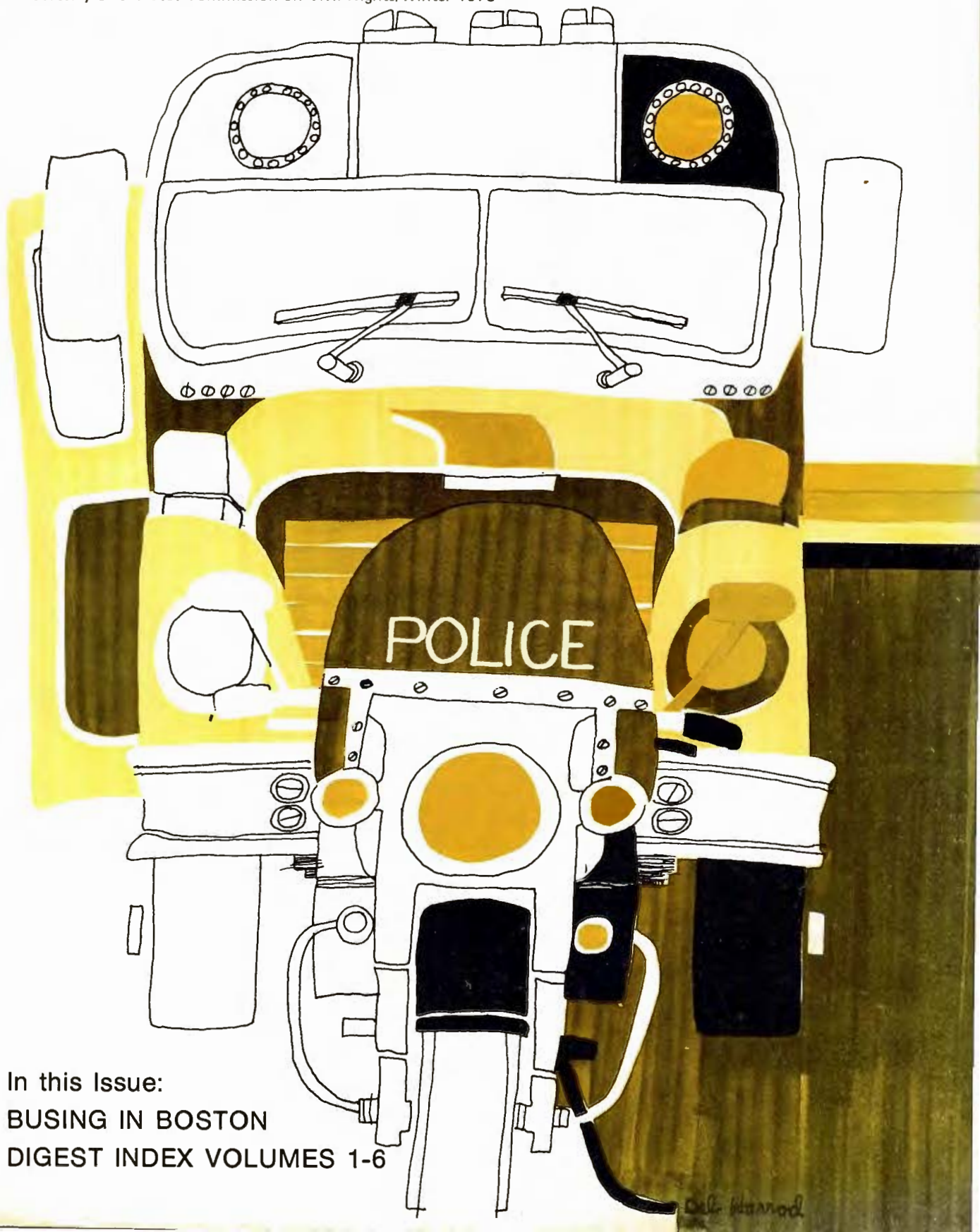
CIVIL RIGHTS DIGEST

A Quarterly of the U.S. Commission on Civil Rights/Winter 1975



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Volume 7 Number 2
WINTER 1975

