reception assignments is a classic example of the abuse inherent in maintaining and recognizing separate male and female locals for co-workers performing the same duties. It is inevitable in such a situation that not only will controversy and suspicion arise between males and females, but that the more dominant group, in this case the males, will gain privileges of various kinds.[79]

Citing *U.S. v. International Longshoremen's Association,* [80] involving the court-ordered merger of a predominantly white local with a predominantly black local, the court held that maintenance of the sex-segregated locals for waitresses and waiters was a per se violation of the Civil Rights Act of 1964.

Employment of Nonwhites

From the perspective of American racial and ethnic minorities, the Federal Government always was "the showcase of society, the harbinger of change for the private sector, and a training ground for induction of change."[81] It had long been considered as the best source of jobs for minorities because of more extensive discriminatory practices in private employment and State and local government. However, within the Federal service, minority employment[82] accelerated as the message of *Brown* spread. Between 1963 and 1973, for instance, the percentage of blacks employed by the Federal Government increased by more than the percentage increase in total Federal employment, 29.1 percent versus 10.6 percent (see table 3.1). Further, while the Federal Government employed nearly half of all nonwhite governmental workers in 1940, by 1972 about two-thirds of all black governmental employees were at the State and local levels, and the number at these levels had doubled since 1960.

In 1972, 15.3 percent of all Federal employees were black, up from 13.1 percent 9 years earlier (see table 3.1). Spanish-surnamed[83] employees represented 3.1 percent of the Federal work force in 1972, up from 2.8 percent in 1969, while Native Americans also showed a slight increase during this period.

The minority work force in the Federal Government, however, continues to be underrepresented in the better-paying and higher-status jobs—despite recent improvements. The experience of blacks is illustrative. In 1972, 15.3 percent of all Federal employees were black, yet blacks held only 3.2

segregated by sex is not a per se violation of the National Labor Relations Act and does not justify decertification of the union: American Mailing Corp., 197 NLRB No. 33 (1972); Sheraton Park Hotel, 199 NLRB No. 104 (1972); and Glass Blowers Association, 2 EPG par. 5123 (1973). In Evans v. Sheraton Park Hotel, the same Bartenders' Union locals considered by NLRB not to be violating the National Labor Relations Act, in the cases just cited, were held in violation of Title VII of the 1964 Civil Rights Act by a Federal district court.

[79] Evans v. Sheraton Park Hotel, 5 EPD, par. 8079, at 6922.

[80] 319 F. Supp. 737 (D. Md. 1970), aff'd 460 F. 2d 497 (4th Cir. 1972), cert. den. 409 U.S. 1007 (1972).

[81] Samuel Krislov, "From Protest to Politics," *Commentary,* February 1965, p. 28.

[82] Data on minority groups are collected under various rubrics. Nonwhite refers to all races other than white. U.S. census data that cite "black and other races" are used for nonwhite in this context. This generally includes Asian Americans and Native Americans but not persons of Spanish-speaking background, who are included as white when not described separately. The lack of data on groups other than white, black, and nonwhite is a widespread concern in research of this kind.

[83] See tables 3.1, 3.2, and 3.3. Although the U.S. Commission on Civil Rights believes that the designation "persons of Spanish-speaking background" is more accurate, the data used here generally have been collected for "Spanish-surnamed Americans" and are so described.

Table 3.2

Employment in Federal Government by Ethnicity 1969, 1970, 1971, and 1972

Year and ethnicity	Number employed in Federal jobs	Percentage of total employed
1969		
Blacks	389,251	15.0%
Spanish-surnamed	73,591	2.8
Indians (Native Americans)	16,478	0.6
Orientals (Asian Americans)	21,188	0.8
All other	2,101,103	80.8
1970		
Blacks	389,355	15.0
Spanish-surnamed	73,968	2.9
Indians (Native Americans)	17,446	0.7
Orientals (Asian Americans)	21,102	0.8
All other	2,091,085	80.6
1971		
Blacks	386,812	15.0
Spanish-surnamed	75,717	2.9
Indians (Native Americans)	19,258	0.7
Orientals (Asian Americans)	20,965	0.8
All other	2,071,018	80.5
1972		
Blacks	389,762	15.3
Spanish-surnamed	77,577	3.1
Indians (Native Americans)	20,440	0.8
Orientals (Asian Americans)	21,528	0.8
All other	2,032,760	80.0

Source: U.S., Civil Service Commission, *Minority Group Employment in the Federal Government*, annual issues.

Table 3.3

Population of the United States by Ethnicity and Percent Female

Race or ethnic group	Total (thousands)	Percent of total population and year		Female percent of each race or ethnic group
All persons	207.9	100.00%	(1974)	51.3%*
Mexican	6.5	3.12	(1974)	50.4
Puerto Rican	1.5	0.72	(1974)	50.6
Cuban	0.7	0.33	(1970)	52.6
Central and So. American	0.7	0.33	(1974)	NA
Other Spanish speaking	1.4	0.67	(1974)	51.5
Blacks	23.4	11.25	(1970)	52.0
Indians (Native Americans)	0.8	0.38	(1970)	50.8
Chinese	0.4	0.19	(1970)	47.6
Japanese	0.6	0.28	(1970)	53.8
Filipinos	0.3	0.14	(1970)	45.6
White	171.6**	82.54	(1974)**	51.0

* Female percentage of the total population was 51.3 in 1970.

NA = not available.

** Estimate based on 1970 and 1974 figures.

Source: U.S., Department of Commerce, Bureau of the Census, *Population Characteristics: Persons of Spanish Origin in the United States: March 1974*, Current Population Reports series, no. 267, p. 20, table 1; *Detailed Characteristics*, PC(1)-D1 (1970), pp. 596–97.

percent of all Federal positions at the level of GS–12 and above. Less than one-fourth of the higher-paid black workers were in positions at the level of GS–14 and above. Federal General Schedule or GS jobs are graded from GS–1, lowest, to GS–18, highest.[84]

Moving from Federal employment to employment in the economy generally, the data show that nonwhites have achieved occupational upgrading since *Brown* and ensuing mandates to end employment discrimination. But, when the data on minority employment, unemployment, and income are evaluated in relation to the same data for white males, conflicting interpretations arise.

Between 1950 and 1973 there has been a significant movement of nonwhites into higher-status occupational categories (see table 3.4).[85] In 1950, for example, nonwhite professional and technical work-

[84] See U.S., Civil Service Commission, *Minority Group Employment in the Federal Government* (1972) and *Study of Minority Group Employment in the Federal Government* (1966).

[85] Data following on occupational distribution for whites and nonwhites are

ers comprised 3.4 percent of the total nonwhite work force; in 1970, 9.1 percent; and in 1973, 9.9 percent. By comparison, white professional and technical workers comprised 9.3 of the total white work force in 1950; in 1970, 14.8 percent; and in 1973, 14.4 percent. Although whites still had proportionately more workers at the professional-technical level, the rate of gain was greater for nonwhites.

Even with a higher rate of upgrading, however, it will take many years before economic equality is achieved. Over the 20-year period, 1950–70, nonwhites increased their proportion in professional and technical occupations at the compound rate of 0.3 percent per year. At this rate it will take about 15 years from 1973 for the percentage of nonwhite professional and technical workers to equal the comparable percentage for white workers in 1973, namely, 14.4 percent. And at the end of those 15 years the proportion of whites may well be higher than 14.4 percent.

As in the professional-technical category, the nonwhite rate of gain during 1950–73 exceeded the white rate in other occupational groupings. Nonwhite managers and administrators comprised 2 percent of the nonwhite work force in 1950; 4.1 percent in 1973. Nonwhite clerical workers totaled 3.5 percent of nonwhite workers in 1950 but 14.9 percent in 1973. Nonwhite salesworkers were 1.3 percent of the nonwhite work force in 1950 and 2.3 percent in 1973. Nonwhite craftworkers and blue-collar worker supervisors constituted 5.2 percent of nonwhite workers in 1950; 8.9 percent in 1973. For nonwhite operatives, the proportions were 18.6 percent in 1950 and 22.2 percent in 1973. The white gains among managers and clerical workers were smaller than the nonwhite gains; among salesworkers, craftworkers, and operatives, the number of white workers actually declined as a proportion of the total white work force.

Looking at one minority in terms of all workers, the data show that black managers, administrators, and proprietors comprised only 1.6 percent of all workers in that category in 1960 and had increased to only 3.2 percent in 1973. (See table 3.5.) Black salesworkers represented only 1.8 percent of all salesworkers in 1960 and by 1973 only 3.1 percent. Black clerical workers, craftworkers, and operatives made more significant gains between 1960 and 1973, and the proportion of black service workers and private household workers declined, although blacks still were overrepresented in the lower-paying jobs.[86]

Careful examination of the reported occupational gains by blacks discloses the difficulty in interpreting such data. Black workers in the professional and technical fields, for example, increased by 328,200 between 1960 and 1970. (See table 3.6.)[87] However, the black proportion of *all* professional and technical workers, which had been 3.7 percent in 1960, had grown to only 5.4 percent in 1970—a gain of 1.7 percentage points in 10 years. Furthermore, although there were numerical increases in every occupation (except members of the clergy), almost three-fifths of the increases were in lower-paying professions, such as public school teachers, nurses, and technicians.

Between 1960 and 1970 black lawyers and judges increased by 1,300, but this averaged only 130 persons a year and the black proportion of all lawyers and judges grew only from 1.2 percent to 1.3 percent. The gain in black dentists was only 100, or 10 per year, and the black proportion of the total actually declined, from 2.7 to 2.6 percent. Black physicians increased by 1,000 but declined from 2.2 to 2.1 percent of all physicians. Black university teachers increased by 10,300, yet declined from 3.6 to 3.3 percent of all university teachers.

The least significant advances, in fact, were in the elite occupations, and blacks remain underrepresented in the best jobs in each occupational category. In

displayed in table 3.4 and come from the sources described there. John H. Powell, Jr., Chairman, Equal Employment Opportunity Commission, in a letter dated December 17, 1974, to John A. Buggs, Staff Director, U.S. Commission on Civil Rights (hereinafter referred to as *EEOC Comments),* commenting on this report in draft, states that the data for 1950 in table 3.4 are not comparable to data for later years and that a comparison is misleading. The Commission agrees that there are certain differences between the 1950 data and the data shown for subsequent years. It is not self-evident, however, that the differences are sufficiently great to preclude comparison. In fact, it should be noted that in *Social Indicators 1973,* published by the Office of Management and Budget, a comparison is made between the 1950 data and the 1970 data despite the differences. See ibid., table 4/14, "Occupation of Employed Persons, by Sex and Race: 1950 and 1970," p. 143.

EEOC notes that "throughout this section [on employment] occupational parity is defined in terms of the proportion which blacks comprise of the total population. This should be defined in terms of the proportion which blacks comprise of the civilian labor force. . . ." *EEOC Comments.* The Commission believes it is not correct to state that "throughout this section" occupational parity is defined in terms of the proportion which blacks comprise of the total population. For example, it is stated that in 1950 nonwhite professional and technical workers were 3.4 percent of the total nonwhite work force whereas in 1973 the comparable figure is 9.9 percent. Nonetheless, the comparison has been eliminated between the proportion of blacks who were professional and technical workers in 1973 and the number of years it would take for this proportion to equal roughly the proportion of blacks in the total population. A comparison has been substituted between the proportion of all nonwhites and of all whites who are professional and technical workers and the number of years it would take for the nonwhites to reach the level attained by whites in 1973.

[86] Data on occupations of blacks are displayed in table 3.5 and drawn from the sources described there.

[87] Data following on blacks in professional and technical occupations are shown in table 3.6 and drawn from sources described there.

Table 3.4

Relative Occupational Distribution of Whites and Nonwhites 1950,* 1958, 1970, 1972, 1973

(annual averages)

Occupation and race	1950	1958	1970	1972	1973
Nonwhites					
TOTAL	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**
Professional, technical	3.4	4.1	9.1	9.5	9.9
Managers, officials	2.0	2.4	3.5	3.7	4.1
Clerical and kindred work	3.5	6.1	13.2	14.4	14.9
Sales	1.3	1.2	2.1	2.2	2.3
Craft workers and blue-collar worker supervisors	5.2	5.9	8.2	8.7	8.9
Operatives	18.6	20.1	23.7	21.3	22.2
Nonfarm laborers	15.7	14.7	10.3	9.9	9.7
Private household	14.6	15.4	7.7	6.8	5.7
Service, except private household	15.1	17.1	18.3	20.5	19.6
Farmers, farm managers	9.3	3.7	1.0	0.6	0.7
Farmworkers and farmworker supervisors	9.7	8.8	2.9	2.4	2.1
Whites					
TOTAL	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**
Professional, technical	9.3	11.8	14.8	14.6	14.4
Managers, officials	9.7	11.7	11.4	10.6	11.0
Clerical and kindred work	13.2	15.4	18.0	17.8	17.5
Sales	7.6	6.9	6.7	7.1	6.9
Craft workers and blue-collar worker supervisors	14.8	14.3	13.5	13.8	13.9
Operatives	20.0	17.9	17.0	16.0	16.3
Nonfarm laborers	5.0	4.5	4.1	4.6	4.6
Private household	1.2	1.7	1.3	1.2	1.1
Service, except private household	6.8	7.7	9.4	10.6	10.6
Farmers, farm managers	7.5	5.0	2.4	2.2	2.1
Farmworkers and farmworker supervisors	3.7	3.0	1.6	1.6	1.6

* Occupations not reported in 1950 were 1.3 percent for whites and 1.5 percent for nonwhites. Data for 1950 include peraons 14 years old and over; data beginning with 1958 refer to persons 16 years old and over. Data for 1950 are based upon occupational information for 1 month of each quarter and are not exactly comparable to data for 1958 forward.

Source: Computed from data in U.S., Executive Office of the President, Office of Management and Budget, *Social Indicators, 1973,* table 4/14; U.S., Department of Ccmmerce, Bureau of the Census, *1950 Census of Population,* vol. II, part 1; U.S., Department of Labor, *Manpowar Report of the President, 1973* and *Manpower Report of the President, 1974.*

the crafts, for example, blacks in 1970 were 3.1 percent of all electricians but 31.4 percent of all cement finishers.

A significant part of the increase by blacks in professional and technical occupations may be owing to new jobs in minority-oriented, federally-funded programs. For example, poverty agencies and related sources of employment may account for a substantial proportion of the increase of more than 40,000 black professionals among personnel and

Table 3.5

Occupation of Employed Blacks

(annual averages)

Occupation	Blacks as percentage of all employed 1960	1970	1973
Professional and technical	3.7%	5.4%	5.8%
Managers, administrators, and proprietors	1.6	2.6	3.2
Sales	1.8	3.1	3.1
Clerical and kindred workers	4.0	7.4	8.0
Craft workers	4.3	6.3	6.3
Operatives	6.0	12.1	12.9
Service workers, except private household	18.9	17.1	16.6
Private household	52.5	52.5	37.6
Farmers and farmworkers*	12.4	9.4	10.3

* Category for 1973 is not exactly comparable to category for 1960 and 1970 due to source data.

Sources: U.S., Department of Commerce, Bureau of the Census, *Occupational Characteristics*, 1970 Census of Population, series PC(2)–7A, table 2; *Occupational Characteristics*, 1960 Census of Population, series PC(2)–7A, table 3; *The Social and Economic Status of the Black Population in the United States, 1973*, Current Population Reports, series P–23, no. 48, table 40.

labor relations workers and social and recreation workers.

These occupational data are particularly important in view of employment projections for the years ahead and the current state of minority labor force participation.

A total labor force of 107.7 million persons is projected for the United States by 1985, including an all-volunteer military of 2 million, for an expected increase in total employment of approximately 24 percent between 1972 and 1985.[88]

In terms of occupations, employment is expected to increase by 50 percent for professional, technical, and kindred workers; 40 percent for clerical workers (especially in electronic data processing); 20 percent for salesworkers; 20 percent for craftworkers (including carpenters, tool and die makers, instrument makers, all-round machinists, electricians, and typesetters); and 13 percent for operatives (semiskilled workers) engaged in assembly work, driving vehicles, and operating machinery. For service workers—including people engaged in maintaining law and order, barbering, food service, and house cleaning and maintenance—the projected increase is 22 percent. A continued decline in the proportion of farmworkers and a slight increase in the demand for laborers are anticipated.

In terms of industries, overall, employment in the service-producing industries (trade, government, miscellaneous services, transportation and other utilities, finance, insurance, and real estate) is expected to grow at a greater rate than in the goods-producing industries (agriculture, manfacturing, construction, and mining). By 1985, 8.7 million persons, or an estimated increase of 38 percent over 1972, will be employed in the service-producing industries. Trade employment is expected to increase by 26 percent; government employment, 42 percent (mostly at the State and local levels); service (and miscellaneous industries) employment, 50 percent. A gain of 15 percent is anticipated in transportation and public utility jobs, although declines will probably continue in railroad jobs and little change is expected in water transportation jobs. Finance, insurance, and real estate jobs will likely increase by 42 percent.

A 13 percent increase is projected for employment in the goods-producing industries between 1972 and 1985, with different industries growing at different rates. Mining is the only nonagricultural industry that probably will not show an increase in employment during this period; farmwork may decline as much as 45 percent. Projected job gains are some 20 percent for contract construction and 23 percent for manufacturing.

In general, employment opportunities in the 1970s and the mid-1980s will be in those occupations and industries requiring greater education and training, such as that offered by colleges and universities, post-secondary vocational schools and courses, and various governmental programs. However, more jobs are expected to become available between 1972 and 1985 because of deaths, retirements, and other

[88] Employment projections following are taken from U.S., Department of Labor, *Occupational Outlook Handbook*, bulletin 1785 (1974).

Table 3.6

Professional and Technical Occupations of Black Workers

	1960		1970	
	Number	Black Percentage Of Total	Number	Black Percentage Of Total
Total	**288,100**	**3.7%**	**616,300**	**5.4%**
Accountants	3,600	0.8	16,200	2.3
Actors	300	3.5	600	6.7
Architects	100	0.4	1,300	2.3
Athletes	200	6.3	2,300	4.4
Authors	300	1.0	400	1.6
Chemists	1,800	2.2	3,800	3.5
Clergy	13,600	6.8	13,500	6.1
Dentists	2,300	2.7	2,400	2.6
Designers	700	1.1	1,900	1.8
Draftsworkers	2,200	1.0	7,600	2.6
Editors and reporters	800	0.8	3,300	2.2
Engineers	4,200	0.5	14,300	1.2
Lawyers and judges	2,400	1.2	3,700	1.3
Librarians	3,800	4.5	7,900	6.5
Nurses, registered	32,800	5.6	65,200	7.8
Personnel and labor relations workers	1,500	1.5	14,900	5.1
Pharmacists	1,700	1.8	2,800	2.5
Photographers	1,100	2.3	1,900	3.0
Physicians	5,000	2.2	6,000	2.1
Public relations and publicity writers	300	1.0	2,300	3.2
Social and recreation workers	13,800	10.4	41,100	15.3
Social scientists	1,100	2.0	3,500	3.1
Teachers, elementary	90,300	9.0	134,600	9.4
Teachers, high school	33,600	6.5	65,500	6.6
Teachers, university	6,000	3.6	16,300	3.3
Technicians, medical and dental	9,900	7.2	24,400	9.0

Sources: U.S., Department of Commerce, Bureau of the Census, *Occupational Characteristics,* 1970 Census of Population Series PC(2)–7A, table 2, and *Occupational Characteristics,* 1960 Census of Population Series PC(2)–7A, table 3.

causes of withdrawal from the labor force than because of employment growth.

Contrasted with these anticipated employment opportunities are both the previously described occupational changes for minorities over the last 20 years and the declining rate of minority participation in the labor force.[89] In 1950, the same proportion of nonwhite and white males 16 years of age and over were labor force participants—86 percent. By 1972 the participation rate was 80 percent for white males but only 74 percent for nonwhites. White female participation in the labor force increased from 33 to 43 percent during this period, yet participation by

[89] The civilian labor force comprises all noninstitutionalized civilians 16 years old and over who are classified as employed and unemployed individuals who are seeking new employment. The total labor force includes the civilian labor force and the armed forces. The labor force participation rate is based on total population and represents the proportion in the total labor force.

nonwhite females increased only from 47 to 49 percent.[90]

The lower median age of the black population, coupled with the high birth rate of the 1950s and early 1960s, will rapidly expand the number of black youth looking for work in the next 10 years. During the 1970s, young blacks will be entering the working age category at a rate five times the rate for white youths.[91] Yet, in 1974 blacks between the ages of 16 and 19 already had an unemployment rate of 30.7 percent, compared with 13.3 percent for whites in this age category. (See table 3.16.) Overall, the black to white unemployment ratio continues to be approximately 2 to 1 in relation to the size of their respective labor forces. (See table 3.7.)

In summary, nonwhite workers have made significant numerical advances and slight but continuing proportionate advances in employment and occupational upgrading during the past 20 years. These advances, however, have been concentrated at lower employment levels. In addition, the rate of these advances—made during years of heightened civil rights efforts and general economic expansion—still would require generations for economic equality to be achieved. Declining labor force participation, continuing unemployment, and more working age persons also call into doubt the opportunity for blacks and other minorities to take advantage of projected employment expansion in the years ahead.

Table 3.7

Unemployment Rates by Race, 1954–74

(annual averages)

Year	Nonwhite	White	Ratio of Nonwhite to White
1954	8.8	4.5	2.0
1955	8.7	3.9	2.2
1956	8.3	3.6	2.3
1957	7.9	3.8	2.1
1958	12.6	6.1	2.1
1959	10.7	4.8	2.2
1960	10.2	4.9	2.1
1961	12.4	6.0	2.1
1962	10.9	4.9	2.2
1963	10.8	5.0	2.2
1964	9.6	4.6	2.1
1965	8.1	4.1	2.0
1966	7.3	3.3	2.2
1967	7.4	3.4	2.2
1968	6.7	3.2	2.1
1969	6.4	3.1	2.1
1970	8.2	4.5	1.8
1971	9.9	5.4	1.8
1972	10.0	5.0	2.0
1973	8.9	4.3	2.1
1974*	9.5*	5.0*	1.9*

* Third quarter average, seasonally adjusted. *Employment and Earnings*, Oct. 1974, table A–41, p. 49.

Note: The unemployment rate is the percentage of the civilian labor force that is unemployed.

Sources: U.S., Executive Office of the President, Office of Management and Budget, *Social Indicators, 1973*, table 4/2; U.S., Department of Labor, Bureau of Labor Statistics, and U.S., Department of Commerce, Bureau of the Census, P–23, No. 48, *The Social and Economic Status of the Black Population in the United States*, 1973, Current Population Reports series, P–23, No. 48, tables 28 and 29.

Employment of Women

Most employed women hold low-paying, low-status jobs—such as clerical, sales, and service work—that have traditionally employed proportionately fewer men than women. Moreover, in 1973 the largest percentage of women were still employed by the same industrial groups that employed the largest percentage of women in 1950.

During the last few decades, the services industry has maintained its position as the largest employer of women. Services include private household work, maintenance and repair, and supporting services in the health, education, and legal fields. "Many jobs in the service industry can be described as extensions of what women do as homemakers—teach children and young adults, nurse the sick, prepare food."[92] In 1950, 58 percent of service workers were women; in 1973, 55 percent.

Women of all races and ethnic backgrounds are overrepresented in the services industry, both overall and within racial and ethnic groups. For example, in 1970 almost 25 percent of all black females were employed in these jobs, but only 4 percent of black

[90] See Sar A. Levitan, William Johnston, and Robert Taggert, *Still a Dream: A Study of Black Progress, Problems and Prospects* (Washington, D.C.: Center for Manpower Policy Studies, 1973), pp. 99–107 of the unpublished manuscript. Explanations for declining participation of nonwhite males include ill health and disability, discouragement, unattractiveness of opportunities, alienation, etc.

[91] Herbert Hill, *Labor Union Control of Job Training: A Critical Analysis of Apprenticeship Outreach Programs and the Hometown Plans* (Washington, D.C.: Institute for Urban Affairs and Research, Howard University, 1974), p. 1.

[92] E. Waldman and B. J. McEaddy, "Where Women Work—An Analysis by Industry and Occupation," *Monthly Labor Review*, vol. 97 (May 1974), p. 3.

males. Similarly, among the Spanish speaking who were employed in the personal services industry in 1970, 11 percent of the females but only 2 percent of the males were so employed.

The industrial group employing the second largest number of women is the trade industry. In 1973 women comprised nearly half of the employees in retail trade jobs (including work in department stores, clothing shops, drugstores, and eating and drinking establishments). The finance, insurance, and real estate work force was approximately 52 percent female in 1973, representing an increase of about 8 percent since 1950.

Local government employment also has become increasingly female. Approximately 50 percent of all local government employees are women, many of whom are in clerical jobs. State and local governments now have a larger proportion of women workers than the Federal Government. State employees are 43 percent female, local government employees are 50 percent female, and Federal Government employees are 34 percent female. Women employed in government jobs, however, show the same employment patterns as in other areas of the labor force; and even in the Federal Government, where the merit system and policy of equal employment for everyone have long been established, women are found primarily in the lower-paying jobs.

In 1972, women employed in the Federal Government in full-time, white-collar positions were predeominantly in the lower-paying and lower-status grade levels, mostly clerical and kindred workers. (See table 3.8.)[93] In 1972, 74 percent of federally-employed women were in GS-1 to 6 jobs; 25 percent were in GS-7 to 12 jobs, and only 1 percent were in grades GS-12 and above. The percentages for men employed by the Federal Government in these grade groupings in 1972 were, respectively, 41 percent, 45 percent, and 14 percent. In 1972, women employed in white-collar, full-time Federal jobs comprised 47.9 percent of all employees in the lowest-paying grades (GS-1 to 6), 22 percent of all employees in the middle-range salary grades (GS-7 to 12), and 4.2 percent of all employees in higher-paying grades (GS-13 through 18).

In 1958, women were 32.7 percent of the total American labor force and this figure increased to 38.4 percent in 1973.[94] The large increase in the number of women working, however, has not meant that women have made vast inroads into male-dominated occupations. There were slight proportionate gains by women employed in craft jobs and managerial positions, as well as in professional and technical occupations, where they are better represented. But clerical work, private household work, and other service work continue to be the areas where women predominate.

Although women currently represent 41.4 percent of professional and technical workers, a close look at the kinds of jobs held by women in this occupational category reveals that many are traditional "women's jobs." (See table 3.10.) For example, in 1972 women made up 82 percent of all librarians, 97 percent of all registered nurses, and 84 percent of all elementary teachers. If the occupations of women are rank ordered, beginning with the occupations in which women are predominantly employed, it becomes apparent that the percentage of women employed in an occupation declines as the occupation increases in status and potential for high income.[95]

Among women in professional and technical jobs, minority women have shown more significant gains than white women since 1960, although white women continue to hold more of these jobs than minority women.[96] In 1960, 6.9 percent of minority women and 13.1 percent of white women were professional and technical workers. By 1973, 10.6 percent of all minority females were in this occupational category, compared to 15.1 percent of all white female workers. In 1960, on the other hand, private household work accounted for 35.1 percent of minority women's employment; a little over a decade later, it had dropped to 16.5 percent. (See table 3.11.)

The percentage of black women heads of families who held professional and technical jobs had substantially increased in 1973 over 1960.[97] In 1960, only 5.6 percent of black women heading families were professional or technical workers, but in 1973, 10.3 percent of black female heads of families were in this occupational category. On the other hand, white women who were heads of families represented

[93] Data following on Federal employment are shown in table 3.8 and drawn from the source described there.

[94] See table 3.9.

[95] Data on women in professional-technical occupations are shown in table 3.10 and drawn from sources described there.

[96] Data following on occupation by race are shown in table 3.11 and drawn from the source listed there.

[97] Data following on jobs of female family heads are shown in table 3.12 and drawn from sources there listed.

Table 3.8

Full-Time, White-Collar Federal Employment of Women by Grade Groupings

GS grade grouping		1967	1968	1969	1970	1972
1–6	Total	1,129,651	1,112,947	1,116,660	1,093,145	1,038,929
	Women	530,220	525,334	517,558	504,096	497,320
	% Women	46.9	47.2	46.3	46.1	47.9
7–12	Total	635,197	672,563	681,991	690,227	753,781
	Women	120,647	132,761	137,941	142,826	165,462
	% Women	19.0	19.7	20.2	20.7	22.0
13 and Above	Total	161,111	171,522	184,294	191,228	199,698
	Women	5,955	6,402	7,060	7,528	8,368
	% Women	3.7	3.7	3.8	3.9	4.2
Total	Total	1,925,959	1,957,032	1,982,945	1,974,600	1,992,408
	Women	656,822	664,497	662,559	654,450	671,150
	% Women	34.1	34.0	33.4	33.1	33.7

As of October 31 for each year.

Note: The GS, or General Schedule, pay system refers to a standardized Federal pay scale for white-collar employees. The GS system is computed on an annual basis. Annual salaries, as of October 1974, began at $5,284 for a GS–1, at $10,520 for a GS–7 and $21,816 for a GS–13. The top level, a GS–18, pays $36,000 a year.

Data for the years indicated include full-time, white-collar employees in all Federal departments and agencies with the following exceptions: foreign nationals employed overseas; Board of Governors, Federal Reserve System; Members and employees of Congress; National Security Agency; Central Intelligence Agency; White House Office; Architect of the Capitol; Botanic Gardens; ungraded employees in the judicial branch.

Source: U.S., Civil Service Commission, *Study of Employment of Women in the Federal Government:* 1972, p. 10.

approximately the same proportion employed in professional and technical jobs in 1973 as in 1960, 12.7 percent and 12.3 percent, respectively.

Nonwhite working women suffer a double penalty of race and sex, as shown by the unemployment statistics. In 1973, nonwhite women 20 years of age and over had an unemployment rate of 8.2 percent, compared with rates of 5.7 percent for nonwhite men, 4.3 percent for white women, and 2.9 percent for white men.[98] Nonwhite female teenagers persistently have the highest unemployment rate: in 1973 it was 34.9 percent, compared with 28.2 percent for nonwhite male teenagers, 13.3 percent for white female teenagers, and 12.5 percent for white male teenagers.

Unemployment

The unemployment rate for nonwhites compared with the unemployment rate for whites has remained virtually unchanged since 1954. The nonwhite unemployment rate continues to be a little more than double the white rate. (See table 3.7 and chart 3.1.) This ratio has been relatively constant throughout business cycles, although nonwhite unemployment has tended to be higher than that of whites in recession periods and to decline to a greater degree than that of whites when the economy has expanded.

Unemployment rates differ not only by race but also by occupation, educational attainment, age, and sex.[99] Less-skilled occupations, which employ a large number of nonwhite workers, have had much higher rates of unemployment over the last two decades than the higher-skilled occupations, which employ more whites. Unemployment figures for the most-skilled occupations (including professional, technical, managerial, and administrative positions) have been consistently low since the late 1950s. (See table 3.13.)

For example, in 1965 (an expansionary year), professional and technical workers had an unem-

[98] Unemployment data used here are displayed in table 3.16 and drawn from the sources described there.

[99] Following unemployment rates by occupation are shown in table 3.13 and drawn from sources listed there.

Table 3.9

Women 16 Years Old and Over as Percentage of Total Employed by Occupation, 1958–73*

Year	All occupations	Professional and technical	Managers, administrators except farm	Sales work	Clerical work	Crafts and kindred work	Operatives	Nonfarm laborer work	Private household work	Other service work	Farm work
1958	32.7%	36.5%	15.2%	39.5%	68.1%	2.7%	28.0%	2.9%	98.1%	51.5%	18.1%
1959	32.8	35.8	15.5	39.5	67.9	2.4	27.6	2.8	98.3	53.1	18.9
1960	33.3	36.2	15.6	39.8	67.8	2.6	27.9	2.3	98.5	53.5	18.5
1961	33.6	35.7	15.7	39.7	68.4	2.5	28.3	2.3	98.0	54.1	17.3
1962	33.8	35.6	15.3	40.9	69.0	2.6	28.1	2.5	97.7	53.9	17.6
1963	34.0	35.7	15.3	40.9	69.6	2.7	28.0	2.6	97.8	54.1	18.7
1964	34.4	36.4	14.9	40.8	69.9	2.8	28.3	2.5	97.8	54.0	18.5
1965	34.8	37.0	15.1	41.3	70.6	2.9	28.2	2.9	98.0	54.8	18.7
1966	35.6	37.3	15.8	41.2	71.7	2.7	29.5	3.1	97.7	55.2	18.4
1967	36.2	37.4	15.7	42.1	72.4	2.9	30.1	3.3	98.2	56.3	17.4
1968	36.6	37.6	16.0	41.4	78.3	3.2	30.6	3.5	97.6	57.3	16.9
1969	37.3	37.3	15.8	43.0	74.5	3.3	31.2	4.0	97.6	59.3	17.3
1970	37.7	38.6	16.0	43.1	74.6	3.3	30.9	3.7	97.4	60.2	16.8
1971	37.8	39.2	17.2	42.5	75.4	3.8	30.6	6.2	97.5	56.5	17.1
1972	38.0	39.3	17.6	41.6	75.6	3.6	30.4	6.3	97.6	57.0	17.7
1973	38.4	40.0	18.4	41.4	76.6	4.1	31.4	6.9	98.3	58.1	17.0

* Data are limited to 1958 forward because occupational information for only 1 month of each quarter was collected prior to 1958 and the adjustment for the exclusion of 14- and 15-year-olds was not possible for earlier years. Although data are not strictly comparable, even for the years indicated, the picture presented is not significantly distorted.

Source: Data compiled from table A–11, *Manpower Report of the President, 1974*, U.S. Department of Labor.

ployment rate of 1.5 percent; managers and administrators, 1.1 percent. During the same year, however, nonfarm laborers had an unemployment rate of 8.6 percent and operatives (engaged in mechanical or manual work) had a rate of 5.5 percent. In 1970 (a recessionary year), professional and technical workers had an unemployment rate of 2 percent, while for managers and administrators the rate was only 1.3 percent. But for nonfarm laborers the unemployment rate rose to 9.5 percent and for operatives, to 7.1 percent.

Regardless of occupational level, however, black unemployment rates are much higher than white.[100] During 1973, unemployment rates for blacks in various occupations ranged from 2.2 to 11.5 percent; for whites the range was from 1.4 to 8.1 percent. Among white-collar workers in 1973, 6.7 percent of black workers, but only 2.7 percent of white workers, were unemployed. For the same year, 8 percent of black workers in blue-collar jobs were unemployed, compared with 5 percent of white workers in this category. The highest unemployment rate for black workers in 1973 was in the sales field, where the rate reached 11.5 percent, more than three times the 3.4 percent unemployment rate for white salesworkers.

Unemployment rates of men and women in 1973 show that unemployment rates for women are higher at all occupational levels. (See table 3.14.) In general, black women have the highest unemployment rate in each occupational category, with black men having the next highest rate, white women having a rate lower than either black men or black women, and white men having the lowest rate. In 1973, the unemployment rate for black men ranged from 2 to 10.2 percent in different occupational categories; for white men the range was 1.1 to 8.1 percent. For black women, the unemployment rate ranged from

[100] Data following on unemployment are displayed in table 3.14 and are drawn from sources cited there.

Table 3.10

Women as Percentage of Total Employed in Selected Occupations, 1972

Occupation	Percent women of total
Private household workers	98%
Registered nurses	97
Dietitians	92
Elementary teachers	84
Librarians	82
Dancers	81
Clerical workers	76
Health technicians	70
Therapists	64
Service workers	63
Social workers	63
Religious workers	56
Professional and technical workers	39
Factory workers	39
University teachers	24
Managers, proprietors	18
Photographers	14
Life and physical scientists	14
Scientific technicians	13
Pharmacists	12
Physicians	9
Full professors (universities)	9
Draftpersons	8
Lawyers, judges	5
Craftworkers, blue-collar worker supervisors	4
Architects	4
Clergy	3
Engineers	2

Sources: Carnegie Commission, U.S. Department of Labor, U.S. Department of Commerce, Council of Economic Advisors.

Table 3.11

Major Occupation Groups of Employed Women, by Race, 1960 and 1971*

Selected major occupation group	1960		1971	
	Minority	White	Minority	White
Number (in thousands)	2,821	19,376	3,658	26,217
Percent	100.0	100.0	100.0	100.0
Professional and technical workers	6.9	13.1	10.6	15.1
Nonfarm managers and officials	1.8	5.4	2.4	5.4
Clerical workers	9.8	32.9	22.0	35.6
Salesworkers	1.5	8.5	2.7	7.8
Operatives	14.1	15.1	15.4	13.0
Private household workers	35.1	6.1	16.5	3.2
Service workers (except private household)	21.4	13.7	27.0	16.0
Other occupations	10.8	5.2	3.4	3.9

* Women 16 years and over in 1971 but 14 years and over in 1960.

Source: U.S., Department of Labor, Women's Bureau, *Facts on Women Workers of Minority Races* (1972).

2.5 to 14.3 percent; for white women, the range was from 2.5 to 8.6 percent. Black males had a total unemployment rate of 7.9 percent, compared to 3.7 percent for white males. The total unemployment rate for black women was 11.1 percent, more than double the 5.3 percent rate of white women. (See table 3.15 and chart 3.2.)

Unemployment rates decrease with years of educational attainment.[101] In 1972, for instance, persons 18 and over with less than 12 years of school had an unemployment rate of 7.3 percent; for those with 12 years of school the rate was 5.5 percent; those with more than 12, 3.7 percent.

Yet at each level of educational attainment there is a disparity between the unemployment rates of whites and nonwhites. For example, nonwhites in 1972 with less than 12 years of school had an unemployment rate of 10.6 percent; whites with same education, 6.6 percent. In the same year, nonwhites with more than 12 years of school had an unemployment rate of 6.5 percent; whites with the same education, 3.5 percent.

The disparity between white and nonwhite unemployment rates for those with 12 years of school narrowed from 5.8 percentage points in 1964 to 4.5 percentage points in 1972, and for nonwhites with more than 12 years of school, from 3.9 percentage points in 1964 to 3 percentage points in 1972. This pace would require many additional years for nonwhites to attain parity with whites at the same educational levels.

[101] Data following on education and unemployment are displayed in table 3.15 and drawn from the sources cited there.

Table 3.12

Major Occupation Group of Employed Female Family Heads 1960, 1970, and 1973

(Percentage)

Occupation and Race of Female Heads	1960	1970	1973
White employed female heads			
Professional, technical, kindred work	12.3	13.9	12.7
Managers, administrators, except farm	6.1	5.7	5.9
Salesworkers	7.5	6.5	5.6
Clerical and kindred workers	30.7	33.6	34.9
Craft and kindred workers	1.7	3.5	1.7
Operatives and transport equipment operatives	18.0	16.4	15.3
Laborers, except farm	.9	1.1	1.0
Farmers and farm managers	1.2	.5	.4
Farm laborers and farm forepersons	.3	.3	.4
Service and private household workers	21.1	18.5	22.1
Percent*	99.8	100.0	100.0
Black employed female heads			
Professional, technical, kindred work	5.6	9.0	10.3
Managers, administrators, except farm	1.2	1.7	2.3
Salesworkers	1.6	2.1	1.0
Clerical and kindred workers	7.9	17.4	22.0
Craft and kindred workers	.9	1.8	1.0
Operatives and transport equipment operatives	14.8	16.1	13.4
Laborers, except farm	1.2	1.5	.5
Farmers and farm managers	1.2	.2	0.0
Farm laborers and farm forepersons	2.3	1.2	1.2
Service and private household workers	63.3	50.0	48.3
Percent*	100.0	99.5	100.0

* May not equal exactly 100 percent due to rounding of figures.

Source: Percentages were computed from data in U.S., Department of Commerce, Bureau of the Census, "Female Family Heads," Current Population Reports, series P–23, no. 50 (1974), table 15, p. 23.

Between 1954 and 1974 the unemployment rates of both white and nonwhite persons 16 to 19 years of age have been substantially higher than those for persons 20 years of age and over.[102] Within both age categories, however, nonwhites have consistently shown higher unemployment rates than whites. White female unemployment rates have been higher in both age categories than the rates for white males, but nonwhite females have experienced higher rates of unemployment than nonwhite males in the 16 to 19 year-old category and generally lower rates than nonwhite males in the 20-and-over age category.

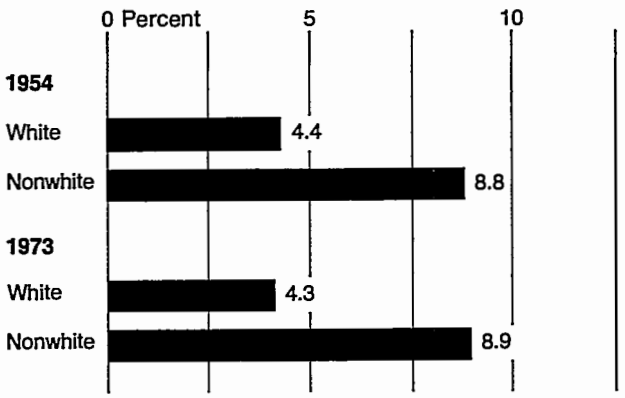
Between 1954 and 1973, unemployment rates for white males 16 to 19 years of age ranged from a low of 10 percent to a high of 15.9 percent; for their nonwhite counterparts, the range was from a low of 13.4 percent to a high of 29.7 percent. Moreover, at no time between 1958 and 1973 did the unemployment rate of nonwhite male teenagers drop below 21 percent. For nonwhite men aged 20 and over, the unemployment rate ranged from a low of 3.7 percent to a high of 12.7 percent between 1954 and 1973. The range for white males 20 and over was from a low of 1.9 percent to a high of 5.5 percent.

[102] Unemployment data by age, race, and sex that follow are shown in table 3.16 and drawn from sources cited there.

Chart 3.1

Unemployment Rates of Whites and Nonwhites

(annual averages)

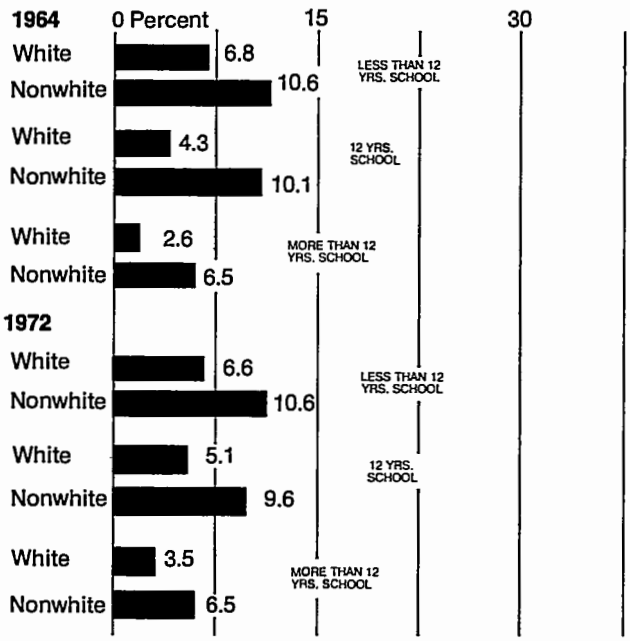


Note: The unemployment rate is the percentage of the civilian labor force that is unemployed.
Source: U.S., Department of Commerce, Bureau of the Census, *Social and Economic Status of the Black Population in the United States*, Current Population Reports, series P-23, no. 48 (1974), table 28.

Chart 3.2

UNEMPLOYMENT RATES BY EDUCATIONAL ATTAINMENT AND RACE

(persons 18 years and over)



Source: Bureau of Labor Statistics, unpublished data; U.S., Department of Commerce, Bureau of the Census, *The Social and Economic Status of the Black Population in the United States*, Current Population Reports, series P-23, no. 48 (1973).

Unemployment rates between 1954 and 1973 for nonwhite females 16 to 19 years of age have ranged from a low of 19.2 percent to a high of 38.5 percent; white females had a low of 9.1 percent unemployment and a high of 15.1 percent. The unemployment range for nonwhite females 20 years old and over was from a low of 5.8 percent to a high of 10.6 percent; for their white counterparts the low was 3.3 percent and the high, 5.7 percent.

In the third quarter of 1974, whites 16 to 19 years of age had a combined unemployment rate of 14.1 percent, compared with a combined unemployment rate of 33 percent for nonwhite teenagers. During the same quarter, nonwhite men 20 years of age and over had an unemployment rate of 6.3 percent, compared with 3.4 percent for white men. Nonwhite women 20 years of age and over had an unemployment rate of 8.1 percent, compared with 5 percent for white women.

Between 1954 and 1974, therefore, unemployment rates have differed by age, sex, race, occupation, and educational attainment. Nonetheless, the overall picture has remained the same: nonwhites consistently have higher rates of unemployment than whites even when age, sex, occupation, or education are equal for the two groups.

It also should be noted that these longstanding disparities tend to be exacerbated during economic recession, when reduced workloads trigger reductions in the work force. Since discriminatory employment practices have prevented minorities and women from acquiring seniority on an equal basis with white males, they are the first to face layoffs during economic downturns and the last to be recalled as prosperity returns. This conflict between the seniority provisions of many collective bargaining agreements and the principle of affirmative action is increasingly the subject of litigation and will be dealt with in greater detail in subsequent Commission reports.

Table 3.13

Unemployment Rates by Occupation, 1956–73

(persons 16 years of age and over)

	White-collar workers					Blue-collar workers					
Year	Total	Professional and technical	Managerial; proprietors	Clerical	Sales	Total	Craftspersons and nonfarm foreperson	Operatives	Nonfarm laborer	Service	Farm
1956	1.7	1.0	0.8	2.4	2.7	5.1	3.2	5.4	8.2	4.6	1.9
1958	3.1	2.0	1.7	4.4	4.1	10.2	6.8	11.0	15.1	6.9	3.2
1959	2.6	1.7	1.3	3.7	3.8	7.6	5.3	7.6	12.6	6.1	2.5
1960	2.7	1.7	1.4	3.8	3.8	7.8	5.3	8.0	12.6	5.8	2.7
1961	3.3	2.0	1.8	4.6	4.9	9.2	6.3	9.6	14.7	7.2	2.8
1962	2.8	1.7	1.5	4.0	4.3	7.4	5.1	7.5	12.5	6.2	2.3
1963	2.9	1.8	1.5	4.0	4.3	7.3	4.8	7.5	12.4	6.1	3.0
1964	2.6	1.7	1.4	3.7	3.5	6.3	4.2	6.6	10.8	6.0	3.1
1965	2.3	1.5	1.1	3.3	3.4	5.3	3.6	5.5	8.6	5.3	2.6
1966	2.0	1.3	1.0	2.9	2.8	4.2	2.8	4.4	7.4	4.6	2.2
1967	2.2	1.3	.9	3.1	3.2	4.4	2.5	5.0	7.6	4.5	2.3
1968	2.0	1.2	1.0	3.0	2.3	4.1	2.4	4.5	7.2	4.5	2.1
1969	2.1	1.3	.9	3.0	2.9	3.9	2.2	4.4	6.7	4.2	1.9
1970	2.8	2.0	1.3	4.1	3.9	6.2	3.8	7.1	9.5	5.3	2.6
1971	3.5	2.9	1.6	4.8	4.3	7.4	4.7	8.3	10.8	5.3	2.6
1972	3.4	2.4	1.8	4.7	4.3	6.5	4.3	6.9	10.3	6.3	2.6
1973	2.9	2.2	1.4	4.2	3.7	5.3	3.7	5.7	8.4	5.7	2.5

Sources: U.S., Council of Economic Advisors, *Economic Report to the President* (1974), table 6; U.S., Department of Labor, Bureau of Labor Statistics, *Handbook of Labor Statistics 1972*, table 66; and U.S., Department of Labor, *Manpower Report of the President 1973*, table 1.

Income

In 1954 nonwhite family income was 56 percent of white family income.[103] The median annual income for a nonwhite American family was $3,757 in 1954 but $6,771 for a white family, representing a disparity of $3,014. By 1972, median nonwhite family income had increased to $7,106 annually, but the corresponding income for a white family was $11,549. The disparity, thus, had increased to $4,443 in 1972, although nonwhite income had reached 62 percent of median white income. Between 1954 and 1972, then, there was a 6 percentage point gain in nonwhite family income as a proportion of white family income, but the dollar disparity increased by $1,429.

Although the data on poverty generally present a portrait of continuing progress, nonwhites still constitute a disproportionate share of the poverty population. In 1959, 28.3 million whites and 10.4 nonwhites (9.9 million blacks) were below the federally-designated, low-income level. Thus, 18.1 percent of the white population but 53.3 percent of the nonwhite population and 55.1 percent of the black population fell below the poverty line.[104] In 1973, 15.1 million whites and 7.8 million nonwhites (7.4 million blacks) were still below the low-income level. Or, 8.4 percent of whites but 29.6 percent of nonwhites and 31.4 percent of blacks fell below the poverty line. Approximately two-thirds of all black families below the low-income level were headed by women.

However, even these figures are subject to varying interpretations. In 1972, for example, there were 7.7 million blacks still living in poverty, and another 2.2 million could be described as near-poor, living at less

[103] Income data following are shown in tables 3.17, 3.18, and 3.19 and chart 3.3 and are drawn from the sources listed there.

[104] Poverty data are shown in table 3.20 and drawn from sources cited there. For example, in 1959, the 28.3 million whites below the low-income level represented 18.1 percent of the white population; similar calculations are shown in the source publication for blacks and nonwhites.

Table 3.14

Unemployment Rates by Occupation, Race, and Sex, 1973

(annual averages)

Occupation	Total		Men		Women	
	Black	White	Black	White	Black	White
Total, all civilian workers	9.3	4.3	7.9	3.7	11.1	5.3
Experienced labor force	7.8	3.7	6.8	3.3	9.0	4.5
White-collar workers	6.7	2.7	5.1	1.7	7.6	3.8
Professional, technical	4.5	2.0	4.5	1.5	4.5	2.8
Managers, administrators, except farm	2.2	1.4	2.0	1.1	2.5	2.5
Salesworkers	11.5	3.4	9.6	2.3	13.4	4.8
Clerical workers	8.2	3.8	6.0	2.7	9.0	4.1
Blue-collar workers	8.0	5.0	7.1	4.5	11.5	7.1
Craft and kindred	5.3	3.6	5.0	3.5	10.2	5.5
Operatives, except transport	9.4	5.6	7.7	4.5	11.7	7.3
Transport equipment	5.1	3.9	5.1	3.9	3.8	2.7
Nonfarm laborers	9.5	8.1	9.2	8.1	14.3	8.6
Service workers	8.7	5.0	8.2	5.0	8.9	5.0
Private household	6.8	2.9	10.2	3.8	6.8	2.9
Other	9.2	5.2	8.1	5.0	10.0	5.4
Farmworkers	6.0	2.2	4.9	2.0	14.3	2.5

Source: U.S., Department of Commerce, Bureau of the Census, *The Social and Economic Status of the Black Population in the United States,* Current Population Reports, series P–23, no. 48 (1973), table 34.

than 25 percent above the poverty level. Thus, the poor and near-poor still represented 42 percent of all blacks in the Nation.

In addition to national variations by sex and race, income varies by region. Between 1960 and 1970, 1.3 million blacks moved out of the rural South; Southern cities increased slightly in black population, and the urban areas of the North and West gained 2 million blacks. Fifty-five percent of all blacks now live in the central cities of the United States, compared with 28 percent of all whites. Even in the South, two-fifths of all blacks live in the cities; the proportion is four-fifths in the North and two-thirds in the West.

Some income variation for blacks is attributable to this migration and to the employment skills of those who left the South, skills that enabled them to find employment at better wages in the North. Both black and white migrants tended to be those with more education than those who remained. Between 1955 and 1960, for example, the South lost 20 percent of black men with some college training but only percent of those with elementary school education. Approximately 50 percent of the black men 25 to 29 years old who left the South during this period had completed some high school education.

Although black income in the North and West is higher overall and in proportion to white income than black income in the South, recently both gaps have diminished as Southern income has grown. (It is also true that living expenses are higher in the North than in the South.) Nevertheless, in 1972, black income was 55 percent of white income in the South, 64 percent of white income in the Northeast, 70 percent of white income in the North Central States, and 71 percent of white income in the West.

The income situation generally improves somewhat for nonwhites with similar educational attainment and occupational distribution as whites, especially for younger workers. After "equalizing" for education and occupation, one recent study found a 25 percent differential between white and black male

Table 3.15

Unemployment Rates by Educational Attainment, Age, and Race, 1964–72

Age group and years	Total			White			Nonwhite		
	Less than 12 years	12 years	More than 12 years	Less than 12 years	12 years	More than 12 years	Less than 12 years	12 years	More than 12 years
PERSONS 18 YEARS AND OVER									
1964	7.4	4.8	2.9	6.8	4.3	2.6	10.6	10.1	6.5
1965	6.6	4.1	2.3	5.9	3.7	2.3	9.8	8.2	2.4
1966	5.1	3.1	2.0	4.6	2.8	1.8	7.6	7.0	4.3
1967	5.1	3.2	1.8	4.5	2.9	1.7	8.3	6.5	4.1
1968	4.9	3.1	1.8	4.4	2.7	1.7	7.3	6.8	2.8
1969	4.3	2.9	1.7	4.0	2.6	1.6	6.0	6.5	3.4
1970	5.6	3.9	2.7	5.2	3.6	2.6	7.3	7.1	4.0
1971	7.7	5.4	4.0	7.4	5.1	3.8	9.5	8.7	6.5
1972	7.3	5.5	3.7	6.6	5.1	3.5	10.6	9.6	6.5
PERSONS 18 to 34 YEARS									
1972	13.4	7.7	5.0	11.7	7.0	4.9	20.4	13.0	6.8

PERSONS 16 to 19 YEARS NOT ENROLLED IN SCHOOL

	White	Nonwhite
1973	11.1	26.2

Note: Unemployment rates are as of March of each year.

Source: U.S., Department of Labor, Bureau of Labor Statistics, unpublished data; U.S., Department of Commerce, Bureau of the Census, *The Social and Economic Status of the Black Population in the United States*, Current Population Reports, series P–23, no. 48 (1973), table 32.

income, with black male income 75 percent of white male income, presumably a measure of discrimination and other impediments.[105] For black and white males between 25 and 35 years of age, the differential was 18 percent after equalizing.

Questions remain as to whether even this narrowing will be maintained, whether any differences in educational quality will show up in later years, and whether the value of a diploma will decline as the supply of educated persons—both minorities and whites—increases. And, of course, the equalization that may be computed theoretically in a study has not yet taken place in fact. Further, the income data presented here do not take into account a variety of factors that may further contribute to inequalities in the economic status of whites and nonwhites. Income, for example, does not include financial assets (such as stocks and investments) or non-cash compensation (fringe benefits including insurance, paid vacations, etc.). Nor do flat income figures take into account disproportionate expenditures for basic necessities by poor and middle-class families and related factors that bear more heavily on minority groups than on white Americans.

Income of Women

The income picture for women over the last 20 years has shown improvement for some groups, yet ends with women worse off than men. In 1954 the median nonwhite female income was only 54 percent of the median white female income, but by 1972 the two groups had nearly the same income and the gap was only $114 annually. However, since white female income continued to be lower than either white or nonwhite male income, the income of nonwhite females continued to be lowest of all.[106]

[105] See Levitan, Johnston, and Taggart, *Still a Dream*, pp. 82–86.

[106] Median income data are displayed in tables 3.17 and 3.18 and are drawn from sources listed there.

Table 3.16

Unemployment Rates, by Age, Sex, and Race, 1954–74

(annual averages)

	16 to 19 years old				20 years old and over			
	White		Nonwhite		White		Nonwhite	
	Male	Female	Male	Female	Male	Female	Male	Female
1954	13.4	10.4	14.4	20.6	4.4	5.1	9.9	8.4
1955	11.3	9.1	13.4	19.2	3.3	3.9	8.4	7.7
1956	10.5	9.7	15.0	22.8	3.0	3.7	7.4	7.8
1957	11.5	9.5	18.4	20.2	3.2	3.8	7.6	6.4
1958	15.7	12.7	26.8	28.4	5.5	5.6	12.7	9.5
1959	14.0	12.0	25.2	27.7	4.1	4.7	10.5	8.3
1960	14.0	12.7	24.0	24.8	4.2	4.6	9.6	8.3
1961	15.7	14.8	26.8	29.2	5.1	5.7	11.7	10.6
1962	13.7	12.8	22.0	30.2	4.0	4.7	10.0	9.6
1963	15.9	15.1	27.3	34.7	3.9	4.8	9.2	9.4
1964	14.7	14.9	24.3	31.6	3.4	4.6	7.7	9.0
1965	12.9	14.0	23.3	31.7	2.9	4.0	6.0	7.5
1966	10.5	12.1	21.3	31.3	2.2	3.3	4.9	6.6
1967	10.7	11.5	23.9	29.6	2.1	3.8	4.3	7.1
1968	10.1	12.1	22.1	28.7	2.0	3.4	3.9	6.3
1969	10.0	11.5	21.4	27.6	1.9	3.4	3.7	5.8
1970	13.7	13.4	25.0	34.4	3.2	4.4	5.6	6.9
1971	15.1	15.1	28.9	35.4	4.0	5.3	7.2	8.7
1972	14.2	14.2	29.7	38.4	3.6	4.9	6.8	8.8
1973	12.5	13.3	28.2	34.9	2.9	4.3	5.7	8.2

1974 (third quarter averages, seasonally adjusted):

Nonwhite men, 20 years of age and over	6.3 percent
Nonwhite women, 20 years of age and over	8.1 percent
Nonwhite men and women, 16–19 years of age	33.0 percent
White men, 20 years of age and over	3.4 percent
White women, 20 years of age and over	5.0 percent
White men and women, 16–19 years of age	14.1 percent

Source: U.S., Department of Labor, Bureau of Labor Statistics, *Employment and Earnings*, vol. 19, no. 8 (October 1974), table A–43, p. 51, and U.S., Department of Commerce, Bureau of the Census, *The Social and Economic Status of the Black Population in the United States, 1973*, Current Population Reports, series P–23, no. 48 (1974), table 30. Also, U.S., Department of Labor, *Manpower Report of the President, 1974*, table A–17.

In 1954, median annual income for white females was $2,011, compared with $5,232 for white males and $2,614 for nonwhite males, a gap of $3,221 and $603, respectively. By 1972, the income for white females had increased to only $2,616, yet for white males it had increased to $7,814 and for nonwhite males to $4,811; the gap had grown to $5,198 and $2,195, respectively. Nonwhite females had nearly gained equality with white females, yet white females were dropping further behind all males in level of income.

Furthermore, women's median income actually was below that of men with the same levels of educational attainment. In 1970,[107] for instance, the median income of female high school graduates was 58.3 percent of male high school graduates. Similarly, women earn less than men in the same occupations. In 1972, for example, women in clerical jobs earned 62.3 percent of the earnings of men in clerical jobs.[108]

[107] See table 3.21.

[108] See table 3.22.

Table 3.17

Nonwhite Median Income as Percentage of White Median Income by Family and Sex, 1954–74

(1972 dollars)

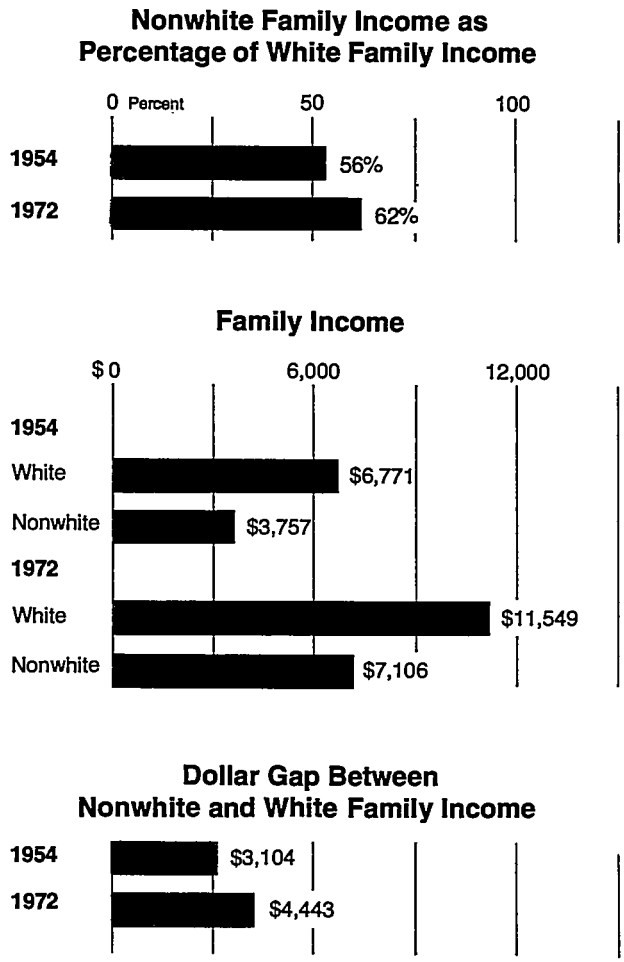
Year	Nonwhite family percentage of white family income	Nonwhite male percentage of white male income	nonwhite female percentage of white female income
1954	56	50	54
1955	55	53	52
1956	53	52	57
1957	54	53	58
1958	51	50	59
1959	54	47	62
1960	55	53	62
1961	53	52	67
1962	53	49	67
1963	53	52	67
1964	56	57	70
1965	55	54	73
1966	60	55	76
1967	62	59	80
1968	63	61	81
1969	63	59	85
1970	64	60	92
1971	63	61	90
1972	62	62	96

Source: Computed from data in U.S., Department of Commerce, Bureau of the Census, *Social and Economic Status of the Black Population in the United States, 1972*, series P-23, no. 46, table 7; and series P-60, annual issues.

Chart 3.3

Income of White and Nonwhite Families

(1972 dollars)



Source: U.S., Department of Commerce, Bureau of the Census, *Social and Economic Status of the Black Population in the United States, 1972*, series P-23, no. 46, and series P-60, annual series.

In 1972 the median income of families headed solely by women was $5,342, which was less than half the national median family income.[109] Median income for black female-headed families was $3,840 in 1972, compared to $6,213 for families headed by white females. Between 1959 and 1972 there was a proportionate loss in income by all female family heads, compared with all family heads, and by white female family heads, compared with all white family heads. Black female family heads made a 1 percentage point proportionate gain compared with all black family heads between 1959 and 1972.

Since the number of families headed by women is increasing, the level of income for female-headed families is gaining significance. The number of families headed solely by women in the United States increased by a million in the first third of the 1970s, which is nearly as much as during the entire decade of the 1950s (1.1 million).[110] Between 1955 and 1973, the number of families headed by women increased from 4.2 million to 6.6 million, representing a growth

[109] Data following on income of female-headed families are displayed in tables 3.23 and 3.24 and drawn from sources cited there.

[110] U.S., Department of Commerce, Bureau of the Census, *Female Family Heads*, Current Population Reports, series P-23, no. 50 (July 1974), p. 1.

[111] Ibid., p. 6.

Table 3.18

Median Income of Whites and Nonwhites, 1954–72

(1972 dollars)

Year	Median family income		Median male income		Median female income	
	White	Nonwhite	White	Nonwhite	White	Nonwhite
1954	$ 6,771	$ 3,757	$ 5,232	$ 2,614	$ 2,011	$ 1,092
1955	7,206	3,987	5,534	2,919	1,953	1,022
1956	7,698	4,058	5,888	3,077	1,949	1,118
1957	7,673	4,109	5,810	3,083	1,947	1,125
1958	7,670	3,931	5,754	2,867	1,851	1,085
1959	8,197	4,178	6,037	2,836	1,884	1,161
1960	8,152	4,562	6,069	3,189	1,905	1,181
1961	8,377	4,464	6,199	3,206	1,899	1,273
1962	8,629	4,603	6,445	3,169	1,957	1,314
1963	8,950	4,748	6,579	3,425	1,969	1,314
1964	9,252	5,177	6,661	3,775	2,042	1,439
1965	9,618	5,330	7,016	3,776	2,139	1,557
1966	10,047	6,016	7,206	3,991	2,210	1,682
1967	10,372	6,440	7,346	4,321	2,347	1,877
1968	10,747	6,723	7,532	4,600	2,499	2,029
1969	11,179	7,073	7,723	4,557	2,491	2,110
1970	11,026	7,031	7,556	4,563	2,442	2,246
1971	11,024	6,936	7,476	4,546	2,529	2,264
1972	11,549	7,106	7,814	4,811	2,616	2,502

Source: U.S., Department of Commerce, Bureau of the Census, *Social and Economic Status of the Black Population in the United States, 1972,* series P–23, no. 46, table 7; and series P–60, annual issues.

of 56 percent. Of the 2.4 million increase, about 44 percent were families headed by black women.[111]

In 1955, 10.1 percent of all families in the United States, 9 percent of all white families, and 20.7 percent of all black families were headed by women only. In 1973, 12.2 percent of all families, 9.6 percent of all white families, 34.6 percent of all black families, and 16.7 percent of all families of Spanish origin were headed by women.[112] The percentage of families headed by white women has increased by one-half of 1 percentage point between 1970 and 1973, in contrast to the 6.3 percentage point increase in families headed by black women during the same period.[113]

It should be noted, however, that the Bureau of the Census does not consider a women the head of a family as long as she is living with her husband. A women is counted as head of a family only if she is not married or not living with her husband. Consequently, the median income of families headed by men does not reflect just the man's income but any income of other members of the family as well.

Among families that are headed by women, the proportion whose income is below the poverty level is particularly high for black, Mexican American, Native American, and Puerto Rican families, the percentages in 1969 being 53 percent, 51 percent, 56 percent, and 57 percent, respectively.[114] Among white women heading families, 26 percent were living in poverty in 1969.

Public Accommodations

The impact of the *Brown* decision also has been significant during the last 20 years in public accommodations. Prior to *Brown,* neither economic level

[112] Ibid., table 1, p. 6.

[113] Calculated from ibid., table 1, p. 6.

[114] See table 3.24 and sources cited there.

Table 3.19

Dollar Gap for White and Nonwhite in Median Income for Families, Males, and Females, 1959–72

(1972 dollars)

Year	Income gap between white and nonwhite family income	Income gap between white and nonwhite male income	Income gap between white and nonwhite female income
1954	$ 3,014	$ 2,618	$ 919
1955	3,219	2,615	931
1956	3,640	2,811	831
1957	3,564	2,727	822
1958	3,739	2,887	766
1959	4,019	3,201	723
1960	3,590	2,880	724
1961	3,913	2,993	626
1962	4,026	3,276	643
1963	4,202	3,154	655
1964	4,075	2,886	603
1965	4,288	3,240	582
1966	4,031	3,213	528
1967	3,932	3,025	470
1968	4,024	2,932	470
1969	4,106	3,166	381
1970	3,995	2,993	196
1971	4,088	2,930	265
1972	4,443	3,003	114

Source: Computed from U.S., Department of Commerce, Bureau of the Census, *Social and Economic Status of the Black Population In the United States, 1972*, series P-23, no. 46, table 7; and series P-60, annual issues.

nor educational attainment were passports to equal treatment, but this is no longer true.

The protagonist in James Weldon Johnson's, *The Autobiography of an Ex-Coloured Man,* ponders the "awful truth" of the social existence of Americans 62 years ago:

> And this is the dwarfing, warping, distorting influence which operates upon each and every coloured man in the United States. He is forced to take his outlook on all things, not from the viewpoint of a citizen or a man, or even a human being, but from the viewpoint of a coloured man. Most of his thinking and all of his activity must run through the narrow neck of this one funnel.[115]

The development of that "viewpoint" was rooted in the national scheme of segregation that established the rules followed by whites and nonwhites in the use of public facilities and public accommodations. In the Southern States blacks were legally excluded from restaurants, libraries, pool parlors, barber shops, bowling alleys, dance halls, hotels, skating rinks, resorts, beaches, amusement parks, movies, theaters, hospitals, and other places in which they might have public contact with whites.

Although blacks were not excluded from all public accommodations or tax-supported public facilities in the South, they were segregated when they were permitted to use them. In selected situations blacks could have access to a public library, provided their social status was that of a servant or they sat at a table especially reserved for them. In some Southern locales separate days were given over to blacks for the use of a beach or amusement park.

In the Northern States, where laws requiring segregation in public accommodations and public institutions were nonexistent, it was "understood" that most places in which the public assembled were for the exclusive use of whites. Hotel resorts, for example, sometimes placed advertisements in newspapers, indicating nonwhites were not welcome as guests. By the use of phrases such as "Christian patronage only," "selected clientele," or "Gentile patronage," the presence of Jews was discouraged as well. In the Far West other minorities—Native Americans, Americans of Spanish-speaking background, and Asian Americans—experienced similar discrimination or segregation in public life.

From the moment they stepped beyond the doors of their homes, black Americans in particular entered a public world in which color determined where they would sit in a public conveyance, where they could eat, which water fountain they could drink from, or what restroom they were to use.

Consequently, although the courts had used *Brown* to invalidate segregation in many areas of public accommodations,[116] it was not without significance that the civil rights movement, in the early 1960s, chose as its target the continuing system of segregat-

[115] Quoted by Gunnar Myrdal, *An American Dilemma: The Negro Problem and Modern Democracy* (New York: Harper, 1944), p. 30.

[116] See for example, Mayor and City Council of Baltimore City v. Dawson, 220 F. 2d 386 (4th Cir. 1955), aff'd per curiam 350 U.S. 877 (1955) (racial segregation of public beaches and bathhouse); Johnson v. Virginia, 373 U.S. 61 (1963), (separate seats in a courtroom); Christina v. Jemison, 303 F. 2d 52 (5th Cir. 1962) (separate seating in public transportation); Turner v. Randolph, 195 F. Supp. 677 (W.D. Tenn. 1961) (separate washrooms).

ed seating on public conveyances and the segregated lunch counters in the five and dime stores dotting the urban South.[117] Mrs. Rosa Parks, too tired to give her seat to a white male passenger, had sparked the bus boycott in Montgomery, Alabama, in 1955. Then in 1960, four college students staged the first sit-in at a lunch counter in Greensboro, North Carolina.

In 1961 integrated teams of "freedom riders" boarded buses in the North and traveled south to use the public restrooms, lunch counters, drinking fountains, and waiting rooms which previously had been segregated despite court decisions to the contrary. Their journey was met with violence, but the demonstrations spread. All of this was to end 3 years later. When Congress enacted the Civil Rights Act of 1964,[118] Titles II and III declared that segregation in public accommodations and public facilities was at an end.[119]

In the first 3 years under the new legislation, through 1967, the U.S. Department of Justice participated in 93 lawsuits against establishments that continued to discriminate.[120] Cases involved restaurants, cafes, hotels, motels, theaters, and recreational facilities. Through lawsuits, permanent injunctions, consent decrees, and voluntary compliance, discriminatory practices were eliminated on a broad scale.

This perception of civil rights success in public accommodations, however, reflects more of a "conventional wisdom" than any careful survey of actual practices. For example:

> Following enactment of Title II there was widespread voluntary compliance with its requirements. Although the Department has not made a statistical survey of the extent of voluntary compliance, it is *known from observation* by Division attorneys that many major hotels and motels desegregated immediately [emphasis added].[121]

In fact, the Justice Department reviewed more than 350 complaints of discrimination in public accommodations each year between 1970 and 1973, including 524 complaints in 1971. Litigation has continued as well.

Some establishments have sought to evade the law by labeling their place of business a "private club." Where this has been attempted, the courts generally have held that such action is an unconstitutional subterfuge to evade compliance. There has been a developing judicial interpretation of the "place of exhibition or entertainment" provision of the public accommodations law. In 1970, for example, a court of appeals held that the sale of items in a golf pro shop was sufficient to bring the operation of a golf course within the nondiscrimination requirements of the statute.[122] Much of the evidence in the field of public accommodations is to be found through such judicial review. These cases appear to point out a small and declining feature of public accommodations, and "it is known from observation" by many civil rights officials and black citizens generally that there is a high level of compliance with the law in the cities and urban areas of the South, especially among national business chains. Most complaints of discrimination in public accommodations now appear to originate in rural areas and smaller establishments, although exceptions persist. Documentation remains negligible, however, and many factors continue to influence the development of official complaints, the only adequate source of information.

By all available accounts, then, the removal of legal support for segregation, and the enforcement of the law where needed, has accomplished the extensive desegregation of public accommodations throughout the Nation. The opportunity to use such accommodations now exists equally for whites,

Toward Economic Equality

The impact of the decision of the Supreme Court of the United States in *Brown v. Board of Education* was not limited to school desegregation, and in the years following *Brown* there was "no problem extending Brown's promise of racial equality throughout the realm of official action."[123] In fact, both court decisions and administrative actions during the last 20 years have been almost uniformly favorable to minority citizens in their quest for nondiscriminatory economic opportunity in America, and a thrust toward such a policy was initiated in Federal employment long before *Brown*. Nevertheless, the data on economic gains by blacks, persons of

[117] For additional detail see chap. one.
[118] 28 U.S.C. 1447 (1974), 42 U.S.C. 1971, 1975a–1975d, 2000a to 2000h–6 (1974).
[119] 42 U.S.C. 2000b–3 (1974).
[120] U.S., Department of Justice, "Report of the Assistant Attorney General in Charge of the Civil Rights Division," in *Report of the Attorney General* (1967).
[121] Ibid., p. 185.
[122] U.S. v. Central Carolina Bank and Trust Company 431 F. 2d. 972 (4th Cir. 1970).

Table 3.20

Persons Below the Low-Income Level, 1959 to 1973

(Persons as of the following year)

Year	Number (thousands)			Percent below the low-income level		
	Negro and other races	Negro	White	Negro and other races	Negro	White
1959	10,430	9,927	28,336	53.3	55.1	18.1
1960	11,542	(NA)	28,309	55.9	(NA)	17.8
1961	11,738	(NA)	27,890	56.1	(NA)	17.4
1962	11,953	(NA)	26,672	55.8	(NA)	16.4
1963	11,198	(NA)	25,238	51.0	(NA)	15.3
1964	11,098	(NA)	24,957	49.6	(NA)	14.9
1965	10,689	(NA)	22,496	47.1	(NA)	13.3
1966 [1]	9,220	8,867	19,290	39.8	41.8	11.3
1967	8,786	8,466	18,983	37.2	39.3	11.0
1968	7,994	7,616	17,395	33.5	34.7	10.0
1969 [2]	7,488	7,095	16,659	31.0	32.2	9.5
1970 [2]	7,936	7,548	17,484	32.0	33.5	9.9
1971 [2]	7,780	7,396	17,780	30.9	32.5	9.9
1972 [2]	8,257	7,710	16,203	31.9	33.3	9.0
1973 [2]	7,831	7,388	15,142	29.6	31.4	8.4

The low-income threshold for a nonfarm family of four was $4,540 in 1973, $4,275 in 1972, and $2,973 in 1959. Families and unrelated individuals are classified as being above or below the low-income threshold, using the poverty index adopted by a Federal interagency committee in 1969. This index centers around the Department of Agriculture's economy food plan and reflects the differing consumption requirements of families based on their size and composition, sex and age of the family head, and farm-nonfarm residence. The low-income cutoffs for farm families have been set at 85 percent of the nonfarm levels. These cutoffs are updated every year to reflect the changes in the Consumer Price Index. The low-income data exclude inmates of institutions, members of Armed Forces living in barracks, and unrelated individuals under 14 years of age. For a more detailed explanation, see Current Population Reports, series P–60, no. 91.

NA Not available.

[1] Beginning with the March 1967 CPS, data based on revised methodology for processing income data.

[2] Based on 1970 census population controls; therefore, not strictly comparable to data for earlier years.

Source: U.S., Department of Commerce, Bureau of the Census, *The Social and Economic Status of the Black Population in the United States 1973*, p. 29.

Spanish-speaking background, Asian Americans, and Native Americans are subject to conflicting interpretation, and at the very least, "it cannot be stated unequivocally that blacks improved their position relative to whites between 1960 and 1972." [124]

Blacks, in particular, have increasingly participated in the Federal work force and in government employment at the State and local levels as well. Slight but continuing advances have included both a gain in all salary categories and occupational movement into the top grades. In all General Schedule Federal employment, however, blacks only now reflect their proportion in the total population, while they are still substantially underrepresented in higher-paying positions.

Blacks have made significant income gains during the last 20 years, but the narrowing of the relative disparities has been offset by the widening of the disparities in dollar terms. There also are a number of valid reasons for questioning the extent of any advances in comparison with whites, including the value of uncounted income, fringe benefits, and other factors that are more advantageous to whites. The blacks, and other minorities, with exceptions that perhaps reflect the overall persistence of prejudice and racial fear in American society. However, the sufficient use of such accommodations waits upon the achievement of equality of opportunity in employment and, thus, income. The nature of the problem for minorities in public accommodations has been transformed from one of access to one of utilization.

[123] Archibald Cox, *The Warren Court: Constitutional Decision as an Instrument of Social Reform* (Cambridge, Mass.: Harvard University Press, 1968), pp. 25–26.

[124] Levitan, Johnston, and Taggart, *Still a Dream*, p. 40.

Table 3.21

Median Income in 1970 of Full-Time Year-Round Workers, by Sex, and Years of School Completed

(Persons 25 years of age and over)

Years of school completed	median income		Women's median income as percent of men's
	Women	Men	
Elementary school:			
Less than 3 years	$3,798	$6,043	62.8
8 years	4,181	7,535	55.5
High school:			
1–3 years	4,655	8,514	54.7
4 years	5,580	9,567	58.3
College:			
1–3 years	6,604	11,183	59.1
4 years	8,156	13,264	61.5
5 years or more	9,581	14,747	65.0

Source: U.S., Department of Commerce, Bureau of the Census, Current Population Reports, series P–60, no. 80.

Table 3.22

Median Earnings for Full-Time Workers by Occupation and Sex, 1972

Occupation	Women	Men	Women's earnings as percent of men's earnings
Professional, technical	$8,744	$13,542	64.6
Managers,administrators	7,024	13,486	52.1
Clerical workers	6,054	9,716	62.3
Salesworkers	4,445	11,610	38.3
Craftworkers	5,545	10,413	53.2
Factory workers	5,004	8,747	57.2
Service workers	4,483	7,630	58.7
Laborers	4,633	7,477	62.0

Source: Percentages computed from U.S. Department of Commerce data, cited in *U.S. News and World Report*, Oct. 8, 1973, p. 42.

number of female-headed families is rising much more precipitously among all minorities than among whites. While black women have nearly achieved income parity with white women, both white and nonwhite women are falling farther behind all men in earnings.

The unemployment rate for all nonwhites has remained consistently higher than white unemployment since 1954. Black teenage unemployment has been rising severely, and during periods of economic constriction minorities have been most severely affected by unemployment. Labor force participation among blacks is declining, and blacks are not escaping from poverty as fast as whites. The number of low-income blacks actually rose in the early 1970s, and it has been estimated that some 42 percent of all blacks still are poor or near-poor.

The occupational distribution of blacks has undergone substantial upgrading during the past 20 years and now more closely reflects that of whites. Nevertheless, much of this advance has been into lower-paying positions in a higher occupational category, and in many cases numerical gains have disguised the small size of proportionate gains or, in some critical categories, declines relative to whites. The income bracket that may be "middle class" for whites is "upper class" for blacks, and even then almost half of the black men earning over $10,000 per year are operatives, laborers, clerical, or service workers.[125]

In fact, a picture of significant progress can be painted only by concentrating on selected groups of minority citizens, and this actually is what often has occurred:

> What we are rapidly developing is two black Americas. One with skills for whom opportunities abound, but that is a minority of the group, of course; and the other is a black America which, if anything, is slipping further behind, and is in a more desperate situation, perhaps, than a decade ago. Whites only see those blacks who are making it. They rarely see the blacks who are not making it.[126]

Even the more evident gains of the past decades have largely been the result of civil rights activity, Government commitment, and economic expansion, conditions that have not consistently obtained in recent years. Moreover, even if the most favorable conditions of this period continued and the prevailing rates of growth were maintained, at least two generations would be required to achieve equality.

[125] Ibid., p. 281.

[126] Thomas Pettigrew, professor of social psychology, Harvard University, Commission staff interview, Oct. 17, 1973, Cambridge, Mass.

Table 3.23

Median Family Income by Race-Ethnicity and for Female Heads of Families, 1969

Race-ethnicity	Family median income	Female head median income	Percent of female-headed families in poverty
White	$11,368	$5,637	26
Black	6,921	3,414	53
Chinese	10,610	6,627	20
Cuban	8,529	4,774	31
Filipino	9,318	4,708	2
Japanese	12,515	6,467	25
Mexican American	6,962	3,483	51
Native American	5,832	3,198	56
Puerto Rican	6,115	3,227	57

Source: Reports on Puerto Ricans, Persons of Spanish origin, Japanese, Chinese, Filipino, and Native Americans as cited in U.S., Commission on Civil Rights *Women and Poverty* (1974), table 20; U.S., Department of Commerce, Bureau of the Census, *Female Family Heads*, Current Population Reports, series P–23, no. 5 (1974), table 12 for white and black median income and table 16 for poverty data.

(At the higher occupational levels, the problem is most severe: among black lawyers and judges, for example, if the rate of increase between 1960 and 1970 were sustained, it would take 1,000 years for blacks to equal their proportion in the total population.)

What is applicable to blacks undoubtedly is applicable also to many of those minorities heretofore subsumed under the designation "nonwhite" and to persons of Spanish-speaking background who heretofore have been included in data gathering as "white." The lack of separate data on these groups in itself is evidence of inattention and often disguises severe inequalities. Women, too, have represented a forgotten group, and available data clearly point to their second-class status relative to male Americans in every area of economic life.

These problems are not easily soluble by traditional laws or policies. Access to public accommodations now is generally open equally to all, for example, yet the inadequate economic means to utilize that access are described in the preceding data. There is less overt racism or discrimination than in the past, and the issue of affirmative action goals now has given rise to complaints of reverse discrimination. Compensatory economic opportunity is not as indisputable as equal opportunity.

Table 3.24

Median Family Income of all Family Heads and Female Heads by Race

(in constant 1972 dollars)

Median family income	1959	1969	1972
Median family income			
All family heads	$8,121	$10,954	$11,116
White family heads	8,455	11,368	11,549
Black family heads	4,535	6,921	6,864
Median family income			
All female heads	4,367	5,664	5,342
White female heads	5,076	5,416	6,213
Black female heads	2,488	3,879	3,840
Median family income			
All female heads as percent of median family income of all family heads	53.8%	51.7%	48.1%
Median family income			
White female heads as percent of median family income of white family heads	60.0	56.4	53.8
Median family income			
Black female heads as percent of median family income of black family heads	54.9	56.0	55.9

Source: U.S., Department of Commerce, Bureau of the Census, *Female Family Heads*, Current Population Reports, series P–23, no. 50 (1974), table 11, p. 20.

Eliminating discrimination is not like building homes, providing medical services, creating jobs or supplementing income. The problem is seldom obvious or well-defined. Most institutional arrangements or individual decisions are subtly discriminatory rather than obviously racist [or sexist]; the rules of the game are usually unstated and frequently flexible. Moreover, to change the rules often involves overcoming long-standing practices, deeply ingrained beliefs, and cherished privileges and priorities of whites [and men]. If intransigence is widespread, and the conflicts-of-interest are great, changes in laws, or incentives to encour-

age changes in behavior, may have little effect.[127]

Title VII of the Civil Rights Act of 1964 outlawed discrimination in employment, and the Equal Employment Opportunity Commission was created to enforce the provisions of Title VII. Yet, the EEOC was not strengthened with extended coverage and powers of litigation until 1972, and it had no major impact in its first 6 years[128] despite its forthright position on major issues and a number of notable achievements. The Office of Federal Contract Compliance, which had enforcement powers from its inception, also has achieved minimal impact, including meager results even in the construction trades in Washington, D.C.[129] In fact, employment gains by blacks in firms with Government contracts are only slightly more evident than in those firms without Government contracts.[130]

If, in the third decade following *Brown v. Board of Education,* more substantial movement toward achieving nondiscriminatory employment and equality of economic opportunity is to be accomplished, a renewed commitment to this goal will have to become a national priority. This will require, essentially, an expanding economy and a period of national growth in which the gains of one group need not be achieved at the expense of another. But it will also require, immediately, that the full force of Federal agencies, State and local governments, and private industry be devoted to effective implementation of the equal employment laws and policies that currently exist.

[127] Levitan, Johnston, and Taggart, *Still a Dream,* p. 329.

[128] Ibid., pp. 392–96. Also see the U.S. Commission on Civil Rights reports on the Federal civil rights enforcement effort, notes 55 and 57 above, this chapter.

[129] See Robert Taggart, *The Manpower System in the District of Columbia: At a Critical Juncture* (Washington, D.C.: National League of Cities/U.S. Conference of Mayors, 1973).

[130] See Orley Ashenfelter and James Heckman, *Changes in Minority Employment Patterns, 1966 to 1970,* prepared for the Equal Employment Opportunity Commission, 1973 (mimeographed).

Chapter Four

Equal Opportunity in Housing

Part 1

Discrimination in Housing—Subversion of National Housing Policy

Justice Harlan, in his dissenting opinion in *Plessy v. Ferguson,* [1] stated that personal liberty is "the power of locomotion, of changing situation, of removing one's person to whatsoever places one's own inclination may direct, without imprisonment or restraint unless by course of law."[2] Racial, ethnic, and sex discrimination, which until very recently was openly enforced by real estate agents, builders, developers, mortgage lenders, landlords, and public officials, has severely restricted the housing choices, and hence the personal liberty, of minorities and women. Because free access to housing is basic to the enjoyment of many other liberties and opportunities, the restrictions in housing placed on minorities and women have far reaching consequences which touch virtually every aspect of their lives.

Historic Outlines of Housing Discrimination

The assumption that whites have the right to deny minorities the opportunity to purchase or rent property because of their race or ethnic origin began as a fundamental tenet of the institution of slavery. With passage of the 13th amendment in 1865 and the abolition of slavery, Federal legislators began more than a century of legal and private efforts to eradicate this assumption, and the practices to which it has led.

The Civil Rights Act of 1866[3] was enacted to guarantee to "[a]ll citizens of the United States. . .the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." With respect to the guarantee of the full enjoyment of property rights spelled out by the act, the Supreme Court in *Jones v. Alfred H. Mayer Co.* [4] made clear that Congress intended "to prohibit *all* discrimination against Negroes in the sale or rental of property—discrimination by private owners as well as discrimination by public authorities."[5]

In 1868, the 14th amendment was ratified. It assures citizenship to "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof" and prohibits a State from making or enforcing any laws which abridge the privileges or immunities of citizens of the United States, and from depriving "any person of life, liberty, or property without due process of law," or denying "any person within its jurisdiction the equal protection of the laws,"[6]

Despite the intent of Congress and the provisions of Federal law, the force of individual and corporate prejudice remained undaunted. The law of 1866 lay partially dormant for many years while discrimination in housing grew to become a fundamental operating principle of the Nation's housing industry. The result was the creation of two housing markets, one for whites and one for blacks, and later for other minorities as well, separate and inherently unequal.

A host of privately-generated and publicly-legislated practices has been utilized to create and perpetuate racial and ethnic discrimination in housing. Early in the 20th century, many American communitites enacted zoning ordinances requiring block-by-block racial segregation. State governments, which have delegated zoning powers to local

[1] 163 U.S. 537, 552 (1896), p. 557.
[2] *Id.* at 557, *quoting* 1 Blackstone, *Commentaries* *134.
[3] 42 U.S.C. §§1981, 1982 (1970).
[4] 392 U.S. 409 (1968).
[5] *Id.* at 421.
[6] U.S. CONST. amend. XIV, §1.

governments, supported the establishment of these ordinances, many of which were upheld in State courts. A number of these ordinances were maintained long after 1917, when they were declared unconstitutional by the Supreme Court in *Buchanan v. Warley.* [7] Legal attempts to enforce them in the courts were still being made in the 1950s.[8]

A second device that came into widespread use after 1917 was the restrictive covenant. This was a written agreement between the buyer and the seller of a house whereby the buyer promised not to sell, rent, or transfer his property to families of a specific race, ethnic group, or religion. Although the covenants were private agreements, they achieved the status of law through enforcement by the judicial machinery of the State.[9] Where residents of entire neighborhoods or communities joined together to use restrictive covenants, and to seek their enforcement by the courts, if necessary, minority group persons were denied access to all or a large portion of the housing inventory.

Perpetrators of the racially-restrictive covenants operated freely for three decades before the Supreme Court ruled in *Shelley v. Kraemer* [10] that enforcement of restrictive covenants by State courts was a violation of the 14th amendment. This ruling, which came in 1948, made restrictive covenants judicially unenforceable; but, because of entrenched racism and the business interests of white real estate brokers, their use continued in many communities. Only among persons familiar with this ruling or interested in discovering the actual legal effect of a restrictive covenant were there those who might question the covenant's validity and the necessity to act in accordance with its provisions.

White real estate brokers operated on the assumption that residential segregation was a business necessity and morally correct. Real estate agents promoted the use of restrictive covenants and refused to show houses located in white residential areas to prospective minority purchasers. In the 1920s, the National Association of Real Estate Brokers (NAREB) counseled its members not to sell property to individuals of racial groups whose ownership allegedly would diminish the value of other property in the area. As late as 1950, NAREB's Code of Ethics stated, in part:

> 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 individual whose presence will clearly be detrimental to property values in the neighborhood. [11]

Private builders and mortgage lending institutions acted in accordance with the separate market principle. Thus, in the period of the late 1940s, during which the building boom supplied a substantial number of new houses in large subdivisions throughout urban areas of the country, the only new housing available to minorities consisted of a comparatively small number of homes located in minority enclaves and designated for minority occupancy.[12] Financial institutions refused to finance builders who desired to provide housing on a nondiscriminatory basis and denied loans to home buyers—black or white—who desired to purchase housing in neighborhoods in which most or all of the residents were not the race of the homeseeker. In addition, many mortgage lenders refused outright to provide loans to blacks, greatly diminishing their opportunity to purchase housing, even in black neighborhoods. Typically, blacks could only secure mortgages under unfavorable terms compared to whites. They were required to pay higher interest rates and to make larger downpayments.

Housing discrimination against women as individuals, as contributors to the family income, and as heads of families has also been a practice of long standing. In contrast to racial and ethnic discrimination in housing, however, discrimination against women was not questioned extensively until recent years. In the mortgage lending industry, discrimination against women was enforced through the widely accepted practice of discounting the wife's income when determining a family's eligibility for a mortgage. It has also been expressed in outright refusal to approve a woman's application for a mortgage, regardless of her marital status, and in the use of much stricter credit and other criteria when consideration has been given to her application.[13]

In the rental market, many landlords and apartment managers have traditionally discounted the wife's income when a couple applies for an apartment. Sex discrimination has also resulted, for

[7] 245 U.S. 60 (1917).
[8] U.S., Commission on Civil Rights, *Understanding Fair Housing* (1973), p. 4 (cited hereafter as *Understanding Fair Housing).*
[9] Ibid., p. 4.
[10] 334 U.S. 1 (1948).
[11] Code of Ethics, 1928, art. 34.
[12] *Understanding Fair Housing,* p. 3.
[13] U.S., Commission on Civil Rights, *Mortgage Money, Who Gets It?* (1974), chap. 4 (cited hereafter as *Mortgage Money).*

example, in the refusal by landlords to accept court-ordered, child support payments as part of a separated or divorced woman's income when considering her eligibility to rent. Similarly, landlords have often automatically refused to rent to families headed by women.

Discrimination on the basis of sex has combined with discrimination on the basis of race or ethnicity to place minority women in double jeopardy in the housing market. The combination of racial and sex discrimination in employment and housing relegates poor minority women to poverty more pervasive in many respects than that experienced by any other group in the Nation.

The Nature of Discrimination

Discrimination in housing operates to deny housing opportunities not only to minorities and women, but to lower-income Americans as a group. Its racial, ethnic, and sexist aspects are seen in the denial of housing opportunities to minority persons and women solely because they are black, of Spanish-speaking background, Native American, Asian American, or female. Racial and ethnic discrimination arises from the belief of many whites that blacks, in particular, as well as other minorities, are inferior and undesirable as neighbors.[14] Translated into the workings of the housing market early in this century, individual prejudice combined in a legally and politically sanctioned system to keep racial and ethnic minorities out of neighborhoods in which whites desired to live.

Sex discrimination in the mortgage lending industry arises from the widely believed myth that single women are inherently unstable and incapable of conducting their own affairs. They are believed to need the protection of a husband or father.[15] About women as tenants, and particularly lower-income women with children, there is often an arbitrary assumption that they cannot be trusted to meet rent-paying and apartment-maintenance responsibilities or control the behavior of their children.

The economic aspects of housing discrimination arise in the deliberate exclusion of low- and moderate-income housing for poorer families from residential areas in which middle- and upper-income families live. Another manifestation is seen in wholesale renovation of an old, central city neighborhood from which poorer residents are expelled as the housing turns over to middle- and upper-income occupancy. Many persons who justify segregation by class would not admit to racist attitudes. For the large proportion of minority persons who are poor, however, the distinction is academic; the effects of either type of discrimination are the same.

The desire to exclude housing for the poor from one's neighborhood, or community, has not been voiced solely by whites. Middle-income blacks, for example, on a number of occasions have objected strenuously to the location of low-rent public housing in their residential areas. [16] A point that must be noted, however, is that, in many instances, the only neighborhoods outside minority low-income areas that have been selected for publicly-assisted housing intended for poor black families have been neighborhoods in which middle-income black families live.

Exclusion of housing for poorer families is often couched in terms of opposition to increases in or diversion of tax monies to pay the greater welfare, education, and other social costs associated with the provision of essential public services to low-income families. In many instances, however, such opposition serves to conceal fears and prejudices about the perceived behavior and lifestyle of poor families whose presence in working-class and middle-class neighborhoods is considered a threat to the neighborhood environment.[17] Expression of exclusionary motives is seen in a variety of zoning and other practices that dictate, for example, minimum lot size or maximum size of multifamily units within a suburban jurisdiction.

Effects of Discrimination on Housing Opportunities of Minorities and Women

Housing discrimination set in motion a nationwide trend towards residential segregation and concentration of urban blacks in certain, well-defined, residential areas of almost all cities. Generally, these areas contained some of the oldest residential buildings in the community. During the late 1940s and 1950s, blacks and other minorities were excluded, on virtually a wholesale basis, from access to the new housing supply resulting from unprecedented hous-

[14] U.S., Commission on Civil Rights, *Equal Opportunity in Suburbia* (1974), pp. 14–15 (cited hereafter as *Equal Opportunity).*

[15] *Mortgage Money,* p. 27.

[16] See, *e.g.,* El Cortez Heights Residents and Property Owner's Ass'n v. Tucson Housing Aurhority, 10 Ariz. App. 132, 457 P.2d 294 (1969).

[17] *Cf.* Nucleus of Chicago Homeowners Ass'n v. Lynn, 372 F. Supp. 147 (N.D. Ill. 1973).

ing production (over 1 million housing units per year). Occasionally, concentrations of isolated minorities became engulfed by suburban growth. Although these areas became a part of white suburban "rings," they did not represent free access for minorities to the suburban housing market; indeed, in some instances, such communities were displaced through the expropriation of their land by developers and local governing jurisdictions.

Housing production, and concomitant suburban development, continued at an accelerated pace during the 1960s. Despite some changes in discriminatory policies and practices, entrenched patterns of residential segregation continued. Even had housing discrimination not existed in these formative years, the large proportion of minorities[18] who were poor would not have been able to afford the new housing being supplied in the suburbs. Publicly- or privately-developed low-cost housing was conspicuously absent from most suburban jurisdictions.

This pattern of suburban development was particularly characteristic of larger urban areas of the Northeast and Midwest, to which blacks from the South began moving in substantial numbers after the First World War. It was repeated in southwestern and western cities such as Dallas, Los Angeles, Las Vegas, Denver, and, to a lesser extent, San Francisco and Oakland, as the black population of these cities increased.

In the southern urban areas, residential separation of blacks and whites initially was not as universal. Interracial social relationships were well defined and, as long as the superior status of whites was clearly recognized by all concerned, blacks living in close proximity to whites did not present a threat to white status—or property values. In recent decades, however, growing urban centers of the South, such as Atlanta, have come to manifest patterns of racial concentration similar to those in metropolitan areas outside the South.

As black urban populations have grown, through natural increase and immigration from the rural South, pressures have mounted to expand the housing supply for blacks. Because of discrimination, few new homes have been available to blacks, whose major source of additional housing has been in long-established neighborhoods nearest the areas of black concentration.

The expansion of these areas has been facilitated by the movement of thousands of whites who, attracted by the prospect of newer, more spacious housing in quieter, less congested, residential suburbs, better quality public education, and newer, more convenient shopping facilities, have left older, central city neighborhoods to take up life in the suburbs. In numerous instances whites have fled from the central city, fearing substantial decline in property values and the quality of public school education as blacks moved into areas that formerly had been all white.

In many instances, real estate agents have abetted this process of racial change by playing on white fears and prejudices and inducing panic selling by whites. Particularly in the decades since the Second World War, this process has been repeated in countless neighborhoods across the Nation. There have been exceptions to the mass exodus of whites from racially changing neighborhoods, but the incidence of stable, integrated, residential patterns is rare.

Thus, by 1970, in every one of 47 cities with black populations in excess of 50,000, the great majority of blacks lived in predominantly black census tracts.[19] In contrast, between 1950 and 1970, blacks constituted approximately 5 percent of the suburban population. It has been estimated that, if present trends in movement continue unabated, by the year 2000 the proportion of whites living in central cities will drop from about 40 percent in 1970 to 25 percent; but the proportion of blacks will only decrease from 79 percent in 1970 to between 70.1 and 74.8 percent.[20]

However, since the onset of a high rate of inflation, the decline in housing production, and the energy crisis, other economic forces have come into play that may slow this trend, at least in some metropolitan areas. As residential growth has declined at the urban fringes of these areas, pressures have mounted to accommodate the desires of white middle- and upper-income families to find housing in

[18] Although numerically there are more white people who are poor, in recent decades the proportion of the white population in this category has been substantially below the proportion in the minority population and in families headed by women. In 1973, 31.4 percent of blacks, 21.9 percent of persons of Spanish origin, and 32.2 percent of families with female head were below the low-income threshold of $4,540 for a nonfarm family of four. Only 8.4 percent of the white population was at this level of poverty. Of Native Americans, 38.3 percent were below the poverty level in 1969 (the latest year for which census data are available for this group). U.S., Department of Commerce, Bureau of the Census, Current Population Reports, series P-60, no. 98, *Characteristics of the Low-Income Population: 1973* pp. 2, 8; series PC(2)-1F, "American Indians" (1973), p. 120.

[19] See table 4.5.

[20] U.S., Department of Commerce, Bureau of the Census, "Population Inside the Outside Central Cities by Race: 2000," in *Hearing Before the U.S. Commission on Civil Rights*, Washington, D.C., 1971, p. 1087.

central city neighborhoods. Housing values have rapidly escalated in a number of neighborhoods where lower-income minority families live. In some cities owners who have been renting to lower-income minorities have opted to terminate these rentals in order to renovate their property or to sell it for purposes of conversion to condominiums, thereby cashing in on higher rental or sale values made possible by the new demand for central city housing. This countertrend to suburban expansion may grow if pressures increase to renovate existing housing stock in higher density, central city neighborhoods where energy utilization is more efficient. If gasoline prices continue to rise, a move to the central city could also mean substantial savings in commuting expenses for many families now living in the suburbs.

Declining housing construction and exclusionary zoning in communities on the fringe of metropolitan areas and concomitant pressures for middle- and upper-income housing in central cities catch lower-income families, and particularly lower-income minority families, in a vise that, if it closes, will create even greater shortages of lower-income housing.

In addition to residential segregation, the effect of discrimination has been to sustain the inferior housing conditions in which live a greater proportion of minorities and families headed by women, particularly minority women, than do whites and families headed by males.[21] Generally speaking, the worst urban housing conditions are found in central city neighborhoods. It is here that congestion, lack of adequate public facilities and services, and crime combine with poor housing to intensify the misery of poverty existence.

In 1973, 8.4 percent of all persons in poor white families resided in low-income areas of central cities. In contrast, 40.4 percent of all persons in poor black families lived in such areas. Among all persons in poor families residing in these areas, 68.4 percent were persons in families with a black female head.[22] Concentrations of Spanish-speaking populations of Mexican or Puerto Rican origin have also located in such areas, owing in large part to racial and ethnic discrimination in housing.[23]

A host of other social problems stems, at least in part, from discrimination in housing. Residential segregation has contributed to inequality in job opportunities, racially impacted and differentially endowed schools, greater tax burdens in central cities to support higher social service costs, and a distorted pattern of urban growth. As the U.S. Commission on Civil Rights found in 1961, housing discrimination "intensifies the critical problems of our cities: slums whose growth is abetted by the racial ghetto; loss of tax revenue and community leadership through flight to the suburbs of those financially (and racially) able to leave—all this in the face of growing city needs for transportation, welfare, and municipal services." [24]

Discrimination in the urban housing market has its counterpart in America's rural areas. By some measures, rural minorities have fared even worse than their urban counterparts in their efforts to acquire adequate housing. With few exceptions, federally-assisted housing programs[25] have offered the only means for improvement of rural housing conditions. Until very recently, rural blacks and Mexican Americans were openly discriminated against as recipients of this assistance.[26]

Insensitivity on the part of the public and the Federal Government to the desperate housing needs of Native Americans living on reservations has only recently begun to change. Reservation Indians are totally dependent on Federal housing assistance to improve the conditions in which they live. Yet, Federal programs to provide decent housing for Native Americans began only in the 1960s.[27] Maladministration of these programs by Federal agencies has seriously impeded the beneficial impact even this meager assistance was intended to provide.[28]

In the past two decades, the enactment of Federal, State, and local open occupancy laws and a decline in public approval of housing discrimination have begun to undermine the forces that have restricted the right of minorities to a free choice in the selection

[21] Data on housing conditions of minorities and families headed by women are provided in pt. 3.

[22] U.S., Department of Commerce, Bureau of the Census, *Characteristics of the Low Income Population: 1973,* Current Population Reports, series P-60, no. 98, table 9.

[23] Connecticut State Advisory Committee to the U.S. Commission on Civil Rights, *El Boricua: The Puerto Rican Community in Bridgeport and New Haven* (1973) (cited hereafter as *El Boricua);* Pennsylvania State Advisory Committee to the U.S. Commission on Civil Rights, *In Search of a Better Life* (1974) (cited hereafter as *In Search of A Better Life).*

[24] *1961 Report of the U.S. Commission on Civil Rights,* vol. 4, *Housing,* p. 1 (cited hereafter as *Housing).*

[25] The Farmer's Home Administration provides financial assistance for homeownership, home repair, and farm labor housing in rural areas. See section below, "Legislation to Provide Decent Housing."

[26] U.S., Commission on Civil Rights, *Equal Opportunity in Farm Programs,* (1965) (cited hereafter as *Equal Opportunity in Farm Programs).*

[27] For a brief description of these programs, see section below, "Administration of Housing Programs on Native American Reservations."

[28] Housing Assistance Council "Toward an Indian Housing Delivery System" (paper prepared for the HUD National Indian Housing Conference, Nov. 14–16, 1974), p. 7.

of housing and residential location. In response, however, opponents of fair housing have resorted to more subtle and secretive methods, and the struggle to achieve equal opportunity in housing is far from over. Although blacks today can purchase or rent property outside ghetto neighborhoods, few can do so without great difficulty, inconvenience, and costs of an economic, social, and psychic nature.[29]

The benefits that have come from this struggle have been confined largely to middle- and upper-income minorities. Lower-income minority families have fared much worse, despite the Nation's commitment in 1949[30] to provide "a decent home and a suitable living environment for every American family."[31] Indeed in the two and a half decades since passage of the Housing Act of 1949, it has been the persistent, unrelenting housing needs of the poor that have been least tractable to solutions offered by a variety of federally-sponsored, lower-income housing programs. Failure to achieve this objective has had its severest impact on poor, and especially elderly, minorities.

The lesson of the past two decades confirms that the attempt to improve lower-income, minority housing conditions within the context of institutionally-racist housing markets alleviates few problems in the long run. It does not alleviate racial isolation and consequent racial antipathy among whites and minorities, improve the pattern of urban growth, reduce racial imbalance in public schools, or alleviate the inequitable financial burden on central city governments, which still must pay the extra costs associated with providing public services to a large poor population.

Federal Legislation

Legislation to Provide Decent Housing

Federal involvement in the Nation's housing industry began in the early 1930s when Congress provided programs to counter the collapse of the housing economy during the Great Depression. Initial efforts consisted of a series of "pump-priming" measures that were designed to stimulate the private business sector to construct housing and to help individuals to retain their homes or to purchase new housing.[32]

The Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation provided new protections for the investments of small depositors with the purpose of attracting a steady stream of deposits and savings from which loans for housing construction might be financed. Through the Home Owner's Loan Corporation (HOLC) program,[33] emergency loans on a new, long-term, self-amortizing[34] basis were made available to homeowners to refinance defaulted and foreclosed home loans. Slum clearance and a modest program of construction or repair of low-cost housing projects was facilitated by the creation of the Public Works Administration which provided many unemployed persons with jobs.[35]

In 1934 Congress replaced the emergency HOLC program with a permanent Federal Housing Administration (FHA) to provide Federal insurance on long-term and low downpayment home mortgage loans for new construction, resale, and rehabilitation. A second major aspect of the National Housing Act of 1934[36] was the authorization of the formation of private secondary mortgage markets, particularly for the new, long-term mortgages the Government had fostered through the FHA program.[37] In 1938, the Federal National Mortgage Association ("Fannie Mae") was created to act as a conduit between idle pools of savings and borrowers of funds for new construction and repair.[38]

The programs initiated in these early years of Federal involvement in housing permanently altered the nature of housing credit markets and created several institutions that continue to exercise vast influence over the Nation's housing industry. As HUD itself recognizes:

> It is difficult to comprehend what the housing credit market was like before these institutions were created. Today, Americans take for granted a private mortgage credit market that offers 30-year low downpayment loans on homes and that recently has been supporting the construction of over 2 million new housing units annually.

[29] John F. Kain, "Theories of Residential Location and Realities of Race" (paper prepared for the Conference on Savings and Residential Finance in Chicago, May 1969), p. 11.
[30] Housing Act of 1949, 63 Stat. 413, *as amended* (codified in scattered sections of 12, 42 U.S.C. (1970)).
[31] 42 U.S.C. §1441 (1970).
[32] U.S., Department of Housing and Urban Development, *Housing in the Seventies* (1974), p. 8 (cited hereafter as *Housing in the Seventies).*
[33] Homeowner's Loan Act of 1933, 12 U.S.C. §§1461–68 (1970).
[34] A loan is self-amortizing (self-retiring) when provision is made for the direct reduction of the loan principal through fixed interest rate, equal monthly payments.
[35] Act of June 16, 1933, chap. 90, §§201–21, 48 Stat. 195.
[36] 48 Stat. 1246 (codified in scattered sections of 12, 41, 49 U.S.C. (1970)).
[37] 12 U.S.C. §1738(a) (1970).
[38] 12 U.S.C. §§1716–32c (1970).

> In the 1920's when the population was about half of today's, annual production averaged about 600,000 units per year, and the family mortgage constituted a major financial burden. Until the Federal laws of the early 1930's, the typical home mortgage was for 1 to 5 years—and seldom longer than 10 years. Loans for half the value of the property carried a high interest rate and had to be repaid in full or refinanced at maturity. The prime mortgage was often accompanied by second, third, and sometimes fourth mortgages, at still higher interest rates due to their lesser claim on the property.[39]

In the United States Housing Act of 1937, [40] Congress created the first permanent direct subsidy program to provide housing for low-income families to replace the Public Works program. The principal aims of this legislation were to alleviate present and recurring unemployment and at the same time remedy the unsafe and unsanitary housing conditions and acute shortage of decent housing suffered by low-income families. The Federal Government agreed to pay the annual principal and interest on long-term, tax-exempt bonds that financed construction of housing by semi-autonomous local public bodies (local housing authorities) authorized by State law.

Since the Depression-born initiatives of the 1930s the early Federal housing programs have been expanded or replaced by new ones, and complementary Federal community development programs have been added. Under the Servicemen's Readjustment Act of 1944,[41] the Government has provided a home loan guarantee program to assist veterans in the purchase of homes. In the Housing Act of 1949, Congress enacted the first comprehensive housing and community development legislation, providing substantial increases in funding for low-rent public housing,[42] a new program of urban redevelopment,[43] and authorization for the first time of a rural housing program, which provided for loans and grants for the construction or rehabilitation of farm dwellings.[44]

Experience with urban redevelopment showed that effective renewal must encompass a broader program than slum clearance. The Housing Act of 1954,[45] therefore, expanded the earlier program to embrace activities aimed at total community improvement. For the first time, preservation and rehabilitation of existing structures was emphasized in the requirement to include a program for strict code enforcement in a community development plan. Federal regulations required, as part of the plan, that communities analyze the need for housing of families displaced by urban renewal activities, provide for relocation, and ensure community-wide citizen participation in the planning of program activities.[46] In the same act Congress authorized an entirely new program to provide additional accommodations for displaced families, familiarly known as section 221 housing.[47] In 1959 Congress established a loan program, known as the section 202 program, to assist private nonprofit corporations in providing housing and related facilities for the elderly.[48]

In the 1960s Federal assistance was initiated for other types of community development activities—such as the construction of water and sewer lines and neighborhood facilities,[49] open space projects, [50] and highways[51]—as well as programs to promote regional and metropolitan comprehensive planning[52] and the development of new communities.[53]

The period of the 1960s also marked the start of a variety of new programs to provide housing for lower-income families and the elderly. In the Housing Act of 1961,[54] rehabilitation and conservation of existing housing received additional stimulus both inside and outside urban renewal areas and the rural housing program was made available to purchasers and owners of nonfarm housing in rural areas.[55]

Other new programs provided homeownership opportunities for low- and moderate-income families

[39] *Housing in Seventies*, p. 8.
[40] 50 Stat. 888 (codified in scattered sections of 42 U.S.C. (1970)).
[41] 58 Stat. 284 (codified in scattered sections of 38, 42 U.S.C. (1970)).
[42] 63 Stat. 413, 42 U.S.C. §§1401 *et seq.* (1970), *as amended*, 42 U.S.C. §§1402 *et seq.* (Supp. III, 1973).
[43] 42 U.S.C. §§1450 *et seq.* (1970), *as amended*, 42 U.S.C. §§1452b *et seq.* (Supp. III, 1973).
[44] 42 U.S.C. §§1471 *et seq.* (1970), *as amended*, 42 U.S.C. §§1471 *et seq.* (Supp. III, 1973).
[45] Housing Act of 1954, 68 Stat. 590 (codified in scattered sections of 12, 18, 20, 31, 38, 40 U.S.C. (1970)).
[46] U.S., Housing and Finance Agency, Program for Community Improvement (Workable Program (1960)).
[47] 12 U.S.C. §1715 *l* (1970).
[48] 12 U.S.C.A. §1701q (1975).
[49] 42 U.S.C. §§3101–3108, *as amended*, 42 U.S.C. §§3102, 3108 (Supp. III, 1973).
[50] 42 U.S.C. §§1500–1500a-c (1970), *as amended*, 42 U.S.C. §1500d (Supp. III, 1973).
[51] See U.S.C. Title 23, Highways. Federal aid for highway construction began in the 1950s and was expanded in the 1960s.
[52] 42 U.S.C. §§3331–3339, 4501–4503 (1970), *as amended*, 42 U.S.C. §§3334, 3338 (Supp. III, 1973).
[53] 42 U.S.C. §§4511–4532 (1970), *as amended*, 42 U.S.C. §§4514, 4519 (Supp. III, 1973).
[54] 75 Stat. 149 (codified in scattered sections of 12, 15, 40, 42 U.S.C. (1970)).
[55] 42 U.S.C. §§1471 (1970).

and rental opportunities outside the traditional public housing program.[56] Other programs were designed to provide rental housing for families with incomes above public housing limits but too low to afford rents in standard, nonsubsidized housing. All of these programs were a response to a renewed emphasis by Congress on directing the energies of the Nation towards accomplishment of the goals of the 1949 Housing Act.

In the public housing program, stronger emphasis was placed on the construction of lower density projects for families. In 1965, Congress authorized the establishment of a variation in the public housing program that permitted local housing authorities to lease units in privately-owned structures and make them available to families eligible for regular public housing. In later years this program, known as section 23 leased housing, became a major subsidized housing program.[57]

New Initiatives in Housing, 1965-67

In 1965, Congress, "in recognition of the increasing importance of housing and urban development in our national life. . .," created the Department of Housing and Urban Development (HUD) "to achieve the best administration of the principal programs of the Federal Government which provide assistance for housing and for the development of the Nation's communities."[58] The functions of a number of separate agencies with housing and community development responsibilities were brought under the administrative control of the Secretary for Housing and Urban Development.[59]

As the administration of housing and urban development programs was being reorganized, the urban disturbances of the mid-1960s focused attention on the poor housing and other conditions of urban minorities. This led to the creation in 1967 of two presidential commissions, the National Commission on Urban Problems,[60] better known as the Douglas Commission, and the President's Committee on Urban Housing, known as the Kaiser Commission.[61] Both were charged with seeking solutions to critical housing needs, particularly of the poor.

The dimension of the need found by the Douglas and Kaiser Commissions is staggering. As Anthony Downs, author of the housing chapter in *Agenda for the Nation,* has stated:

> According to the official national goal, every American household which does not enjoy "a decent home and suitable living environment" is part of the housing problem. Unfortunately, this statement utterly fails to convey the appalling living conditions which give the housing problem such overriding urgency to millions of poor Americans. In fact, most Americans have no conception of the filth, degradation, squalor, overcrowding, personal danger, and insecurity which millions of inadequate housing units are causing in both our cities and rural areas. Thousands of infants are attacked by rats each year; hundreds die or become mentally retarded from eating lead paint that falls off cracked walls; thousands more are ill because of unsanitary conditions resulting from jamming large families into a single room, continuing failure of landlords to repair plumbing or provide proper heat, and pitifully inadequate storage space. [62]

The Douglas Commission found that one of the most damning indictments against the public concern for housing in the Nation was the lack of realistic, reliable data about housing deterioration. The Com-

[56] In 1961, Congress authorized a new, subsidized, below-market-interest-rate mortgage insurance program to provide rental housing for moderate-income families (sec. 221(d)(3) of the 1961 Housing Act, 12 U.S.C. §1715 *l* (d)(3) (1970); 1715 *l* (d)(3) (Supp. IV, 1974). Other liberalized programs were instituted to promote the acquisition, rehabilitation, or construction of housing for low- and moderate-income families: sec. 221(d)(2); sec. 221(d)(3) market interest rate; sec. 221(d)(4). By December 1972, 1.1 million units had been insured under these programs.

In 1965, Congress authorized the establishment of the rent supplement program, to provide a Federal payment to meet a portion of the rent of low-income families in privately-owned housing built with FHA mortgage insurance assistance (12 U.S.C. §1701s (1970)). Until 1969, most of the rent supplement payments went to tenants in section 221(d)(3) market interest rate housing. The Housing Act of 1969 provided that up to 40 percent of the units in the new sec. 236 subsidized housing program (12 U.S.C. §1715z-1 (1970)) could be occupied by families receiving rent supplement assistance. (12 U.S.C. §1701s(h)(1)(D) (1970)).

[57] 12 U.S.C. §1701s (1970). From the point of view of promoting greater locational choice and nonsegregated housing opportunities for low-income minorities, and providing for a mixture of families at various income levels in single apartment complexes, the rent supplement and leased housing programs offered considerably more flexibility than the regular public housing program. Achievement of these goals, however, depended on the response of private builders and owners, especially in the leased housing program. In some areas of the country, particularly in the South, it was found that entire apartment houses were being offered and new subdivisions constructed, for lease to local authorities. In a number of instances, these were occupied on a segregated basis. Additionally, because of cost limitations, housing in most white neighborhoods of large cities could not be secured for leasing to low-income tenants.

[58] The Department of Housing and Urban Development Act of 1965, 42 U.S.C. §§3531 *et seq.* (1970).

[59] The Veterans Administration retained control of the VA home loan guarantee programs, as did the Department of Agriculture of the Farmers Home Administration program.

[60] National Commission on Urban Problems, *Building The American City* (Washington, D.C.: 1969).

[61] The President's Committee on Urban Housing, *A Decent Home* (Washington, D.C.: 1968).

[62] Ed. by Kermit Gordon (Washington, D.C.: Brookings Institution, 1968), pp. 141-42.

mission warned against the common tendency to read into the census housing data more than is there:

> Visible condition of a building (which the census classifies as sound, deteriorating, and dilapidated) and plumbing facilities in combination are indeed. . ."one measure of housing quality," but only one—and a crude one at that. Quite surely it is on the conservative side—that is, it results in a lower estimate of the volume of substandard housing than most reasonable persons would arrive at on the basis of careful local studies. This seems doubly likely for housing in older, large, central cities and industrial suburbs of metropolitan areas. The census definition amounts to "a nearly weathertight box with pipes in it," and this notion of quality, unfortunately, is hopelessly inadequate.[63]

Because of the "ridiculously inadequate data" at hand, the Commission found that, "personal guesses and far-fetched assumptions with little relation to the actual world around us clutter the housing and urban development field."[64] Calling on the Nation to direct a major effort towards the improvement of housing for the poor, the Douglas Commission found that the estimates based on the 1960 census, of 11 million substandard and overcrowded units (16 percent of the Nation's total housing inventory), greatly understated the problem. They masked the critical aspect of inadequate urban housing, which was then and still is the concentration of substandard housing and of poor people. In analyzing the unprecedented achievement in improving housing quality since 1950, the Commission pointed out that the extent of the achievement depends on how available figures are read and the standards on which they are based. The achievements have been selective, largely bypassing the poor and minority groups.

Noting that the proportion of poor households in substandard housing is two to three times greater than the proportion for all households, depending on the measures used, the Douglas Commission again warned that, although the percentage of poor in substandard housing does not seem excessively high, it must be remembered that the figures do not refer merely to poor housing but only to the "rock bottom stratum of utterly unfit housing."[65] Poor renters pay considerably more of their income for housing than other income groups. Even if many poor families escape the worst housing, they still suffer "cruelly curtailed expenditures for other basic necessities such as food, clothing and medical care."[66]

In its findings published in 1969, the Kaiser Commission reached the fundamental conclusion that there are two distinct but inseparably interdependent problems: the immediate and critical need for millions of decent dwellings to shelter the Nation's lower-income families and the need to increase sharply the production of housing to stave off an impending serious shortage for the total population.[67] According to a study prepared for the Commission, the American economy would have to:

1. Build 13.4 million units for new young families forming between 1960 and 1978.
2. Replace or rehabilitate 8.7 million units that will deteriorate into substandard conditions.
3. Replace 3 million standard units that will be either accidentally destroyed or purposefully demolished for nonresidential uses, and
4. Build 1.6 million units to allow for enough vacancies for an increasingly mobile population.

Thus, the Kaiser Commission recommended a 10-year goal of producing at least 26 million new and rehabilitated housing units, including 6 to 8 million federally-subsidized units for families in need of housing assistance.[68]

The Housing and Urban Development Act of 1968

President Johnson recommended and Congress enacted the Kaiser Commission's recommendation as part of the Housing and Urban Development Act of 1968.[69] In calling for the production or rehabilitation of 26 million housing units by 1978, including 6 million for low- and moderate-income families, Congress for the first time specified a housing goal in terms of housing units to be produced and an established time frame for production.[70]

Enormous acceleration in housing production was obviously required to achieve these goals. Between 1950 and 1959 an average of 1.5 million new units were built each year, as opposed to the 2.6 million needed on a yearly average to meet 1968 Housing Act goals. Less than 60,000 subsidized units were produced each year, as opposed to the 600,000

[63] *Building The American City*, p. 68.
[64] Ibid., p. 68.
[65] Ibid., p. 76.
[66] Ibid., p. 77.
[67] *A Decent Home* (Washington, D.C.: U.S. Government Printing Office, 1969).
[68] Ibid., pp. 39–50.
[69] 82 Stat. 476 (codified in scattered sections of 5, 12, 15, 18, 20, 31, 38, 40, 42, 49 U.S.C. (1970)).
[70] 42 U.S.C. §1441a (1970).

needed as a yearly average between 1968 and 1978. HUD estimated that its annual budget for housing subsidy costs would have to increase to a peak of $2.8 billion in order to add 6 million units to the existing stock of subsidized housing.[71] A comparison of this multibillion dollar demand with other Federal expenditures helps place the budgetary impact in perspective. For fiscal years 1962 through 1967, $356.3 billion was spent for national defense, $33.2 billion for stabilizing farm prices and incomes, $24.2 billion for space exploration, and $22.2 billion for Federal highway construction. However, only $8.1 billion was budgeted for all housing subsidies.[72]

Alvin Schorr, director of the income maintenance project in the Department of Health, Education, and Welfare, quoted in a report of the Douglas Commission, points out that the Nation had already been investing heavily in housing but that the "lion's share" of the subsidy, through income-tax deductions, was going to the well-off. In 1962 the Government expended an estimated $820 million to subsidize housing for poor people (this figure includes public housing, public assistance, and savings because of income tax deductions). In the same year, the Federal Government spent an estimated $2.9 billion to subsidize housing for those with middle incomes or more. This sum includes only savings from income tax deductions—quite as effective a subsidy as a public assistance payment. It does not include the many housing-related Federal expenditures, such as grants for water and sewer lines, which made large developments of middle- and upper-income housing possible.

A recent analysis of the impact and equity of housing subsidy programs proposed in the Ford administration's fiscal year 1976 budget shows that:
1. The top 1 percent of the income distribution would receive 10 percent of all housing subsidies.
2. The lower half of the income distribution would receive only one-quarter of all housing subsidies.
3. More than two-thirds of subsidy recipients have incomes above $10,000.[73]

In 1973, tax subsidies were estimated at $7.9 billion. In 1976, they will be $11.3 billion. The $3.4 billion increase is almost $1 billion more than total outlays will be for low- and moderate-income housing in 1976. In 1973, the average tax subsidy received by families with incomes below $3,000 was $23; the average for families with incomes above $100,000 was $2,499.[74] Again in 1973, only 8 percent of new housing was available to the 29 percent of all families with incomes below $8,000.[75]

To meet the new lower-income housing goals, Congress created several new housing programs for low- and moderate-income families and assigned additional funding for the public housing program. Section 235 of the Housing and Urban Development Act of 1968[76] created a homeownership program providing special mortgage insurance and cash payments to help lower-income home purchasers meet mortgage payments. Section 236[77] established a multifamily, rental housing program for moderate-income families to be produced and managed by private interests. Finally, Congress revamped a 1965 program for the development of new communities. The 1968 act provided an entirely new, community assistance program, by which the Federal Government guaranteed bonds and other obligations issued by private developers of an approved "new community," and included certain supplemental grants for public utilities and other facilities. [78]

Almost as soon as production began of large amounts of new housing under the section 235 and 236 programs, the Nixon administration began to question the equity and economic viability of these and other federally-subsidized housing programs. In January 1973, therefore, President Nixon issued a moratorium on all federally-subsidized housing programs, with the exception of section 23 leased housing. The President called upon HUD to perform an indepth study of the suspended programs in order that the administration might reassess the entire Federal involvement in subsidized housing production.[79]

Based on HUD's findings, President Nixon proposed to continue the moratorium, with the exception of the section 23 leased housing program and 100,000 units of 235 and 236 housing for which

[71] The Kaiser Commission estimated peak costs at $3.4 billion in 1978, when all units would be completed or near-ready for occupancy.
[72] Urban America, Inc., *The Ill-Housed* (Washington, D.C.: undated), p. 13.
[73] Cushing Dolbeare, "Let's Correct the Inequities," *ADA World* (1975 Convention Issue, vol. 30, nos. 4 and 5, April-May 1975), p. 9. Dolbeare is executive secretary of the National Rural Housing Coalition.
[74] Ibid., pp. 9 and 35.
[75] Ibid., p. 35.
[76] 12 U.S.C. §1715z-2 (1970).
[77] 12 U.S.C. §§1715z-1 (a)-(m), (o) (1970); 1715z-1 (f), (g), (i), (n), (p) (Supp. IV, 1974).
[78] 42 U.S.C. §§3901-3914 (1970).
[79] See section entitled "Meeting 1968 Housing Production Goals," in this chapter for further discussion of the moratorium.

commitments had been made prior to the moratorium.[80]

New Directions in Subsidized Housing

The administration believed that emphasis should be shifted from federally-subsidized construction to reliance on and encouragement of the private market, accompanied by a cash assistance program to lower-income families who are unable to pay market prices without assistance. A housing allowance program would, in the administration's view, provide the most equitable and least expensive means for accomplishing low- and moderate-income housing goals. HUD estimated that a program of this kind would cost between $8 and $11 million annually as opposed to the $34 billion annual expenditure that would be required to provide housing to all eligible families under the subsidized construction programs.[81]

The President proposed a modified program whereby developers would make newly-constructed units available to lower-income families at below-market rents. This program and an expanded section 23 leased housing program would both serve as testing grounds for certain aspects of a housing allowance concept, which HUD was already testing in a small experimental program.

Housing and Community Development Act of 1974

After considerable deliberation, Congress authorized a housing assistance payment program similar in principle to the one proposed by President Nixon. Under Title II, section 8, of the Housing and Community Development Act of 1974,[82] the Secretary of HUD is authorized to make assistance payments on behalf of lower-income families occupying new, substantially rehabilated, or existing rental units. The new program replaces the former section 23 leased housing program, which ended in December 1974. Payments can be made to owners who may be private owners, cooperatives, or public housing agencies. The new program does not provide financial assistance for construction or rehabilitation, the cost of which must be borne by the prospective developer or owner. The assistance payment is the difference between not less than 15 nor more than 25 percent of an eligible family's gross income and the maximum or fair market rent, as determined by HUD. Assistance payments may run for as many as 15 years for families in existing units, 20 years for families in substantially rehabilated units, and 40 years for families in newly-constructed units.

It is anticipated that the new program will serve as a foundation for a national housing allowance plan, and several of its features are similar to those that would be found in such a plan. For example, the subsidy is tied to the needy family rather than the housing unit, as in the past. Tenants may find housing on their own and negotiate with the owner to contract for section 8 assistance. Tenants sign the leases and must pay their portion of the rent to the owner. Owners are responsible for maintenance and repairs and assuring full occupancy of the housing.

Other features of the section 8 program represent significant departures from previous federally-assisted housing programs. One such feature is the broadening of income eligibility limits so that families with a wide range of incomes are eligible to participate in one federally-assisted housing program.[83] In the past, the traditional public housing program served families with the lowest incomes and FHA-subsidized programs, such as sections 235 and 236, primarily served families in the moderate-income range.[84] Congress was concerned that a broad economic mix be achieved in multifamily projects in which families who receive section 8 assistance live. To assure that low-income families will receive assistance, as opposed to only moderate-income, Congress required that 30 percent of all families served must have incomes below 50 percent of the median income in the area.

A second feature of the new program provides that resources will be made available to meet increases in operating costs, thereby eliminating the problem encountered in the 236 program in which operating costs in many projects have exceeded the rent-paying ability of tenants and placed such projects in severe financial crisis. In the section 8

[80] Richard M. Nixon, Message to Congress, "Housing Policy" (Sept. 19, 1973), 9 Weekly Comp. of Presidential Documents (1973), p. 1141. The President proposed that the leased housing program be expanded from the existing 20,000 units to 100,000 units annually.

[81] *Housing and Development Reporter*, vol. 1, no. 10 (Sept. 19, 1973), p. AA-3.

[82] 88 Stat. 633 (1974), 42 U.S.C.A. §1437f (1975).

[83] In the section 8 program, lower-income families with incomes less than 80 percent of median income in the area are eligible for assistance.

[84] Income limits for admission to 235 and 236 housing can be high as 135 percent of public housing income limits for the area. Subsidies available in these two programs are not deep enough to serve most low-income families, *Housing In The Seventies*, pp. 85 and 98.

program, tenants will never pay more than 25 percent of their gross income,[85] regardless of increases in operating costs. Thus, section 8 provides a deeper subsidy than any previous Federal lower-income housing program.

Under section 8, tenants are required to pay at least 15 percent of their gross income. The minimum rent requirement curtails section 213(a) [86] of the Housing Act of 1969,[87] which provided for the establishment of rent-income ratios that assumed some families had no income available for housing expenses. Under the new law, all families must pay something towards rent.

Under the 1974 act, opportunities for lower-income homeownership are to be provided through the section 8 program[88] as well as the conventional public housing program. Congress did not specify how the ownership provisions should be carried out, however, and HUD has not implemented these provisions of the act.

An important feature of the section 8 program is that it can be used along with other HUD programs to finance housing construction. Thus Congress provided that a qualified sponsor can use the section 202 program for housing for the elderly to finance construction and the section 8 program to subsidize rentals.[89]

Finally, the most important feature of the section 8 program, from the point of view of facilitating integrated housing, makes it possible for HUD to provide assistance to families in both urban and rural jurisdictions that do not have local housing agencies or that are unwilling to utilize the section 8 program. Thus, the approval of the locality is not a prerequisite to the provision of section 8 assistance, as in the public housing and rent supplement programs.

With the funding levels authorized by Congress, original estimates placed the number of units to be provided under section 8 at 400,000 annually for fiscal years 1975 and 1976. In its 1976 budget, however, HUD has lowered its target to 200,000 units in fiscal 1975 and has asked for funds to provide 400,000 units originally targeted under section 8 for fiscal year 1976.

Because a number of congressional representatives were skeptical of the reliance placed by the administration on an essentially untried mechanism, the 1974 act also authorizes funds for the construction of conventional public housing units and for a limited number of units under the 235 and 236 programs.[90] It was felt that these programs might be needed to provide housing in localities in which the section 8 housing program may not work properly.

HUD estimates that 78,000 units of new public housing will be constructed under the 1974 congressional authorization. More significant than the number of units to be provided are changes in the basic public housing law that Congress has authorized. Public housing is no longer restricted to families at the lowest income levels, those who could pay rents no higher than 20 percent below rents on the private market. Under the new law, income eligibility requirements are the same as in the section 8 program. Continued-occupancy income limits are removed so that a family whose income goes above a certain level need no longer move out of public housing. Both of these changes were made to foster economic mix in public housing projects.

Tenants in public housing are required under the new law to pay the higher of two amounts figured either as 25 percent of adjusted income[91] or 5 percent of gross income, or that amount of the welfare payment specifically designated for shelter. Local housing authorities are required to establish satisfactory procedures to assure, among other things, prompt payment and collection of rent and prompt eviction in the case of nonpayment.

The 1974 act also provides for the extension of rural housing programs,[92] several new features of which improve upon past Farmers Home Administration (FmHA) programs. For example, FmHA may now operate in communities with populations up to 20,000 that are located outside metropolitan areas and in which a serious lack of mortgage credit exists. Inclusion of a rent supplement program in

[85] In determining the percentage of income to be paid, consideration can be given to the number of children, the level of income, and the extent of medical and other expenses. 88 Stat. 633, Title II, sec. 8(c)(3) (1974).

[86] 42 U.S.C. §1402(1) (Supp. III, 1973). This section is familiarly known as the Brooke Amendment.

[87] 83 Stat. 379 (codified in scattered sections of 12, 15, 20, 40, 42 U.S.C. (1970)).

[88] 42 U.S.C.A. §1437f(c)(8) (1975).

[89] See HUD Construction Loans for Housing for the Elderly and Handicapped, 40 Fed. Reg. 36536–43 (1975). For fiscal year 1976 $375 million is provided for the section 202 program. P.L. 94–116.

[90] 88 Stat. 633, Title II, sec. 211–212 (1974). These programs are extended for only 1 year. Despite the intent of Congress, HUD provides funding in its 1976 budget for only 3,250 new units of 236 housing for which commitments were made before the January 1973 moratorium. No funds are provided for additional 235 housing. *BNA Housing and Development Reporter, Current Developments*, vol. 2, p. 928.

[91] 42 U.S.C.A. §1437a (1975). Deductions are made from gross income for minor or student's income, dependents who are disabled or full-time students, nonrecurring income, extraordinary medical and other expenses, and the like.

[92] 88 Stat. 633, Title V (1974).

FmHA rental, farm labor, and cooperative housing means that FmHA housing benefits can be made available to more low-income families. In an effort to provide more housing in rural areas, Congress changed the old FmHA program to permit State and local housing agencies to participate in any of the FmHA programs, in addition to developing public housing or housing to be made available through section 8 assistance.

For poorly-housed Native Americans living on reservations, the new act is significant in that, for the first time, a specific authorization is set aside for Indian housing (at least $30 million for fiscal years 1975 and 1976).[93] The 1974 act makes Indian tribes and groups specifically eligible to receive community development block grants [94] and provides them greater access to FmHA programs by enabling tribal housing authorities to become sponsors of FmHA rural rental housing.[95] Thus, the new act enlarges and diversifies tribal housing programs.[96]

The Housing and Community Development Act of 1974 for the first time ties the provision of community development funds to the provision of lower-income housing by requiring each locality to submit a housing assistance plan as part of its community development block grant application.[97] To receive community development funding, a locality must address its need for lower-income housing. It must take into consideration not only those lower-income families who presently reside in the locality, but also those who might be expected to reside there, based on current and projected employment and other factors. In the housing assistance plans, the general location of proposed federally-assisted housing must be indicated. Localities must aim at reducing spatial concentrations of low-income families and promoting economic diversity of residents in neighborhoods selected for redevelopment.

Because so many aspects of the most recent housing and community development block grant program are new, it is difficult to assess how successful it will be in meeting the needs of lower-income families. It is clear, however, that Congress has abandoned the 1968 housing production goals, despite their reiteration in the 1974 Housing and Community Development Act.[98] At the currently anticipated level of funding for fiscal years 1975 and 1976, fewer than 800,000 units of lower-income housing will be made available. Given the shortfalls in housing starts during the years from 1968 to 1974, many more units of housing would be needed each year between now and 1978 were the goal of 6 million low- and moderate-income units to be achieved. Rising inflation is undoubtedly causing an increase in the number of families in need of assistance. Thus, as Arthur P. Solomon, associate professor at Massachusetts Institute of Technology and author of *Housing The Urban Poor,* [99] has indicated, the $3.4 billion housing authorization is too small to have a significant impact on the 73.1 million families that live in poor quality, overcrowded housing or pay excessive rent.

Despite the need, the United States continues to spend the smallest percentage of its gross national product (GNP) for direct housing subsidies of any Western industrialized nation.[100] Without doubt, the United States has abandoned the commitment made in 1968 to meet lower-income housing needs within the current decade.

Legislation to Assure Equal Housing Opportunities

Since the latter part of the 19th century, Federal law has been in existence that requires equality of housing opportunity for all American citizens. Until 1962, however, the Federal housing agencies and the majority of State governments either openly endorsed or ignored discriminatory practices of private housing interests which acted in direct opposition to these laws. As the Nation entered the decade of the 1960s, the impetus of the burgeoning civil rights movement brought the issue of discrimination in housing to the forefront. Indeed, within the short period of 12 years, the long tradition of restricting the access of minorities and women to housing was denied all legal and administrative support by the Federal Government and most State governments.

Executive Order 11063

In attempting to shed the legacy of discrimination in housing and prevent its perpetuation, the Federal Government first took a piecemeal approach to the

[93] 88 Stat. 633, Title II, sec. 5(c) (1974).
[94] 88 Stat. 633, Title II, sec. 102(a)(1) (1974).
[95] 88 Stat. 633, Title V (1974).
[96] Housing Assistance Council, "Toward an Indian Housing Delivery System," p. 7. Under 42 U.S.C. §1471(a)(2) (1970) FmHA can make loans to individuals with leasehold interests in nonfarm rural land. Leasehold land is one form of Indian land status.
[97] 88 Stat. 633, Title I, sec. 104(a)(4) (1974).
[98] 88 Stat. 633, Title VIII, sec. 801 (1974).
[99] Boston: Massachusetts Institute of Technology Press, 1974.
[100] According to Arthur Solomon, the United States spends 3.2 percent of its GNP; France, 6.9 percent; Belgium, 5.7 percent; West Germany, 5.4 percent.

revival of the guarantees of the 14th amendment and the Civil Rights Act of 1866 by banning discrimination in some types of housing but not others.

Under Executive Order 11063,[101] issued in November 1962, a broad intent was stated to prevent discrimination because of race, color, creed, or national origin in all housing financed through Federal assistance.[102] In the preamble to the Executive order, President Kennedy pointed to the problem of discrimination and the effect it had in denying to "many Americans" the benefit of federally-assisted housing, thus confining them to substandard, unsafe, unsanitary, and overcrowded housing. Citing the goal established by Congress in the 1949 Housing Act, the President alluded to the impossibility of achieving a "decent home in a suitable living environment for every American family" as long as discrimination persists.

Although the order was couched in broad terms, it was, in fact, limited in scope. It covered only housing provided through mortgage insurance by FHA or loan guarantees by VA and federally-assisted public housing. Conventionally-financed housing (non-FHA or VA) financed by mortgage lending institutions, representing the great bulk of the Nation's housing supply, was excluded from coverage. Furthermore, the principal content of the order related almost entirely to housing provided through Federal aid agreements executed after November 20, 1962.

Builders and owners of housing could be subject to disbarment from further participation in Federal programs, if found to discriminate. With respect to owners of existing housing that previously had received Federal assistance or that was still receiving such assistance, the order provided only for the exercise of "good offices" by Federal administrative personnel, who were to attempt to bring violators into compliance with the order.

Title VI of the Civil Rights Act of 1964

Overall, Executive Order 11063 had only minor impact in assuring equal opportunity in housing provided through FHA, VA, and public housing programs. In 1964, therefore, Congress took a second step to redress racial discrimination in federally-assisted housing and other Government programs, spurred into action by the growing protests of the civil rights movement and by such events as the massive March on Washington in August 1963. With enactment of Title VI of the Civil Rights Act of 1964,[103] discrimination was prohibited on the basis of race, color, or national origin against persons who were eligible to participate in and receive the benefits of any program receiving Federal financial assistance.[104]

Title VI filled in some of the gaps in coverage of federally-assisted housing left open by Executive Order 11063. For example, all housing in urban renewal areas was made subject to the provisions of Title VI, as well as all public housing, regardless of the date of contract for assistance, as long as Federal financial contributions were still being received for the operation of a public housing program. However, housing provided through FHA mortgage insurance and VA loan guarantee programs outside urban renewal areas, as well as the Farmers Home Administration housing, was exempted from coverage,[105] a mark of the considerable power exercised by private housing interests on Capitol Hill. Likewise, conventionally-financed housing was not affected unless it was located in urban renewal areas.

Title VIII of the Civil Rights Act of 1968

In the same year as the passage of the landmark Housing and Urban Development Act of 1968, which established specific goals for the production and rehabilitation of housing, Congress once again focused on the need to expand Federal law to prevent discrimination in housing. In Title VIII of the Civil Rights Act of 1968[106] Congress made its intentions clear by declaring that "[i]t is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."[107] Two months after passage of Title VIII, the Supreme Court brought its weight to bear in support of this policy through the majority opinion in *Jones v. Alfred H. Mayer, Co.* [108] Thus, judicial and legislative processes combined to form extensive and definitive national policy in the housing field, which provided a clear-cut commitment to equal housing opportunities for all.

[101] 3 C.F.R. 1959–1963 Comp., p. 652.
[102] *Id.*, §101.
[103] 42 U.S.C. §§2000d *et seq.* (1970).
[104] 42 U.S.C. §2000d (1970).
[105] Under section 602 of Title VI, Federal departments and agencies which extend Federal financial assistance by way of grant, loan, or contract *other than a contract of insurance or guaranty* are directed to implement the provisions of section 601. 42 U.S.C. §2000d–1 (1970).
[106] 42 U.S.C. §§3601–3619, 3631 (1970).
[107] 42 U.S.C. §3601 (1970).
[108] 392 U.S. 409 (1968).

Title VIII prohibits discrimination in the sale or rental of all housing, federally-assisted and nonassisted, except:

> 1) single family homes sold or rented without use of a broker and without publication, posting or mailing of any advertisement "that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination."[109]
>
> 2) dwellings providing units or rooms for up to four families living independently of each other, and in one unit of which the owner resides.[110]

Title VIII became fully effective on January 1, 1970, at which time more than 80 percent of all housing came under its coverage. The following specific discriminatory acts are prohibited:[111]

1) To refuse, after a bonafide offer is made, to negotiate on a sale or rental, or to otherwise deny a dwelling to any person because of race, color, religion, or national origin.

2) To discriminate in terms, conditions, or privileges of a sale or lease or in providing services or facilities in connection with a sale or lease.

3) To make, print, or publish (or cause to be made, printed, or published) any notice, statement, or advertisement that indicates preferences or limitations based on race, etc.

4) To represent to any person because of race, etc., that a dwelling is not available, when in fact it is.

5) To induce or attempt to induce any person to sell or rent any dwelling by telling them that persons of a particular race, etc., are moving into the neighborhood.

6) To deny because of race, etc., a loan or other financial assistance to any person applying for such assistance for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling.

7) To deny any person because of race, etc., access to or membership or participation in multilisting services, real estate organizations, or other services relating to the business of selling or renting dwellings.

The Housing and Community Development Act of 1974 amends Title VIII by prohibiting discrimination in the sale or rental of housing on the basis of sex.[112] In addition, the 1974 act provides that federally-related mortgage loans or Federal insurance, guarantees, or other assistance cannot be denied to any person on account of sex and that the combined income of both husband and wife must be considered for the purpose of extending mortgage credit in the form of a federally-related mortgage loan to a married couple or either member thereof.[113]

Persons who believe they have been the victims of discrimination in housing may file a complaint with HUD,[114] which is the agency responsible for administration of Title VIII, or, after having exhausted HUD's complaint procedure, they may file a civil action in the proper Federal district court or State or local courts of general jurisdiction.[115]

In the enforcement of Title VIII, HUD's powers are limited to the receipt, investigation, and conciliation of complaints. [116] If HUD is unable to resolve a complaint, HUD may refer the matter to the Department of Justice for further action.[117] HUD is not empowered to request a temporary or permanent injunction or restraining order against the person or persons accused of discriminatory action.

Title VIII authorized the Attorney General to bring a civil action in a Federal district court against any person or group of persons who are believed to be engaged in a pattern or practice of resistance to the rights granted by Title VIII, or if any group of persons are believed to have been denied these rights and the denial raises an issue of general public importance.[118] The Attorney General may apply for a permanent or temporary injunction, restraining order, or other order against those responsible for such pattern or practice or denial of rights. [119]

In vesting responsibility for the administration of Title VIII with the Secretary of HUD, Congress provided for an additional Assistant Secretary in

[109] 42 U.S.C. §3603(b) and (c) (1970).
[110] *Id.*
[111] 42 U.S.C. §§3604–3606 (1970).
[112] 88 Stat. 633, Title VIII, sec. 808(b) (1974).
[113] 88 Stat. 633, Title VIII, sec. 808(a) (1974).
[114] 42 U.S.C. §3610(a) (1970).
[115] 42 U.S.C. §3610(d) (1970).
[116] 42 U.S.C. §§3610(a) (1970). With respect to federally-assisted housing HUD's enforcement powers under Title VIII are far weaker than those provided by Title VI of the Civil Rights Act of 1964 and Exec. Order 11063, both of which provide for the ultimate sanction of withdrawal of Federal financial assistance (see 42 U.S.C. §2000d–I (1970); Exec. Order No. 11063, §302(a) and (b), 3 C.F.R. 654 (1959–1963 Comp.).
[117] 42 U.S.C. §3611(g) (1970).
[118] 42 U.S.C. §3613 (1970).
[119] *Id.*

HUD, to whom the Secretary could delegate Title VIII enforcement functions.[120] In addition, the Secretary of HUD as well as *all* executive departments and agencies were required to "administer their programs and activities relating to housing and urban development in a manner affirmatively to further the policies" of Title VIII.[121]

Federal Administration of Housing and Civil Rights Laws

Housing Programs

Because of the extensive nature of its involvement in housing and community development, the Federal Government has been the single most influential entity shaping urban growth in America. It, therefore, has also been most influential in creating and maintaining urban residential segregation.

Early Administration of Mortgage Insurance and Loan Programs

For nearly 30 years after the first Federal housing programs were initiated, the Federal Government either actively or passively promoted racial and ethnic discrimination in housing. For 15 years, for example, the FHA Underwriting Manual warned of the infiltration of "inharmonious racial groups"[122] into neighborhoods occupied by families of a different race. FHA actively promoted the use of a model racially-restrictive covenant by builders and owners whose properties would receive FHA insurance.[123] This policy was in full effect during the first 5 years of the building boom after the Second World War, when over 900,000 units of FHA housing were produced. VA administrative policies with respect to segregation closely paralleled those of FHA.

FHA and VA housing for the most part has benefitted moderate- to middle-income families.[124] Thus, many minorities have not been eligible for FHA mortgage insurance or VA loan guarantees simply on the basis of income.[125] Moreover, until very recently homeownership opportunity for minorities at virtually all income levels has been restricted to older housing. Older housing frequently has failed to meet minimum FHA and VA construction requirements and, therefore, has not been eligible for FHA insurance or VA loan guarantees.[126]

In December 1949, FHA and VA reversed the policy of promoting racial segregation in housing, acting upon the 1948 decision in *Shelley v. Kraemer,* which prohibits judicial enforcement of restrictive covenants. FHA and VA ruled that they would not provide mortgage insurance for property on which restrictive covenants were recorded after February 15, 1950.[127] In 1951, FHA announced that all repossessed, FHA-insured housing would be administered and sold on a nonsegregated basis.[128]

These changes had little real effect in increasing minority participation in FHA and VA programs on an integrated basis. "As late as 1959, it was estimated that less than 2 percent of the FHA-insured housing built in the post-war housing boom had been made available to minorities."[129] The intent to promote minority housing opportunities was not matched by action to prevent builders and owners who participated in federally-sponsored programs from behaving much as they had in the past.

The policies of the four Federal financial regulatory agencies [130] charged with responsibility for the supervision and regulation of mortgage lenders also endorsed overt racial and ethnic discrimination in mortgage lending until passage of the 1968 Fair Housing Law. Mortgage lenders were left free to consider minorities as less desirable risks than whites, regardless of the minority applicant's personal or financial worth. They routinely refused to provide minorities mortgages for homes in nonminority areas. These practices were stoutly defended as essential elements of prudent banking by lenders and regulatory agency personnel alike.[131]

Until very recently, Federal policies also actively endorsed traditional mortgage-lending criteria that virtually require discrimination against women, either as individual homeseekers, as heads of families, or as contributors to the amount of family income on which mortgage lenders base a determination of

[120] 82 Stat. 84 §808(b) and (c) (1968).
[121] 42 U.S.C. §3608(c) (1970).
[122] Sec. 980 (1938).
[123] *Understanding Fair Housing,* p. 5.
[124] Paul F. Wendt, *Housing Policy—The Search for Solutions* (Los Angeles: University of California Press, 1962) pp. 208-09.
[125] See poverty level income data in note 18, this chap.
[126] Wendt, *Housing Policy,* p. 209.
[127] Federal Housing Administration, Underwriting Manual, sec. 303 (December 1949).
[128] *Housing,* p. 25.
[129] *Understanding Fair Housing,* p. 5.
[130] The Board of Governors of the Federal Reserve System regulates all national banks, as well as banks that are voluntary members of the FRS, by setting monetary, credit, and operating policies for system as a whole.
The Federal Deposit Insurance Corporation provides insurance for bank deposits. The Office of the Comptroller of the Currency charters and supervises national banks. The Federal Home Loan Bank Board supervises savings and loan associations and savings banks.
[131] *Mortgage Money,* p. 33.

mortgage applicant eligibility for FHA mortgage insurance or VA loan assistance.[132] Thus, whether single or married, women have frequently faced insurmountable obstacles in obtaining mortgage credit.

If a woman is married and working, her income has automatically been discounted in the process of determining the family's eligibility for a mortgage. No matter how important her income is to the family budget, it has been considered "secondary" for mortgage lending purposes. It is the husband's financial status that has determined the family's chances for a mortgage loan.[133] This has occurred despite the fact that the working wife's income has become increasingly important as a substantial and continuing part of a family's assets.[134]

The practice of discounting all or a part of the wife's income has prevented many families from buying homes. Such families have often been compelled to accept housing that does not suit their needs and incomes. The practice has arisen from the fallacious assumption that a married woman's participation in the labor force is a temporary aberration; once she becomes pregnant, her employment will end abruptly and permanently. This assumption is based on myth that has ignored changing social conditions, such as the increased employment of women and the availability of liberal maternity leave policies.[135]

For the minority family, the routine discounting or total ignoring of the wife's income has worked a special hardship and placed minority women and their families in double jeopardy.[136] A far smaller percentage of minority families have had sufficient incomes provided solely or largely by the husband that have made them eligible for mortgage loans. As of 1970, among black families in which only the husband worked, family income was only two-thirds of white family income. For black families in which both husband and wife worked, family income was 90 percent of the income of white families.[137] Thus, in many black families, the addition of the wife's income has been crucial to bringing the family within a income level sufficient to permit the assumption of a home mortgage.

The widespread practice of discounting the wife's income has been shown by a 1971 Federal Home Loan Bank Board (FHLBB) survey of savings and loan institutions. Savings and loan managers were asked what credit they would allow for a working wife's income if she were 25 years old, had two school-age children, and worked full time as a secretary. In response, 25 percent of the managers said they would count none of her income and the majority stated they would count 50 percent or less. Only 22 percent stated that her income would receive full credit.[138] Another study released in May 1972 by the United States Savings and Loan League showed that, of more than 400 large savings and loans, only 28 percent indicated they would give full credit to a working wife's income.[139]

Discounting practices have not been justified by economic evidence. Most major studies on mortgage risk have found that the key factors in determining default risk relate to the characteristics of the loan itself, particularly the loan to value ratio, rather than to the characteristics of the borrower. In fact, a 1964 study on mortgage delinquency rates in two-wage-earner and single-wage-earner families showed that, if anything, families in which the husband was the only wage earner had a slightly greater likelihood of being delinquent in making payments than families in which the husband's income was only a portion of the family income.[140]

Single women—whether unmarried, widowed, separated, or divorced—have been viewed with great skepticism under traditional mortgage lending criteria. The U.S. Commission on Civil Rights has found that, regardless of their professional background or work experience, their status as women who are not part of a male-headed household traditionally has rendered them suspect credit risks.[141]

The FHA Underwriting Manual endorses this bias in its emphasis on the married mortgagor, whom FHA believes to be more stable than the single mortgagor. It is assumed that, because the married

[132] Ibid., pp. 18–29.
[133] Ibid., pp. 18–20.
[134] As of 1970, in two of every five families, with husband and wife both present, both the husband and wife worked.
[135] Steven M. Rohde, "Ending Sexism in the Mortgage Market" (paper presented at the National President's Meeting sponsored by the National Council of Negro Women, Sept. 14, 1974), p. 3.
[136] *Mortgage Money*, p. 34.
[137] Ibid., p. 20.
[138] Rohde, "Ending Sexism," p. 2.
[139] Ibid., p. 4. See also Utah Advisory Committee to the U.S. Commission on Civil Rights, *Credit Availability to Women in Utah* (1975).
[140] Rohde, "Ending Sexism," p. 4.
[141] *Mortgage Money*, p. 26.

mortgagor has greater responsibilities, he or she will be more likely to fulfill his or her obligations.[142] In the FHLBB survey, it was found that 64 percent of the savings and loan managers use marital status as a factor in assessing applications for loans. Eighteen percent indicated that marital status, in and of itself, could be the determining factor in disqualification for a loan. [143] Although single men as well as women have been at a disadvantage in obtaining a mortgage, the disadvantage has been greater for women. Women are a significant percentage of the persons in the unmarried, widowed, separated, and divorced categories of persons who seek mortgage loans.[144] In addition, single women must present a stronger credit and income status than single men, and single women are more closely scrutinized at every step of the mortgage application process.[145]

The myth generating this treatment of single women characterizes women as inherently unreliable, incapable of conducting their own affairs, and in need of the protection of a husband or father. The lending industry translated the myth into a reluctance to grant a woman a mortgage loan outright or a requirement for an assumption or a male cosigner.[146]

As in the case of the married woman whose income has been discounted, there is no supportable rationale for discrimination based on marital status. To the contrary, no demonstrable relationship has been shown between marital status and mortgage loan risk.[147] This evidence suggests that a single woman who is employed and who desires to purchase a home is unlikely to quit work during the early years of the mortgage, the crucial period for default. If her marital status changes, it is likely that the income of her family will actually increase.[148]

Until very recently, only FHA's mortgage lending policy ran counter to the practice of systematic housing discrimination on the basis of sex. FHA revised its policies during the 1960s to encourage inclusion of the wife's full income in determination of income eligibility for FHA-insured mortgage loans. Data relating to accepted applications indicates that in most cases where there is a working wife her full income has been counted.[149]

Early Administration of Public Housing

In the public housing program, early Federal administrative policy with respect to participation of minorities differed somewhat from policies followed in the other Federal housing programs. From the outset, there was a desire to provide low-rent housing to poor minorities as well as to whites. Local public housing authorities (LHAs) were permitted to enforce either "separate but equal" or "open occupancy" policies.[150] Most LHAs chose the former.[151] Under the separate but equal policy, LHAs assessed the need for low-rent housing separately for minorities and whites and provided housing according to the relative needs on a segregated basis.[152]

However, the requirement that the public housing program be administered to promote economy [153] limited the extent to which racial equity actually operated in assessing need. As a result, only those who were able to pay some rent were served. Because a larger proportion of poor minorities than of poor whites were at the lowest income levels, with little or no resources available for rent, public housing under the racial equity policy actually met the need of a smaller proportion of the low-income minority population. This factor contributed to the development of a substantial backlog of need for public housing among low-income minority families.

The provision of public housing on a racially segregated basis continued with Public Housing Administration (PHA) approval through the 1950s and into the 1960s, despite a growing trend among States and localities to adopt laws prohibiting discrimination in public housing and despite several significant court decisions that found State-enforced segregation in public housing unconstitutional.[154] In communities covered by open occupancy laws, on

[142] U.S., Department of Housing and Urban Development, credit analysis for Mortgage Insurance on One to Four Family Properties (Handbook 4155, July 1972), chap. 2, sec. 2-7a.
[143] Rohde, "Ending Sexism," p. 4.
[144] Ibid., p. 5.
[145] *Mortgage Money*, pp. 26-27.
[146] Ibid., p. 27. Assumptions are a safety device wherein ultimate responsibility rests with the original mortgagor. The second mortgagor assumes payments of the original loan.
[147] Rohde, "Ending Sexism," p. 5.
[148] Ibid., p. 5.
[149] Ibid., p. 3.
[150] U.S., Commission on Civil Rights, *Report of the U.S. Commission on Civil Rights* (Washington, D.C.: 1959), p. 474.
[151] Ibid., p. 474. New York forbade discrimination in public housing in 1939, Massachusetts in 1948, Connecticut and Wisconsin in 1949. Several other States followed in later years. By 1961, 32 States operated public housing on an open occupancy basis, and 17 States and numerous localities had antidiscrimination housing laws that applied to publicly-assisted as well as other types of housing.
[152] Assessing need on a racial equity basis first became the official policy of PHA in 1951 (Public Housing Administration, Housing and Home Finance Agency, Low-Rent Housing Manual, sec. 102.1, Feb. 21, 1951).
[153] 42 U.S.C. §1402(1) (1970).
[154] Detroit Housing Commission v. Lewis, 226 F.2d 180 (6th Cir. 1955); Heyward v. Public Housing Administration, 238 F. 2d 689 (5th Cir. 1956).

the other hand, patterns of integration began to emerge in some public housing projects. By 1960, of 886 public housing projects, 492 had mixed-occupancy patterns. Frequently, however, mixed occupancy meant that a few minority families lived in otherwise all-white projects or vice versa.[155]

In most localities, racial segregation in public housing was also enforced through the selection of locations for the construction of low-income housing. LHAs selected, and the Public Housing Administration approved, separate locations for the units to be occupied by white and minority families. Also with Federal approval, LHAs created separate management offices for projects occupied by whites and blacks and separate waiting lists based on race. In some localities, the policies pursued by LHAs, with the Government's blessing, actually created segregated residential patterns and concentrations of minority poor where they had not existed before. In virtually all metropolitan areas, the location of public housing accentuated the concentration of minority groups in central cities. Local opposition to the construction of public housing in more desirable locations assured this result.

Similarly, in a number of cities, per-unit cost limitations resulted in the construction of gigantic public housing projects containing hundreds of units to house the poor. In such cases, although the intent was ostensibly to provide decent housing in clean, attractive living environments, quite the opposite result was achieved. The problems in managing poorly planned and constructed, densely populated, and inadequately serviced projects have become so great that many have deteriorated to an uninhabitable state. In St. Louis, Pruitt-Igoe, a public housing venture on urban renewal land, deteriorated so badly that the Federal Government in 1970, to reduce the number of units, demolished large portions of the high-rise structures.

Although PHA had no mandatory site selection requirements prior to 1964, Federal program administrators were cognizant of the problems of increased residential segregation and concentration of lower-income minorities resulting from LHA site selection policies. PHA discouraged site selection in minority neighborhoods and towards the end of the 1950s began to encourage the dispersal of smaller public housing projects in different areas of a given community. However, PHA's efforts were frequently stymied by local opposition to public housing construction on any sites other than those created by clearing slums in which racial minority groups resided, or sites that were available in other minority areas in a locality.

Early LHA management policies often adversely affected low-income women as well who were heads of families in which one or more children were born out of wedlock. Endorsing the moral contempt in which society has traditionally held women with illegitimate children, LHAs usually refused to rent to them, thereby depriving housing to families who often had the greatest need. This practice was not questioned until the latter half of the 1960s when several courts ruled against it as contrary to the 14th amendment. In 1968, HUD issued new regulations[156] on admission and continued occupancy in public housing which prohibited LHAs from automatically denying admission or continued occupancy to "a particular class" such as unmarried mothers or families having children born out of wedlock.

Early Administration of Rural Housing Assistance Programs

To the extent that Farmers Home Administration (FmHA) programs have assisted in improving rural housing conditions, the benefits have been extended on a racially disproportionate basis. A 1965 study by the U.S. Commission on Civil Rights found that, while blacks in 13 southern rural counties were receiving an equal or somewhat greater percentage of FmHA loans, individual loan amounts were much larger for whites. Poor whites received more financial assistance than blacks at the same income level,[157] and a much greater proportion of whites received assistance for the purchase of farms, the purchase of rural nonfarm housing, and improvement of farm or nonfarm housing. For each successively lower economic class of black borrowers, FmHA assistance went heavily to living expenses and annual operating costs.

Inequitable administration of Federal rural housing assistance as well as other Federal agricultural programs has played a role in heightening the disparity between white and black farmers and hastening the exodus of southern rural blacks from

[155] *Housing*, p. 112. In Detroit, for example, five projects were recorded as "completely integrated" but two of the five were less than 4 percent minority and another project was 91.8 percent minority.

[156] U.S., Department of Housing and Urban Development, "Admission and Continued Occupancy Regulations for Low-Rent Public Housing" (circular of Dec. 17, 1968) contained in HUD Circular HM 7465.12 (June 2, 1971).

[157] *Equal Opportunity in Farm Programs*, pp. 72–73.

the land. Over the years, the prevailing FmHA policy was to follow local discriminatory practices and, thus, to perpetuate a double standard with its injurious effects on rural minorities.

Administration of Federal Community Development Programs

Other Federal programs initiated during the 1950s adversely affected minority housing opportunities while benefiting the white majority. Of these, urban redevelopment—later called urban renewal—has played a substantial role in divesting blacks and other minorities of housing and causing massive shifts of minority population from areas to be redeveloped to nearby neighborhoods. Frequently these neighborhoods have become the new ghettos. Overcrowding, lack of adequate public facilities, and dwindling investments by banks and private owners in the sale and maintenance of housing in these neighborhoods have resulted in the creation of new blighted areas, much like those the local urban renewal program has aimed to eliminate.

Morton Shussheim, author of "Housing In Perspective," found that during roughly the first decade of urban renewal,

> more than 60 percent of the families displaced were blacks, although blacks numbered less than a third of the total city populations involved. Through June 1965, reconstruction of urban renewal land was mainly for institutional and public purposes (27 percent), and housing (36 percent), and prior to 1963, most of the new housing was for upper middle-income occupancy.[158]

In the latter half of the 1950s and early 1960s, as the civil rights movement gathered momentum, one of the targets was slum clearance, which had come to be known as synonymous with "Negro removal." Increasingly, blacks objected to the arbitrary use of public power for the benefit of others. All too frequently urban renewal resulted in crosstown expressways, high-cost housing, university expansions, and other improvements in which blacks, and in some instances other minorities, had no share.

Despite the new approaches provided in later years, urban renewal has continued to have an adverse impact on minority interests in many communities. A large part of this problem has stemmed from the unwillingness or inability of Federal administrators to enforce the requirements of the program. Another factor is the nature of the requirements themselves, as well as local resistance to the type of planning that would assure equal housing opportunity for minorities in the urban renewal process.[159]

From the late 1950s to the present, federally-assisted highway construction, like urban renewal, has caused massive displacement of nonwhites in central cities and has destroyed some older black enclaves in suburban areas. Until passage of the Uniform Relocation Act of 1970,[160] the Federal highway program imposed no requirement on either the Federal Government or States to consider the impact of highway location plans on minority communities or to provide relocation housing and monetary assistance to displacees to defray moving costs.

The impact of highway construction, however, has extended far beyond displacement. New highways have led to the movement of job opportunities, which in turn causes changes in residential patterns. Highways separate one area of the city from another and in some instances have isolated minority neighborhoods from the mainstream of community life. The construction of federally-assisted highways has dominated the timing and location of suburban residential development, creating urban land where none existed by extending the commuting distance from existing cities.[161] As the Douglas Commission pointed out in 1968, "the low density pattern found in most of the Nation's areas would never have been possible without the effect of high-speed highways in reducing the importance of compact urban development."[162] Because of racial discrimination in housing and the exclusion of low- and moderate-income housing from new growth suburban areas, the direct benefits of the suburban housing and commercial development sparked by highway construction have been largely restricted to white populations.

[158] *The Public Interest*, no. 19, Spring 1970, p. 27.

[159] As of 1959, only 33 percent of new construction under sec. 221 had been occupied by certified displacees, while 56 percent of rehabilitated housing had gone to displacees. Because whites as well as blacks were displaced, the proportions of minority participation in the 221 program were lower than the foregoing figures. In a number of cities with 221 programs, blacks could find 221 housing only in predominantly or all-black neighborhoods. Pittsburgh is a notable exception. *Housing*, pp. 95–99.

[160] 42 U.S.C. §§4601–4602; 4621–4638; 4621–4655 (1970).

[161] The National Commission on Urban Problems, *Building the American City*, p. 231.

[162] Ibid., p. 231.

Administration of Housing Programs on Native American Reservations

The Federal Government first became involved in a special program to provide housing for Native Americans in 1961 when the Public Housing Administration authorized the establishment of tribal housing authorities, thereby allowing for the construction of public housing on Indian reservations.[163] In 1962, PHA established the mutual-help program,[164] through which prospective Indian occupants of publicly-assisted housing could provide the labor needed for construction in exchange for the opportunity to purchase, rather than rent, the new housing provided. Then in 1965, the Bureau of Indian Affairs (BIA) of the Department of the Interior established a program [165] to provide funds for home rehabilitation, downpayments, and a limited home construction program for Native Americans who were unable to obtain housing assistance from other sources.

Despite Federal programs to improve Indian reservation housing, the majority of Native Americans continue to live in poor, and frequently deplorable, housing conditions. The Federal effort to improve reservation housing has been marred by insufficient funding, lack of coordination among Federal agencies having responsibilities affecting construction of such housing, and insensitivity to Indian cultural patterns and desires.[166]

According to the Housing Assistance Council, the Federal approach to Indian housing delivery, "has been characterized in various ways, from someone's bad dream to a deliberate effort to impede Indian housing development."[167] The fact that Native Americans who choose to remain on reservations are totally dependent on Federal assistance to secure decent housing underscores the seriousness of the Government's failure.

In many instances the public housing program has not been well adapted to rural Native American lifestyles, and it has rarely served Native American needs successfully. What adaptations in housing design and other features have been made have resulted more often from the demands of particularly vocal tribal representatives, rather than from an official assessment that the adaptations were reasonable and necessary.[168]

The activity of at least three Federal agencies is required to produce a single house on a reservation. According to the Housing Assistance Council:

> HUD has major responsibility for the planning, funding, and developing of Indian public housing, and this responsibility can extend to providing streets and some sanitation facilities; the Bureau of Indian Affairs is responsible for providing most access roads to Indian housing projects and for approving all site leases, as well as performing some preliminary site tests; and the Indian Health Service is responsible for providing most water and sanitation facilities. Additionally, HUD requires that all new projects receive "flood plain" clearance from the Army Corps of Engineers, an agency that has never championed the Indian cause; and the BIA, in collaboration with the National Park Service, is required under the revitalized antiquities act dating from 1906, to assure that new projects are not built on archaeological specimens. If these seemingly endless requirements and agencies fail to impede the development of a housing project, then the Department of Transportation enters the picture to approve the construction of new access roads, and to finance the improved roads program provided by the Bureau of Indian Affairs.
>
> Somewhere in this arrogance of power stands the tribal housing authority, striving to cope with the requirements of these numerous and distant federal agencies, but rarely able to exert the kind of coordinating influence that would assure the timely development of its housing projects.[169]

By 1969, the lack of coordination among these agencies had produced some serious situations that had begun to receive national attention. For example, new housing had been provided that lacked water and sanitation facilities or passable access roads, and serious faults in construction were found in a number of new homes.

These problems prompted HUD, BIA, and the Indian Health Service of the Department of Health,

[163] Marie C. Mcquire, Commissioner, Public Housing Administration, memorandum to Central Office Divisions and to Branch Heads, Regional Directors, "Low-Rent Housing for Indian Tribes on Indian Reservations," 1961, as reprinted in report of the U.S. Senate, Committee on Interior and Insular Affairs, *Indian Housing in the United States* (February 1975), pp. 213–15.

[164] Public Housing Administration, "PHA Mutual-Help Housing for Indians" (circular, Dec. 5, 1962) as reprinted in *Indian Housing in the United States*, p. 221.

[165] The Home Improvement Program. *Indian Housing in the United States*, p. 7.

[166] The Housing Assistance Council, "Toward an Indian Housing Delivery System" (1974) p. 3. See also *Indian Housing in the United States.*

[167] Ibid., p. 3.

[168] Housing Assistance Council, "Indian Housing. . .A Separate Concern" (Washington, D.C.: Nov. 1, 1974), p. 5.

[169] Ibid., pp. 3–4.

Education, and Welfare to enter into formal agreements[170] that spelled out the responsibilities of each agency with respect to providing reservation housing and established an objective of 8,000 units to be constructed or renovated in each of fiscal years 1970–74.[171] Despite these agreements, progress has been slow in eliminating poor housing conditions on reservations. The agreements failed to assign to one agency the responsibility of coordinating the activities of all agencies. Thus, coordination is still lacking. In addition, the Indian public housing program was affected by the moratorium on federally-assisted, lower-income housing programs issued by President Nixon in January 1973. Thus, the objectives of the 1969 tri-agency agreements have not been met.

In 1974, Congress for the first time authorized funds specifically earmarked for Indian housing.[172] Whether or not the desperate housing needs of Indians will be served well under the new authorization depends largely on how much effort HUD, BIA, and other Federal agencies exert to improve the coordination of their activities.[173]

The complexity of Native American land status has also hindered the development of adequate housing. For example, tribal trust land is tax exempt and cannot be mortgaged. Thus, banks are reluctant to make loans to Indians because adequate security is not available. Trust land is held collectively by the tribe, and individual members cannot sell or use it for purposes of which the tribe disapproves.[174]

For the most part, title to Native American land is held in trust by the Federal Government for use by an Indian tribe. As trustee of Native American land resources, however, the Federal Government has frequently acted contrary to Native American interests by accommodating the desires of whites to cultivate tribal trust land or to exploit gold, silver, timber, water, and oil resources located on reservations.[175]

Under the General Allotment Act of 1887,[176] tribal trust land could be allotted to individual members. However, instead of providing Native Americans an opportunity to own their own land to use, if desired, as security for a home mortgage or home improvement loan, allotment has resulted in the turning over of nearly two-thirds of the land to non-Native-American ownership.[177] Under allotment came taxation, in some instances, as well as the ability to sell property. The pitifully low income of most Native Americans forced many to sell their property, usually at very low prices.

Meeting 1968 Housing Production Goals

In order to achieve a goal of 26 million new and rehabilitated housing units by 1978, as called for in the Housing Act of 1968, an average of 2.6 million units must be produced each year. The 2.6 million level was achieved in 1971 and exceeded in 1972. Annual production of subsidized housing increased sharply beginning in 1968, reaching a peak of approximately 470,000 units in 1970 and 1971.

In the 235 and 236[178] programs alone, 655,923 units were produced between 1968 and December 1972. This figure almost exceeds the amount of federally-assisted housing produced for low- and moderate-income families during the 30 years from 1942 to 1972.[179] Thus, these programs, and a greatly expanded mobile home industry,[180] provided a substantial

[170] William H. Stewart, Acting Assistant Secretary for Health Scientific Affairs, Department of Health, Education, and Welfare (Mar. 17, 1969); Lawrence M. Cox, Assistant Secretary for Renewal and Housing Assistance, Department of Housing and Urban Development (Apr. 4, 1968); *Memorandum of Understanding: Provisions of Sanitation Facilities for Indian Housing*, as reprinted in *Indian Housing in the United States*, pp. 293–94. Emery Johnson, M.D., Director, Indian Health Service (May 8, 1969); T. W. Taylor, Commissioner, Bureau of Indian Affairs (May 15, 1969); L. M. Cox (May 26, 1969), *Memorandum of Understanding: Provisions of Water Supply and Sewerage Facilities*, as reprinted in *Indian Housing in the United States*, pp. 295–97.

[171] *Indian Housing in the United States*, p. 23.

[172] 88 Stat. 633, Title II, sec. 5(c) (1974).

[173] HUD's proposed regulations for Indian Housing Programs were published in the Federal Register on Sept. 19, 1975. The regulations include a new interdepartmental agreement which provides a "mechanism for coordination of assistance from the federal agencies." The agreement requires that representatives of IHA meet with representatives of HUD, IHS, BIA, and other involved agencies at the beginning of project development. The agencies are to agree upon a plan for coordination and establish a schedule of actions for the total project development period. Any deviations from the schedule must be justified in writing. 40 Fed. Reg. 43372–43402 (1975).

[174] Housing Assistance Council, "Indian Housing. . .A Separate Concern," p. 6.

[175] Ibid., p. 6.

[176] 25 U.S.C. §§331–358 (1970).

[177] Housing Assistance Council, "Indian Housing. . .A Separate Concern," p. 8. "In an 80-year period alone, the 'Indian' land base dwindled from 138 million acres to a mere 55 million. Two years ago (1972), according to Bureau of Indian Affairs' land inventory, trust lands totaled 50.4 million acres, several thousand acres less than the prior year. The erosion of the Indian land base continues despite federal promises to the contrary." Ibid., p. 6.

[178] For a description of these programs see section entitled "Housing and Urban Development Act of 1968," in this chapter.

[179] Arthur J. Mageda, "Housing Report/Major Programs Revised to Stress Community Control," *National Journal Reports*, Sept. 14, 1974, p. 1376.

[180] Mobile homes have become an increasingly important source of housing. In 1950, 63,100 mobile homes were shipped; in 1960, 103,700; in 1970, 401,190; in 1973, 566,900. Fifty percent of the households who occupied mobile homes in 1970 had incomes under $7,000. There is serious question, however, as to the quality of the mobile homes provided in terms of construction, durability, and safety. Congress was sufficiently concerned to include in the Housing and Community Development Act of 1974 special

Table 4.1

Housing Starts, 1968–74

(in thousands)

	Total units [1]	Federally-subsidized units [2]
1968	1,899.5	198.6
1969	1,944.3	232.0
1970	1,910.9	470.5
1971	2,622.0	471.0
1972	3,005.2	389.6
1973	2,657.6	280.8
1974	1,732.9	270.5

[1] Includes mobile home shipments.

[2] Includes federally-subsidized rehabilitation.

Source: U.S., Department of Housing and Urban Development, *Housing in the Seventies*, table 2, chap. 4, p. 86, and subsequent HUD data.

amount of housing for lower-income families. As the decade of the seventies began, it appeared that the Nation might actually achieve the 1968 housing goals, assuming the yearly production levels increased somewhat beyond the 1971 and 1972 levels.

Instead, housing production declined in 1973 and 1974 (table 4.1).[181] Major causes of the decline have been inflation, which has severely affected all facets of the housing industry, and the imposition of a moratorium on the principal, federally-subsidized housing programs in January 1973.[182] As a consequence, housing starts fell from 3 million in 1972 to approximately 1.7 million in 1974. Production of subsidized housing declined to 280,000 units in 1973 and 270,000 units in 1974. A total of 300,000 units were not provided as a result of the moratorium.[183]

In the face of strong public opposition to the moratorium, the administration released funds for farm labor housing in February 1973. Funds for the rural homeownership program were released in August 1973, in compliance with a Federal court order.[184] Suspension of the 235, 236, rent supplement, and conventional public housing programs was continued, however, following the President's announcement in September about the results of a study HUD had made of the suspended programs.[185]

HUD found the subsidized housing programs expensive, inequitable, and inefficient. HUD faulted the 236 program for its high cost and both 235 and 236 programs for high rates of foreclosure and other financial difficulties. The conventional public housing program was also faulted for high per-unit costs. Only the section 23 leased housing program and the Farmers Home Administration programs received any praise.[186]

All programs were found to be inadequate because of their failure to serve more than a handful of the total number of American families eligible for housing assistance. HUD stated that of the 16 million households with annual incomes of less than $5,000, 94 percent received no federally-subsidized housing aid. Only 1 of every 15 American families at any income level benefited directly from the $2.5 billion spent annually for housing programs. HUD asserted that tying Federal aid to new construction had caused this result. HUD also found a great disparity in the geographic distribution of the 235 program, with families in the South being five times more likely to obtain such housing than families living in the mid-Atlantic States.

Regardless of the administration's rationale for suspension of subsidized housing programs, the fact remains that its action has caused increased hardships for lower-income families. Because a much greater proportion of minority families are poor, and in need of Federal assistance to obtain decent housing, the impact of the moratorium has been clearly discriminatory in effect.

On October 17, 1975, the Ford Administration announced the release of $264.1 million in funds for reactivating a revised version of the section 235 mortgage subsidy program of the Housing Act of 1968. The revised program will be aimed at providing mortgage subsidies for families earning between $9,000 and $11,000 annually. Participants will be required to absorb between $1,500 and $2,000 in initial costs as compared with a minimum downpayment of $200 under the old section 235. Under the old program, interest costs above 1 percent were

provisions for the creation of Federal mobile home construction and safety standards.

[181] For subsidized housing production the decline began in 1972.

[182] The programs affected were secs. 235 and 236 housing, rent supplements, public housing, sec. 502 rural housing, and sec. 202 housing for the elderly.

[183] Kenneth R. Harney, "Commentary," *Housing and Urban Development Reporter*, vol. 2, no. 7 (Aug. 26, 1974), p. 360.

[184] Pealo v. Farmers Home Administration, 361 F. Supp. 1320 (D.D.C. 1973).

[185] Litigants contesting the suspension of the 235, 236, and rent supplement funds won their case at the district court level, Pennsylvania v. Lynn, 362 F. Supp. 1363 (D.D.C. 1973), but HUD appealed and the legality of the suspension was upheld by the court of appeals, 501 F.2d 848 (D.C. Cir. 1974).

[186] *Housing in the Seventies*, chap. 4.

subsidized by the Federal Government. Under the revised program the Government will only absorb the cost above 5 percent.[187]

The revised 235 homeownership program represents the abandonment by the administration of the concept of homeownership for low-income families. Henceforth homeownership assistance will be reserved for those whose income is not far below the median income. While the problems associated with the 235 program certainly justified a reconsideration of its standards and its administration, they can hardly justify its total abandonment as a vehicle to provide housing for low-income families. The idea that low-income families are incapable of managing and maintaining their own home is refuted by the success of millions of low-income homeowners. For example, 53 percent of white families having an income of under $5,000 own their own homes.[188]

Implications of the Housing and Community Development Act of 1974 for Lower-Income Housing Opportunities

Dispersal of Low- and Moderate-Income Housing.— The 1974 Housing and Community Development Act represents a significant departure from earlier housing legislation in that it conditions the receipt of HUD community development funding on the willingness of a community to provide low- and moderate-income housing within its boundaries. Thus, for example, a suburban locality that heretofore has excluded the development of such housing must now provide a plan for meeting lower-income housing needs if it desires to receive a community development block grant. Formerly, HUD permitted a locality to receive funds under HUD categorical grant programs while disregarding the need for lower-income housing in the locality.[189]

In taking this approach, Congress shied away from requiring metropolitan or regional plans for the dispersal of lower-income housing, or from requiring communities that ban lower-income housing to remove restrictive zoning and other barriers, taking its lesson, perhaps, from the defeat of proposed national land use legislation earlier in 1974.[190] One of the issues proponents of land use legislation hoped to address was the problem of lower-income housing concentration in central cities and older neighborhoods outside central cities and its exclusion from newer residential neighborhoods at the expanding fringes of metropolitan areas. Through land use planning techniques, it was felt that suburban areas could be opened to lower-income housing.

In embracing the "carrot and stick" approach in the 1974 act, however, Congress has provided some loopholes that place limitations on the ability of the new housing and community development program to achieve the economic and social integration objectives that Congress expressed in the act. One limitation is that communities can simply refuse to participate in the block grant program. At least two suburban jurisdictions, both located in the Chicago area, have indicated that they may not apply for community development funds because of the requirement to provide lower-income housing.[191]

Another problem lies in the method communities are required to use to assess low- and moderate-income housing needs. HUD regulations[192] provide that the needs of current residents for lower-income housing must be assessed, as well as those of persons employed as the economic base of the community expands. Suburban, upper-income, bedroom communities with a small existing and anticipated employment base may be able to avoid providing lower-income housing, while still qualifying for community block grant assistance.

Whether or not dispersal of lower-income minority families and families headed by women occurs under the section 8 program will also depend on the effect HUD regulations have on the location of housing to be made available to section 8 assistance recipients. Following the creation of the section 8 program, HUD issued new regulations[193] that govern, among other things, the selection of sites for newly-constructed or substantially-rehabilitated housing for assistance payment recipients. These regulations provide essentially the same site selection standards as those HUD issued in 1972.[194] One weakness, however, is that the new standards do not cover the location of existing housing offered by

[187] *Washington Post*, Oct. 18, 1975, p. A1.

[188] See table 4.12.

[189] HUD's former categorical grant community development programs such as grants for water and sewer facilities, open space projects and urban renewal were consolidated by the 1974 act into a single community development block grant program, which permits localities great flexibility in carrying on a wide range of community development activities.

[190] A bill to establish a national land use policy (The National Land Use Bill) died in the House of Representatives, June 11, 1974, *Housing and Development Reporter* vol. 2, no. 2 (June 17, 1974), p. 51.

[191] Berwyn and Cicero, Ill.

[192] 39 Fed. Reg. 40144 (1974).

[193] 39 Fed. Reg. 45132 (1974) (substantial rehabilitation). 39 Fed. Reg. 45169 (1974) (new construction).

[194] 24 C.F.R. §§200.700–200.710 (1974).

owners to families certified as eligible to participate in the section 8 program.[195] The reason for this exemption is that, in localities which intend to use the existing housing supply, eligible lower-income families may find suitable housing on their own or apply for assistance to pay the rent for the housing they currently occupy. Thus, with respect to the utilization of existing housing, which HUD favors, the extent of dispersal of lower-income families depends entirely on the initiative of these families and the response of owners who have suitable housing to offer.

One feature, for which HUD has made administrative provision in the existing housing part of the section 8 program, may work against dispersal of lower-income families outside low-income areas. HUD offers a "shopper's incentive"[196] that is designed to encourage assisted families to "shop around" and to seek units that provide acceptable housing at lower cost than the fair market rents set by HUD for existing rental housing in the locality. When an assisted family is able to find such a unit, HUD will share with the family the difference between the fair market rent[197] and the actual rental amount charged for that unit, thereby reducing the amount of the contribution towards rent which the assisted family must pay.

The question that arises relates to the location of the cheaper housing. If it is widely dispersed throughout a locality, some dispersal of lower-income minority and female-headed families may occur. If it exists largely in low-income areas or changing neighborhoods,[198] the shopper's incentive may act to encourage such families not to choose housing outside these areas or neighborhoods.

Local and Federal Responsibility for Program Planning and Evaluation.— A further problem may arise in the planning, review, and evaluation of community development block grant applications. In designing the 1974 Housing and Community Development Act, Congress shifted the major responsibility for community development program content and planning to officials and citizens at the local level. HUD can disapprove a community's plan only if it is "plainly inconsistent" with the other data available to HUD pertaining to development and housing needs in that community, if the activities to be undertaken are "plainly inappropriate" to meet the locality's identified needs and objectives, or if the plan does not comply in some other aspect with the requirements of the 1974 act or other applicable laws (including Title VIII, Title VI, and Executive Order 11063).[199] HUD must make findings on the acceptability of proposed community development and housing plans within 75 days. If approval or disapproval is not given within this period, the application is automatically approved.[200]

In order to meet time constraints and evaluate applications effectively, HUD has, among other things, instructed its field equal opportunity staff to develop profiles of housing and community development needs of minorities and women and other equal opportunity issues for each of the localities served by each field office.[201] It is hoped through this process that field staff will become better informed of and more sensitive to local conditions and have ready access to the type of information needed to perform reviews quickly. Recipient performance will also be evaluated by HUD, with reliance placed largely on the recipient's annual performance report. (The recipient is required by HUD regulations[202] to provide specific data on the ways in which the community development and housing programs have addressed equal opportunity requirements and goals.)

It is too early to determine whether reliance on local initiative in the area of planning and HUD's new procedures for application review and program monitoring will result in better programming to meet the needs of lower-income minorities and women. In the past, local inattentiveness to equal opportunity issues and HUD's failure to correct poor programming have resulted too often in the perpetuation of gross inequities for minorities whose welfare is affected by HUD programs.

New Income Eligibility and Minimum Rent Requirements.— The 1974 act makes all families with incomes less than 80 percent of the median income in a locality eligible for section 8 assistance or for low-

[195] 40 Fed. Reg. 3734 (1975).
[196] 40 Fed. Reg. 3738 (1975).
[197] HUD has pegged the fair market rent for a particular unit size and type as the amount of rent paid for at least half of the units of this size and type in a given geographical area. 40 Fed. Reg. 14502 (1975).
[198] Traditionally, a changing neighborhood has been defined as one in which the race of the residents is turning from predominantly white to predominantly black or other minority race.
[199] 88 Stat. 633, §104(c) (1974).
[200] 88 Stat. 633, §104(b) (1974).
[201] Gloria E. A. Toote, Assistant Secretary for Equal Opportunity, memorandum to HUD Assistant Regional Administrators for Equal Opportunity (Dec. 19, 1974).
[202] 39 Fed. Reg. 40149 (1974).

rent public housing and sets minimum rents in both programs.[203] These provisions may adversely affect the lowest-income families. A new provision in the public housing program that removes income limits on continued occupancy could have the same consequences if the total supply of low-income housing is not increased. Because a larger proportion of all minority families and families headed by women, especially minority women, fall in the lowest-income category,[204] these families may suffer most from the effect of these provisions.

With respect to the income eligibility standard, Congress stipulated that at least 30 percent of the families assisted under section 8, and 20 percent assisted through the public housing program, must have incomes 50 percent or less of the median income in a locality.[205] However, given the limited amount of funding for these programs, it will be impossible to serve all lower-income housing needs. Thus, there is no guarantee that the 30 percent provision will do anything more than permit owners or developers participating in the section 8 program and local public housing authorities to "cream" the top levels of the lower-income sector, leaving the poorest families to fend for themselves.[206]

The new minimum rent requirements, which virtually abolish the equitable rent-to-income ratios established under section 213(a) of the Housing Act of 1969, [207] will cause severe hardships for very poor families, who often do not have any funds available for housing. Under the new requirement, these families will have to pay rental expenses from already meager resources needed to pay for food, clothing, medical care, and other essentials.[208]

Other Potential Problems.— The fair market rents that HUD has established for the section 8 program may be too low for section 8 to be attractive to owners or developers. The 1974 act provides for flexibility in determining the level of rent needed for a particular unit, by allowing in special cases for an upward adjustment to 110 percent—and in rare instances, 120 percent—of the fair market rent figure established for units of the same size and type.[209] HUD contends that its fair market rent determinations are equitable and apparently believes that the upward adjustment provision will take care of any problems that might arise. Other groups, such as the National Association of Housing and Redevelopment Officials, the National Association of Home Builders, and the National Committee Against Discrimination in Housing, have disputed HUD's contention.[210]

There is also concern that developers may not be able to secure financing to construct new units for section 8 assistance recipients. Tax-exempt bond financing provided a large share of the money to finance construction under the former section 23 leased housing program and is expected to be an important source in the section 8 program. Bond rating services have recently indicated a disenchantment with State-backed "moral obligation" bonds on which State housing finance agencies have depended to provide funds for lower-income housing construction. Proliferation of such bonds and lack of Federal subsidy funds were cited as causes of the change in attitude.[211] HUD expects State housing finance agencies to play a significant role in the section 8 new construction program. Nevertheless, financing problems could seriously limit their ability to participate.

Implementation of Fair Housing Requirements

Executive Order 11063 of 1962

Aside from the limitation of Executive Order 11063 coverage to federally-assisted housing, the principal weakness of the order lay in its enforcement by Federal administrators.

First, FHA under the order exempted one- and two-family, owner-occupied dwellings.[212] Secondly, Federal agencies did not adopt an affirmative program to prevent discrimination in federally-assisted housing. Instead, reliance was placed on the complaint process as the principal means through which compliance would be achieved.

Builders and owners of housing assisted through agreements or contracts signed after November 20, 1962, were required to certify that they would not discriminate against prospective tenants or owners

[203] 42 U.S.C.A. §§1437a(1), 1437f(c)(3) (1975).
[204] See note 402, for comparative data and also note 18, this chapter.
[205] 42 U.S.C.A. §§1437a, 1437f(c)(7) (1975).
[206] Housing Assistance Council, "The Housing and Community Development Act of 1974: Implications for Rural America" (Washington, D.C.: 1974), p. 13.
[207] See note 85.
[208] Housing Assistance Council, "The Housing and Community Development Act of 1974," p. 20.
[209] 42 U.S.C.A. §1437f(c)(1) (1975).
[210] *Housing and Development Reporter,* vol. 2, no. 13 (Nov. 18, 1974), p. 638.
[211] Ibid., vol. 1, no. 11 (Oct. 3, 1973), p. AA-1.
[212] U.S., Commission on Civil Rights, *Federal Civil Rights Enforcement Effort* (1971), p. 155 (cited hereafter as *Federal Enforcement Effort* (1971)). This exemption was removed in June 1969.

on the basis of race, creed, color, or national origin.[213] However, no followup procedures were implemented to ensure that these certifications were actually being complied with, unless a complaint was received with respect to the practices of a particular builder or owner.

Builders and owners of housing under agreement or contract prior to November 20, 1962, were affected by the order only if a complaint was filed against them. Then the Federal Government would attempt to resolve the complaint through the exercise of its "good offices."[214] In such cases, if remedies failed, the Federal Government was empowered to litigate the case. Not in a single instance, however, was litigation pursued.[215]

With respect to public housing, the Executive order had somewhat greater impact in changing the way the program was being operated. Because of the order, LHAs in a small number of instances made concerted efforts to locate public housing projects outside areas of minority concentration in order to provide minority applicants a broader range of housing opportunities.

With respect to the selection of public housing tenants, LHAs that had, prior to the Executive order, assigned tenants on a racially-segregated basis, were required to establish a new plan for selection that permitted applicants a free choice in the selection of a unit, regardless of its location in a white- or nonwhite-occupied project. As in the case of public schools, freedom of choice proved ineffective in producing open occupancy in public housing.

The principal defect of the new policy was that it placed the burden to desegregate on the person least able to accomplish the goal; i.e., the individual applicant who was to make a "free choice" in a community in which segregated housing patterns were frequently traditional. HUD found that in such situations, "for various reasons such as the mores of the community, fear of reprisals, types of neighborhoods, inducement by local authority staff... .such freedom of choice plans. . .did not provide applicants with actual freedom of access to, or full availability of, housing in all projects and locations."[216]

Administration of Title VI of the Civil Rights Act of 1964

Insofar as Federal housing programs are concerned, early Title VI enforcement had its greatest impact in public housing. Federal tenant selection policies and policies relating to the selection of locations for public housing projects were strengthened to promote open occupancy and the location of public housing outside areas of minority concentration. In tenant selection, a modified freedom-of-choice policy[217] was adopted, and is still in effect, whereby an LHA could permit applicants to exercise up to three choices in the selection of a unit.[218] If there was a suitable vacancy in more than one location, the applicant was to be offered a unit in the project that contained the highest number of vacancies. At the time the new policy was first implemented, white-occupied projects frequently had the highest number of vacancies, whereas the public housing applicant workload had grown more heavily black. Thus, the new policy anticipated that some mixed occupancy would occur if the applicant's choice of units were restricted to those in projects with the highest vacancy rates.

LHAs were required to abolish dual waiting lists that had been maintained by race and to create a unified waiting list for all applicants based on the date and time of application. Enforcement of the new tenant selection plans proved successful in producing integrated occupancy patterns in a number of instances, particularly in smaller towns and cities in which the public housing workload included a good number of white as well as minority families, and in which local housing authority officials took steps to implement the plans aggressively. In cities with large minority populations, however, segregated occupancy patterns in public housing persist. In many such cities, the public housing workload is largely nonwhite, making substantially integrated occupancy impossible to achieve in all projects.

For site selection, the requirement became that a local housing authority could not utilize criteria or methods of administration in the selection of locations for public housing that had the effect of subjecting persons to discrimination because of their

[213] §101, 3 C.F.R. 652 (1959–1963). Early regulations adopted pursuant to the order are not available in manual form. They may be obtainable through HUD archives. See *Federal Enforcement Effort* (1971), pp. 155–56.

[214] §102, 3 C.F.R. (1959–1963 Comp.). See *Federal Enforcement Effort* (1971), p. 140.

[215] *Federal Enforcement Effort* (1971), p. 140.

[216] U.S., Department of Housing and Urban Development, "Statement of the Basis for Low-Rent Housing Manual Sec. 102, exh. 2, 'Requirements for administration of low-rent housing programs under Title VI of the Civil Rights Act of 1964'," July 1967.

[217] 24 C.F.R. §1.4(b)(2)(ii) (1974).

[218] U.S., Department of Housing and Urban Development, (Handbook 7401.1) ch. 9, sec. 1, app. 2.

race, color, or national origin, or of "impairing accomplishment of the objectives of the program. . .as respect to persons of a particular race, color, or national origin.[219] Sites located only in areas of minority concentration were *prima facie* unacceptable because they denied minorities an opportunity to locate outside areas of minority concentration. If such sites were selected by the local housing authority, HUD required that the LHA select alternative or additional sites, so as to provide a more balanced distribution of the proposed housing, or factually substantiate that no acceptable sites were available outside areas of racial concentration.

This regulation represented a substantial step forward in efforts to change long-established practices of local housing authorities and promote new, nonsegregated housing opportunities for lower-income minorities throughout a community. Beyond this, the regulation went to the *results* of site-selection criteria, quite apart from local authority intent either to promote or discourage the development of public housing on a "balanced distribution" basis. The principal weakness of the new policy was that, in effect, it permitted waiver of the nondiscrimination requirement if the LHA could show that no sites with costs under the cost acquisition limits were available outside racially-concentrated areas, that proper rezoning could not be obtained from the city for an acceptable site outside these areas, or that approval had been denied by local officials of all acceptable sites in white areas.[220]

Thus, cost, zoning, and local political review, which lie at the heart of the constraints LHAs have faced, were singled out by Federal nondiscrimination regulations as satisfactory reasons for an LHA's failure to achieve nondiscriminatory site selection. As long as an LHA was provided with these formidable excuses, the inevitable result in many instances was the perpetuation of segregation through public housing site location.[221]

Title VIII of the Civil Rights Act of 1968

Under the affirmative mandate and expanded coverage of Title VIII, Federal activity to assure equal opportunity in housing for minorities and, more recently, for women has increased substantially. Despite all the activity, success has been limited, due largely to intra- and inter-agency disagreements over policy, lack of cooperation, inadequate regulations, temporizing, insufficient staff, and lack of commitment. Thus, the Federal effort to achieve a society in which minorities and women have full access to the housing supply, on a nonsegregated basis, has been severely hampered.

Department of Housing and Urban Development

HUD has primary responsibility for Title VIII enforcement relative to the processing of complaints and coordination of the overall fair housing efforts of other Federal agencies. HUD efforts have so far had minimal impact in curbing housing discrimination.[222]

HUD's processing of Title VIII complaints is frequently slow and negotiations are protracted. Because HUD can only negotiate and conciliate complaints, those cases in which HUD is not successful must be referred to the Department of Justice for further review and action. Lack of sufficient equal opportunity staff and slow processing have resulted in a substantial backlog in complaints. Only recently has HUD made a concerted effort to reduce this backlog.

HUD refers Title VIII complaints to 28 States and 16 localities that have fair housing enforcement powers substantially equivalent to those given to HUD under Title VIII.[223] Frequently State and local fair housing agency negotiations are more successful than HUD's, possibly because many of these agencies have greater enforcement powers. However, a number of these agencies have a substantial complaint backlog also.[224]

HUD has mounted several media campaigns to acquaint people with their rights under Title VIII and to solicit complaints, but many minorities have not been reached, in particular persons of Spanish origin, Asian Americans, and Native Americans.[225] The U.S. Commission on Civil Rights believes that a principal weakness in HUD's fair housing program is its failure to divide its available resources between processing individual complaints and conducting community-wide investigations to identify patterns of housing discrimination and to review compliance

[219] 24 C.F.R. §1.4(b)(2)(1) (1972).
[220] Stephen T. Buehl, Norman D. Peel, and Garth E. Pickett, "Racial Discrimination in Public Housing Site Selection," *Stanford Law Review*, vol. 23 (Nov. 1970), p. 73.
[221] Ibid., p. 116.
[222] U.S., Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974*, vol. II, "To Provide. . .For Fair Housing" (1974), p. 328. (Cited hereafter as *Federal Enforcement Effort (1974)*).
[223] Ibid., p. 42.
[224] Ibid., p. 43.
[225] Ibid., pp. 32–33.

with all equal opportunity requirements in HUD programs.[226] From July 1972, when HUD first acknowledged the necessity for community-wide investigations, to November 1974, only four community-wide investigations had been completed.[227]

Requirement for Site Selection and Affirmative Marketing.— In 1972 HUD issued two sets of standards designed to create new nonsegregated housing opportunities for minority beneficiaries of all HUD housing programs. New project selection criteria[228] were developed to provide a uniform standard governing the selection of locations for most subsidized housing for low- and moderate-income families. Affirmative marketing requirements[229] were developed to govern the marketing of all FHA-subsidized and insured housing.

Project Selection Criteria.— The development of project selection criteria came in response to important court decisions[230] and was intended to implement more fully the mandate of Title VI as well as the more recent mandate of Title VIII. Several studies pointed up the urgent need for site selection standards that would prevent the continuing concentration of low-income and minority families resulting from federally-sponsored housing programs. In its 1971 report on the racial and ethnic impact of the 235 program,[231] the U.S. Commission on Civil Rights found that the traditional pattern of separate and unequal housing markets for white and minority families was being perpetuated. The Commission studied the program in four cities and found that new 235 housing was in most instances located in suburban areas and nearly all was being purchased by white families. To the extent minorities purchased new 235 housing, the housing was located in subdivisions reserved exclusively for minority residence. By contrast, in all four metropolitan areas, most of the existing 235 housing was located in ghetto areas or changing neighborhoods in the central city and nearly all was being purchased by minority families. Minority 235 buyers tended to purchase housing that was older and less expensive than the housing purchased by their white counterparts.[232]

The 1972 project selection criteria provided a rating system by which all proposed projects would be evaluated for their potential effect on minority patterns of residence. Thus, two of six criteria were designed to increase housing choices for minorities and low-income families outside of minority and low-income areas. The development of subsidized housing in minority areas was not acceptable unless the area was part of an official development plan, such as an urban renewal project, or it could be shown that an overriding need existed for housing in a minority area that could not be met by other new and existing housing located elsewhere.[233]

The potential impact of the project selection criteria was reduced substantially because the programs to which it applied were suspended in January 1973, less than a year after the criteria were released in final form. The actual impact of these criteria is also unknown. HUD has not made a comprehensive study of the requirements' effect on selection of locations for the relatively small number of projects to which the requirements did apply. Undoubtedly, however, enforcement of the requirements themselves or acceptance of the goals they were meant to serve has changed somewhat the way in which subsidized housing for minorities was traditionally located in urban centers. One small study [234] conducted for HUD showed that of 14 section 236 projects studied in metropolitan Washington, 5 were located in predominantly black areas of the District of Columbia and 9 were located in predominantly white areas of suburban Maryland and Virginia. All but one of the nine suburban projects had 15 percent or more black occupancy. Of the black occupants, 21 percent moved from the central city.

A second study[235] showed that 18 percent of the blacks who moved into 235 and 236 housing constructed within the metropolitan areas of HUD's far western, southwestern, and middle-Atlantic regions moved from central cities to suburban areas. These figures compare with a national rate of about 8 percent for black movement to the suburbs between 1960 and 1970. The findings relative to the 235 program do not necessarily contradict the findings of the 235 study conducted by the U.S. Commission on Civil Rights. The HUD-sponsored studies did not give data indicating whether or not the suburban

[226] Ibid., p. 329.
[227] Ibid., pp. 49–50.
[228] 24 C.F.R. §2000.700 (1973). These regulations were issued pursuant to Exec. Order 11063 and Title VI, as well as Title VIII.
[229] 24 C.F.R. §200.600 (1973). These regulations were issued pursuant to Exec. Order 11063 as well as Title VIII.
[230] Gautreaux v. Chicago Housing Authority, discussed below; Shannon v. Department of Housing and Urban Development, 305 F. Supp. 205 (E.D. Pa. 1969), *aff'd*, 436 F.2d 809 (3d Cir. 1970).
[231] *Homeownership for Lower Income Families*, (1971). (Cited hereafter as *Homeownership.)*
[232] *Homeownership*, p. 89.
[233] An assertion of overriding need had to be factually substantiated to the satisfaction of HUD.
[234] *Housing in the Seventies*, p. 103.
[235] Ibid., p. 104.

neighborhoods to which minority 235 buyers moved were integrated or segregated.

Affirmative Marketing Requirements.— To promote greater housing choice by tenants and home buyers in all FHA housing programs, HUD issued the affirmative fair housing marketing regulations in February 1972. The regulations state that "it is the policy of [HUD] to administer its FHA housing programs affirmatively so as to achieve a condition in which individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, religion or national origin." [236] Each applicant for participation in FHA's subsidized and unsubsidized housing programs is required to pursue affirmative marketing policies in soliciting buyers and tenants, in determining their eligibility, and in concluding sales and rental transactions. Builders and developers must prepare a plan which provides for affirmative outreach to persons who might not ordinarily apply for the housing to be covered by the plan. In addition, sales and management personnel must be instructed regarding nondiscrimination and fair housing policies. Staff engaged in sales and management must be recruited on a nondiscriminatory basis from both majority and minority groups.[237]

The major weakness of the regulations is that they do not apply to existing FHA-insured or subsidized projects but only to those projects for which builders and sponsors made application following the effective date of the regulations.[238] Furthermore, the regulations apply only to the HUD-subsidized or insured housing constructed by the builder or developer and not to other privately-financed housing he or she markets.[239] Another problem has occurred because of the uneven administration of the requirements in the various HUD area offices. Experience has shown that one area office may assess the adequacy of an affirmative marketing plan differently from another office.

As part of the plan HUD requires that the projected racial mixture of the occupants must be estimated.[240] The U.S. Commission on Civil Rights found, however, that HUD has not provided adequate criteria by which anticipated results might be set.[241] In addition, monitoring the enforcement of HUD-approved plans has been uneven. Only rarely have onsite reviews been made to determine how affirmative marketing plans are working. However, of eight builders reviewed, six were found out of compliance with their plans, showing the need for better monitoring.[242] Rather belatedly, HUD has begun to take steps to determine what kinds of affirmative marketing plans have been effective. HUD hopes to provide a manual that will give much needed guidance in the development of strong and more uniform affirmative marketing plans.

In addition to the implementation of affirmative marketing requirements with respect to individual builders and developers, HUD has encouraged the development of industry-wide affirmative marketing plans that would involve most builders in a given metropolitan area.[243] In Dallas, 35 major builders agreed in November 1972 to implement a plan that covers all housing produced by the participating builders and provides for an advertising campaign that is much stronger than that required by the affirmative marketing regulations. A similar plan has been developed by major builders in San Diego. [244]

The overall impact of the affirmative marketing regulations has not been assessed by HUD. However, HUD believes that racially mixed occupancy has occurred to a significant extent in housing covered by the requirements. In April 1974, the *Chicago Tribune* presented an analysis of occupancy in 34 projects constructed under the 236 program.[245] It was found that a stable mixture can be achieved of black and white tenants and tenants of varying income levels. Moreover, well-integrated occupancy can be achieved regardless of the location of the projects, whether in the central city, suburbs, or small towns. The success in these projects is attributed to careful design and management of the project, rather than to affirmative marketing techniques, which would not have been required of those builders who received approval for projects prior to February 1972. In addition, the small number of three and four bedroom apartments provided limited the number of large families, and the screening of

[236] 24 C.F.R. §200.610 (1975). These regulations also now apply to builders and developers of newly-constructed or substantially rehabilitated housing to be offered to families assisted under section 8.
[237] 24 C.F.R. §200.620 (1975).
[238] 24 C.F.R. §200.615 (1975).
[239] Ibid.
[240] Applicants must complete a form, supplied by HUD, on which the projected mixture must be indicated.
[241] *Federal Enforcement Effort (1974)*, p. 85.
[242] Ibid., p. 67.
[243] Ibid., p. 80.
[244] Ibid., p. 83.
[245] "How to Make Subsidized, Integrated Housing Work," Apr. 7, 1974.

applicants limited the number of families receiving public assistance and fatherless families.

Title VIII Enforcement by Other Federal Agencies

The efforts of most other Federal agencies to promote equal housing opportunities in compliance with Title VIII have for the most part had only minor impact. A notable exception is the Department of Justice, which has filed a number of Title VIII suits and obtained favorable rulings in nearly every instance. The actions of these Federal agencies show a distinct unwillingness to establish and enforce the kinds of requirements needed to eliminate discrimination in housing.

VA and FmHA.— The Veterans Administration (VA) has provided a Title VIII complaint-processing procedure and since 1968 has been developing and expanding a program to collect data on minority participation in VA's acquired property, loan guaranty, and direct loan programs. However, VA requires only a simple certification of nondiscrimination from builders, developers, lenders, and appraisers who participate in VA housing programs. Although VA has proposed affirmative marketing regulations[246] similar to those of HUD, they have not been issued in final form.

The need for more stringent requirements in VA programs is evident from data on minority participation. In the acquired properties program, for example, although a substantial number of minorities have purchased homes, these homes have been mostly in minority neighborhoods.[247]

VA has lagged well behind FHA[248] in dealing with problems of sex discrimination in VA housing programs. For example, VA had a long-standing policy under which pregnancy was a basis for discounting the wife's income in establishing a family's income eligibility for a VA home loan. In 1973, the practices of some VA home lenders came to light; women were being required to submit affidavits or make promises about their current or future use of birth control methods as a condition to giving credit to their income.[249] In February 1973, VA stated that it neither condoned nor required this practice,[250] but VA did not revise its basically restrictive policy on pregnancy and require a full counting of the wife's income until later that year.[251] VA now requires that full credit be given to the wife's income, but towards the end of 1974 had no reliable data to show how well the new policy was being implemented.

The Farmers Home Administration (FmHA) has issued affirmative marketing requirements.[252] However, builders and managers of FmHA housing are not asked to develop written plans indicating what steps will be taken to comply with the requirements. Without such plans, affirmative marketing requirements are virtually meaningless. In 1969, FmHA set goals to increase the relatively small number of minorities who participate in rural housing programs. Since that time the percentage of minorities participating has increased somewhat each year, but greater efforts are needed to assure minorities equality of access to and benefit from FmHA programs.

Federal Financial Regulatory Agencies.— Since passage of Title VIII, HUD and public interest groups have pressured the Federal financial regulatory agencies to use their powers to bring the mortgage lending practices of the banks and building and loan associations they regulate into full compliance with Title VIII nondiscrimination requirements. The potential impact of such action is great inasmuch as regulatory agencies promulgate far-reaching rules, require submission of various reports, and maintain a network of Federal examiners who routinely visit and examine regulated institutions. These agencies also have at their disposal effective sanctions, such as cease and desist orders, to assure that lending practices are in compliance with all applicable Federal laws and policies and in accordance with sound business practices.

Despite their clear responsibility to ensure that Title VIII is enforced, the Federal financial regulatory agencies have failed to take strong steps to require compliance by their regulatees.

All that the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Reserve System have done is to issue policy statements requiring regulatees to display an equal

[246] 37 Fed. Reg. 17217 (1972).
[247] *Federal Enforcement Effort (1974)*, p. 245.
[248] FHA revised its policies in the 1960s so that, under normal circumstances, the wife's income would be fully counted.
[249] Rohde, "Ending Sexism," p. 8.
[250] U.S., Veterans Administration, Department of Veteran's Benefits, Information Bulletin 26-73-1, "Wives' Income" (Feb. 2, 1973).
[251] U.S., Veterans Administration, Department of Veteran's Benefits, Manual M26-1, Change 42 (July 18, 1973).
[252] 7 C.F.R. §1822.381 *et seq.* (1975).

housing lender poster and to state in advertisements that loans are made on a nondiscriminatory basis.[253] Although not entirely convinced that discrimination occurs in mortgage lending, these agencies together with the Federal Home Loan Bank Board also instituted an experimental data collection program in 18 metropolitan areas through which data were recorded with respect to the race of applicants for mortgage loans.[254]

On May 6, 1975, the results of the Federal Reserve-Federal Deposit Insurance Corporation survey were announced. [255] Redlining[256] was the specific practice to which this study was directed and FRS found that the data "must be considered marginal at best" for purposes of attempting to identify this practice.[257] The survey was afflicted with a number of limitations and deficiencies in the data. For example, the period under review was atypical because of very low mortgage activity. Similarly, a potentially serious error occurred with respect to recording of zip codes.[258] It is apparent that FRS–FDIC data collection techniques must be improved considerably if meaningful information is to be obtained relative to discriminatory practices in mortgage lending.

Under considerable pressure from public interest groups, the Federal National Mortgage Association (FNMA) followed the FHA lead and revised property underwriting guidelines[259] it had developed shortly after the establishment of a secondary market for conventional mortgages made by mortgage bankers and commercial banks in 1970. These guidelines, which originally included a provision that generally only one-half of a wife's income should be counted, were changed to recommend counting the full income of the wife. There is little data to show how well the stated policy has been implemented because FNMA has not established a system of data analysis on loans accepted or rejected for purchase.

The Federal Home Loan Bank Board has issued regulations[260] setting forth its nondiscriminatory policy that deal specifically with the practice of discounting the wife's income as well as with other discriminatory practices and advise member institutions to examine their underwriting policies to ensure that they are not unintentionally discriminatory in effect. These institutions are not required, however, to take positive action to end discriminatory practices.[261]

The Housing and Community Development Act of 1974 requires that full credit be given the wife's income in all federally-related mortgage transactions.[262] The agencies involved are to establish their own procedures for carrying out this section of the act and the Justice Department is to coordinate the activities of the agencies. Although some of the Federal regulatory agencies have not issued regulations to implement the requirements of the new law, other agencies (e.g., FHA) were in compliance with section 808(a) and simply changed their handbook to reflect their compliance.[263]

On October 16, 1975, the Federal Reserve Board issued regulations, effective October 28, 1975, to implement the Equal Credit Opportunity Act,[264] which pertains to mortgage as well as other credit transactions. If strongly enforced, the act could help eliminate sex discrimination in mortgage lending practices. The regulations prohibit the use of sex or marital status in any credit "scoring" system.[265] Concerted action is needed to eliminate practices that are known to persist despite the prohibitions of Title VIII. A recent study of mortgage lending practices in Hartford, Connecticut, by the U.S. Commission on Civil Rights found that Title VIII has not eliminated racially discriminatory practices. Rather, it is apparent that such practices "have gone underground."[266] Racially discriminatory policies are now rarely espoused openly, but the traditional banking attitudes and perceptions about minorities

[253] *Federal Enforcement Effort (1974)*, pp. 147–48.

[254] The program ran from June 1 through November 30, 1974. Three different reporting forms were used (Forms A, B and C). The forms used in some cities required information relative to applicants' age, sex, marital status, and certain financial information in addition to racial data.

[255] FRS–FDIC used the form B approach which recorded only racial data. Results of the COC–FHLBB study, utilizing forms A and C, had not been released as of June 13, 1975.

[256] Redlining is defined by FRS–FDIC as "a process whereby financial institutions avoid making any mortgage and home improvement loans in a particular geographic area." George W. Mitchell, Vice Chairman, Board of Governors of the Federal Reserve System, letter to Senator William Proxmire, May 6, 1975, enclosure, p. 3.

[257] Ibid., p. 10.

[258] Zip code was defined for purposes of the study as "the address of the property which was the subject of the application. Because initial instructions to institutions completing form B did not comply with this definition, a significant number of errors could have been made. FRS indicates that it is impossible to determine the actual extent of error. Ibid., p. 5.

[259] FNMA, Conventional Selling Contract Supplement, sec. 311.03(D) Dec. 15, 1971.

[260] 12 C.F.R. §531.8 (1975).

[261] *Federal Enforcement Effort (1974)*, p. 151.

[262] 88 Stat. 633, §808(a) (1974).

[263] Michael Wells, Program Analyst, U.S. Department of Housing and Urban Development, telephone interview, Oct. 24, 1975.

[264] 88 Stat. 1500, Title V (1974).

[265] 40 Fed. Reg. 49298–49310 (Oct. 22, 1975).

[266] *Mortgage Money*, p. 66.

persist. With respect to women homeseekers, the extension of Title VIII protection is so recent that blatant discrimination against them most likely continues in most mortgage lending institutions.

General Services Administration.— The record of the General Services Administration (GSA) shows that it has used little of its power to promote fair housing. The U.S. Commission on Civil Rights found that "GSA's responsibilities provide it with leverage to ensure that fair housing becomes a reality in all communities in which Federal agencies locate." [267] However, fair housing considerations and the need for low- and moderate-income housing are not of active concern to GSA, despite the HUD–GSA memorandum of understanding,[268] in which GSA agreed to solicit HUD advice on fair housing concerns in communities selected as potential sites for Federal installations. Because of deficiencies in the procedures for implementing the memorandum, its enforcement has been poor.[269] GSA has not always asked HUD to provide information concerning fair housing in the communities under consideration for Federal space. At times GSA has simply asked HUD's concurrence with a GSA assessment. HUD reports have generally been poor, but GSA has not questioned HUD's execution of its duties under the memorandum. [270]

In only two instances has HUD found that a lack of low- and moderate-income housing rendered a proposed Federal agency site unacceptable and has called for the development of an affirmative action plan to provide the housing needed. Such a plan is required by the memorandum if HUD finds that housing opportunities for minorities and lower-income families are restricted in the community. In one instance, GSA has disagreed with a portion of HUD's findings about lower-income housing need;[271] and, in the other, GSA has not made a final determination of the extent of the need for low- and moderate-income housing in connection with the development of the Federal facility.[272]

Relocating agencies have not pressured GSA to carry out its fair housing responsibilities, thereby failing to fulfill an important aspect of their own fair housing responsibilities. As a result, the need for low- and moderate-income housing and for open housing in communities in which Federal agencies relocate receives minor emphasis among the many considerations relative to the selection of Federal agency sites.

The Department of Defense.— The Department of Defense (DOD) requires that all off-base housing sold or rented to military personnel must be available on a nondiscriminatory basis.[273] Beyond this requirement, DOD takes little formal action to promote housing opportunities for minority and female service persons. Military housing coordinators usually solve cases of discrimination by simply removing from their housing lists the names of agencies or persons who are known to discriminate against minorities or women in the sale or rental of housing.[274] If a complaint is conciliated, DOD regulations only require the respondent to sign a nondiscrimination certification. DOD does not monitor the respondent's subsequent performance.[275] HUD has attempted on occasion to work with DOD to coordinate Title VIII enforcement activities. For the most part, however, DOD has failed to respond to HUD's limited initiatives.[276]

Department of Justice.— By November 1974, the Department of Justice (DOJ) had instituted over 200 fair housing suits against more than 500 defendants.[277] The record of success in these cases is impressive. Most of them relate to a pattern or practice of discrimination. A small number of cases consist of single complaints that HUD was unable to conciliate successfully and hence referred to DOJ for litigation.

This record notwithstanding, DOJ has been slow to institute Title VIII challenges against exclusionary land use practices through which communities have prevented the construction of low- and moderate-income housing. It is apparent that the Department will only consider filing cases in which racial discrimination is clearly a substantial factor among the issues involved.

[267] *Federal Enforcement Effort (1974),* p. 271.

[268] Memorandum of Understanding between the Department of Housing and Urban Development and the General Services Administration concerning low- and moderate-income housing, signed by Robert L. Kunzig, Administrator, GSA, June 11, 1971, and George Romney, Secretary, HUD, June 12, 1971 (41 C.F.R. §101–17.4801)(1973).

[269] In the area of making determinations as to the extent of discrimination in the sale or rental of housing, for example, the procedures provide no outline of the steps to be taken. HUD, Procedure for Implementation of Memorandum of Understanding between HUD and GSA (May 1973).

[270] *Federal Enforcement Effort (1974),* pp. 124–25.

[271] The site is located in Woodlawn in Baltimore County, Md. The League of Women Voters has filed suit to require an affirmative action plan that would provide housing in conformity with HUD's findings.

[272] Laguana-Niguel, Orange County, California.

[273] *Federal Enforcement Effort (1974),* p. 132.

[274] *Federal Enforcement Effort (1974),* p. 132, n. 364.

[275] Ibid., p. 132, n. 363.

[276] Ibid., pp. 132–33.

[277] J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, letter to John Hope III, Director, Office of Program and Policy Review, United States Commission on Civil Rights, Nov. 15, 1974, p. 4.

Even when it is apparent that racial discrimination has served as a basis for exclusionary actions, the Department can move slowly. The Federal *Black Jack* (Missouri) case[278] was pending for months while the Department considered whether or not to file. However, the Department's recent success in this case represents an important victory in fair housing litigation.[279]

Federal Court Adjudication of Equal Housing Opportunity Issues

Judicial Construction of the Civil Rights Acts of 1866 and 1968

In legal decisions under the Civil Rights Act of 1866 and Title VIII of the Civil Rights Act of 1968, courts have rendered broad and imaginative readings of the provisions of these statutes. It is evident in many decisions that the courts intend to carry out the spirit as well as the letter of fair housing laws.

In *Jones v. Alfred H. Mayer Co.*, the Supreme Court held that the Civil Rights Act of 1866 "bars all racial discrimination, private as well as public, in the sale or rental or property."[280] In so holding, the Supreme Court, unlike Title VIII, allowed no exceptions. Every housing unit in the United States is covered.[281] Although the 1866 statute is declaratory only, the Court held that its broad equity power made injunctive relief appropriate.[282]

In this landmark decision, the Supreme Court expressed in broadest terms its commitment to judicial relief when access to and acquisition of property is denied because of race, a commitment the majority found necessary despite passage of the Fair Housing Act 2 months earlier. Subsequent cases have indicated that the Court's decision has been essential to litigation by providing the basis for relief in situations in which, even with the broad provisions of Title VIII, relief otherwise would not have been available.[283]

An indication that the courts are committed to an expansive interpretation of the 1866 statute is found in decisions that have followed upon *Jones v. Alfred H. Mayer Co.* Thus, it has been established that a plaintiff can recover both punitive and compensatory damages as well as attorney's fees.[284] Courts have also allowed plaintiffs to maintain suits under both the 1866 statute and Title VIII without having to choose to proceed under one act rather than the other.[285]

In two important decisions, courts have held that the 1866 act does not apply solely to outright denial of housing. Illegal discrimination has been found to exist in situations in which minority home buyers have been given less favorable terms or charged higher prices.[286] In a recent case, black homeowners in south Chicago argued that the Civil Rights Act of 1866 prohibits the charging of higher prices for houses in black neighborhoods than for comparable houses sold to whites in white neighborhoods. On appeal, the court sustained plaintiffs' argument, reversing findings of the trial court that had ruled in favor of the defendants. Defendants had justified the pricing disparities by evidence showing that demand in the black housing market supported the higher markup for black buyers. The court of appeals rejected this argument.[287]

Because the 1866 statute lacks the specificity and detail found in Title VIII, suits brought under it may avoid some of the limitations and disadvantages of a Title VIII suit. Title VIII has a short statute of limitations,[288] limits the successful plaintiff's recovery to actual damages and not more than $1,000

[278] United States v. City of Black Jack, 372 F. Supp. 319 (E.D. Mo. 1974) *rev'd*, 508 F.2d 1179 (8th Cir. 1975).

[279] A second case is United States v. City of Parma, which was consolidated with Cornelius v. City of Parma and eventually dismissed on the basis of Warth v. Saden, 95 S. Ct. 2197 (1975), discussed below. *Dismissed* 374 F. Supp. 730 (N.D. Ohio 1974), *rev'd*, 506 F.2d 1400 (6th Cir. 1974), *vacated*, U.S. , 95 S. Ct. 2673 (1975), *remanded with instructions to dismiss*, 6th Cir. (Sept. 24, 1975).

[280] 392 U.S. 409, 421 (1968).

[281] *Id.* at 421.

[282] *Id.* at 414.

[283] The Supreme Court, in comparing the Civil Rights Act of 1866 and Title VIII of the Civil Rights Act of 1968, made clear the importance of both acts, 392 U.S. at 409–416.

[284] Sullivan v. Little Hunting Park, 396 U.S. 229 (1969); Lee v. Southern Homes Sites Corp., 444 F.2d 143 (5th Cir. 1971). In Seaton v. Sky Realty Co., 491 F.2d 634 (7th Cir. 1974), humiliation was held to be a proper basis for an award of compensatory damages under the Civil Rights Act of 1866 and Title VIII.

[285] Smith v. Sol D. Adler Realty Co., 436 F.2d 344 (7th Cir. 1970); Brown v. Ballas, 331 F. Supp. 1033 (N.D. Tex. 1971).

[286] Contract Buyers League v. F&F Investment, 300 F. Supp. 210 (N.D. Ill. 1969), *aff'd with respect to other issues sub nom.* Baker v. F&F Investment, 420 F.2d 1191 (7th Cir. 1970), *cert. denied*, 400 U.S. 821 (1970).

[287] Clark v. Universal Builders, Inc., 501 F.2d 324 (7th Cir. 1974); *cert. denied*, 419 U.S. 1070 (1974). The plaintiffs showed that appraisers had pegged the sale prices of south Chicago houses built by Universal Builders, Inc., at $3,729 to $6,508 above the going prices for comparable housed located in Chicago's suburbs. House-by-house comparisons of south Chicago and suburban homes showed that the average gross profit on south Chicago homes was almost double the average profit usual for the same type of house in suburban Deerfield, Ill.

[288] A civil action must be commenced within 180 days after the alleged discriminatory housing practice occurred, 42 U.S.C. §3612(a) (1970).

punitive damages, and restricts the recovery of attorney's fees to the plaintiff who is unable to pay.[289] These constraints do not exist under the 1866 act.

In cases arising under Title VIII, the courts have given expansive interpretation to the provisions of the act. In the leading case of *Brown v. State Realty Co.,* [290] for example, the court held that defendants had violated Title VIII in merely attempting to induce residents of a particular neighborhood to list with them. The defendants, a real estate broker and her agents, were charged with making statements to several neighborhood residents that the area was "going colored" and with posting a "sold" sign to represent that a house had been sold when in fact it had not.

Statements of this nature may violate Title VIII even though they do not explicitly refer to race. The test is whether or not the representation would be likely to convey to a reasonable person the idea that people of a particular race, color, religion, or national origin are or may be entering the neighborhood.[291]

It has been determined that owners of single-family homes are protected under the antiblockbusting provisions of Title VIII. The court has reasoned that, because blockbusting primarily injures private homeowners, exempting them would be to deny protection to the group most in need of it. [292]

The courts have interpreted Title VIII broadly in terms of what conduct constitutes "pattern or practice" or raises an issue of "general public importance." In one case the court found that the requirement that a representation prohibited by Title VIII be made "for profit" is met as long as the person making the representation hoped to gain as a result.[293] An actual realization of profit is not necessary to sustain a charge of discrimination. In dealing with the issue of how many discriminatory acts on the part of an individual defendant are necessary to constitute a pattern or practice, another court found that any showing of more than one such act would support a pattern or practice charge.[294]

The Attorney General has been successful in enjoining the publication of discriminatory advertisements in a newspaper. The court of appeals upheld the reasoning that the issue was one of general public importance inasmuch as it would set a precedent for all other newspapers. [295]

Other important interpretations of the Fair Housing Act have come through private civil actions. These include the findings that property owners are responsible for the discriminatory acts of their rental agents because the duty of property owners not to discriminate cannot be delegated.[296]

Finally, under both Titles VIII and the 1866 statute, whites as well as blacks have been granted standing to sue.[297] The importance of this particular construction can be seen in the fact that whites are often in a strategic position to detect discriminatory practices such as steering, blockbusting,[298] illegal solicitation of sales, or other discriminatory practices that may not be apparent to the individual minority home or apartment seeker. In *Trafficante v. Metropolitan Life Insurance Co.,* the Supreme Court stated, "While members of minority groups were damaged the most from discrimination in housing practices, the proponents of the [1968 fair housing] legislation emphasized that those who were not the direct objects of discrimination had an interest in ensuring fair housing, as they too suffered."[299]

On January 20, 1975, the Department of Justice made its first charge relative to sex discrimination, based on the 1974 Housing Act amendment to Title VIII. The charge relates to the refusal of an apartment management firm in Richmond, Virginia, to include a wife's income in determining the financial qualifications of apartment applicants.[300] In addition, the Department has filed its first suit alleging that the refusal to rent to citizens of certain specified foreign countries has the effect of discrimi-

[289] 42 U.S.C. §3612(c) 1970).
[290] 304 F. Supp. 1236 (N.D. Ga. 1969).
[291] United States v. Mitchell, 327 F. Supp. 476 (N.D. Ga. 1971). This tactic is commonly known as blockbusting.
[292] United States v. Mintzes, 304 F. Supp. 1305 (D. Md. 1969).
[293] *Id.* at 1311–12.
[294] United States v. Gilman, 341 F. Supp. 891 (S.D.N.Y. 1972).
[295] United States v. Hunter, 459 F.2d 205 (4th Cir.), *cert. denied,* 409 U.S. 934 (1972).
[296] Collins v. Spasojcevic, Civil No. 73-C-243 (N.D. Ill., May 17, 1974).
[297] Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205 (1972); Walker v. Pointer, 304 F. Supp. 56 (N.D. Tex. 1969); Sullivan v. Little Hunting Park, 396 U.S. 229 (1969).
[298] Steering is the practice of showing prospective buyers listings only in a neighborhood or neighborhoods in which the residents are of the same color, race, or national origin as the prospective buyer. Blockbusting is a technique whereby real estate brokers perpetuate segregated neighborhoods by entering into a process, for commercial advantage, which artificially hastens or at least accelerates the rate of population turnover and the pace of racial change. Zuch v. Hussey, 394 F. Supp. 1028, 1047 (E.D. Mich. 1975).
[299] 409 U.S. at 210.
[300] United States v. Crestview Corp., Civil No. 74-0081-R (E.D. Va. June 13, 1975). The Department of Justice also filed an amended complaint alleging discrimination on the basis of sex in United States v. Davis, Civil No. 74-317-N (M.D. Ala., filed Jan. 30, 1975).

nating on the basis of race, color, and national origin in violation of Title VIII.[301]

Judicial construction of both the Civil Rights Act of 1866 and Title VIII of the Civil Rights Act of 1968 has molded these statutes into effective instruments to combat discrimination in housing. HUD, which has substantial Title VIII enforcement responsibilities, and State agencies that enforce State and local fair housing laws have a central role to play in the elimination of housing discrimination. Unfortunately, HUD and State agency performance with respect to fair housing law enforcement has not been satisfactory. Nor has there been a sufficient uniform degree of citizen involvement in efforts to monitor fair housing problems at the local level on a day-to-day basis. Continuing vigilance is needed by citizens and lawmakers in order to render illegal any practice that is not now covered by the law that is found to have the effect of skirting the law.

Federal Court Litigation Against Exclusionary Land Use and Other Practices Affecting Lower-Income Housing Location

Overview

In dealing with the issue of race and the location of low- and moderate-income housing, the courts have played a leading role in redefining the rights of localities to use land-use controls and other tactics to exclude the development of such housing within their borders or to prevent its construction on specific sites located in certain neighborhoods or sections. This is a comparatively recent role for the courts, not assumed until the late 1960s after discriminatory practices in locating federally-assisted housing for lower-income urban minorities had already resulted in confining this group to America's inner cities.

This result was obtained partly because of the nature of Federal requirements relative to the establishment of subsidized housing programs in a locality. Local discretionary powers in the areas of initiative, referenda, zoning, building codes, the issuance of building permits, and the like, have also been used in a discriminatory fashion.

Prior to 1968, the Federal Government required that all subsidized housing progams receive local government approval as a condition to their implementation in a locality.[302] By refusing to approve such programs, localities that did not want subsidized housing could prevent its construction within their borders. Furthermore, most local housing authorities are restricted by State legislation to operation within a single locality and cannot provide housing outside city limits unless they are able to secure cooperation agreements with surrounding jurisdictions. Even where housing authorities are authorized by State law to provide housing throughout a metropolitan area, the Federal requirement on securing cooperation agreements had to be met. Thus, suburban jurisdictions, through refusal either to sign cooperation agreements or to establish a public housing program of their own, have excluded subsidized housing from their communities.

Requirements imposed by Congress with respect to the rent supplement program have had the same effect. Communities were required either to adopt a workable program for community improvement, in conjunction with an urban renewal program, or give local official approval to a rent supplement program.[303] Again, suburban communities effectively excluded rent supplements by refusing to meet these requirements.

With the advent of the Housing and Urban Development Act of 1968, new pressures arose against the traditional practice of confining subsidized housing to minority areas. First, the tremendous increase in subsidized housing production called for by the act necessitated finding new land resources to accommodate the construction of housing units. Builders and developers often had to look in suburban areas where land is more plentiful than in inner-city minority areas. Secondly, the new 235 and 236 programs could operate freely throughout metropolitan areas without formal approval by local governments.

In the face of these pressures, a number of localities prevented construction of lower-income housing by refusing to rezone land for multifamily housing, requiring minimum lot sizes and minimum square footage for single-family homes, refusing building permits, or denying water and sewer hookups for proposed subsidized housing. In addition, several communities have adopted slow growth or no growth policies to restrict residential development. Although a partial basis for these policies is community desire to preserve the environment and concern that additional building would overtax existing and proposed municipal services and facili-

[301] United States v. Dittmar Co., Inc., Civil No. 193-75-A (N.D. Va., filed Mar. 3, 1975).

[302] 42 U.S.C. §§1410(h) and 1451(c) (1970).

[303] 80 Stat. 141, ch. IV (1966).

ties, another motivation has been the desire to exclude low- and moderate-income housing.

In a number of instances minorities, builders, and interested organizations have challenged the array of exclusionary devices employed by suburban jurisdictions. In a related development, minority tenants and applicants for low-rent public housing, or litigants on their behalf, have challenged traditional site selection procedures that localities have used to concentrate public housing in low-income minority areas. In several instances litigants have also challenged tenant selection policies that have caused segregation in federally-assisted housing.

A number of Federal court challenges to exclusionary land use practices have been successful. However, a recent report of the National Committee Against Discrimination in Housing (NCDH) and the Urban Land Institute (ULI) states that "the precise elements of a successful challenge are still uncertain and only dimly defined." Yet to be determined are "the specific circumstances [under which] localities will be held to have committed an unlawful act or engaged in unconstitutional conduct by preventing the construction of subsidized housing within their borders."[304] On the other hand, recent challenges dealing with discriminatory site selection have generally been successful. Most of these cases involve public housing. In fashioning remedies, the courts have been forceful and innovative in requiring new approaches to the problem of segregated housing.

Cases dealing with exclusionary land use practices to prevent construction of federally-subsidized housing and with confinement of low-rent public housing to minority areas have all involved certain common factors. They have been brought in Federal court charging violations of Federal constitutional and statutory requirements. All have alleged that the conduct of a State or local government authority was racially discriminatory in purpose or effect. Proof of the latter allegation has been essential to the outcome of most of the cases in which minority and fair housing litigants have been successful.[305]

Exclusion of Federally-Subsidized Housing from Predominantly White Communities

In dealing with the issue of allegedly discriminatory use of initiative, referenda, and cooperation agreement requirements to prevent construction of subsidized housing in predominantly white neighborhoods or communities, the courts generally have upheld the constitutionality of these measures, while carefully distinguishing between the use of such procedures to approve or disapprove housing for lower-income people generally and their use to deny housing opportunities to minority poor.[306]

Thus, a district court has held that a cooperation agreement signed between the housing authority and the city of Cleveland is a valid and subsisting contract, and that the city cannot cancel the agreement through a subsequent city ordinance.[307] Through the ordinance, the city had attempted to block the construction of 2,500 units of public housing, much of which was to be located in the predominantly white west side of the city. This case is unique in that the city of Cleveland had earlier permitted the construction of public housing for low-income minorities on sites located in minority areas of the city. It was not until the housing authority attempted to secure sites for public housing in predominantly white areas that the city took the novel action of passing an ordinance that cancelled the existing cooperation agreement that had permitted the establishment of a public housing program in Cleveland. The court noted the racially discriminatory effect of the cancellation, pointing out that 75 percent of the persons on the housing authority's waiting list were black.

However, in *James v. Valtierra* [308] the Supreme Court upheld a California State law that requires approval by the voters of a local jurisdiction before the construction of low-rent public housing can take place. The Court viewed the case as one involving the issue of whether poor people are protected under the equal protection clause of the 14th amendment, not as a racial discrimination case, although in many instances minorities constitute the larger proportion of applicants for public housing.[309]

[304] *Fair Housing and Exclusionary Land Use*, p. 33.

[305] Ibid., p. 38.

[306] In two instances not involving construction of lower-income housing courts have found discriminatory the use of initiatives and referenda. Reitman v. Mulkey, 387 U.S. 369 (1967), an initiative measure was struck down that would have added a provision to the State constitution to prevent the State from prohibiting racial discrimination in housing. In Hunter v. Erickson, 393 U.S. 385 (1969), a provision of the Akron, Ohio, city charter was invalidated that required that any fair housing ordinance must be submitted to a vote of the electorate before becoming effective.

[307] Cuyahoga Metropolitan Housing Authority v. City of Cleveland, 342 F. Supp. 250 (N.D. Ohio 1972), *aff'd sub nom.* Cuyahoga Metropolitan Housing Authority v. Harmody, 474 F.2d 1102 (6th Cir. 1973).

[308] 402 U.S. 137 (1971), *rev'g* Valtierra v. Housing Authority, 313 F. Supp. 1 (N.D. Cal. 1970).

[309] The district court cited *Hunter* as controlling in this case. Justice

The apparent meaning of *Valtierra* is that economic discrimination does not constitute a violation of the equal protection clause of the 14th amendment.[310] Thus, challenges to exclusionary land use practices must be able to show convincing evidence of discriminatory impact on racial minorities in order to prevail in Federal court.

How substantial this showing must be is not yet clear. On the one hand, a U.S. court of appeals appeared to disregard the effect that repeated refusals and failures of five predominantly white suburbs to enter into cooperation agreements with a metropolitan housing authority have had on minorities elegible for public housing.[311] In a class action suit, plaintiffs argued that the cooperation agreement requirement was unconstitutional because low-income blacks were not residing in the defendant suburbs. A district court judge found that the actions of the five suburbs had the effect of excluding blacks and perpetuating racial discrimination. He ordered the housing authority to prepare a plan for scattered site public housing in each of the defendant suburbs.[312]

The appeals court found that under *Valtierra* municipalities have the right to determine whether or not they need and want low-income public housing and that there was no basis for inferring discrimination on the part of a municipality that had exercised a right recognized by the Federal cooperation agreement requirement. The substantial evidence showing disproportionate impact on minority poor did not effect the appeals court's decision. Decisions such as this notwithstanding, fair housing litigators are hopeful that *Valtierra* will be read narrowly as based on the special facts involved; i.e., the long history of referenda in California and the financial burdens that arise in connection with the traditional public housing program.[313]

In deciding whether or not to allow the construction of federally-subsidized or other types of housing in a community, local officials can exercise an array of discretionary powers. Such powers include zoning and granting zoning variances, issuing building permits and authorizing water and sewer hookups, restricting the types of housing that can be built, restricting the number of bedrooms per unit, requiring that all multifamily housing have certain amenities such as dishwashers and tennis courts, and requiring minimum lot and interior floor sizes and minimum frontage.

In cases that have dealt with the refusal of local officials to grant zoning, building permits, or water and sewer hookups for proposed federally-subsidized housing projects, courts generally have affirmed the exercise of discretionary powers of local officials. In so affirming, however, Federal courts have stipulated that such powers may not be exercised with racially discriminatory intent or effect.

In the leading case of *Kennedy Park Homes v. City of Lackawanna,* [314] which involved changes in zoning and denial of building permits and water and sewer hookups for a proposed subsidized housing project, the court found that the city had failed to show a "compelling governmental interest" that would overcome discriminatory denial to plaintiffs of the enjoyment of property rights. In another case involving refusal to rezone a proposed site for 236 housing in Evanston, Illinois,[315] the district court ruled that a city cannot "refuse to rezone for black projects where under the same circumstances it would have granted a variance to an all-white project."[316]

Several cases in which discrimination has been alleged in the exercise of local land use controls have been unsuccessful in achieving reversals of actions that prevented the construction of proposed subsidized housing. In some of these cases the courts have rejected arguments that have shown substantial evidence that minorities were severely and disproportionately affected by the challenged actions.

Marshall, in dissenting from a majority in the Supreme Court, believed that the requirement should have been struck down because it discriminates against the poor. Citing Douglas v. California, 372 U.S. 353 (1963), which held that the 14th amendment prohibits States from discriminating between rich and poor as such in the formulation and application of their laws, Justice Marshall stated, "[i]t is far too late in the day to contend that the fourteenth amendment prohibits only racial discrimination; and to me, singling out the poor to bear a burden not placed on any other class of citizens tramples the values that the fourteenth amendment was designed to protect." 402 U.S. at 144.

[310] NCDH–ULI, *Fair Housing,* p. 35.

[311] Mahaley v. Cuyahogha Metropolitan Housing Authority, 355 F. Supp. 1245 (N.D. Ohio 1973), 355 F. Supp. 1257 (N.D. Ohio 1973), *rev'd,* 500 F.2d 1087 (6th Cir. 1974), *cert. denied,* 419 U.S. 1108 (1975).

[312] NCDH–ULI, *Fair Housing,* p. 17.

[313] Ibid., p. 21. The referendum issue is again before the Supreme Court in Forest City Enterprises v. City of Eastlake, 41 Ohio St. 2d 187, 324 N.E.2d 740 (1975), *prob. jur. noted,* 44 U.S.L.W. 3031 (U.S. Oct. 13, 1975) (No. 74–1563).

[314] 318 F. Supp. 669 (W.D.N.Y. 1970), *aff'd,* 436 F.2d 108 (2d Cir. 1970), *cert. denied,* 401 U.S. 1010 (1971).

[315] Sisters of Providence of St. Mary of the Woods v. City of Evanston, 355 F. Supp. 396 (N.D. Ill. 1971). *See also* United States v. City of Black Jack, n. 278 this chap.

[316] The court distinguished *Valtierra* by stating that the issue of voting rights injects a different constitutional ingredient than found in cases where a municipality attempts to prevent low- and moderate-income housing by refusing to rezone. 335 F. Supp. at 403.

For example, in *Citizens Committee for Faraday Wood v. Lindsay,* [317] the court rejected claims that the city of New York and its officials had denied funding for a 236 housing project in a predominantly white section of the Bronx because of community opposition based on racially discriminatory attitudes. The court found that the opposition was not rooted in discrimination to any significant degree and that, to the extent there was racial opposition, the city officials had not acted in response to it. The court imposed an extremely burdensome test of racially discriminatory effect by requiring a showing that a "policy or activity which has a racially discriminatory effect results from a prior pattern of discrimination or that such policies affect only racial miniorities."[318]

The ultimate outcome of attempts in Federal court to invalidate discretionary land use controls that block specific housing proposals is uncertain. If the standard of *Faraday* is applied in other circuits, future opponents of such controls have discriminatory intent or effect.

When a specific proposal for such housing is not involved, Federal courts appear to view the problem of exclusionary zoning narrowly. Two Federal courts in the Second Circuit have severely limited the "standing" of nonresidents to challenge local and related Federal policies bearing on exclusionary land use controls.[319] These courts have rejected the concept that development policies in the suburbs have a direct impact on central cities sufficient to cause or threaten some real injury to the plaintiffs. In *Evans v. Lynn,* [320] the court stated that, "potential residents, as such, can claim at best only a remote speculative injury [which] cannot be made the cornerstone of standing."[321]

A demonstration that low- and moderate-income housing is not available in the defendant suburb, even for persons who work there, is not sufficient to show threatened or actual injury. Under *Warth v. Seldin,* [322] plaintiffs apparently must either suffer denial of an offer to purchase or lease housing or property in a defendant locality, have some interest in land within the town, or have some connection with a plan to construct housing therein for persons of the plaintiffs' class in order to pass the test for standing in Federal csses of this kind.

Discriminatory Site Selection and Tenant Assignment in Federally-Assisted Housing

Judicial attacks on exclusionary zoning and other discretionary land use powers of local government have aimed primarily at the invalidation of practices that prevent the inclusion of low- and moderate-income housing in the residential development of suburban communities. Another line of attack has been instituted in Federal courts regarding local housing authority selection of locations for public housing in communities that have not attempted to exclude such housing outright, but that have confined its location to areas of minority residence.

The seeking of judicial protection against discrimination in the selection of locations for federally-assisted, lower-income housing is comparatively recent in origin. During the 1960s only five cases had reached the courts. In contrast, cases dealing with segregated occupancy in public housing had been brought in the previous decade.[323]

Despite the rulings in the early tenant selection cases and the establishment of Federal administrative requirements to prevent segregation through site and tenant selection, many local authorities continued practices that had this effect. In a number of instances, HUD itself failed to impede these practices. Particularly in the area of site selection, HUD frequently approved project locations in minority areas without questioning in depth a locality's assertion that no other suitable locations were available.

In dealing with the impact of public housing site selection on racial patterns of residence, Federal courts have invalidated local government practices that have enforced racial segregation. In *Gautreaux v. Chicago Housing Authority, Hicks v. Weaver, El Cortez Heights Residents and Property Owners Association v. Tucson Housing Authority* and *Banks v. Perk,* [324] the courts found that deliberate racial segregation

[317] 362 F. Supp. 651 (S.D.N.Y. 1973), *aff'd,* 507 F.2d 1065 (2d Cir. 1974), *cert. denied,* 95 S. Ct. 1679 (1975).

[318] *Id.* at 659.

[319] Herbert Franklin, Memorandum 74-5, Potomac Institute, Washington, D.C., June 14, 1974, p. 1.

[320] 376 F. Supp. 327 (S.D.N.Y. 1974). This case involved an attempt by low-income minority nonresidents to restrain two Federal agencies from supplying funds to the town of New Castle, N.Y., for sewer facilities and swamp clearance. Plaintiffs alleged that exclusionary and discriminatory policies in New Castle denied minorities an equal opportunity to benefit from grants.

[321] *Id.* at 333.

[322] 95 S. Ct. 2197 (1975).

[323] Detroit Housing Commission v. Lewis, 226 F.2d 180 (6th Cir. 1955); Heyward v. Public Housing Administration, 238 F.2d 689 (5th Cir. 1956).

[324] Gautreaux v. Chicago Housing Authority, 296 F. Supp. 907 (N.D. Ill. 1969). Hicks v. Weaver, 302 F. Supp. 619 (E.D. La. 1969). El Cortez Heights Residents and Property Owners Ass'n v. Tucson Housing Authority, 10 Ariz. App. 132, 457 P.2d 294 (1969). Banks v. Perk, 341 F. Supp. 1175 (N.D. Ohio 1972), *aff'd in part, rev'd in part,* 473 F.2d 910 (6th Cir. 1973).

resulting from site selection and, in *Gautreaux,* tenant selection as well violated the 14th amendment. In so holding the courts have extended a principle that had been established earlier in school segregation cases, and applied to earlier public housing tenant selection cases.

Of greater significance are the remedies the courts have ordered to overcome segregation in public housing. In *Banks,* the court enjoined the Cuyahoga Metropolitan Housing Authority from planning future public housing in black neighborhoods of Cleveland and ordered the authority to consider sites in the predominantly white neighborhoods of the city's west side.

In *Gautreaux,* the court, in an extensive and detailed order, required the Chicago Housing Authority to take affirmative action to integrate its public housing by locating most future units in white areas and by assigning black and white tenants to these projects in accordance with a strict ratio. [325] In so ordering, the court held that purposeful integration is a necessity to overcome governmentally-sanctioned or enforced segregation. An alternative remedy, the banning of all racial classifications in selecting housing sites, bore no guarantee that existing, segregated living patterns would not continue. This lack of affirmative guarantee was justification in the court's mind for requiring actions that must use racial classifications to achieve integration.

Subsequent to the court's order in *Gautreaux,* the Chicago City Council repeatedly refused to approve sites for public housing in white neighborhoods. Hence, in 1972, the district court ordered the Chicago Housing Authority to ignore local legislative requirements, which called for city council approval of public housing sites, and to acquire directly property in white sections of the city. In affirming the order, the U.S. court of appeals rejected the defendants' argument that, under *Valtierra,* the local legislative requirement for city council approval is valid.[326] The court stated that in *Valtierra* the Supreme Court could not find that a seemingly neutral law was, in fact, aimed at a racial minority. In *Gautreaux,* however, the court found "that only race could explain the defendant's actions and subsequent inaction."[327]

Because the city of Chicago continued to refuse to build any additional public housing within the city's limits, plaintiffs requested further relief. They asked the court to extend the original order to require the construction of public housing in Chicago's suburbs for low-income families currently residing in the city.[328]

Although metropolitan relief was denied by the lower court, the appeals court ruled that the record in the protracted case of *Gautreaux* makes it necessary and equitable that any remedial plan to overcome segregation in Chicago's public housing must be on a suburban or metropolitan basis.[329]

The court found that the record in *Gautreaux* indicated that there had been housing discrimination in Chicago's suburbs and that the effects of this discrimination had caused segregation in housing throughout the metropolitan area. The court held that the city portion of the metropolitan plan could go forward while the suburban phases were perfected. The case was remanded to the district court for the adoption of a comprehensive metropolitan area plan that would undo the system of segregated public housing in and around the city of Chicago and increase the supply of dwelling units as rapidly as possible. As of October 1975, *Gautreaux* is before the United States Supreme Court.[330]

In its brief before the Supreme Court the Government has attempted to extend the holding of *Milliken v. Bradley,* [331] in which the metropolitan remedy for central city school segregation was denied, to the provision of low- and moderate-income housing. Two key factors, however, were present in *Milliken* but are absent in *Gautreaux.* [332] In *Milliken* the Court was unable to find any of the defendants responsible for segregation in the schools of Detroit. In *Gautreaux,* on the other hand, the Department of Housing and Urban Development is deeply implicat-

[325] 304 F. Supp. 736 (N.D. Ill. 1969), *aff'd,* 436 F. 2d 306 (7th Cir. 1970), *cert. denied,* 402 U.S. 922 (1971). The employment of a racial classification of any type in this order has sparked subsequent debate as to whether racial classifications of any type are permissible under the 14th amendment. The Supreme Court has upheld some racial classifications but has stipulated that they must not be arbitrary or unrelated to a legitimate government purpose and that there must be a strong, overriding justification for their use. Buehl, Peel, and Pickett, "Racial Discrimination in Public Housing," *Stanford Law Review,* vol. 23 (1970) p. 126.

[326] 342 F. Supp. 827 (N.D. Ill. 1972), *aff'd,* 480 F. 2d 210 (7th Cir. 1973), *cert. denied,* 414 U.S. 1144 (1974).

[327] 480 F.2d at 215.

[328] Gautreaux v. Chicago Housing Authority and Lynn, 363 F. Supp. 690 (N.D. Ill. 1973), *rev'd,* 503 F.2d 930 (7th Cir. 1974).

[329] 503 F.2d at 937.

[330] Hills v. Gautreaux, *cert. granted,* 421 U.S. 962 (1975) (No. 74–1047). In January 1975, the Staff Director of the Commission wrote the Solicitor General in support of the appeals court decision, urging that Supreme Court review not be sought. John A. Buggs, Staff Director, U.S. Commission on Civil Rights, letter to Robert H. Bork, Solicitor General, U.S. Department of Justice, Jan. 20, 1975.

[331] 418 U.S. 717 (1974).

[332] See section entitled "The Effect of Residential Segregation on the Public Schools," in this chapter.

ed in the creation of segregated housing patterns. In *Milliken* the Court did not see any feasible administrative remedy that could be implemented on a metropolitan-wide basis. But with respect to housing HUD has the authority under the section 8 program to provide housing in jurisdictions that do not themselves conduct housing programs.

In one other case, a court has ordered a plan for public housing location having metropolitan impact, for the purpose of overcoming the effects of segregation in central city public housing projects. In *Crow v. Brown,* [333] the court held that the Atlanta Housing Authority had followed by a pattern of residential segregation by locating public housing projects exclusively in areas of minority concentration in the city of Atlanta. The court directed the housing authority and officials of Fulton County (in which the city of Atlanta is located) to join in locating other sites for public housing in the county outside areas of minority concentration.

In an important case dealing with Federal administrative procedures that have the effect of intensifying residential segregation, a U.S. court of appeals defined Federal responsibility in the site selection process. At issue in *Shannon v. Department of Housing and Urban Development* [334] was the location of a FHA-subsidized project. HUD's original plan provided for moderate-income homeownership. When the plan was revised to provide project housing for low-income families through the rent supplement program, residents living near the project site opposed the plan. The court ruled that HUD was obligated under the Civil Rights Acts of 1964 and 1968 to consider the potential impact that location of a particular housing project would have on patterns of residential segregation in a community. Noting that HUD must act affirmatively to achieve fair housing, the court stated that HUD must weigh all alternatives and, if it finds that a site in a minority area is approvable, it must show that the "need for physical rehabilitation or additional minority housing at the site in question clearly outweighs the disadvantage of increasing or perpetuating racial concentration."[335]

Shannon and *Gautreaux* have played a major part in HUD's development of new site selection criteria for federally-subsidized housing. These were released in final form in February 1972. Under the old site selection criteria for public housing, HUD frequently sanctioned a local site selection process that made little effort to justify the location of public housing in minority areas. Under the new criteria, however, HUD required substantial proof that the construction of federally-assisted housing on sites located outside minority areas was not possible.

Recent Federal court scrutiny of tenant selection policies in federally-assisted housing has delineated local and Federal Government responsibility beyond the basic prohibition not to segregate. In *Otero v. New York City Housing Authority,* [336] plaintiffs were minority urban renewal displacees. They challenged the housing authority's policy of disregarding its own regulation giving former residents of an urban renewal area first priority for units in public housing to be constructed in the area. The housing authority claimed that under Federal fair housing law it was obligated to promote racially-balanced housing. If former residents were given preference, the new public housing would not have well-mixed occupancy patterns. The court of appeals upheld the argument that the authority's duty to bring about racial integration in public housing takes precedence:

> We do not view that duty as a "one-way street" limited to introduction of non-white persons into a predominantly white community. The authority is obligated to take affirmative steps to promote racial integration even though this may in some instances not operate to the immediate advantage of some non-white persons.[337]

Federal Programs as Instruments of Minority Removal

Federal programs, and particularly federally-sponsored highways and urban renewal, have in a number of instances been used as tools to displace or remove minorities from certain neighborhoods of a community or from the entire community itself. One of the most extreme cases to reach the courts occurred in the city of Hamtramck, Michigan. [338] A district court found that HUD and the city had violated the constitutional rights of black, low-income plaintiffs who were displaced as the result of a "planned program of population loss."[339] The black population of Hamtramck, a predominantly Polish American

[333] 332 F. Supp. 382 (N.D. Ga. 1971), *aff'd per curiam,* 457 F.2d 788 (5th Cir. 1974).
[334] 436 F.2d 809 (3d Cir. 1970), vacating 305 F. Supp. 205 (E.D. Pa. 1969).
[335] 436 F.2d at 822.
[336] 344 F. Supp. 737 (S.D.N.Y. 1972), 354 F. Supp. 941 (S.D.N.Y. 1973), *rev'd* 484 F.2d 1122 (2d Cir. 1973).
[337] 484 F.2d at 1125.
[338] Garrett v. City of Hamtramck, 335 F. Supp. 16 (E.D. Mich. 1971), 357 F. Supp. 925 (E.D. Mich. 1973), 503 F.2d 1236 (6th Cir. 1974).
[339] 335 F. Supp. at 19.

community surrounded by the city of Detroit, had fallen from 14.4 to 8.5 percent between 1960 and 1966, a decline due largely to plans carried out under the Wyandotte urban renewal project.[340] To negate the effects of the conscious plan for black removal, the court ordered the city to eliminate discrimination from the project and provide replacement housing for persons to be displaced. HUD was enjoined from providing assistance to the urban renewal project until the relocation plan had received the approval of HUD and the court.

Although the decisions of the Federal courts do not yield a coherent unitary set of principles relative to land use and the provision of lower-income housing, several trends are evident. Of these, two are of particular importance. First, in dealing with the issue of racial segregation in subsidized housing, the courts in *Gautreaux* and *Otero* have defined equal housing opportunity for low-income minorities as requiring integrated occupancy. These courts have recognized that impartial procedures for tenant selection are not adequate to achieve fair housing.

Second, the need for a metropolitan approach to the provision of low-income housing has been found essential to the alleviation of segregation caused by discriminatory practices of the local housing authorities in Chicago and Atlanta. In many other metropolitan areas, low-income subsidized housing is also segregated, with the housing for poor minorities concentrated in minority areas of central cities. Although the factors leading to segregation may differ, the effects and the need for a metropolitan approach to solving them are the same.

If housing legislation and fair housing law are to work as related parts of a single national policy, as viewed by the *Shannon* court, housing must be provided for low-income minorities in nonminority neighborhoods throughout metropolitan areas. Missing from national policy at this time, however, is an explicit requirement that communities abrogate exclusionary zoning regulations and building codes and implement affirmative laws and procedures for the inclusion of lower-income housing. In the absence of this requirement, HUD could, at the very least, have established affirmative guidelines under Title VIII which would lead communities to examine zoning and other laws or practices that inhibit development of housing opportunities for all segments of the population. The failure to take the initiative in this area is a serious shortcoming of HUD's implementation of Title VIII.

The Effect of Residential Segregation on the Public Schools

Because school district boundaries often follow the boundaries of municipalities and because students are often assigned to a school in their own community, residential racial segregation between municipalities in a metropolitan area and within municipalities often has resulted in segregation in the schools. In some areas residential segregation is so massive and complete that simple remedies for school segregation are difficult to find.

The relationship between segregated housing and segregated schools was recognized by the lower court in *Milliken v. Bradley.* [341] In that case, which was concerned with segregation in the Detroit school system, the district court found that "[g]overnmental actions and inaction at all levels, Federal, State and local, have combined with those of private organizations, such as loaning institutions and real estate associations and brokerage firms, to establish and to maintain the pattern of residential segregation throughout the Detroit metropolitan area."[342] The Court further recognized that "just as there is an interaction between residential patterns and the racial composition of schools, so there is a corresponding effect on the residential pattern by the racial composition of schools."[343] As a result of these findings the district court ordered into effect a metropolitan school desegregation plan. The United States Supreme Court, however, reversed this order, holding that, on the facts that had been proved in this case, the suburban school districts could not be held responsible for segregation within the Detroit school system. [344]

The Supreme Court's decision in *Milliken* leaves open the possibility that, when lawyers are able to establish a more direct connection between suburban exclusionary practices and resulting segregated schools, metropolitan relief will be granted. Until then, substantial progress in the desegregation of schools of many metropolitan areas will only be achieved when housing patterns are substantially desegregated.

[340] 503 F.2d at 1246.

[341] 338 F. Supp. 582 (E.D. Mich. 1971), 345 F. Supp. 914 (E.D. Mich. 1972), *aff'd in part, vacated in part,* 484 F.2d 215 (6th Cir. 1973), *rev'd* 418 U.S. 717 (1974).

[342] 418 U.S. at 724 quoting 338 F. Supp. 587.

[343] *Id.*

[344] 418 U.S. at 745.

State Initiatives on Exclusionary Land Use Practices

State Litigation

In State cases, litigants who have challenged exclusionary land use practices have aimed at removing local requirements that have the effect of severely limiting or excluding residence of lower-income families. Most of these cases do not involve a specific proposal for lower-income housing or allegations of racial discrimination. Instead, they are concerned with land use practices that litigants believe violate State constitutional and statutory provisions. Nearly all of the State court cases have been brought in Pennsylvania and New Jersey, where courts have given careful scrutiny to restrictive land use practices that limit residential development, particularly of lower-income housing, and hamper a regional approach to meeting housing needs.

In *National Land and Investment Company v. Kohn,* [345] the Pennsylvania Supreme Court stated that "[z]oning is a means by which a governmental body can plan for the future—it may not be used as a means to deny the future."[346] In striking down a 4-acre minimum lot size requirement, the court stated that, "a zoning ordinance whose primary purpose is to prevent the entrance of newcomers in order to avoid burdens, economic or otherwise, upon the administration of public services and facilities cannot be held valid."[347]

In *Appeal of Kit-Mar Builders, Inc.,* [348] the Pennsylvania Supreme Court dealt with the regional effects of local zoning, and found that:

> 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 through the use of exclusionary zoning regulation, 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.[349]

[345] 419 Pa. 504, 215 A.2d 597 (1965).
[346] 215 A.2d at 610.
[347] *Id.* at 612.
[348] 439 Pa. 466, 268 A.2d 765 (1970).
[349] 268 A.2d at 768-69.

In recognizing the need for a regional approach to housing needs, the Commonwealth Court of Pennsylvania has also dealt with the issue of "fair share" housing distribution.[350] The township of Williston originally had an ordinance that prohibited the construction of apartments. When a developer of a proposed multifamily complex applied for a zoning variance on land that had been zoned for single-family use, the township amended the ordinance to regulate apartment use and then denied the variance. Justifying the amended ordinance, the township attempted to show that it was dealing realistically with the need for all townships in the metropolitan area to accept their "fair share" of all types of housing and income groups.

Both the lower court and the Commonwealth Court of Pennsylvania ruled against the township, finding the ordinance, both before and after amendment, unconstitutional. The township would still be able to exclude those portions of the population it did not want. The court acknowledged that it is difficult to define the point at which a community will have performed its "fair share" in providing housing for all groups. Nonetheless, the court found that "[f]air share is much like the word 'reasonable'—difficult of definition but still capable of indicating what is expected within bounds which only individual cases can define."[351] The court concluded that Williston did not meet the fair share test.

While demonstrating similar concerns, New Jersey courts have also shown a growing reluctance to sanction fiscal zoning practices which have the effect of excluding certain kinds of people by preventing development that would further burden taxpayers.

In *Molino v. Borough of Glassboro,* [352] the New Jersey Superior Court struck down a multifamily housing ordinance that severely limited the number of units with two or more bedrooms and required the inclusion of expensive facilities such as swimming pools, tennis courts, and air conditioning. Such restrictions eliminate the possibility of providing housing for lower-income families. The court ruled that the ordinance was inconsistent with the general welfare of the community and a violation of the equal protection clause of the 14th amendment. The court stated:

[350] Township of Williston v. Chesterdale Farms, Inc., 7 Pa. Commw. 453, 300 A.2d 107 (1973), *aff'd,* 341 A.2d 466 (1975).
[351] 300 A.2d at 116.
[352] 116 N.J. Super. 195, 281 A.2d 401 (1971).

> the effort to establish a well balanced community does not contemplate the limitation of the number in a family by regulating the type of housing. . . .There is a right to be free from discrimination based on economic status. There is also a right to live as a family, and not to be subject to a limitation on the number of members of that family in order to reside in any place.[353]

In two other cases, the New Jersey Superior Court has dealt directly with zoning ordinances designed to exclude multifamily housing that would benefit lower-income groups. In *Southern Burlington County NAACP v. Township of Mount Laurel,* [354] the court invalidated a zoning ordinance and required the municipality to develop a plan for meeting the housing needs of low- and moderate-income persons residing or working in the township.[355]

In *Oakwood at Madison, Inc. v. Madison,* [356] the Superior Court of New Jersey invalidated a zoning ordinance that it found had failed to promote a reasonably balanced community in accordance with the general welfare. The court stressed the obligation of communities to meet the housing needs of their own residents as well as those of the region, including those of lower-income people. The court found a cause-and-effect relationship between exclusionary suburbs and inner-city ghettos, emphasizing that exclusionary zoning practices have been influential in perpetuating inner-city deterioration and congestion.

In two instances in which plaintiffs have brought suit against a group of municipalities in an attempt to demonstrate the adverse impact of exclusionary land use practices on a regional basis, courts in both Pennsylvania and New Jersey have dismissed the complaints on the principal ground of lack of justiciability. The courts reasoned that the issues were political in nature and more appropriate for legislative consideration.[357]

Challenges to Time Zoning

In recent years several communities have attempted to control growth by devising zoning ordinances that restrict the residential use of land over a long period of time. These ordinances attempt to stop or slow down residential growth for purposes of maintaining the character of the community or to assure that public facilities and services can be expanded adequately to serve the needs of additional residents in the community.

In a leading case, an ordinance of this kind developed by the town of Ramapo, New York, has been upheld by the New York Court of Appeals.[358] The court found that there is a rational basis for phased growth "where it is clear that the existing physical and financial resources of the community are inadequate to furnish the essential services and facilities which a substantial increase in population requires. . . .[359]

Plaintiffs attempted to show that an ordinance extending 18 years into the future would preclude development of low- and moderate-income multifamily housing in Ramapo, which had taken only limited steps to provide such housing in the past. The court's majority apparently believed that Ramapo had already provided an acceptable response to this need and was not concerned with the impact the ordinance might have on future development in the region.[360]

In *Construction Industry Association of Sonoma County v. City of Petaluma,* [361] litigants challenged elements of Petaluma's zoning, planning, and other ordinances that restrict residential construction. The district court struck down an ordinance that limited multifamily residential construction to 2,500 units

[353] 281 A.2d at 405.
[354] 119 N.J. Super. 164, 290 A.2d 465 (1972).
[355] *Aff'd with modifications,* N.J. , A.2d , *appeal dismissed,* U.S. (1975).
[356] 117 N.J. Super. 11, 283 A.2d 353 (1971).
[357] Commonwealth of Pennsylvania v. County of Bucks, Ct. E.P. of Bucks Co., 22 Bucks Co. Rep. 179 (1972); *appeal dismissed,* 8 Pa. Commonwealth 295, 302 A.2d 897 (1973), *aff'd,* Pa. S. Ct., Aug. 1, 1973, *cert. denied,* 414 U.S. 1130 (1974). Baylis v. Borough of Franklin Lakes, Civil No. L-33910-71-P.W. (N.J. Super. Ct. 1974).
[358] Golden v. Town Planning Board of Ramapo, 30 N.Y. 2d 359, 285, N.E. 2d 291 (1972), *appeal dismissed,* 409 U.S. 1003 440 (1972).
[359] 285 N.E.2d at 304. Plaintiffs did not contest Ramapo's allegations regarding inadequate existing facilities, nor did the court appear to examine the adequacy of Ramapo's financial resources to support population growth at some "fair" level. Had the court examined which taxpayers benefit financially from slow growth policies, it might have found that Ramapo had as adequate fiscal resources to finance urbanization as other localities throughout the New York metropolitan area, but is simply unwilling to expend them. See Herbert Franklin, *Controlling Urban Growth—But For Whom* (Washington, D.C.: Potomac Institute, 1973).
[360] There are 50 units of public housing for the elderly in Ramapo and 49 units of family public housing. At the time of the suit, all elderly tenants were white and fewer than 10 units in the family housing were occupied by blacks. Under the ordinance, no further public housing is planned; there is no FHA-subsidized housing. Some additional, privately-sponsored housing may be provided for the elderly, but the capital program does not schedule the investment of any public resources to simulate or assist State- or federally-subsidized housing. Franklin, *Controlling Urban Growth,* p. 15.
[361] 375 F. Supp. 574 (N.D. Cal. 1974), *rev'd,* No. 74-2100 (9th Cir. Aug. 13, 1975).

over a period of 5 years, ruling that the ordinance violated the constitutional right to travel.[362] The court of appeals, however, upheld the ordinance, sidestepping the right to travel issue by asserting that appellees (homebuilders, the builders' association, and individual landowners) had no standing to assert a claim on behalf of potential purchasers or renters of housing that would be produced in Petaluma, were growth controls not enforced. The court then stated that "the concept of the public welfare is sufficiently broad to uphold Petaluma's desire to preserve its small town character, its open spaces and low density of population, and to grow at an orderly and deliberate pace."[363]

In contrast to the district court's analysis in *Petaluma,* the right to travel issue was not analyzed in depth by the court in *Ramapo.* As Herbert Franklin of the Potomac Institute has stated,

> when a locality proposes not to close the door altogether but to keep it somewhat ajar, as it were, the question arises as to who is able to stand in line waiting to go through. The *Ramapo* court was not concerned, or was not aware, that those in line to enter Ramapo will be mainly people able to afford expensive houses on large lots.[364]

State and Local Legislative Initiatives

State and local legislative initiatives to disperse low- and moderate-income housing have centered around the creation of regional housing allocation plans, State housing finance agencies, and reform of local zoning practices. All three developments are recent in origin.

Housing Allocation Planning

In 1968, Federal legislation for the first time required the inclusion of a housing element in activities funded through HUD's comprehensive planning program. Prior to that time, planners had not been concerned with the dispersal of various types of housing throughout metropolitan areas. Comprehensive planning had little or no effect on Federal and State programs to house persons unable to compete for shelter in the private market.[365]

Under the new Federal requirement, planners began to formulate plans designed to allocate dwelling units by price and type suited to the needs of various elements of the population. The plans have been intended to maximize choice of area of residence and to provide, in particular, for the dispersal of low- and moderate-income housing as a part of planned growth in a region or metropolitan area.

The first, and one of the most notable, allocation plans was developed for the metropolitan area of Dayton, Ohio, by the Miami Valley Regional Planning Commission in 1970.[366] The plan formulates 5-year subsidized housing construction goals for each of five counties within the jurisdiction of the commission. The counties were divided into analysis sectors, their size reflecting respective degrees of urbanization, and each sector's fair share of the countywide subsidized housing goals was calculated, based on a formula that included criteria for equal shares, proportionate shares of households eligible for subsidized housing, poverty, local educational funding capacity, and overcrowded schools.[367] Since 1970, metropolitan housing allocation plans have been developed in approximately 30 other areas. Some plans, such as the interim master plan for Middlesex County, New Jersey, [368] include allocations for all types of housing to be developed within a specified time.

From 1970 through 1972, HUD strongly favored the development of housing allocation plans as a means of satisfying the housing element requirement of the comprehensive planning program. With the suspension of the major subsidy programs in January 1973, however, HUD's emphasis on fair share plans declined sharply. The workability of such plans was largely subverted by the moratorium.[369]

Under the new Housing and Community Development Act of 1974, it is not clear what role such plans will play in the development of low- and moderate-income housing in metropolitan areas. Under Title I, section 104(e) of the act, applications for community

[362] "A zoning regulation which has as its purpose the exclusion of additional residents in any degree is not a compelling governmental interest, nor is it one within the public welfare." 375 F. Supp. at 586. The constitutional right to travel was used in an earlier case to prevent California from excluding certain groups during the Great Depression. Edwards v. California, 314 U.S. 160 (1941). More recently it has been cited as the basis for striking down residency requirements for welfare benefits, Shapiro v. Thompson, 394 U.S. 618 (1969).

[363] Slip opinion, pp. 17–18.

[364] Franklin, *Controlling Urban Growth,* p. 24.

[365] Ernest Erber and John P. Prior, *Housing Allocation Planning: An Annotated Bibliography* (Washington, D.C.: Council of Planning Librarians Exchange Bibliography No. 547, March 1974), p. 2.

[366] Miami Valley Regional Planning Commission, *A Housing Plan for the Miami Valley Region* (Dayton, Ohio: July 1970).

[367] Erber and Prior, *Housing Allocation Planning,* p. 6.

[368] Middlesex County Planning Board, *Interim Master Plan* (New Brunswick, N.J.: September 1970).

[369] Erber and Prior, *Housing Allocation Planning,* p. 3.

development block grants must be submitted to areawide planning agencies for review and comment prior to HUD approval. Presumably, the areawide planning agency would assess the extent to which local housing assistance plans in its area conform to a regional housing allocation plan, if one has been developed. The intended impact of the agency's assessment is unclear, however. HUD is not required to disapprove a local housing plan on the basis of a negative areawide agency review. It is the intention of Congress also that localities not be "rigidly bound" by comprehensive plans, although "careful consideration" should be given to them. [370] Thus, regional housing allocation plans may or may not be disregarded under the new program.

Housing allocation plans have their limitations, one of which is that the participation of local jurisdictions in implementation of the plan is strictly on a voluntary basis. Each community covered by a plan retains the power to block development of lower-income housing, either outright or through such devices as land use controls. Thus, the success of a plan depends on the cooperation of all jurisdictions within a metropolitan or regional area.

State Housing Finance Agencies

As of December 1974, 31 States had created housing finance agencies (HFAs) that have as one express purpose the development of low- and moderate-income housing.[371] State HFAs are involved in a wide array of programs, including financing of construction, insurance, and secondary market activities. They have financed more than 110,000 units of single-family and multifamily housing.[372]

Increasingly, State HFAs are being looked on as a major participant in providing low-income housing. At the same time, however, they are faced with a shortage of financial resources for such housing and are dependent on bond financing and Federal low- and moderate-income housing subsidies. [373] Because financing for low-income housing is difficult to provide, a number of HFAs have turned to programs for moderate- to middle-income groups during the current period of tight money.[374] Hope for further involvement in the provision of lower-income housing rests with the new Federal section 8 program of housing assistance payments.

Requirements and powers vary among HFAs with respect to the provision of lower-income housing. In Ohio, for example, 20 percent of all projects of more than 20 units must be set aside for low-income families. [375] In New York, the Urban Development Corporation (UDC) was given the power to bypass local zoning ordinances, building codes, and subdivision regulations in selecting sites for and constructing low- and moderate-income housing. Despite the restraint followed by UDC in exercising these powers, the New York legislature curtailed them substantially in June 1973 by permitting localities to veto UDC projects.[376]

The UDC experience has shown that HFAs that must deal with the conflicting goals of providing lower-income housing and overcoming local resistance to such housing will tend to emphasize production rather than the location of sites. UDC has not been active in suburban communities and has generally placed projects where they were likely to be highly acceptable to surrounding residents.[377] Thus, UDC has yet to be an effective tool for the dispersal of low- and moderate-income housing.

Legislative Reform of Zoning

Several State legislatures enacted reforms of local zoning practices in an effort to curb exclusionary activity and provide for the development of low- and moderate-income housing in suburban areas. The Massachusetts statute[378] provides streamlined procedures for developers of subsidized housing. A single application may be submitted directly to the local board of zoning appeals in lieu of separate applications to various local boards such as the board of survey, the board of health, the planning board, etc. The board of zoning appeals must evaluate the application based on a statutory allotment of lower-income housing to be developed in each locality. No single locality must absorb more than its quota of such housing.

[370] H.R. Rep. No. 93-1114, 93d Cong., 2d sess., 6-7 (1974).
[371] Jane A. Silverman, "State Housing Finance Agencies: Future Prospects, Present Problems," *Housing and Development Reporter*, vol. 2, no. 14 (Dec. 2, 1974), p. 717.
[372] Ibid., p. 718. Twenty percent of the 236 units were produced by HFAs prior to the 1973 moratorium.
[373] Ibid., p. 718.
[374] The bond market has exerted pressure to get HFAs to develop projects with less risk than those that provide housing for lower-income families.
[375] Ibid., p. 718.
[376] *Equal Opportunity*, p. 53.
[377] Ibid., p. 53. UDC approached bankruptcy during the winter of 1974. As of October 1975 the corporation's financial problems were still unresolved. *New York Times*, Oct. 16, 1975, p. 3.
[378] Mass. Gen. Laws Ann., ch. 4013 §20-23 (1971).

Part 2

Minority Migration and Urban Residential Segregation

Between 1950 and the present, there has been a radical change in the residential locations of the black population in the United States. Blacks have migrated in large numbers from the South to the northern and western regions of this country. Before the Second World War, black migration streams had been directed for the most part toward the major cities found along the Atlantic seaboard, those fringing the lower Great Lakes, and a few major river cities. Given the new economic opportunities associated with the war, new migration paths to the Pacific Coast began to emerge, and for the first time large numbers of blacks began to abandon the South in favor of Pacific Coast urban centers.[379] During the same period, noticeable changes occurred in the residential locations of other minority groups, although not on the scale found among blacks.

During the course of urban migration, most minorities have been confined to segregated neighborhoods in central cities. Severe residential segregation and isolation between races and ethnic groups is a marked feature of virtually every metropolitan area in which minorities reside.

A relatively small number of blacks have moved from central cities to suburban communities. Suburban blacks are more often found in integrated neighborhoods, although frequently when blacks have moved to suburban subdivisions, those neighborhoods, too, have become black enclaves. In some instances black suburbanization has simply been an extension of black residential concentration in central city neighborhoods that border suburban communities.

Minority Migration

The dramatic shift in the overall geographic location of the black population is documented in census data[380] showing that, since 1960, five States—California, New York, Illinois, New Jersey, and Michigan—have each added more than 100,000 blacks to their population through migration. Seven Southern States have had black migration losses exceeding 100,000—Mississippi, Alabama, South Carolina, North Carolina, Louisiana, Arkansas, and Georgia. By 1970, Mississippi had lost nearly one-third of its 1960 black population, and in Alabama, South Carolina, and Arkansas as well, the black migration losses exceeded the natural gains[381] in black population.[382] In 1970, 52 percent of the black population lived in the South, 20 percent lived in the Northeast, 20 percent in the North Central region, and 8 percent in the West.

During the period from 1960 to 1966, black migrants accounted for an estimated 34 percent of metropolitan growth.[383] Since 1966, however, there has been an apparent slowing in the rate of movement of blacks out of the South. In addition to the direct impact black migration has had on urban black population growth, it is indirectly responsible for the substantial natural increases in the size of black metropolitan populations that occurred throughout the mid-sixties. From 1950 to 1960, one-half of the black population in the 25 to 29 age group abandoned the Deep South.[384]

Changes in the geographic distribution of other minority groups have also occurred during the last two decades. Large numbers of persons of Puerto Rican origin have migrated from Puerto Rico to the larger cities of the East Coast, such as New York and Philadelphia. Substantial numbers of Cubans have immigrated from Cuba to the United States, settling frequently in southern Florida, in particular Dade County, and to a lesser extent in cities along the Atlantic Coast. However, the greater proportion of persons of Spanish origin (primarily Mexican American) is still found in five Southwestern States; these States plus New York account for three-fourths of the Spanish-origin population in the United States.[385]

All States showed growth[386] in Native American population, over half of the growth being in New York, Minnesota, Michigan, Illinois, Oklahoma,

[379] Harold M. Rose, "The Spatial Development of Black Residential Subsystems," *Economic Geography*, vol. 48, no. 1 (January 1972), p. 44.

[380] Except for citations to other sources, data for this chapter are taken from U.S., Department of Commerce, Bureau of the Census, 1970 Census of Population and Housing, Series PHC (2) (March 1971).

[381] The gain in population resulting from more births than deaths.

[382] The census data are for Negro and other races. In most States, blacks are the overwhelming majority in this group. Other races were Asian and Native American.

[383] W. Alonso, "What are New Towns For?" *Urban Studies*, vol. 7 (February 1970), p. 42, cited in Rose, "Spatial Development," p. 46.

[384] A.F. Taeuber and K.E. Taeuber, *Negroes in Cities* (Chicago: Aldine Publishing Co., 1965), cited in Rose, "Spatial Development," pp. 46–47.

[385] Approximately 86 percent of the persons of Mexican origin are in the Southwest; 86 percent of persons of Puerto Rican origin are in the Northeast; 85 percent of the persons of Cuban origin are in the Northeast and the South, and predominantly in the latter.

[386] Includes growth through migration and natural increase. Some of the increase in the Native American population recorded by the 1970 census resulted from more persons identifying themselves as Native American than had been so identified in earlier census tabulations.

Table 4.2

Metropolitan And Nonmetropolitan Residence Of Whites And Blacks, 1950 To 1970

(Numbers in thousands)

	1950		1960		1970	
	Number	%	Number	%	Number	%
Total population	151,326	100.0	179,323	100.0	203,184	100.0
in SMSAs	94,579	62.5	119,595	66.8	139,387	68.6
in nonmetropolitan areas	56,747	37.5	59,728	33.2	63,798	31.4
White population	135,150	100.0	158,832	100.0	177,612	100.0
in SMSAs	85,099	63.0	105,180	66.2	120,424	67.8
in nonmetropolitan areas	50,051	37.0	53,652	33.8	57,189	32.2
Black population	14,972	100.0	18,793	100.0	22,673	100.0
in SMSAs	8,850	59.1	12,710	67.6	16,786	74.0
in nonmetropolitan areas	6,122	40.9	6,083	32.4	5,887	26.0

Source: U.S., Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States, 1971*, table 14.

Arizona, California, and New Mexico. Just over half of the Native American population now lives in five States: Oklahoma, Arizona, California, New Mexico, and North Carolina.

Urbanization

The greater proportion of all minority populations (except Native Americans) lives in urban areas. The growth in urbanization has been most dramatic for blacks and Native Americans, although the latter remain largely rural. Over the past two decades, the proportion of black population in metropolitan areas has been rising considerably faster than the proportion of white population in these areas (table 4.2). Between 1960 and 1970, urban black population grew by 3.7 million, 3.3 million in central cities. By 1970, three-fourths of the black population lived in these areas, whereas in the South 44 percent of blacks still lived in rural areas. Only in the last decade did the southern black metropolitan population start to outnumber the small town and rural black population.

The pattern of urbanization among other minorities has been less uniform than among blacks. Approximately 45 percent of the Native American population lived in urban areas in 1970, as opposed to 28 percent of those persons counted as Native Americans in 1960. Thirty-six metropolitan areas now have a Native American population of more than 2,000.[387]

Within the Spanish-origin population, nearly all persons of Puerto Rican and Cuban origin live in urban areas, whereas a large number of persons of Mexican origin are living in rural areas.[388]

The increasing central city concentration of urban blacks is seen in the fact that, since 1950, the black share of central city populations grew from 13.3 percent to 20 percent, while the black proportion of suburban population remained steady at approximately 5 percent (chart 4.1). Approximately 78 percent of the black urban population lived in central cities in 1970; 60 percent of metropolitan whites lived in suburban areas (table 4.3). Of the Nation's 40 largest cities, only 6 lost black population, whereas all but 6 lost white population by outmigration (table 4.4).

Increasing Residential Segregation

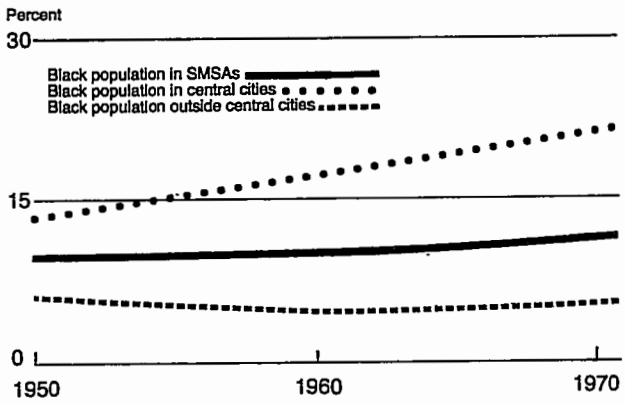
Within central cities, blacks have become increasingly concentrated in black neighborhoods. In 20 large cities, blacks in neighborhoods in which they represented three-fourths of the population increased

[387] The five metropolitan areas with the largest Native American populations are Los Angeles-Long Beach, San Francisco-Oakland, Tulsa, Oklahoma City, and New York.

[388] Puerto Rican origin urban population, 1,390,000; rural, 32,400; Cuban origin urban population, 536,000; rural, 8,000; Mexican origin urban population, 3,800,000; rural, 656,000.

Chart 4.1

Black Proportions of Total Metropolitan Populations, 1950–70



Source: U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States, 1971*, table 14.

from 30 to 51 percent between 1950 and 1970, while the proportion of blacks in mixed neighborhoods with 25 percent or less blacks declined from 25 to 16 percent.[389] In everyone of 47 cities with black populations in excess of 50,000, the majority of blacks, and often the overwhelming majority, lives in predominantly or solidly black census tracts (table 4.5A and B). Generally speaking, cities with a smaller number of blacks show a lesser degree of concentration. However, there are exceptions, as in Ft. Lauderdale where 95 percent of 21,000 blacks live in concentrated black areas, and Las Vegas where 93 percent live in solidly black tracts.

By all measures, Chicago has a high degree of segregation, while San Francisco, Los Angeles, and New York show a relatively high degree of dispersion. For some cities, the rank varies depending on the measurement used. In cities where blacks are less concentrated in solidly black areas, it cannot readily be assumed that blacks have greater access to nonsegregated housing throughout the community. Less concentration usually indicates that the patterns are less rigid. Thus, in cities in which there is only one "ghetto" area expanding at the fringes, a more rigid pattern of residential segregation exists. In those cities with two or more ghetto areas expanding at the fringes, less-segregated patterns result when the black housing demand is not sufficient to fill up the potentially open areas at the various "ghetto" fringes.

Black Movement to the Suburbs

Although black segregation and concentration in central cities have increased during the last two decades, the movement of a small but significant number of blacks to suburban areas may indicate an easing of past trends. A 1971 study of 15 of the largest metropolitan areas of the United States showed that in 10 areas the suburban black population grew by more than 50 percent during the 1960s. In nine of these areas, the black population grew at a higher rate in the suburbs than it did in the central city (table 4.6). This new trend began relatively late in the decade when the annual rate of black population growth in the suburbs reached 8 percent. Increases in black income in the late 1960s, changes in attitudes and behavior of blacks and whites, effects of the civil rights movement of the 1960s, and subsequent changes in public policy, in particular the Federal Fair Housing Law, all played a part in increasing black suburbanization.

In general, suburban blacks are more integrated with whites than in central cities.[390] Table 4.7 shows the degree of black concentration in the suburban census tracts of 34 cities. In most cities the majority of suburban blacks live in tracts in which white population is predominant. However, Detroit, Los Angeles-Long Beach, Chicago, St. Louis, Gary, Cleveland, Jackson (Mississippi), and San Francisco-Oakland are among metropolitan areas in which the majority of suburban blacks live in overwhelmingly black tracts. In some of these areas, a substantial portion of suburban blacks are concentrated in relatively older cities and towns outside central cities.[391] These places in many respects resemble their sister central cities rather than new growth,

[389] Sar A. Levitan, William Johnston, and Robert Taggert, *Still a Dream:* A Study of Black Progress, Problems and Prospects (Washington, D.C.: Center for Manpower Policy Studies, George Washington University, 1973), table 7–7, p. 227.

[390] Deborah R. Both, *A Study of the Suburban Residential Integration Process in the Washington Metropolitan Area* (Master's thesis, George Washington University, 1974), pp. 2–3.

[391] The degree of black dispersion within suburban areas is more difficult to assess than in central cities inasmuch as available data in many instances relate only to census tracts, which cover a much larger geographical area than a central city, census block classification. Specific knowledge of black suburban settlement patterns in each metropolitan area is needed to assess this factor fully.

Table 4.3

Population Of Standard Metropolitan Areas, Inside And Outside Central Cities, By Race, 1950 to 1970

(Numbers in thousands)

	1950		1960		1970	
	Number	Percent	Number	Percent	Number	Percent
Total SMSA population	94,579	100.0	119,595	100.0	139,387	100.0
in central cities	53,817	57.0	59,964	50.1	63,816	45.8
outside central cities	40,762	43.0	59,631	49.9	75,570	54.2
White SMSA population	85,099	100.0	105,180	100.0	120,424	100.0
in central cities	46,791	55.0	49,440	47.0	48,796	40.5
outside central cities	38,308	45.0	55,741	53.0	71,628	59.5
Black SMSA population	8,850	100.0	12,710	100.0	16,786	100.0
in central cities	6,608	74.7	9,950	78.3	13,097	78.0
outside central cities	2,242	25.3	2,760	21.7	3,689	22.0

Source: U.S., Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States, 1971*, table 14.

suburban areas and hence do not fit the common concept of suburbs.[392]

Black movement to the suburban areas of Washington, D.C., may be fairly typical of black suburbanization elsewhere. There, increases in black population throughout the suburban areas have taken place but in a very uneven pattern. Most blacks (67 percent) have moved to the close-in suburban neighborhoods of Prince George's County, which are contiguous to heavily black southeast and northeast Washington. Thus, the predominant pattern of suburban black settlement in Washington has been extended ghettoization.[393]

In other Washington metropolitan jurisdictions, blacks have located through a pattern that primarily establishes or reinforces pockets of minority population. Only a small number of blacks has moved into predominantly white neighborhoods. However, this limited amount of integration is a significant change from earlier patterns in the metropolitan Washington area. It indicates that blacks, particularly those with higher incomes, are taking advantage of a greater variety of housing locations than previously.[394]

Location of Other Minorities

Residential location of urban Spanish-origin populations appears to resemble the pattern of concentration found among urban blacks. Persons of Puerto Rican origin in northeastern cities such as New York, Philadelphia, New Haven, and Bridgeport are especially segregated. However, there is evidence that Spanish-origin families in the South and Southwest are less segregated than American blacks in the same areas. A 1974 study of 109 cities in the South found that the trend towards residential segregation has been reversed since 1960. While in nearly every city the study showed that in 1970 there were more blocks with both white and minority residents than in 1960, the most dramatic changes were in cities with large Spanish-origin populations, e.g., San Antonio and San Diego with large Mexican American populations, and Miami with a large Cuban population. It has been inferred from this study that persons of Spanish origin are having less difficulty than blacks

[392] East St. Louis with more than one-third of the St. Louis suburban blacks; Camden, N.J., and Chester, Pa., with one-third of suburban Philadelphia blacks; Compton and Willowbrook in the Los Angeles-Long Beach SMSA; Cambridge in the Boston SMSA.

[393] Both, *Suburban Residential Integration Process*, p. 52.

[394] Ibid., pp. 54–57.

Table 4.4

Migration Gains And Losses, By Race, 40 Cities, 1960 to 1970

City	Negro and other races		Whites	
	Number	Percent [1]	Number	Percent
New York	435,840	38.2	−955,519	−14.4
Chicago	113,194	13.5	−654,866	−23.8
Los Angeles	119,522	28.7	− 48,288	− 2.3
Philadelphia	39,648	7.4	−246,435	−16.8
Detroit	97,533	20.0	−386,771	−32.7
Houston	55,619	25.6	67,243	9.3
Baltimore	31,737	9.7	−149,741	−24.5
Dallas	46,899	35.7	7,525	1.4
Washington, D.C.	38,348	9.2	−138,322	−40.1
Cleveland	− 2,769	− 1.1	−206,373	−33.1
Indianapolis	15,420	15.3	− 17,429	− 2.9
Milwaukee [2]	23,038	35.0	−128,388	−19.0
San Francisco	37,485	27.6	− 93,122	−15.4
San Diego	17,305	38.7	27,616	5.2
San Antonio	5,304	12.3	− 52,349	− 9.6
Boston	26,493	38.7	−130,621	−20.8
Memphis [3]	22,581	12.2	34,542	11.0
St. Louis	− 948	− 0.4	−181,815	−34.0
New Orleans	− 10,548	− 4.5	− 91,607	−23.3
Phoenix	5,599	21.8	71,453	17.3
Columbus	9,371	12.0	− 10,600	− 2.7
Seattle	9,810	21.1	− 72,572	−14.2
Jacksonville	− 3,914	− 3.7	5,337	1.5
Pittsburgh	− 6,444	− 6.3	− 99,079	−19.7
Denver	12,154	34.5	− 41,116	− 9.0
Kansas City, Mo.	13,037	15.5	− 28,835	− 7.4
Atlanta	32,707	17.5	− 82,474	−27.4
Buffalo	8,965	12.2	−111,095	−24.2
Cincinnati	− 2,520	− 2.3	−106,096	−27.0
Nashville	2,354	3.1	− 1,906	− 0.6
San Jose [4]				
Minneapolis	7,239	46.4	− 94,381	−20.2
Fort Worth	11,250	19.8	− 19,435	− 6.5
Toledo [3]	5,785	14.3	− 28,645	−10.3
Portland, Ore.	4,661	22.3	− 7,565	− 2.2
Newark	31,506	22.6	−106,583	−40.1
Oklahoma City	5,242	12.4	− 10,425	− 3.7
Oakland	29,463	30.4	− 61,373	−22.7
Louisville	6,978	9.9	− 78,093	−24.4
Long Beach	8,177	55.4	− 18,942	− 5.8

[1] Percentage pertains to 1960 population base.
[2] Figures are for Milwaukee County.
[3] Some change is the result of annexation to the central city.
[4] No racial migration figures are provided for the city of San Jose.

Source: U.S., Department of Commerce, Bureau of the Census, General Demographic Trends for Metropolitan Areas, 1960 to 1970, 1970 census of population, series PHS(2) 4, 6, 7, 10, 11, 12, 15, 16, 19, 20, 22, 23, 24, 25, 27, 32, 34, 37, 38, 39, 40, 44, 45, 49, 51.

in finding housing outside of areas of minority concentration.[395]

[395] *Washington Post*, May 26, 1974. The study was performed by the University of Wisconsin Institute for Research on Poverty directed by Karl E. Taeuber.

Table 4.5

Indicators of Racial Separation In Cities With Populations Over 100,000 And Black Populations Over 50,000, 1970

A. Proportion Of Black Population Living In Census Tracts 50 Percent Or More Black

Rank		Percent	Rank		Percent
1.	Washington, D.C.	96.2	26.	New Oreans	85.3
2.	Chicago	93.9	27.	Mobile	85.1
3.	Cleveland	93.7	28.	Houston	83.3
4.	Richmond, Va.	93.6	29.	Buffalo	83.2
5.	Jackson, Miss.	93.3	30.	Jacksonville	82.6
6.	Dallas	92.8	31.	Philadelphia	81.9
7.	Baltimore	91.5	32.	Tampa	81.3
8.	Oklahoma City	91.3	33.	Ft. Worth	81.0
9.	Atlanta	91.0	34.	Pittsburgh	80.5
10.	Dayton	90.9	35.	Flint	80.3
11.	Savannah	90.6	36.	Boston	76.1
12.	Detroit	90.4	37.	Cincinnati	76.1
13.	Gary	90.0	38.	Indianapolis	76.0
14.	Newark	89.7	39.	Nashville	75.6
15.	Charlotte, N.C.	89.5	40.	Columbus	73.9
16.	Memphis	89.0	41.	Toledo	69.3
17.	Shreveport	88.9	42.	Oakland	66.6
18.	Miami	88.5	43.	New York	64.0
19.	Kansas City	88.5	44.	San Diego	58.3
20.	St. Louis	88.2	45.	San Francisco	55.5
21.	Norfolk	87.4	46.	Jersey City	53.5
22.	Los Angeles	86.9	47.	San Antonio	51.8
23.	Birmingham	86.0			
24.	Milwaukee	86.0			
25.	Louisville	85.8			

Native Americans living in metropolitan areas are more likely than blacks to live outside central cities. In 36 metropolitan cities with Native American populations in excess of 2,000 an average of 48.4 percent lived outside central cities.[396]

Contrary to the pattern in metropolitan areas, Native Americans face severe restrictions relative to the neighborhoods in which they can find housing in smaller localities in such States as Montana, North Dakota, and South Dakota.[397]

The concentration and consequent isolation of urban minority populations is likely to continue in the future unless much greater effort is made to reverse the effect of the forces that have led to residential segregation in urban areas throughout the United States. With such effort, the future is likely to bring the establishment of many more "super ghet-

[396] In 1970, metropolitan areas with the highest concentrations of Native Americans in the central cities were New York with 82 percent, Milwaukee with 81 percent, Minneapolis-St. Paul with 79 percent, Houston with 75 percent, and Chicago with 73 percent. U.S., Department of Commerce, Bureau of the Census, *General Population Characteristics: 1970,* Series PC(1)B.

[397] Montana, North Dakota, and South Dakota Advisory Committees to the U.S. Commission on Civil Rights, *Indian Civil Rights Issues in Montana, North Dakota, and South Dakota,* (1974), pp. 37–38 (cited hereafter as *Indian Civil Rights Issues).*

Table 4.5 Continued

B. Proportion Of Black Population Living In Census Tracts 90 Percent Or More Black

Rank		Percent	Rank		Percent
1.	Chicago	77.7	26.	Birmingham	46.9
2.	Shreveport	76.3	27.	Philadephia	44.7
3.	Atlanta	74.9	28.	Newark	43.2
4.	Mobile	72.2	29.	Buffalo	42.9
5.	Norfolk	71.8	30.	Milwaukee	41.7
6.	Jackson, Miss.	71.6	31.	New Orleans	41.0
7.	St. Louis	71.2	32.	Indianapolis	39.2
8.	Baltimore	70.8	33.	Houston	38.8
9.	Gary	68.8	34.	Pittsburgh	38.2
10.	Richmond	67.6	35.	Tampa	37.3
11.	Cleveland	67.4	36.	Cincinnati	36.6
12.	Washington, D.C.	66.5	37.	Flint	34.7
13.	Dallas	66.0	38.	Boston	31.3
14.	Dayton	65.1	39.	Los Angeles	30.0
15.	Miami	64.9	40.	Toledo	29.7
16.	Memphis	61.2	41.	New York	28.4
17.	Savannah	60.0	42.	San Antonio	25.7
18.	Oklahoma City	59.6	43.	Oakland	15.2
19.	Jacksonville	56.9	44.	Columbus	15.2
20.	Louisville	53.9	45.	Jersey City	9.8
21.	Nashville	51.3	46.	San Francisco	0.0
22.	Charlotte	50.1	47.	San Diego	0.0
23.	Kansas City, Mo.	49.3			
24.	Ft. Worth	49.0			
25.	Detroit	48.9			

Source: Special census tabulations prepared for the Office of Equal Opportunity, Department of Housing and Urban Development, by Census Data Corp.

tos," some of which exist now, and in which the life chances of the average minority resident are depressed rather than enhanced.[398] In addition, the social costs of continued ghetto expansion are likely to exact a high price in the long run in adverse impacts on metropolitan growth and development.[399]

Part 3

Housing Conditions of Minorities and Families Headed Solely by Women

Over the last two decades, minority housing conditions improved substantially, particularly in urban areas. The extent of improvement, however, lagged well behind that for whites. Thus, a dispro-

[398] Rose, "Spatial Development," p. 64.

[399] John F. Kain, "Housing Market Discrimination and Its Implications for Government Housing Policy" (paper prepared for the Department of Housing and Urban Development, June 29, 1973), p. 32.

Table 4.6

Percent Changes In Population, 1960–70, 15 Largest Metropolitan Areas

	Central cities		Suburbs	
	Black Pop.	White Pop.	Black Pop.	White Pop.
New York	53%	− 9%	55%	24%
Los Angeles-Long Beach	52	5	106	14
Chicago	36	−19	62	34
Philadelphia	24	−13	34	21
Detroit	37	−29	26	28
San Francisco-Oakland	40	−17	61	29
Washington	31	−39	102	58
Boston	66	−17	53	11
St. Louis	19	−32	54	27
Baltimore	29	−21	16	36
Cleveland	15	−27	453	23
Houston	47	26	7	63
Newark	50	−37	64	11
Minneapolis	49	− 9	223	55

Source: "How Racial Patterns Are Shifting in Your Neighborhood," *U.S. News and World Report*, March 1, 1971, p. 25.

portionately greater number of minorities than of whites continue to live in substandard[400] and overcrowded housing.

Rates of homeownership for minority families and families headed by women are substantially below the rate for white families and families headed by men. Housing owned by minorities is of considerably less value, on the average, than white-owned homes. Minority-owned housing is among the oldest in the Nation's housing stock.

Well over half of the black population lived in poverty areas[401] in 1970, and the majority of black persons in families headed by women were poor and lived in such areas.[402] In general, poverty areas provide living conditions that are far less healthful than areas where the preponderance of families are above the poverty-income level. Little more than one-quarter of the white population lived in such areas.

Minorities in Substandard Housing

Because census data and other information are often sketchy or nonexistent relative to the housing conditions of minorities other than blacks, the data in this section relate most accurately to blacks. It can fairly be stated, however, that the problems of blacks are shared by persons of Mexican and Puerto Rican origin, Native Americans, and Asian Americans.

The percentage of all American families[403] living in substandard housing[404] has declined from 35 percent in 1950 to approximately 7 percent in 1970 (chart 4.2). Considerably more black families than white lived in substandard housing in 1950: 73.2 percent of black families compared to 31.8 percent of white families. Between 1950 and 1970 the proportion of whites living in substandard housing dropped faster than the proportion of blacks. Thus in 1970, 23 percent of black families but only 5.7 percent of white families lived in substandard housing. One factor creating this imbalance was that between 1950 and 1960, 9 out of 10 of standard homes added to the housing supply went to white occupants, despite the relatively greater need of blacks.

Because the incidence of substandard housing rises with declining income and a larger proportion of the black population is poor[405] than of the white, it can be expected that a larger proportion of blacks would be living in substandard housing conditions. How-

[400] The term "substandard housing," used as a measure of housing quality, was first coined by the national housing agencies in the 1950s. It is descriptive of the structural quality as well as the basic facilities of a housing unit. In 1950, units in a dilapidated condition were defined as substandard. In 1960, deteriorating housing was added as a classification in the substandard category. In the 1970 census, structural quality was not measured. However, units lacking some or all basic plumbing facilities, previously included in the substandard category, were counted in 1970.

[401] In metropolitan areas, the census defines a low-income area in terms of a census tract in which 20 percent or more of the population was below the poverty-income level in 1969. In nonmetropolitan areas, a low-income area is defined in terms of a township, district, etc., in which 20 percent of the population is below this income level. In 1972 about one-fifth of all persons in the United States lived in low-income areas, and nearly one-half (46 percent) of the poor resided in these areas as compared to 17 percent of the nonpoor. U.S., Department of Commerce, Bureau of the Census, *Characteristics of the Low Income Population: 1972*, Current Population Reports, Series P-60, no. 91 (1973), pp. 3–4.

[402] Of all black families below the poverty level, 63.8 percent were families headed by women in 1973; of all poor white families, 37 percent were families headed by women; and of all poor Spanish-origin families, 45.1 percent were families headed by women. Of all black unrelated individuals below the poverty level, 60.4 percent were females. For poor white and Spanish-origin unrelated individuals, the figures were 70.8 percent and 57.1 percent, respectively. U.S., Department of Commerce, Bureau of the Census, *Characteristics of The Low-Income Population: 1973*, Current Population Report, Series P-60, no. 98 (1975).

[403] In this report, the term "family" or "home" is used interchangeably with the census terms "household" and "housing unit."

[404] In 1950, the figures were for "Negro and other races." In 1970, black households were treated separately, and other races were included with whites.

[405] The poverty-level income for a nonfarm family of four in 1973 was $4,540, based on an annually adjusted poverty index that reflects the different comsumption requirements of families according to their size and composition, sex and age of family head, and farm or nonfarm residence.

Table 4.7

Indicators of Racial Separation in Suburban Sectors of Selected Standard Metropolitan Areas, 1970

A. Proportion Of Black Suburban Populations Living In Census Tracts 50 Percent Or More Black

Rank		Percent	Rank		Percent
1.	Miami	80.1	18.	Norfolk	39.2
2.	Gary	73.7	19.	Buffalo	36.9
3.	Detroit	70.2	20.	Houston	35.5
4.	Los Angeles	69.7	21.	Flint	35.2
5.	Shreveport	68.3	22.	New York	34.8
6.	Memphis	65.2	23.	Savannah	34.3
7.	San Francisco	60.2	24.	Philadelphia	34.1
8.	Kansas City, Mo.	59.9	25.	Washington, D.C.	33.2
9.	St. Louis	55.4	26.	Cincinnati	33.0
10.	Chicago	54.3	27.	Dayton	31.2
11.	Jackson, Miss.	52.3	28.	Dallas	30.3
12.	Tampa	49.2	29.	Atlanta	21.8
13.	Newark	49.2	30.	Pittsburgh	21.4
14.	Cleveland	48.4	31.	Nashville	19.2
15.	Mobile	45.6	32.	Richmond	17.0
16.	Birmingham	44.3	33.	Columbus	17.0
17.	New Orleans	44.0	34.	Baltimore	13.5

B. Proportion Of Black Suburban Populations Living In Census Tracts 90 Percent Or More Black

Rank		Percent	Rank		Percent
1.	Detroit	43.8	14.	Chicago	17.0
2.	Kansas City, Mo.	38.7	15.	Tampa	15.3
3.	Miami	37.5	16.	San Francisco	14.7
4.	Savannah	34.3	17.	Cleveland	11.9
5.	Shreveport	34.1	18.	Newark	11.5
6.	St. Louis	27.9	19.	Dallas	11.3
7.	Buffalo	27.0	20.	Birmingham	11.2
8.	Cincinnati	25.0	21.	Philadelphia	11.2
9.	New Orleans	22.5	22.	Norfolk	10.6
10.	Mobile	22.3	23.	Memphis	10.5
11.	Dayton	17.7	24.	Pittsburgh	2.4
12.	Los Angeles	17.2	25.	New York	2.1
13.	Washington, D.C.	17.2	26.	Baltimore	0.8

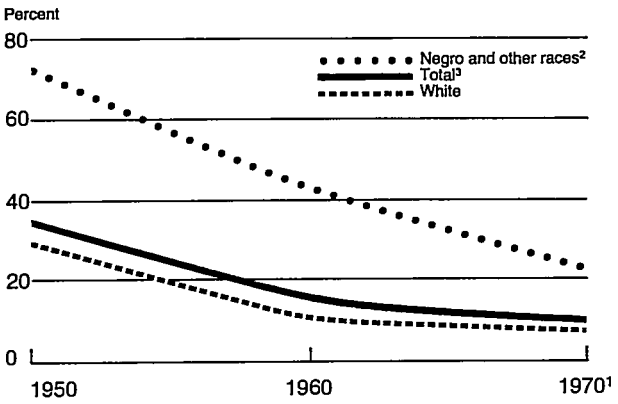
Source: Special census tabulations prepared for the Office of Equal Opportunity, Department of Housing and Urban Development, by the Census Data Corp.

ever, this factor holds true for blacks in every income category (table 4.8).

The incidence of overcrowded housing is considerably more frequent among minority families of all income levels than among white families (table 4.9).

Chart 4.2

Households Living in Substandard Units, by Race, 1950–70



[1] Figures for 1970 are based on a special tabulation of unpublished data provided by a 1970 Census Bureau survey. Components of Inventory Change.

[2] In 1970 "Negro and other races" is limited to Negro only and "White" included white and other races.

[3] For 1960 census data yielded a figure of 16 percent. However, 1960 data had a serious undercounting of dilapidated units. The 1959 Survey of Components of Change and Residential Finance (SCARF) is believed to have yielded more accurate figures regarding dilapidation. Hence, the 17 percent figure is based on SCARF findings.

Source: U.S., Executive Office of the President, Office of Management and Budget, *Social Indicators, 1973,* table 6/3.

Table 4.8

Households Living In Substandard Units By Income And Race, 1970

Family income	All races	White & other	Black
All households	7.4%	5.7%	23.0%
Less than $2,000	23.8	19.4	45.6
$2,000 to $2,999	15.8	12.1	34.1
$3,000 to $3,999	12.5	9.4	29.5
$4,000 to $4,999	12.3	10.7	21.5
$5,000 to $5,999	9.1	7.3	19.0
$6,000 to $6,999	7.1	6.0	15.4
$7,000 to $9,999	4.5	3.6	13.7
$10,000 to $14,999	2.1	1.8	8.6
$15,000 and over	0.9	0.9	2.0

Note: Income is estimated family income. Table is based on Bureau of the Census, 1970 Components of Inventory Change Survey, unpublished data.

Source: Executive Office of the President: Office of Management and Budget, *Social Indicators,* 1973, table 6/6.

In 1960, one-tenth of white homes had more than one person per room compared with 28 percent of nonwhites. By 1970 the proportion for whites and minorities other than blacks had fallen to 7 percent and for blacks to 19 percent. For families of Spanish origin living in urban areas, crowded conditions were more prevalent than for any other racial or ethnic group in 1970 (table 4.10). This was especially true for families of Mexican origin. In rural areas, Native American families had the highest incidence of overcrowding, followed closely by families of Mexican origin (table 4.11).

Minority families are also more likely than white families to live in housing that lacks adequate plumbing facilities (tables 4.10 and 4.11). This discrepancy is greater in rural areas. In rural areas especially, moreover, blacks, Mexican Americans, and Native Americans are quite likely to occupy housing that not only is overcrowded but also lacks adequate plumbing facilities (table 4.11). Not only is the incidence of overcrowding and inadequate plumbing facilities higher among minority families, but a greater proportion of minorities at all income levels live in such housing than whites. For example, 14 percent of the housing occupied by white[406] families with incomes below $2,000 lacked some or all plumbing facilities in 1970 and 3.5 percent were overcrowded. For black families at this income level, the respective figures were 29.9 percent and 12.3 percent. At the other end of the income scale, only 0.7 percent of the white households earning $15,000 or more lived in homes lacking adequate plumbing facilities, and 5.4 percent were overcrowded. For black families with similar incomes, the figures were 2.3 percent and 17.4 percent, respectively.[407]

Even in homes with adequate plumbing facilities, the number of such facilities in minority homes

[406] These figures are for whites and "other races." There can be no doubt that households of Native Americans and persons of Mexican and Puerto Rican origin have characteristics by family income level similar to those of black households, given the fact that in general these two minority populations lag well behind whites insofar as adequate housing is concerned, as shown in tables 4.10 and 4.11. Combining the "other races" category with whites therefore results in an understatement of the housing conditions of whites.

[407] Levitan, Johnston, and Taggert, *Still a Dream,* table 7–2, p. 217.

Table 4.9

Households Living In Crowded Conditions, By Income and Race, 1970

Family income	All races	White & Other Races	Negro
All households	8.0%	6.7%	19.4%
Less than $2,000	5.1	3.5	12.3
$2,000 to $2,999	6.6	4.5	18.4
$3,000 to $3,999	8.9	6.4	22.8
$4,000 to $4,999	9.8	7.5	24.0
$5,000 to $5,999	10.2	8.3	23.8
$6,000 to $6,999	10.2	8.6	23.0
$7,000 to $9,999	9.7	8.6	22.3
$10,000 to $14,999	8.2	7.5	19.8
$15,000 and over	5.8	5.4	17.4

Note: Income is 1969 family income. Housing units with more than one person per room are defined as overcrowded.

Source: Executive Office of the President, Office of Management and Budget, *Social Indicators*, 1973, table 6/13.

lagged well behind the number found in white homes. For example, 26 percent of all white-occupied housing in 1970 had more than one bath as opposed to only 12 percent of black-occupied homes.[408] In other amenities, such as clothes washers and dryers, dishwashers, and garbage disposals, minority homes lagged well behind white homes.

Minority Homeownership

Although the gap between minority and white homeownership rates narrowed slightly between 1960 and 1970, the difference is still substantial. Homeownership for minorities increased from 38 percent in 1960 to 45.1 percent in 1970. For whites, the homeownership rate was 64 percent in 1960 and 69.4 percent in 1970.

For blacks there is a wide regional variation in rates of homeownership. In 1970, 47 percent of southern black families owned[409] homes compared with 29 percent of those in the Northeast. In each income class and area of residence, whites owned their homes more frequently than blacks (table 4.12).

Lower black than white income can only partly explain the differences in homeownership rates. Blacks could be expected to have a higher rate of homeownership than currently exists were limited income the only barrier. Restrictions placed against blacks seeking to purchase homes are a far more significant factor.

Table 4.13 provides estimates of actual levels of black homeownership in 18 large metropolitan areas in 1960 and of the levels of homeownership that would have existed if income were the only factor affecting homeownership rates. The restrictions against minority homeownership suggested by the figures in tables 4.12 and 4.13 have far greater ramifications than may at first be evident. John Kain and John Quigley, researchers in housing market discrimination, found that:

> An effective limitation on homeownership can increase Negro housing costs over 30 percent, assuming no price appreciation. Moreover, . . .given reasonable assumptions about appreciation of single family homes, a Negro household prevented from buying a home in 1950 would have out-of-pocket housing costs in 1970 more than twice as high as the costs would have been if the family had purchased a home 20 years earlier. These increases in housing costs are in addition to any price markups.[410]

Current and historical limitations on homeownership and the substantial decline in black farm ownership in the South are important reasons why black families at every income level have less wealth today than white families. Homeownership has been the principal means of capital accumulation for low- and middle-income families. The importance of homeownership has been illustrated by John F. Kain. He estimates that the average house purchased with an FHA mortgage in 1949 had a value of $8,286 and a mortgage of $7,101. If this house were purchased with a 20-year mortgage by a 30-year-old household head, and the home neither appreciated or depreciated, the purchaser of this home would have saved more than $7,000 and would own the home free and clear by his or her 50th birthday. However, Kain stated that the average appreciation of single-family houses during the past 20 years must have exceeded 100 percent, which is a conservative estimate.

[408] Ibid., p. 218.

[409] The 1970 homeownership rate for black families was 47.7 percent; for families of Mexican origin, 53.4 percent; of Puerto Rican origin, 30.4 percent; of Cuban origin, 37.8 percent; for Native American families, 50.2 percent; and for all other nonwhite families, 50.9 percent.

[410] John F. Kain and John M. Quigley, "Housing Market Discrimination, Homeownership, and Savings Behavior," *The American Economic Review*, vol. 52 (June 1972), pp. 263–77.

Table 4.10

Selected Characteristics Of Urban Housing By Race, 1970

	Total population	White	Black	Spanish origin: Mexican Amer.	Spanish origin: Puerto Rican	Spanish origin: Cuban	Indian	Other races [2]
Overcrowded units [1] Percent of all units occ. by racial groups in urban areas	7.5%	5.3%	17.5%	31%	22%	24.5%	18.6%	18.4%
Units lacking some or all plumbing facilities Percent of all units occ. by racial group in urban areas	3.6%	2.7%	8.4%	6.8%	3%	2.4%	7.3%	4.3%
Median value owner-occupied units	$18,100	—	$11,600	$12,600	$18,200	$18,400	$13,500	$25,880
Median contract rent	$92	—	$73	$74	$84	$110	$81	$105.40
Percent of all urban units occ. by racial group owned	58.4%	61.8%	38.8%	49.7%	9.9%	23.4%	38.6%	40.5%

[1] Overcrowded is defined as 1.01 persons or more per room.

[2] "Other races" includes Japanese, Chinese, Filipino, Korean, and all other races (Malayan, Polynesian, Thai, etc.).

Source: U.S., Department of Commerce, Bureau of the Census, Census of Housing: 1970, Vol. 1, Part 1 *United States Summary*, tables 10, 11, 12, 13, 14; *Housing of Selected Racial Groups*, series HC(7)-9, tables A-1, A-2, A-3; *American Indians*, series PC(2)1F, table 10; *Persons of Spanish Origin*, series PC(2)-1C, table 12.

Therefore, the homeowner in Kain's example would have accumulated assets by age 50 worth at least $16,000, a considerable sum that he or she could use to reduce housing costs, to borrow against for family needs, or simply hold for retirement.[411]

For minorities who have obtained homeownership, median housing value is considerably less than that for whites, and the houses owned are generally older (tables 4.10 and 4.11). In 1970, 60.7 percent of the whites owned homes worth $15,000 or more and 35 percent of these homes were constructed since 1960. Only 29.8 percent of the black-owned homes were constructed since 1960 (table 4.14). On the other hand, 46.3 percent of black homeowners owned homes of less than $10,000 value and 93 percent of them were built prior to 1960. Although the age of similar white-owned homes approximated those owned by blacks in this category, only 19.4 percent of the whites owned homes under $10,000 in value. Among homes valued the highest ($20,000 or more), those owned by blacks were less likely than those owned by whites to be of recent construction.

Rental Housing for Minorities

A much greater proportion of minority renters also live in older housing. In 1970, 16 percent of black renters lived in housing built within the last decade, compared to 25 percent of white renters. Seventy percent of black renters, as compared to 59 percent of white renters, lived in housing built in 1949 or earlier.

[411] John F. Kain, "Housing Market Discrimination and Its Implications for Government Housing Policy" (paper prepared for the Department of Housing and Urban Development, June 29, 1973), pp. 14–15.

Table 4.11

Selected Characteristics Of Rural Housing (Farm & Nonfarm) By Race, 1970

	Total population	White	Black	Spanish origin: Mexican Amer.	Spanish origin: Puerto Rican	Spanish origin: Cuban	Indian	Other races [2]
Overcrowded units [1] Percent of all units occ. by racial group in rural areas	11%	8%	31%	43%	25.5%	9.5%	45%	24%
Units lacking some or all plumbing facilities Percent of all units occ. by racial group in rural areas	18.8%	15.5%	62.5%	27.6%	8.7%	4.8%	46%	21.3%
Median value of owner-occupied units	$12,600	—	$6,000	$6,400	—[3]	—[3]	$4,900	$18,150
Median contract rent	$58	—	$30	$54.50	—[4]	—[4]	$41.50	$66.60
Percent of all rural units occ. by racial group owned	76.2%	77%	56.6%	57%	50.9%	51.2%	61.8%	61.3%

[1] Overcrowded is defined as more than 1.01 persons per room.

[2] Includes Japanese, Chinese, Filipino, Korean, and all other races (Malayan, Polynesian, Thai, etc.).

[3] Median value of owner-occupied units for all households of Spanish origin: $8,850.

[4] Median contract rent for all households of Spanish origin: $53.

Source: U.S., Department of Commerce, Bureau of the Census, Census of Housing: 1970, Vol. 1, Part 1, *United States Summary*, tables 10, 11, 12, 13, 14; *Housing of Selected Racial Groups*, series HC(7)–9, tables A–1, A–2, A–3; *American Indians*, series PC(2)–1F, table 10; *Persons of Spanish Origin*, series PC(2)–1C, table 12.

Housing Costs of Minorities

In general, minorities pay lower median contract rents[412] than whites (tables 4.10 and 4.11). Nevertheless, according to some studies, blacks still spend more of their income for housing than whites. Table 4.15 shows one estimate of housing costs as a percentage of income in 1970. These figures show, for example, that 30 percent of black homeowners paid one-quarter of their incomes or more for housing as compared to 18 percent of the white homeowners. Approximately 43 percent of black renters, compared to 35 percent of white renters, paid one-quarter of their incomes or more for rent.

Other recent studies, however, have found that blacks actually spend a smaller fraction of their incomes on housing than whites of similar income and family structure because of the higher relative prices of good quality housing to which whites have easy access but which is in short supply in areas of minority concentration.[413] These studies concluded that blacks would spend as much or more than similarly situated whites were access the same for both groups to a similar range of housing.

Other studies confirm that blacks pay more than whites for housing of similar size, quality, and neighborhood amenity. The Kaiser Commission found that nonwhites in urban areas paid up to 30 percent more than whites to obtain minimally adequate housing in 1960.[414] A later study provided

[412] See table 4.18 for definition of contract rent.

[413] Kain, "Housing Market Discrimination," pp. 15–16.

[414] President's Committee on Urban Housing, *A Decent Home*, pp. 42–43.

Table 4.12

Percentage Of Families Residing In Owner-Occupied Housing Units By 1969 Income, Inside And Outside Metropolitan Areas, 1970

Race and residence	Total	Annual Income: Less than $3,000	$3,000 to $4,999	$5,000 to $6,999	$7,000 to $9,999	$10,000 to $14,999	$15,000 or more
Black							
Total	42	33	34	38	47	57	70
Metropolitan areas	39	26	28	33	44	56	69
In central cities	35	23	25	30	40	52	66
Outside central cities	54	43	44	49	58	68	80
Outside metropolitan areas	52	46	48	56	63	70	77
White and other							
Total	65	53	53	54	63	74	82
Metropolitan areas	62	45	46	47	58	71	81
In central cities	51	35	37	38	49	62	72
Outside central cities	71	56	56	55	65	77	86
Outside metropolitan areas	72	65	65	66	72	80	87

Source: U.S., Department of Commerce, Bureau of the Census, *The Social and Economic Status of the Black Population in the United States, 1972*, series P–23, no. 46, July 1973, table 62.

estimates of the magnitude of discrimination markups[415] for rental properties occupied by blacks for 10 metropolitan areas (see table 4.16). In only one, San Francisco, was evidence insufficient to indicate rental markups based on race. A similar markup system exists with respect to homes purchased by blacks.[416]

Blacks in Poverty Areas

Whether below or above the poverty income level, a much greater proportion of blacks than whites lived in poverty areas in 1970, both inside and outside metropolitan areas, as shown in table 4.17. In nonmetropolitan areas, 80.2 percent of low-income blacks and 71.3 percent of blacks above the poverty level lived in low-income areas. For whites the figures are 50.6 percent and 30.9 percent, respectively. In metropolitan areas, 66 percent of low-income blacks and 46.5 percent of blacks above the poverty level lived in low-income areas. For whites the figures respectively were 22.8 percent and 6.1 percent. Moreover, low-income whites living in metropolitan areas were distributed equally between central cities and suburban areas. For blacks the ratio was 5 to 1.

Thus, whites not only enjoy better housing conditions than blacks but better neighborhood environments as well, regardless of income. The quality of the immediate neighborhood is at least as important as the physical condition of the housing itself when the concern is for the total home environment of the family or individual. Figures relating the incidence of overcrowded and substandard housing conditions are clearly insufficient to convey the pervasive picture of bad living conditions found in low-income areas, especially in central cities.

In central city poverty areas, for example, housing density is many times greater than anywhere else.[417]

[415] The discrimination markup is a monetary difference in either the rent or purchase price paid by blacks. Kain, "Theories of Residential Location," p. 17.

[416] A 1967 study of the St. Louis housing market showed a 9 percent markup in rental units and a 15 percent markup in sale units. More recent analyses using later data indicate that comparable differences in sale and rental prices exist today. Because housing is a collection of heterogeneous attributes, the markups of the numerous housing characteristics are not uniform. Thus, "larger price differences arise, if different price structures of the ghetto and non-ghetto housing markets are taken into account. . .the typical ghetto rental unit could be obtained for 13 percent less in all white areas [and] the typical non-ghetto rental-and owner-occupied units would cost 14 percent to 15 percent more respectively in the ghetto than in the non-ghetto housing market." Ibid., pp. 17–18.

[417] In 1968, the Douglas Commission found that density in central city poverty areas was 100 times as great as in like areas outside central cities.

Table 4.13

Actual And Expected Proportions Of Negro Families Who Are Homeowners By SMSA, 1960

SMSA	Actual	Expected
Atlanta	31%	52%
Boston	21	43
Chicago	18	47
Cleveland	30	58
Dallas	39	54
Detroit	41	67
Los Angeles/Long Beach	41	51
Newark	24	50
Philadelphia	45	66
St. Louis	34	55
Baltimore	36	61
Birmingham	44	56
Houston	46	56
Indianapolis	45	58
Memphis	37	50
New Orleans	28	40
Pittsburgh	35	59
San Francisco-Oakland	37	51

Source: John F. Kain and John M. Quigley, "Housing Market Discrimination, Homeownership, and Savings Behavior," *American Economic Review*, June 1972, table 3.

Table 4.15

Homeownership and Rental Costs, by Race, 1970

Annual housing cost as percent of income	Homeownership		Rental	
	Black	White and other	Black	White and other
Number (thousands)	1,786	26,776	3,607	19,953
Percent	100	100	100	100
Less than 10 percent	14	20	23	27
10 to 14 percent	18	21	23	27
15 to 19 percent	14	18	15	17
20 to 24 percent	11	11	11	12
25 to 34 percent	13	9	14	13
35 percent or more	12	7	29	22
Not reported	19	14	8	9
Median	18	16	24	20

Note: Annual housing costs included the sum or payments for real estate taxes, special assessments (if any), property insurance, utilities, fuel, water, ground rent (if any), and interest and principal payments on all mortgages (if property is mortgaged), plus any other items included in the mortgage payment. "Gross rent" is the contract rent plus the estimated average monthly cost of utilities and fuel, if these items are paid for by the renter in addition to rent.

Source: Sar A. Levitan, William Johnson, and Robert Taggert, *Still A Dream, A Study Black Progress, Problems and Prospects* (Washington, D.C.: Center for Manpower Policy Studies, George Washington University, 1973), table 7-6 based on data from U.S., Department of Commerce, Bureau of the Census, *The Social and Economic Status of the Black Population in the United States, 1972*, series P-23, no. 46, tables 64 and 65.

The Douglas Commission found that, "in central city poverty areas, congestion is the great evil, making for acute shortages of open and recreational space, continual crowding in use of transit and other public facilities, and the sense of confinement or containment that gives some support to the label 'ghettos' that has come to be applied to them."[418] Here, too, educational and health care opportunities tend to be the poorest in quality; the percentage of residents who are victims of crime, the highest; and public services such as trash collection, the least effective.

Such areas contain most of the substandard and overcrowded housing in the central city and well over a third of the structures that were built before 1940. None of these factors exist in such heavy concentration elsewhere.[419] Thus, the deleterious effects of poor housing are compounded many times over when they prevail to the virtual exclusion of salutary conditions in central city neighborhoods. These are the neighborhoods where the great majority of urban blacks live.

Spanish-Origin and Native American Minorities

Although information on housing conditions for other minorities is not as extensive as that for blacks, census data as shown in tables 4.10 and 4.11 and evidence from special studies indicate a substantial proportion of other minorities are also ill-housed. Housing opportunities for these groups are severely limited by discriminatory practices in the private housing market and the adverse effects of Federal and local housing policies.

For example, a 1973 study of housing conditions for persons of Spanish origin in Bridgeport, Connecticut, found that:

Although the central city average is increased by the great bulk and untypically high densities in New York City, all central city poverty areas bear higher densities than elsewhere.

[418] *Building the American City*, p. 77.

[419] Ibid., pp. 77-78.

Table 4.14

Year Structure Built by Value Of Owner Occupied Housing Units And Race Of Owner, 1970

Year structure built	Total	Value: Less than $5,000	$5,000 to $7,499	$7,500 to $9,999	$10,000 to $12,499	$12,500 to $14,999	$15,000 to $19,999	$20,000 or more
Specified black occupied								
thousands	2,079	334	320	310	289	206	339	281
Percent, total	100	100	100	100	100	100	100	100
1969 to March 1970	2	1	1	1	2	3	3	4
1965 to 1968	6	4	4	4	5	7	8	12
1960 to 1964	10	7	8	9	10	11	12	16
1950 to 1959	22	17	19	21	24	25	26	26
1949 or earlier	59	71	67	65	59	54	51	43
Percent by value	100	16	15	15	14	10	16	14
1969 to March 1970	100	7	8	9	12	14	26	25
1965 to 1968	100	9	10	11	12	11	20	26
1960 to 1964	100	11	12	12	14	11	19	20
1950 to 1959	100	12	13	14	15	11	19	16
1949 or earlier	100	20	18	16	14	9	14	10
Specified white[1] occupied								
thousands	29,647	1,489	1,933	2,344	3,014	2,882	6,094	11,890
Percent, total	100	100	100	100	100	100	100	100
1969 to March 1970	2	1	1	1	1	1	2	5
1965 to 1968	10	3	2	2	3	5	8	17
1960 to 1964	14	5	5	5	8	11	15	20
1950 to 1959	29	12	15	19	26	33	36	32
1949 or earlier	45	80	78	72	62	51	39	26
Percent by value	100	5	7	8	10	10	21	40
1969 to March 1970	100	2	2	2	3	4	15	74
1965 to 1968	100	1	2	2	3	5	17	70
1960 to 1964	100	2	2	3	6	8	23	57
1950 to 1959	100	2	3	5	9	11	25	44
1949 or earlier	100	9	11	13	14	11	18	24

[1] Includes persons of "other races."

Source: U.S., Department of Commerce, Bureau of the Census, Current Population Reports, series P–23, no. 46, *Social and Economic Status of the Black Population in the United States, 1972*, table 63.

Although housing is a problem for all low-income residents, it is magnified within the Spanish-speaking community. The influx of Puerto Ricans and other persons of Spanish speaking descent into Bridgport has filled an already surfeited low-income housing market. Many neighborhoods where Puerto Ricans originally settled have been demolished by city urban renewal projects and families relocated in the city's substandard areas where a great many live in poverty today.

Puerto Ricans are forced to pay high rents for dilapidated housing in Bridgeport. Large apartments with three-to-six bedrooms are scarce and expensive and the Puerto Rican tradition of

Table 4.16

Estimated Markups For Nonwhite Renters, 1960–61

City	Percent
Chicago	20.4
Los Angeles	9.5
Detroit	9.6
Boston	3.1
Pittsburgh	16.9
Cleveland	12.6
Washington, D.C.	3.0
Baltimore	17.4
St. Louis	13.4
San Francisco-Oakland	0.1

Source: Robert F. Gillingham, "Place to Place Rent Comparisons Using Hedonic Quality Adjustment Techniques Research" (Washington, D.C.: U.S. Department of Labor, Bureau of Labor Statistics, Office of Prices and Living Conditions, Discussion Paper No. 7, March 1973), p. 60. These percentages represent a combined estimate of 17.6 percent for nonwhite households residing in mixed blocks (20 to 39 percent nonwhite); 22.9 percent for nonwhite households residing in predominantly nonwhite blocks (more than 40 percent nonwhite).

> extended family living often forces families to take older, often substandard housing. . . .Another factor relegating Puerto Ricans to the slums is their strong linguistic and cultural ties. Spanish-speaking friends, relatives, and Spanish newspapers provide a comfortable cushion from the world outside the barrio. This limited access to the English speaking world, however, often prevents the Puerto Rican community from learning of suitable housing elsewhere.[420]

Bridgeport has a Puerto Rican population of approximately 25,000, most of whom are poor and eligible for low-income housing assistance. Hindered by the lack of public housing units large enough to house them, or by tenant admission policies, Puerto Ricans have been denied equal access to public housing. In 1973, approximately 16 percent of the total number of public housing units available were occupied by Puerto Ricans, a lower percentage than that for eligible whites and blacks.[421]

The picture is the same for the Puerto Rican population living in Philadelphia. Here, Puerto Ricans are concentrated in specific neighborhoods, have the lowest per capita median annual income of any group,[422] and live in some of the worst housing in the city. Again, the representation of Puerto Ricans in public housing is much lower than for low-income blacks and whites.[423]

Chicanos living in Phoenix, Arizona, have similar housing problems. Phoenix has a Chicano population of approximately 60,000, most of whom reside in barrios in South Phoenix. Although 90 percent of the housing of Phoenix blacks is classified as dilapidated and deteriorating, the housing for Chicanos is considered worse.[424] Blacks and Chicanos living in public housing, moreover, are segregated in different projects. Housing for Mexican Americans in Phoenix, moreover, is considered no worse than housing for Mexican Americans elsewhere in the Southwest.[425]

Despite various building programs and the efforts of both public and private agencies, poor housing conditions prevail on many Native American reservations. The Bureau of Indian Affairs (BIA) estimated in 1968 that 68,000 Native American families were living in substandard housing. Two years later, BIA found that the 1968 estimate was too low; for in 1970, the Bureau found that 63,000 Native Americans were still in substandard housing despite the construction of 4,800 new homes and the renovation of 5,700 other homes in the intervening 2-year period.[426]

In 1970 and 1971, the Indian Health Service (IHS) testified before Congress that many Native American families were living under such atrocious conditions that many of the deaths and injuries of children in these families were directly attributable to unsafe, overcrowded housing.[427] The IHS found that the high infant mortality rate [428] among Native Americans was also associated with the harsh living environment and totally inadequate housing, as were

[420] *El Boricuo*, p. 28.
[421] Ibid., pp. 32, 35.
[422] $5,222 as opposed to $5,558 for blacks and $7,465 for whites.
[423] Two percent of the public housing tenants are Puerto Ricans; 85 percent are black; 12 percent are white.
[424] Morrison F. Warren, Acting Co-Chairman, Arizona State Advisory Committee, Phoenix, Arizona, *Hearing before the U.S. Commission on Civil Rights*, Washington, D.C., June 1971, p. 110.
[425] See, e.g., Los Angeles County Commission on Human Rights, *The Urban Reality: A Comparative Study of the Socio-Economic Situation of Mexican Americans, Negroes, and Anglo-Caucasians in Los Angeles County* (1965), pp. 42–54.
[426] *Indian Housing in the United States*, p. 40.
[427] Ibid., pp. 46–48.
[428] In the early 1970s the national infant mortality rate was 22.4 per 1,000 live births. For the Navajo population the rate was 42 per 1,000 live births. Ibid., p. 47.

Table 4.17

Low-Income Area Residence, Income Status, Metropolitan-Nonmetropolitan Residence, And Race Of Head, 1972

	Below low-income level		Above low-income level	
	White	Black	White	Black
In low-income areas	35.3%	70.5%	13.9%	51.1%
Outside low-income areas	64.7	29.5	86.1	48.9
Metropolitan areas				
In low-income areas [1]	22.8	66.0	6.1	46.5
Outside low-income areas	27.2	34.0	93.9	53.5
Inside central cities				
In low-income areas	31.5	71.8	10.2	51.0
Outside low-income areas	68.5	28.2	89.8	49.0
Outside central cities				
In low-income areas	13.5	37.8	3.6	31.9
Outside low-income areas	86.5	62.2	96.4	68.1
Nonmetropolitan areas				
In low-income areas	50.6	80.2	30.9	71.3
Outside low-income areas	49.4	19.8	69.1	28.7

[1] In 1973, the percentages for both whites and blacks living in low-income areas of metropolitan areas changed slightly, as follows: whites below the poverty level, 23 percent; above the poverty level, 6 percent; blacks below the poverty level, 67 percent; above the poverty level, 44 percent.

Source: U.S., Department of Commerce, Bureau of the Census, Current Population Reports, series P–60, no. 91, "Characteristics of the Low-Income Population: 1972," table B; series P–60, no. 98, "Characteristics of the Low-Income Population: 1973," pp. 10–11.

the high mortality rates resulting from infectious diseases, especially among the Navajo population.[429]

For Native Americans who have left reservations seeking greater opportunities in urban areas, housing conditions appear to be as bad as for other minorities. The housing they find tends to be of the poorest quality. [430] For example, in a predominantly Native American residential area of north Rapid City, South Dakota, over 14 percent of the homes were so bad that they had to be torn down by the city because they could not meet minimum code standards. In many instances, these homes were not replaced. Only 41 percent of the homes in the area met city building code standards in 1974.[431]

In pointing to the housing problems that Native Americans face when they leave reservations, Kathryn Turcotte of the Montana United Indian Association, Havre, Montana, has stated:

> Practically every Indian family lives in an old shack or an old run-down apartment. This is the only thing they can get and some pay as high as $95.00 for these old run-down apartments. The plumbing is usually out of order, the plaster is falling from the ceiling. . .landlords generally say. . ."There's no use fixing it up, because we just rent to Indians."[432]

Because there is a prevailing attitude that Native Americans do not take care of their homes, Native Americans are frequently charged exorbitant rents for substandard housing.[433] In addition, there is evidence that lease agreements are used by landlords to intimidate Native Americans and prevent them

[429] In addition to overcrowding and structural defects, such conditions included poor water supply, unsanitary waste disposal, and insect infestation.

[430] Charles F. Marden and Gladys Meyer, *Minorities in America* (New York: 1973), p. 301.

[431] *Indian Civil Rights Issues*, p. 37.

[432] Ibid., p. 37.

[433] Ibid., p. 38.

from making complaints about their housing conditions.[434]

Housing Conditions of Families Headed by Women

Census data on housing conditions of women is given for the designation "female headed households." Traditionally, female-headed households have been defined as those that do not have a husband present. Women whose incomes provide the majority of support in a husband-wife household, for example, have not been considered household heads even when so designated on census forms by household members. Thus, it has not been possible to determine the extent to which husband-wife households may, in reality, be headed by the wife, or the extent to which such household may, in fact, be equal partnership.[435] Furthermore, housing data for single person households is not given by male-head-female-head subcategories for separate racial and ethnic groups. Thus the information that is available applies only to families that have two or more persons and that are headed solely by women.

Data from the 1970 census on housing conditions of women indicates that the incidence of factors such as overcrowding and inadequate plumbing facilities is only slightly greater in two-or-more person homes headed by women than in those headed by men[436] (table 4.18). Although the incidence of these conditions is substantially greater among households headed by minority women than households headed by men of all races, it closely approximates the degree of overcrowding and inadequate plumbing found in homes headed by minority men. The rate of homeownership for households headed by women is well below that for households headed by men (47.9 percent and 69.5 percent, respectively) and the median value of homes owned by women is somewhat less than those owned by men ($14,200 and $16,900 respectively). Of homes owned by women, 82.3 percent were constructed in 1959 or earlier; of those owned by men, 72 percent were in this category.

With respect to the characteristics of residents in and outside poverty areas, a substantially greater proportion of persons in families headed by women lived in low-income areas than persons in families headed by men, regardless of income (see table 4.19). Of persons in black[437] families headed by women, 64.8 percent lived in low-income areas.

A slightly greater proportion of the single male population lived in low-income areas than of the single female population (table 4.20). Although this factor holds true for individuals of all incomes, it is not true for single individuals who are poor and who live in low-income areas, 48.6 percent of whom are women and 33 percent of whom are men. The combined effect of discrimination based on race and sex is seen in the figures for black women shown in table 4.20.

As the foregoing information indicates, minorities and women are far more likely to suffer the adverse effects of poor housing and neighborhood environments than other groups in the American population. Were it not for discrimination on the basis of race and ethnicity in location of federally-assisted housing, and on the basis of race, ethnicity, and sex in providing access to the total housing supply, minorities and women of all income levels, including those at the lowest income levels, would on the whole live in better housing and more healthful environments.

Conclusion

Discrimination against minorities and women has been a fundamental operating principle in the Nation's housing market. It arose as an expression of the inferior status to which American society relegated minorities and women early in the Nation's history and has prevailed despite constitutional and other guarantees that, if enforced, would have prevented individual and corporate prejudice from denying equality of housing opportunity to these segments of the American society.

The effect of discrimination in housing has caused untold suffering for minorities and women, especially those at the lower end of the economic scale. It has kept a much larger proportion of minorities and women from acquiring any but the worst housing available in a community. Similarly, it has confined minorities to residence in circumscribed neighborhoods and, until recently, the construction of federally-assisted lower-income housing to minority or low-income areas. This, in turn, has distorted patterns of

[434] Ibid., p. 38.

[435] U.S., Commission on Civil Rights, *Women and Poverty* (1974), p. 7. In 1980 the census definition will be changed to permit counting the wife as head, even when the husband is present, if she is so designated by household members.

[436] A household may be composed of one or more persons, related or unrelated. The census provides housing characteristics data by male-female subcategories for households of two or more persons; single person households are treated as a unit.

[437] Census tabulations are not made for poverty area residence of families or persons of Spanish origin.

Table 4.18

Selected Characteristics Of Households Headed By Men And Women By Race, 1970 [1]

Characteristics	All Races		White and other [2]		Black		Spanish origin	
	Male	Female	Male	Female	Male	Female	Male	Female
Total occupied units	46,004,556	6,289,683	40,685,902	4,553,521	3,553,834	1,437,667	1,764,820	290,495
Overcrowded units	4,393,564	674,455	3,029,071	250,865	851,416	348,442	513,077	75,148
Percent of total units occ. by household type	9.6%	10.7%	7.4%	5.5%	23.9%	24.2%	28.4%	25.2%
Units lacking some or all plumbing facilities	1,892,235	444,487	1,277,513	209,134	526,850	215,691	87,872	19,662
Percent of total units occ. by household type	4.1%	7.1%	3.1%	4.6%	14.8%	15%	4.8%	6.6%
Overcrowded and lacking some or all plumbing facilities	570,912	128,776	296,848	34,946	224,042	84,840	50,002	8,990
Percent of total units occ. by household type	1.2%	2.1%	0.7%	7.7%	6.3%	5.9%	2.8%	3%
Units owned	32,110,243	3,018,249	30,219,961	2,497,242	1,801,404	432,129	908,943	88,878
Rate of homeownership	69.5%	47.9%	74.1%	54.9%	50.7%	30%	51.7%	29.7%
Median value of owner-occupied homes	$16,900	$14,200	—	—	$11,300	$9,200	$14,650	$11,600
Median gross rent [3]	$117	$105	—	—	$96	$90	$102.50	$97

[1] Two or more person households.
[2] The category of "other" includes all minority racial and ethnic groups except the black and Spanish-origin groups.
[3] Gross rent is the contract rent plus the estimated average monthly cost of utilities and fuels paid by the renter. Contract rent is the monthly rent agreed to, or contracted for, regardless of furnishings, utilities, or services that may be included.

Source: U.S., Department of Commerce, Bureau of the Census, *1970 Housing Characteristics by Household Composition, Final Report*, HC(7)–1, tables A1, A2, A3, A6, A7, A8, A11, A12, A13.

urban growth, cut off minorities from access to growing suburban employment markets, subverted efforts to desegregate public schools and equalize the quality of public school education, and caused inequitable distribution of the burden of providing essential services to lower-income urban populations. In rural areas, discrimination in Federal housing programs and appalling insensitivity to the needs of Native Americans has resulted in the denial to many minorities of Federal assistance, virtually the only means through which decent housing can be obtained.

On the one hand, the Federal Government, in attempting to cope with the problem of poor housing, has operated largely within the system of housing discrimination established long before the Government entered the housing market. The Federal Government has been timid in its approach to stimulating lower-income housing production in areas in which whites, and particularly middle- and upper-income whites, reside. Administratively and in housing legislation, the Federal Government has espoused the goal of lower-income housing dispersal. Despite success in some instances, however, the actions of the Government in catering to exclusionary desires of whites and in abruptly terminating federally-assisted housing programs in 1973 while providing no immediate alternatives belie the Government's determination to achieve this goal. With few exceptions, this assessment holds true for similar State administrative and legislative efforts as well. Only in Federal and State adjudication of exclusion-

Table 4.19

Low-Income Area Residence—Persons In Families By Low-Income Status In 1972, Sex And Race Of Head

	All races		White		Black	
	Male head	Female head	Male head	Female head	Male head	Female head
All persons in families (in thousands)	167,928	21,264	151,890	13,739	13,991	7,125
In families in low-income areas	30,681	7,474	23,057	2,764	7,444	4,597
Percent in families in low-income areas	17.8%	32.2%	15.2%	20.4%	51%	64.8%
In low-income families in low-income areas	5,536	4,099	3,509	1,152	1,903	2,892
Percent in low-income families in low-income areas	17.9%	49.1%	54.8%	41.7%	25.6%	62.9%
Percent of all persons in families who are in low-income families in low-income areas	3.3%	19.2%	2.3%	8.4%	13.6%	40.6%

Source: U.S., Department of Commerce, Bureau of the Census, *Characteristics of the Low-Income Population: 1972*, Current Population Reports, series P–60, no. 91, table 10.

ary land use issues are there signs of an understanding of the steps that must be taken if there is to be real commitment to dispersal. In addition, the allocation of national resources to the elimination of poor housing conditions has been insufficient to accomplish the task. Thus, the results of Federal efforts have failed to serve lower-income minorities and women equitably.

On the other hand, the efforts of the Federal Government over the past decade and a half to legislate discrimination out of the housing market have been piecemeal. Not until 1968 did the prohibitions against racial and ethnic discrimination in housing as set forth in Title VIII combine with the concurrent judicial rendering of the Civil Rights Act of 1866 in *Jones v. Mayer* to provide a comprehensive national policy requiring equal housing opportunity for minority citizens. Even at that, full coverage of Title VIII did not occur until 1970 and the prohibition against discrimination in the sale or rental of housing on the basis of sex did not come until amendment of Title VIII in 1974. This piecemeal approach and the lack of vigorous enforcement of fair housing law at the Federal, State, and local levels have militated against full realization of the law's potential.

At this juncture in our Nation's history, therefore, the Commission finds that the forces promoting discrimination in housing hold powerful, if less than universal, sway. These forces will be curbed only by new dedication of national resources and fair housing enforcement efforts to the creation of many more rental and homeownership opportunities for minorities and women of all incomes, in good housing located in a full variety of viable urban neighborhoods, and in rural areas and on Native American reservations as well.

Table 4.20

Low-Income Area Residence—Unrelated Individuals By Low-Income Status In 1972, Sex And Race

	All races		White		Black	
	Male	Female	Male	Female	Male	Female
All unrelated individuals (in thousands)	6,673	10,139	5,485	9,010	1,005	1,023
In low-income areas	1,727	2,342	1,041	1,694	659	622
Percent in low-income areas	25.8%	23%	19.2%	18.8%	65.6%	60.8%
Low-income individuals in low-income areas	570	1,138	302	754	264	379
Percent low-income individuals in low-income areas	33%	48.6%	29%	44.5%	40.1%	60.9%
Percent of all unrelated individuals who are low-income and in low-income areas	8.5%	11.2%	5.5%	8.4%	26.3%	37%

Source: U.S., Department of Commerce, Bureau of the Census, *Characteristics of the Low-Income Population: 1972,* Current Population Reports, series P–60, no. 91, table 10.

Findings

Education

Finding No. 1

School desegregation has progressed substantially in the South. The proportion of black pupils attending predominantly white schools had increased from less than 19 percent in 1968 to more than 46 percent in 1972. A significant number of black pupils, nevertheless, continue to attend predominantly minority schools 20 years after *Brown.*

Finding No. 2

School desegregation progress in the North has been minimal. The proportion of black pupils attending predominantly white schools had increased less than 1 percent between 1968 and 1972. In 1972 more than 71 percent of black pupils continued to attend predominantly minority schools.

Finding No. 3

Without positive action, segregation in urban areas, both North and South, appears likely to increase, and urban-suburban racial divisions will be intensified. Half of all black pupils are enrolled in the Nation's largest and most segregated school districts, where there has been a continuing decline in white enrollment and increase in black enrollment. The same pattern is apparent where there is a large population of Spanish-speaking background.

Finding No. 4

Most fears about school desegregation have proved groundless, and desegregation generally is working where it has been genuinely attempted. Given adequate preparation, planning, and leadership, desegregation can and has been a force contributing to substantial improvement in the quality of education, including among other factors the opening of new opportunities to know and understand persons of differing backgrounds.

Finding No. 5

"Freedom of choice" has proved a totally ineffective method of school desegregation. It has received support in North and South as a political compromise between the constitutional imperative to eliminate segregation and the resistance of many white Americans to the changes in the educational system this requires. It is a compromise that leads to only one result: denial of equal educational opportunity.

Finding No. 6

The Federal Government's commitment to desegregation must include termination of Federal financial assistance to school systems maintaining segregated schools. In *Adams v. Richardson,* the Federal district court held that where negotiation and conciliation do not secure thorough and effective constitutional compliance, the Department of Health, Education, and Welfare is required to implement its statutory responsibilities and halt Federal aid. Any other course adds to the burden of the courts and forces them to deal with situations which can be handled by administrative orders.

Finding No. 7

The desegregation of dual school systems in the South has often resulted in the displacement or demotion of black school staff. Further, the number of black staff employed to fill new positions appears to be declining. Few southern school systems have black administrators, and the number of minority educators also is markedly small in many northern schools.

Finding No. 8

There is evidence that disciplinary action against minority pupils in some desegregated schools has resulted in high numbers of expulsions and suspensions. For this reason, and because of hostility directed against them, these students often terminate their education and become "pushouts."

Finding No. 9

The establishment of white segregated private schools denies the pupils in those schools the opportunity to have a desegregated education and weakens the Nation's commitment to implement an effective system of desegregated education in accordance with the Constitution.

Finding No. 10

Although some white segregationists have been joined by some black separatists in a thrust for "separate but equal" schools, the Supreme Court's finding that separate can never be equal nevertheless remains sound and to hold otherwise is to deceive those young persons whose constitutional rights are at stake. This thrust has contributed to divisiveness in the civil rights movement.

Finding No. 11

There will continue to be situations when transportation of pupils will be required if the constitutional right to desegregated education is to be implemented. The extensive and increased use of pupil transportation historically has been accepted as an educational necessity, yet present opposition arises primarily when transportation is used to achieve the educational objective of bringing the advantages of desegregation to both minority and majority group pupils. Contrary to public misunderstanding about the use of transportation to achieve desegregation, transportation for this purpose accounts for less than 4 percent of all transportation for educational purposes.

Finding No. 12

The 1974 Milliken v. Bradley decision by the Supreme Court places an added burden of proof on the proponents of metropolitan desegregation but leaves open the door to such a remedy. Evidence regarding the interdistrict effects of segregation, which the Court now requires, appears to be available.

Finding No. 13

School desegregation has not, in many instances, led to integration. Desegregation describes the physical proximity of pupils from different racial and ethnic groups. Integration describes a quality of educational and interpersonal interaction based on the positive acceptance of individual and group differences as well as similarities. The absence or displacement of minority staff, within-school segregation caused by ability grouping, and denial of minority cultural values are among the problems impeding a movement from desegregation, where it exists, to integration.

Finding No. 14

Although desegregation sometimes may result in higher achievement test scores, the tendencey to evaluate its effectiveness on this basis ignores its essential purpose: to provide the equal educational opportunity that segregation inherently denies and to permit all pupils to develop the understanding and appreciation of each other that inevitably will result in a more equitable society for all Americans.

Economic Opportunity

Finding No. 1

Despite laws, Executive orders, and regulations committed to equal employment, and despite some numerical gains in recent years, blacks, other minorities, and women remain underrrepresented in higher-paying jobs and overrepresented in lower-paying jobs throughout the occupational structure of the Federal service and the entire civilian labor force.

Finding No. 2

In the critical professional and technical occupations of dentist, physician, and university teacher, the proportion of blacks relative to all persons in these occupations has declined, while in many other critical occupations proportionate gains have been minimal.

Finding No. 3[1]

Those occupations in which there is likely to be the greatest relative demand for workers in the future are those which traditionally have included few minorities and women, particularly in the professional, technical, and managerial fields.

Finding No. 4

Participation by whites and blacks in the labor force has declined in recent years, but the decline has been more severe for blacks.

[1] EEOC notes that "Finding No. 3 is inaccurate. The occupations mentioned here will experience the greatest growth through 1985. However, due to replacement, the absolute demand for workers is likely to be as great or greater in presently large occupational groups which will experience little or no growth during this period." EEOC Comments. The Commission believes that Finding No. 3, as stated in terms of relative growth, is accurate. The fact that the absolute demand in certain occupations will be larger than in the high growth occupations is not pertinent. Furthermore, in calculating growth, replacement of persons who will leave an occupation has been taken into account as well as the need for additional workers. To clarify the language in the finding, the word "relative" has been added between "greatest" and "demand."

Finding No. 5

The unemployment rate for nonwhites compared with the unemployment rate for whites has remained virtually unchanged since 1954. The unemployment rate for nonwhites continues to be a little more than double the white rate, and minority unemployment undoubtedly is even higher than available data indicate. Similarly, the unemployment rate for women, regardless of race, has been higher than for white men; the unemployment rate for black women has been substantially higher than for white women; and unemployment for nonwhite teenagers has been more than double the rate for white teenagers.

Finding No. 6

Regardless of occupational level, nonwhites have rates of unemployment that are higher than those for whites, although there has been a slight narrowing of unemployment rate disparities between nonwhites and whites with greater educational attainment.

Finding No. 7

Between 1954 and 1972, median nonwhite family income had increased from 56 percent to 62 percent of white family income, but the dollar gap between the two groups had increased from $3,014 to $4,443 (in 1972 dollars) during this same period.

Finding No. 8

While 2.5 million blacks moved out of poverty between 1959 and 1973, more than 13 million whites also moved out of poverty during this same period.

Finding No. 9

The median income of black women now is almost equal to that of white women, yet the income of white women increasingly has dropped behind the income of all men.

Finding No. 10

The number of women heading families is increasing, especially among minorities. Between 1955 and 1973, the number of families in the United States headed by women increased by 2.4 million, of whom 44 percent were black women.

Finding No. 11

Among families that are headed by women, the proportion earning incomes below the poverty level is unusually high, especially among families headed by minority women.

Housing

General Finding

Two basic facts constitute the Nation's central housing problem:

a. First, a considerable number of Americans, by reason of their color, race, national origin, or sex, are being denied equal opportunity in housing.

b. Second, the housing problems of minorities and women are part of a national housing crisis involving a general shortage of low-cost housing.[2]

Despite the effort that has been exerted by the Federal Government, State and local fair housing agencies, and other organizations to improve housing conditions and opportunities, these problems persist.

Discrminatory forces continue to restrict the rights of minorities and women to equality of housing opportunity in the Nation's housing market. Factors such as poor administration of housing programs for Native Americans and poor enforcement of fair housing laws, though perhaps not discriminatory in intent, have decidedly adverse effects on the housing opportunities of minorities and women.

The production of low- and moderate-income housing has declined drastically since Congress first committed the Nation's resources to the production of 600,000 units for low- and moderate-income families each year between 1968 and 1978. As a result of the 1973 moratorium on subsidized housing and the limited authorization of the 1974 Housing and Community Development Act, it is clear that the elimination of poor housing conditions for lower-income Americans is not a foremost concern of the Government.

Lower-Income Housing Production

1. Congress and the President have abandoned the goals of the Housing Act of 1968 for the production and rehabilitation of low- and moderate-income housing.

Few programs, if any, are more crucial to the Nation's welfare than the provision of decent housing for Americans at the lower end of the income scale. The degree of Federal commitment of our

[2] In 1959 and again in 1961, the U.S. Commission on Civil Rights identified these as the basic factors of the Nation's housing problem, although at that time the issue of sex discrimination in housing was not addressed.

national resources to the elimination of unfit housing and to the improvement of poor neighborhood environments will determine the fate of hundreds of central city areas throughout the Nation and the quality of life in rural areas. In the initial years following enactment of the 1968 housing goals, it appeared that the Nation might achieve the elimination of poor housing conditions by 1978 through the production or rehabilitation of 6 million units for urban and rural low- and moderate-income families. With the imposition of the moratorium on virtually all subsidized housing programs in January 1973, however, production of housing for families with the greatest need declined drastically. In the Housing and Community Development Act of 1974, Congress has provided a housing package which holds no promise of providing in excess of the 600,000 units needed yearly to make up for the shortfalls in production between 1968 and 1974 and meet average production levels set in 1968 for the years 1975 through 1978. Nor will the recent lifting of the moratorium on 235 housing enable the Federal Government to provide the housing that is required. The revised 235 program, moreover, because of the new financial requirements, will not meet the needs of low-income families.

Thus, rather than eliminating substandard and overcrowded housing, the Federal Government has elected to permit the severe shortage in decent, lower-income housing to continue idefinitely. Because improvement in housing conditions is a key element in the effort to eliminate discrimination in housing, particularly as it affects lower-income minorities and women, the current policy of the Government precludes the creation of a society in which all Americans, regardless of race, color, national origin, or sex, have full and equal access to good housing suitable to their needs at prices they can afford.

Homeownership Opportunities for Minorities and Women

2. Minority families and families headed by women are affected most severely by the suspension of the section 235 program in January 1973, by HUD's refusal to implement the provision for 235 housing in the 1974 Housing and Community Development Act, and by HUD's failure, so far, to implement the provisions of this act that would create homeownership opportunities for lower-income families through public housing and the section 8 program of housing assistance payments.

The provision of homeownership opportunities for lower-income families is an important aspect of efforts to equalize housing opportunities between minority families and white families and between families headed by women and those headed by men.

In its 1971 study of the 235 homeownership program, the U.S. Commission on Civil Rights found that it was of substantial help to many lower-income minority families by enabling them to acquire good-quality housing and to enjoy the benefits, both material and psychological, of homeownership.[3] Because a greater proportion of the minority and female population subgroups have lower income than whites or males, a greater proportion is in need of special financial assistance in order to become homeowners. Thus, denial of assistance of this kind is discriminatory in its impact.

The new funding for the 235 program will be of no benefit for most low-income families. The new financial requirements imposed by HUD will limit the utility of the program to moderate-income families with significant savings. The revised program apparently is based on the premise that low-income families lack the managerial skills and foresight necessary for successful home ownership. Experience under the 235 program, and the experience of millions of lower-income families who are successful homeowners, does not support this premise.

3. Discriminatory mortgage lending practices have restricted the homeownership opportunities of middle-income minorities and women, thereby subjecting them more often to higher housing costs and inferior housing and denying them a principal means of saving and accumulating wealth.

Minorities and women who are financially able to purchase homes have been denied this opportunity because of their sex or race. This fact has had repercussions far beyond variations in homeownership rates between whites and minorites or males and females. Restrictions on homeownership have forced many minority families and families headed by women to live in housing that is not suitable to their needs, often at higher cost than would be the case had their housing choice been unrestricted.

The Equal Credit Opportunity Act, enacted October 28, 1974, should assist women in obtaining

[3] *Homeownership for Lower Income Families*, p. 89.

mortgage financing, if it is properly enforced by the Federal financial regulatory agencies.

Enforcement of Fair Housing Laws by Federal Agencies

4. The steps that Federal agencies have taken to implement Title VIII of the Civil Rights Act of 1968 have failed to have a major impact in reducing racial, ethnic, and sex discrimination in housing.[4]

Among the many weaknesses in Federal agency enforcement are the failure of HUD to exercise a strong leadership role among Federal agencies to effect fair housing goals, to monitor affirmative marketing plans adequately, and to conduct community-wide compliance reviews; the failure of the Veterans Administration (VA) and Farmers Home Administration to provide strong affirmative marketing regulations; the failure of the Federal financial regulatory agencies to issue adequate regulations prohibiting discrimination against minorities and women in the mortgage lending industry; and the failure of both HUD and the General Services Administration (GSA) to follow procedures provided for in the HUD–GSA memorandum of understanding that would assure open housing and an adequate supply of lower-income housing in communities selcted as sites for Federal facilities.

5. The methods by which HUD is authorized to settle Title VII complaints of discrimination in the sale or rental of housing have proved to be inadequate to bring about prompt compliance with the law.[5]

HUD's effectiveness in resolving complaints of discrimination under Title VIII is hampered by limitations on the ways HUD may obtain compliance. In the event there is a refusal to comply with Title VIII, HUD cannot issue a cease-and-desist order but is confined to methods of conference, conciliation, and persuasion. When these fail HUD's only alternative is to refer the complaint to the Department of Justice for litigation.

Metropolitan Residential Segregation

6. The Federal Government, which has played a dominant role in shaping urban growth and development, has been a major factor in the creation of segregated residential neighborhoods throughout metropolitan areas of the United States.

In shaping urban growth, the Federal Government has provided a variety of programs for the development of housing and community facilities. Federally-assisted highway and water and sewer construction and FHA and VA housing programs have been instrumental to the development of suburbs. Federally-assisted urban renewal has been the single most significant factor in the reshaping of central city neighborhoods. In providing this assistance, the Government took first an active and then a passive part in the creation of racially segregated residential neighborhoods until issuance of Executive Order 11063 in 1962. Enforcement of Executive Order 11063 and subsequent civil rights laws has not succeeded in altering significantly the entrenched patterns of segregation resulting from earlier Federal program administration and private housing market policies.

The position taken by the Solicitor General in a brief submitted to the Supreme Court in *Gautreaux v. Hills* indicates that the Federal Government is still unwilling to take effective action to promote residential desegregation. The Government's position in *Gautreaux* is that metropolitan remedies for segregation in central city public housing should not be ordered. A metropolitan remedy, however, is both feasible and necessary, if desegregation is to be accomplished.

7. The Housing and Community Development Act of 1974 provides the means for a new approach to providing for lower-income housing dispersal throughout metropolitan areas.

The current Housing and Community Development Act breaks with the past by requiring communities to provide lower-income housing as a condition of receiving community development block grant assistance. However, there is need for assurance that this requirement will actually result in substantial lower-income housing dispersal throughout metropolitan areas or a deconcentration of low-income families in central cities. The financial restrictions placed on the revised 235 program will make it more difficult for communities to provide lower-income housing through homeownership programs.

[4] This general finding, as well as a number of specific findings, was set forth in *The Federal Civil Rights Enforcement Effort—1974*, vol. II, *To Provide for Fair Housing*, released by the Commission in December 1974. See pp. 328–45.

[5] The Commission also made this finding in *The Federal Enforcement Effort* (1974) p. 328.

The Section 8 Housing Allowance Program Shopper's Incentive

8. The shopper's incentive offered by HUD to families eligible to receive section 8 assistance who find existing housing at below fair market rent prices will enable the Federal Government to assist the housing needs of more families for the same amount of money and will help to maintain the existing housing stock.

A defect in some Federal aid programs is that the recipient has no financial incentive to use the Federal money economically. The shopper's incentive program will benefit both the recipient and the Federal Government by enabling both to share in the savings resulting from consumer bargain hunting.

9. However, the shopper's incentive may inhibit movement to neighborhoods outside of areas of minority or low-income concentration.

A primary objective of the Housing and Community Development Act of 1974 is the deconcentration of lower-income persons in urban areas through the provision of lower-income housing opportunities in neighborhoods outside low-income areas and the revitalization of slums and deteriorating neighborhoods to attract higher-income residents. The principal program through which dispersion of lower-income housing opportunities is to be achieved is the section 8 housing allowance program.

HUD's regulations governing the location of housing that families eligible for section 8 assistance may utilize address this objective only with respect to newly-constructed and substantially rehabilitated housing. Existing housing is not covered by any site selection criteria. In addition, HUD is offering a shopper's incentive to encourage families utilizing existing housing to shop around for the cheapest suitable housing available. If the cheapest suitable existing housing found in a housing market area is in low-income and minority neighborhoods, the shopper's incentive may simply act to reinforce segregated urban residential patterns.

Housing for Native Americans on Reservations

10. The goal of eliminating substandard housing for Native Americans on reservations will not be achieved unless Federal housing programs for Native Americans are substantially improved and accelerated.

For over a decade, the Federal Government has operated housing programs designed specifically to alleviate the deplorable housing conditions which exist on Native Americans reservations. As studies of the Housing Assistance Council and the Senate Committee on Interior and Insular Affairs have found, however, progress under these programs has been poor because of bureaucratic mismanagement, insufficient funding, and insensitivity to the desires and unique lifestyles of Native Americans.

Residential and School Segregation

11. School systems in many of the Nation's largest cities and metropolitan areas are becoming increasingly segregated as a result of segregated housing patterns.

Residential patterns in metropolitan areas have become increasingly racially and economically polarized as a result of the suburban housing boom, discrimination in the sale and rental of housing, and zoning practices and building regulations that exclude low- and moderate-income housing. Housing segregation has in turn contributed to the spread of segregated schools and the denial of equal educational opportunities.

Recommendations

Education

The U.S. Commission on Civil Rights believes that the Nation must continue to dedicate time, energy, and resources to bringing about the desegregation—followed by the integration—of our public schools, in spite of the complexities we confront and the difficulties we are experiencing. Any other course of action transmits to young people, and to racial and ethnic minorities, the message that, when it becomes difficult for the Nation to enforce constitutional rights, we turn our backs on them.

Recommendation No. 1

The President should issue an Executive order that will:

a. Set as a Presidential goal the pooling of all Federal responsibilities and authorities and resources in order to effect the strongest possible Federal enforcement of the constitutional mandate to desegregate our public schools;

b. Require the prompt application of all available sanctions in support of determinations by the Executive Branch of the Federal Government or the courts calling for the desegregation of schools;

c. Assign responsibility to an appropriate Federal official to develop and execute, in the name of the President, an action program designed to achieve the Presidential goal.

Recommendation No. 2

Immediate steps should be taken to develop a uniform national standard for the elimination of all forms of school desegregation. The standard should provide the basis for determining in each situation the extent to which the constitutional mandate for school desegregation has been carried out. The Commission will take the initiative in this area and will make specific recommendations to the President and the Congress in a future report.

Recommendation No. 3

The President should propose and Congress should enact legislation to finance the construction of new school facilities in school districts or groups of cooperating districts only where they have complied with the proposed uniform standard.

Recommendation No. 4

The President should propose and Congress should enact legislation to help finance additional pupil transportation in those school districts or groups of cooperating districts that demonstrate that such transportation is necessary to maintain compliance with the proposed uniform standard in a fair and equitable way.

Recommendation No. 5

If, within 90 days, efforts by the Department of Health, Education, and Welfare fail to obtain voluntary desegregation, proceedings leading to the termination of all Federal financial assistance should be completed within 90 additional days, and funds then should be withheld. This is consistent with the Federal district court decision in *Adams v. Richardson* that school desegregation guidelines should be expeditiously and effectively enforced.

Recommendation No. 6

The Internal Revenue Service, in compliance with the law, should take action to ensure that tax-exempt status and the deduction of charitable contributions are not permitted for segregated private schools.

Recommendation No. 7

The Department of Health, Education, and Welfare and other appropriate Federal agencies should ensure that no public funds are made available, directly or indirectly, to segregated private schools.

Recommendation No. 8

The Department of Health, Education, and Welfare should review and, if necessary, revise its guidelines to provide for the termination of Federal financial

assistance to school districts that fail to meet the special needs of pupils whose primary language is not English. Districts receiving Federal funds should be required to provide instruction in the primary language in every school where 20 or more pupils from the same background exhibit lack of facility in English. Programs for these pupils should not substitute for desegregation, nor should desegregation substitute for these programs; both should be required.

Recommendation No. 9

The Department of Health, Education, and Welfare should ensure, in desegregated districts receiving Federal funds, that no new administrators, teachers, or other personnel be hired until staff from previously segregated systems who have appropriate certification are assigned to comparable positions in terms of responsibility, salary, and status. Remedial programs should be provided for those staff lacking in credentials or educational effectiveness. The Department of Health, Education, and Welfare also should ensure that all districts receiving Federal funds develop and implement an effective affirmative action plan for staff hiring, promotion, and transfer.

Recommendation No. 10

The Department of Health, Education, and Welfare should ensure that school districts receiving Federal financial assistance do not discriminate in the application of pupil disciplinary procedures. Enforcement should be extended to include all regions of the Nation and all compliance reviews. Guidelines should be developed to ensure clear understanding and effective implementation.

Recommendation No. 11

Federal funding should be increased to assist desegregated school districts. The President should propose and Congress should enact legislation extending and substantially expanding the funding uner Title IV of the Civil Rights Act of 1964, Title VII of the Elementary and Secondary Education Act, the Education Professions Development Act, and the Emergency School Aid Act to assist school districts or groups of cooperating districts that have met the proposed uniform standard. The Department of Health, Education, and Welfare also should ensure that all school districts presently receiving funds for desegregation assistance in fact are implementing a comprehensive desegregation plan.

Recommendation No. 12

The President should direct the Department of Health, Education, and Welfare and the Department of the Treasury to cooperate in the development of a study to determine the extent to which a program of substantial financial incentives, in addition to those set forth in Recommendation No. 10, might influence the implementation of school desegregation.

Recommendation No. 13

The Department of Health, Education, and Welfare should require that States receiving Federal funds for programs in the public schools mandate, as a condition of issuing or maintaining credentials for teachers, administrators, counselors, and related personnel, effective preservice and inservice training programs designed to develop competency, sensitivity, and understanding related to professional performance in multiracial, multicultural, and multilingual schools.

Recommendation No. 14

The Department of Health, Education, and Welfare should require that State governments, as a prerequisite for Federal financial assistance in the field of education, annually submit statewide action desegregation plans for approval by HEW. These plans should include identification of the desegregation results achieved under plans approved by HEW, the steps the States intend to take to accelerate desegregation, and plans for moving from desegregation to integration. The responsibility for public education is vested in the States, and the authority to ensure nondiscrimination in the use of Federal funds is provided by Title VI of the Civil Rights Act of 1964.

The U.S. Commission on Civil Rights incorporates by reference all recommendations in its publication *To Ensure Equal Educational Opportunity,* volume III of *The Federal Civil Rights Enforcement Effort—1974,* January 1975.

Economic Opportunity

The U.S. Commission on Civil Rights has provided detailed recommendations on equality of economic opportunity to the President and Congress over the course of many years. For example, recommendations offered in 1961 and subsequently implemented to a substantial degree are described in chapter 3 as are recommendations that were offered in 1970. The presentation of detailed recommendations in connection with Federal enforcement of nondiscrimination in employment is continued in *The Federal*

Civil Rights Enforcement Effort—1974, volume V, *To Eliminate Employment Discrimination,* which also is being published at this time. A forthcoming report on women and minorities in labor unions will similarly provide recommendations on economic issues.

However, given the economic conditions described in this summary of the 20 years since *Brown v. Board of Education,* the Commission believes that a vastly increased Federal commitment and a new approach to economic disparities are required if equality of economic opportunity is to be achieved, particularly under the existing circumstances of recession and inflation. In keeping with this belief, therefore, the following broad recommendations are offered at this time:

1. The President should formulate and Congress should adopt as a high priority national goal the elimination of disparities in economic status that are based on race, ethnicity, or sex.

The *Brown* decision was instrumental in generating legitimate expectations among minorities and women not only in regard to equality of educational opportunity but also in terms of economic opportunity. Although these groups have made economic gains in the 20 years since *Brown,* the Commission finds that the nature, extent, and rate of these advances are marginal. It is now time that specific operating goals, an implementation timetable, and monitoring procedures be established to ensure the achievement of economic parity between all racial and ethnic groups and men and women. The need for these measures is particularly critical during extreme shifts in the national economy, when the disproportionate burden upon these groups increases.

2. The President should propose and Congress should enact legislation requiring the preparation of a statement delineating the probable consequences of any proposed law, policy, program, order, or regulation likely to have an adverse impact on the elimination of disparities in economic status that are based on race, ethnicity, or sex.

The purpose of such legislation is to minimize in advance, if not eliminate, Federal actions likely to place an even greater burden upon minorities and women. If, therefore, an impact statement indicates that an impending governmental action can be expected to have this effect, that action should not be executed until modified, at least to equalize the projected burden. Such an impact statement would simply bring to social and economic change what has become an accepted feature of environmental change.

3. The President and Congress should take immediate steps to develop the policies and commit the resources necessary to eliminate the longstanding disparity in unemployment rates between minority and nonminority groups, men and women, and minority and nonminority working youth in the labor force.

This disparity further indicates the disproportionate economic burden carried by these members of the labor force. It is evident that the various federally-supported programs to improve the economic condition of the unemployed and marginally employed have not been adequate to the task. Apart from issues of job classification and income, there is need to ensure that unemployment does not contribute further to the problems of those already economically disadvantaged.

Housing

Lower-Income Housing Production

1. Congress should renew its 1968 commitment to provide 6 million units of low- and moderate-income housing by 1978. This recommendation requires that Congress authorize funds for at least 600,000 units per year between now and 1978.

Renewing the commitment to 1968 housing goals requires a reassessment of current national priorities in order to increase the percentage of Federal funds allotted to federally-assisted housing. In light of the urgent need for lower-income housing, a need that has undoubtedly increased as a result of the current economic crisis, this reassessment should be made.

Homeownership Opportunities for Minorities and Women

2. The President should require HUD, through the section 8 and public housing programs, to implement the provisions of the Housing and Community Development Act of 1974 that authorize funds for 235 housing and lower-income homeownership.

Encouragement of homeownership among lower-income minority and female-headed families is an important aspect of eliminating the effects of discrimination in housing. When the 235 program started, there was a recognition of the importance of providing a significant number of homeownership opportunities for lower-income families, a need that is especially great among lower-income minority families and families headed by women. HUD,

however, endorsed the suspension of the 235 program in 1973 and has not implemented other provisions of the 1974 act that encourage lower-income homeownership. The new funding provided in 1975 for the 235 program will not, because of the stringent financial requirements imposed, help those lower-income families most in need. Thus, the Commission recommends that the President reestablish lower-income homeownership as a central goal of the Nation's housing policy and direct the Secretary of HUD to fulfill HUD's responsibilities under the 1974 act.

3. Congress should establish a special mortgage insurance and loan program for middle-income minority families and families headed by women, with the objective of substantially narrowing the gap between homeownership rates of these families and those of white families and families headed by males.

The Commission believes there is ample justification and precedent for the development of a special program of mortgage insurance and loans to promote greater homeownership among middle-income minority families and families headed by women. Recent congressional approval of a measure that would allow up to $2,000 in tax credits to families purchasing new homes built or under construction by March 25, 1975, and the Small Business Administration program to promote minority enterprise both assist specific groups within the general population.

Enforcement of Fair Housing by Federal Agencies

4. The President should direct the Secretary of the Department of Housing and Urban Development and the heads of all other Federal agencies with fair housing responsibilities to give priority to the enforcement of Title VIII of the Civil Rights Act of 1968, by undertaking a major new effort to end racial, ethnic, and sex discrimination in housing.

In *The Federal Civil Rights Enforcement Effort—1974,* volume II, the U.S. Commission on Civil Rights made a number of specific recommendations for action that would strengthen the Federal fair housing enforcement effort.[1] The Commission again endorses these recommendations. They include the following:

1. "The fair housing responsibilities of the Federal Government should be restructured. The Veterans Administration, the General Services Administration, the financial regulatory agencies, and all other agencies with fair housing responsibilities should draft comprehensive regulations detailing the duties of those affected by their programs and activities. . . .These draft regulations should be subject to approval by HUD. When the regulations are issued, the agencies should delegate their implementation to HUD. . . .The agencies would retain the duty to conduct all of their programs in a manner to affirmatively further the purposes of fair housing, and impose sanctions in the event that they are informed of noncompliance with their regulations by HUD."

2. "The President should direct the Secretary of the Department of Housing and Urban Development to make enforcement of fair housing provisions a higher departmental priority in order to accomplish the following major objectives within the next 12 months in that area:

a. HUD should, within the next year, allocate sufficient resources to conduct at least 50 comprehensive communitywide Title VIII compliance reviews of all major institutions which affect the production, sale, and rental of housing. . . .

b. Where housing discrimination is found as a result of these communitywide reviews which cannot be corrected by HUD under its Title VIII authority, it should use all other leverage it has to bring about nondiscrimination in housing including, where appropriate, the termination of financial assistance under Title VI and Executive Order 11063.

c. HUD should make the submission of an affirmative plan for widening housing opportunities for minorities, women, and persons of low income an absolute requirement for participation in its housing activities. . ."

HUD should also formulate a policy pursuant to Title VIII that will provide communities with a comprehensive guideline for actions that communities should take to remove barriers to fair housing for minorities and women. These steps include the careful examination of current zoning ordinances, building codes, land use policies and requirements, real estate practices, and rental policies and the revision of those that prohibit or discourage the provision of housing opportunities for minorities and women, particularly those with low incomes.

5. Congress should amend Title VIII of the Civil Rights Act of 1968 to authorize HUD to issue cease-

[1] Pp. 346–61.

and-desist orders to end discriminatory housing practices.[2]

HUD's ability to resolve Title VIII complaints is severely hampered by the restriction of HUD's powers to conciliation. If unsuccessful, HUD's current complaint procedures that call for referral of an unsuccessfully conciliated complaint to the Department of Justice necessitate delays that are inconsistent with the need for efficient processing of Title VIII complaints. If HUD had the authority to issue cease-and-desist orders, Title VIII complainants could be assured a more timely resolution of their complaints.

Equal Credit Opportunity

6. The Equal Credit Opportunity Act, which prohibits discrimination on the basis of sex and marital status, should be amended to include race, color, religion, national origin, and age.

In today's society the availability of credit influences many aspects of life and directly affects the standard of living of most Americans. While the Equal Credit Opportunity Act is important in providing women and single persons fair access to credit opportunities, equal credit opportunities should be assured for all Americans.

Facilitation of Metropolitan Residential Desegregation

7. Congress should require each State, as a precondition to the receipt of future Federal housing and community development grants, to establish, within one year, a metropolitan housing and community development agency in each metropolitan area within its borders, or to create a State metropolitan housing and community development agency with statewide authority, for the purpose of facilitating free housing choice throughout metropolitan areas, particularly for lower-income minority and female-headed families.

In its 1974 report entitled *Equal Opportunity in Suburbia,* the U.S. Commission on Civil Rights recommended that Congress provide funds to States to finance the planning, establishment, and operation of metropolitan housing and community development agencies. The Commission again makes this recommendation.

Each political subdivision in a metropolitan area should be represented in the agency based on population within each jurisdiction, with provisions made for representation by minorities and economically disadvantaged groups. With respect to the provision of low- and moderate-income housing, a metropolitan housing and community development agency should have the power:

a. To allocate low- and moderate-income units to each jurisdiction based on current and projected needs for such housing within that jurisdiction and the metropolitan area as a whole.

b. To determine the locations of low- and moderate-income housing in order to provide for a balanced distribution of such housing throughout the metropolitan area and the deconcentration of lower-income families, in particular, lower-income minority and female-headed families.

c. To override various local and State laws and regulations, such as restrictive zoning ordinances or other devices that impede implementation of a plan for balanced distribution of low- and moderate-income units.

d. To provide a metropolitan certification process for section 8 housing allowance recipients through which eligible families would have an opportunity to seek appropriate housing throughout the metropolitan area, without having to establish eligibility for housing assistance in each locality in which the family might wish to reside, as is now required.

e. To establish offices, readily accessible to neighborhoods with a high proportion of lower-income households, to advise lower-income families and organizations representing their interests concerning all subsidized housing available in the metropolitan area. The Commission first recommended the establishment of such offices in its June 1971 report, *Homeownership for Lower Income Families.* The function of these offices would be to provide information about the following:

(1) "Which programs are being operated in the particular metropolitan area."

(2) "The location of the housing being provided under each program and the identity of the builder or sponsor."

(3) "The price or rental range of housing in each subdivision or project."

(4) "The qualifications necessary for eligibility to obtain housing in each such subdivision or project."

(5) "An analysis of each individual family's needs and resources and advice as to the kind of

[2] The Commission also made this recommendation in *The Federal Civil Rights Enforcement Effort* (1974) vol. II, p. 347.

program and housing that would best meet its needs."

(6) "Advice as to the nature and amount of the subsidy available in each program for which the family is eligible, so as to assure that the family will be in a position to obtain the full benefit of the assistance that exists."

(7) "Advice on the rights and responsibilities of homeownership, including equity rights, income tax advantages, and physical upkeep of the property."

(8) "A description of the procedures and steps that the family must follow to obtain the housing."

(9) "Advice on their rights in the event families should encounter racial, ethnic, sex, or economic discrimination on the part of builders or sponsors."

(10) "In those areas where there are families which have difficulty communicating in English, the neighborhood offices should provide staff members who are fluent in languages other than English."[3]

f. To monitor performance under the affirmative marketing plans that are required of developers, sponsors, and others who participate in providing housing through HUD and VA housing programs, as well as of those voluntary, community-wide plans negotiated by HUD with builders and real estate brokers in a specific metropolitan area.

g. To plan for the revitalization of deteriorating or deteriorated neighborhoods in such manner as to provide for a wide variety of new or rehabilitated housing for persons at all income levels. The aim of this plan should be to promote improved neighborhood environments as well as economic diversification within such areas as part of the overall effort to reduce the concentration and isolation of lower-income groups.

The U.S. Commission on Civil Rights believes that the severe economic and racial polarization that characterizes residential patterns in metropolitan areas cannot be reduced significantly by Federal housing programs that permit local communities to act independently in determining what, if any, lower-income housing needs will be serviced within their jurisdictions. Although the Housing and Community Development Act of 1974 ties the provision of lower-income housing to receipt of community development block grant funds, this legislation still permits localities not to act or to act apart from the need for deconcentrating lower-income families in central cities. As long as this situation prevails, residential segregation will not be significantly reduced.

Thus, the Commission calls for the establishment of a metropolitan agency, vested with the authority to plan and implement a program for metropolitan housing development. The program would provide within each community sufficient lower-income housing resources to meet the current and projected needs of each community as well as the need within the metropolitan area as a whole, particularly that which results from efforts to reduce the heavy concentrations of lower-income families in a particular jurisdiction, such as a central city.

In addition, an important aspect of servicing lower-income housing needs is the provision of housing information and counseling services to lower-income families, in order that they may be fully aware of the benefits available to them. For such families, access to this information is often difficult unless a special effort is undertaken to contact them in the neighborhoods in which they currently reside. The metropolitan agency would be particularly well suited to provide an outreach of this kind.

8. The Department of Justice should change its position before the Supreme Court in Gautreaux v. Hills to support metropolitan solutions for segregated public housing.

The position taken by the Department is inconsistent with the policy established by Congress in the Fair Housing Act of 1968 and the Housing and Community Development Act of 1975 and is not required by legal precedents. The Department's position is not supportive of the development nationwide of desegregated residential patterns; it contributes, moreover, to the continuation of segregation in the schools.

9. HUD should provide a special financial incentive, in addition to the shopper's incentive, under which the contribution made by the assisted family towards rent would be reduced when the family selects housing in a neighborhood in which the residents are not predominantly of the same race or ethnic group as the assisted family. When the assisted family finds below-fair-market-rent housing in such a neighborhood, the

[3] *Homeownership for Lower Income Families*, pp. 90–91.

shopper's incentive would be offered in addition to the special financial incentive.

The existing housing portion of the section 8 housing allowance program has no site selection criteria. The Commission believes that current patterns of residential segregation are likely to be reinforced in the selection of existing housing, unless assisted minority families, in particular, are encouraged to seek housing outside minority and low-income areas. The special financial incentive would provide such encouragement.

Coordination of Housing Programs for Native Americans on Reservations

10. The President should vest responsibility for the coordination of all reservation housing and community development activities in a single Federal agency in order to improve their administration at the Federal level. To determine the best method of coordination, the President should immediately create a Native American housing task force to evaluate the entire Federal approach to Native American housing development and propose ways to increase its effectiveness.

The task force should be composed of representatives of tribal housing programs, tribal governments, national and regional Native American organizations, appropriate Federal and State housing agencies, and appropriate congressional committees.[4] The task force should propose the method it believes would be most appropriate for ensuring coordination among the various Federal agencies with responsibilities for reservation housing programs, and it should recommend the Federal agency to be given responsibility for overall coordination. In addition, the task force should propose ways to improve the design of reservation housing programs in order that they may be more responsive to such factors as the environment on reservations and the unique cultural heritage of Native Americans.

[4] The Housing Assistance Council made this recommendation in "Toward an Indian Housing Delivery System," pp. 8 and 9.

APPENDIX A

THE BROWN DECISION

(OLIVER BROWN ET AL. V. BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS, ET AL.)

May 17, 1954

These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. They are premised on different facts and different local conditions, but a common legal question justifies their consideration together in this consolidated opinion.

In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a non-segregated basis. In each instance, they have been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases other than the Delaware case, a three-judge federal district court denied relief to the plaintiffs on the so-called "separate-but-equal" doctrine announced by this Court in *Plessy* v. *Ferguson,* 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256. Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate. In the Delaware case, the Supreme Court of Delaware adhered to that doctrine, but ordered that the plaintiffs be admitted to the white schools because of their superiority to the Negro schools.

The plaintiffs contend that segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws. Because of the obvious importance of the question presented the Court took jurisdiction. Argument was heard in the 1952 Term, and reargument was heard this Term on certain questions propounded by the Court.

Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then existing practices in racial segregation, and the views of proponents and opponents of the Amendment. This discussion and our own investigation convince us that, although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among "all persons born or naturalized in the United States." Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.

An additional reason for the inconclusive nature of the Amendment's history, with respect to segregated schools, is the status of public education at that time. In the South, the movement toward free common schools, supported by general taxation, had not yet taken hold. Education of white children was largely in the hands of private groups. Education of Negroes was almost nonexistent, and practically all of the race were illiterate. In fact, any education of Negroes was forbidden by law in some states. Today, in contrast, many Negroes have achieved outstanding success in the arts and sciences as well as in the business and professional world. It is true that public school education at the time of the Amendment had advanced further in the North, but the effect of the Amendment on Northern states was generally ignored in the congressional debates. Even in the North, the conditions of public education did not approximate those existing today. The curriculum was usually rudimentary; ungraded schools were common in rural areas; the school term was but three months a year in many States; and compulsory school attendance was virtually unknown. As a

consequence, it is not surprising that there should be so little in the history of the Fourteenth Amendment relating to its intended effect on public education.

In the first cases in this Court construing the Fourteenth Amendment, decided shortly after its adoption, the Court interpreted it as proscribing all state-imposed discriminations against the Negro race. The doctrine of "separate but equal" did not make its appearance in this Court until 1896 in the case of *Plessy* v. *Ferguson, supra,* involving not education but transportation. American courts have since labored with the doctrine for over half a century. In this Court, there have been six cases involving the "separate but equal" doctrine in the field of public education. In *Cumming* v. *Board of Education of Richmond County,* 175 U.S. 528, 20 S.Ct. 197, 44 L. Ed. 262, and *Gong Lum* v. *Rice,* 275 U.S. 78, 48 S.Ct. 91, 72 L. Ed. 172, the validity of the doctrine itself was not challenged. In more recent cases, all on the graduate-school level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. *State of Missouri ex. rel. Gaines* v. *Canada,* 305 U.S. 337, 59 S.Ct. 232, 83 L.Ed. 208; *Sipuel* v. *Board of Regents of University of Oklahoma,* 332 U.S. 631, 68 S.Ct. 299, 92 L.Ed. 247; *Sweatt* v. *Painter,* 339 U.S. 629, 70 S.Ct. 848, 94 L.Ed. 1114; *McLaurin* v. *Oklahoma State Regents,* 339 U.S. 637, 70 S.Ct. 851, 94 L.Ed. 1149. In none of these cases was it necessary to re-examine the doctrine to grant relief to the Negro plaintiff. And in *Sweatt* v. *Painter, supra,* the Court expressly reserved decision on the question whether *Plessy* v. *Ferguson,* should be held inapplicable to public education.

In the instant cases, that question is directly presented. Here, unlike *Sweatt* v. *Painter,* there are findings below that the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible" factors. Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plessy* v. *Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditure for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

In *Sweatt* v. *Painter, supra* [339 U.S. 629, 70 S.Ct. 850], in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on "those qualities which are incapable of objective measurement but which make for greatness in a law school." In *McLaurin* v. *Oklahoma State Regents, supra* [339 U.S., 637, 70 S.Ct. 853], the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: ". . .his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

> Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of the child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.

Whatever may have been the extent of psychological knowledge at the time of *Plessy* v. *Ferguson,* this finding is amply supported by modern authority. Any language in *Plessy* v. *Ferguson* contrary to this finding is rejected.

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment.

Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity. On reargument, the consideration of appropriate relief was necessarily subordinated to the primary question—the constitutionality of segregation in public education. We have now announced that such segregation is a denial of the equal protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument on Questions 4 and 5 previously propounded by the Court for the reargument this Term. The Attorney General of the United States is again invited to participate. The Attorneys General of the states requiring or permitting segregation in public education will also be permitted to appear as *amici curiae* upon request to do so by September 15, 1954, and submission of briefs by October 1, 1954.

It is so ordered.

May 31, 1955

These cases were decided on May 17, 1954. The opinions of that date declaring the fundamental principle that racial discrimination in public education is unconstitutional are incorporated herein by reference. All provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle. There remains for consideration the manner in which relief is to be accorded.

Because these cases arose under different local conditions and their disposition will involve a variety of local problems, we requested further argument on the question of relief. In view of the nationwide importance of the decision, we invited the Attorney General of the United States and the Attorneys General of all states requiring or permitting racial discrimination in public education to present their views on that question. The parties, the United States, and the States of Florida, North Carolina, Arkansas, Oklahoma, Maryland, and Texas filed briefs and participated in the oral argument.

These presentations were informative and helpful to the Court in its consideration of the complexities arising from the transition to a system of public education freed of racial discrimination. The presentations also demonstrated that substantial steps to eliminate racial discrimination in public schools have already been taken, not only in some of the communities in which these cases arose, but in some of the states appearing as *amici curiae,* and in other states as well. Substantial progress has been made in the District of Columbia and in the communities in Kansas and Delaware involved in this litigation. The defendants in the cases coming to us from South Carolina and Virginia are awaiting the decision of this Court concerning relief.

Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts.

In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical

flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.

While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system. During this period of transition, the courts will retain jurisdiction of these cases.

The judgments below, except that in the Delaware case, are accordingly reversed and the cases are remanded to the district courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases. The judgment in the Delaware case—ordering the immediate admission of the plaintiffs to schools previously attended only by white children—is affirmed on the basis of the principles stated in our May 17, 1954, opinion, but the case is remanded to the Supreme Court of Delaware for such further proceedings as that court may deem necessary in light of this opinion.

It is so ordered.

Appendix B

LETTER OF TRANSMITTAL

U.S. COMMISSION ON CIVIL RIGHTS
Washington, D.C.
June 1974

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
Sirs:

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

This is the first in a series of reports which will examine the extent of civil rights progress in the United States since *Brown v. Board of Education,* the Supreme Court's landmark school desegregation decision of May 17, 1954. Subsequent reports will offer specific recommendations for achieving equal opportunity, where it is lacking, in education, employment, housing, public accommodations, political participation, and the administration of justice. This report provides historical background for the material which follows.

We believe that these reports, issued in commemoration of the 20th anniversary of *Brown,* may be of help to Federal, State, and local officials, as well as to all Americans concerned with racial justice. We hope that these reports will contribute to an informed public discussion of *Brown,* the status of civil rights today, and paths to racial equality in our Nation.

We urge your consideration of the information presented here.

Respectfully,
Arthur S. Flemming, *Chairman*
Stephen Horn, *Vice Chairman*
Frankie M. Freeman
Robert S. Rankin
Manuel Ruiz, Jr.
John A. Buggs, *Staff Director*

LETTER OF TRANSMITTAL

U.S. COMMISSION ON CIVIL RIGHTS
Washington, D.C.
March 1975

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
Sirs:

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

This is the second in a series of reports which will examine the extent of civil rights progress in the United States since *Brown v. Board of Education,* the Supreme Court's landmark school desegregation decision of May 17, 1954. The first report provided historical background for the series. This report covers the evolution of educational opportunity during the 20 years since *Brown.* Subsequent reports will offer specific recommendations for achieving equal opportunity, where it is lacking, in employment, housing, public accommodations, and the administration of justice.

We believe that these reports, issued in commemoration of the 20th anniversary of *Brown,* may be of help to Federal, State, and local officials, as well as to all Americans concerned with racial justice. We hope that these reports will contribute to an informed public discussion of *Brown,* the status of civil rights today, and paths to racial equality in our Nation.

We urge your consideration of the information, findings, and recommendations presented here.

Respectfully,
Arthur S. Flemming, *Chairman*
Stephen Horn, *Vice Chairman*
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LETTER OF TRANSMITTAL

U.S. COMMISSION ON CIVIL RIGHTS
Washington, D.C.
July 1975

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
Sirs:

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We believe that these reports, issued in commemoration of the 20th anniversary of *Brown,* may be of help to Federal, State, and local officials, as well as to all Americans concerned with human justice. We hope that these reports will contribute to an informed public discussion of *Brown,* the status of civil rights today, and paths to equality in our Nation.

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John A. Buggs, *Staff Director*

LETTER OF TRANSMITTAL

U.S. COMMISSION ON CIVIL RIGHTS
Washington, D.C.
December 1975

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
Sirs:

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We believe that these reports, issued in commemoration of the 20th anniversary of *Brown,* may be of help to Federal, State, and local officials, as well as to all Americans concerned with human justice. We hope that these reports will contribute to an informed public discussion of *Brown,* the status of civil rights today, and paths to equality in our Nation.

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