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

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

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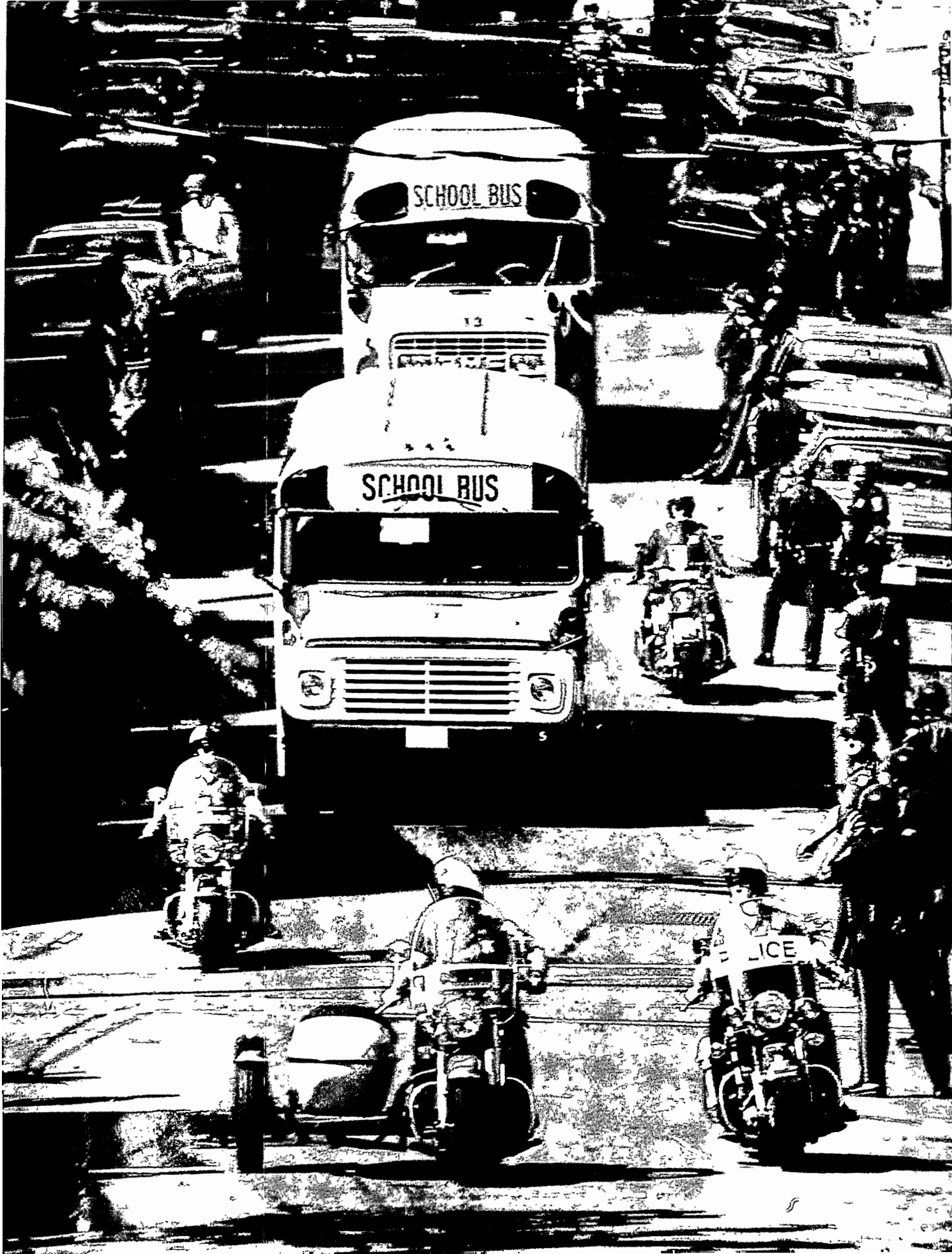
PHOTO CREDITS: cover, 20, 36, 47—Del Harrod; inside front cover, 6 (bottom left)—Boston Phoenix/Kobre; 2,6 (top, bottom right), 7 (top left)—UPI; 7 (bottom), inside back cover—Boston Globe; 7 (top right)—Black Star/Lockwood; 11—Black Star/Wilson; 16—Black Star/Pickerel; 29—Black Star/Launois; 22—Black Star/Brack.

The *Civil Rights Digest* is published quarterly by the U.S. Commission on Civil Rights as part of its clearinghouse responsibilities. Funds for printing the *Digest* were approved by the Director of Bureau of the Budget on January 29, 1963. Correspondence related to the *Digest* should be addressed to Editor, *Civil Rights Digest,* U.S. Commission on Civil Rights, Washington, D.C. 20425.


SCHOOL BUS
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BUSING IN BOSTON

DESEGREGATING THE NATION'S OLDEST PUBLIC SCHOOL SYSTEM

By James Worsham

When the legal battle to end segregation in the Boston public schools began, the black fifth graders who would ride to the Andrew School in Irish South Boston the first day of "busing" had not yet been born.

The police commissioner who would order motorcycle escorts for those buses and the blue walls of security along Southie's streets was still a suburban police chief a continent away.

The superintendent of schools who would publicly plead with the boycott-minded white parents to send their children to school was still a high school history teacher.

And the Federal judge who would order the "forced busing" to begin the desegregation process had not yet looked over a courtroom from behind the bench.

That it took so long to bring desegregation to the nation's oldest public school system is a measure of the resistance here to what has become known as "forced busing."

But during the decade leading up to the order of the Federal district court last June 21, Judge W. Arthur Garrity would write, the Boston School Committee "intentionally segregated its schools . . . and knowingly carried out a systematic program of segregation."

The imposition last fall of a controversial State "racial balance" plan—Garrity's first step—brought national attention to a city viewed as the "cradle of liberty," stronghold of abolitionists, birthplace of political liberalism, and the only State to deny victory to Richard Nixon.

But a decade of politically-inspired resistance in what is for the most part a working-class city of proud ethnic neighborhoods bowed to the Federal court and on September 12, 1974, the face of Boston was irrevocably changed.

On that day, some 317 buses took some 17,000 black and white students to new schools as part of the reassignment of about half of the system's 81,000 1st to 12th graders. Attention focused that day on South Boston High School, where the first black students—only 56—hopped off a bus and strode through corridors of police and school officials while their ears caught the catcalls of "nigger go home" from the white students across G Street.

Later in the day, buses returning to black Roxbury from the Gavin Middle School would be stoned and the children crouched on the floor while Boston police were pitted against their neighbors in street disturbances.

In October, a black man was dragged from his car on a South Boston street and chased and beaten by whites; in December, a white youth was allegedly stabbed by a black youth in South Boston High, leading to Supt. William Leary's decision to shut down seven South Boston schools for a week's extra holiday vacation. No one had been killed yet, and the South Boston closings were the largest to date.

The History of Resistance

Trouble was not unexpected in a desegregation plan that, among other things, combined into one district the nearly all-black Roxbury (Girls) High and the nearly all-white South Boston High. The plan was drawn up by the State Board of Education under the State Racial

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Imbalance Law, passed in 1965 as a "model" law for the other 49 states to end racial imbalance and isolation in public schools.

The law dictated that no school should be more than 50 percent nonwhite; such a school would be unlawful, but a school 100 percent white would be permissible. That year, the Boston school system was 23 percent nonwhite.

But realization of the law in Boston was a long way off, and Garrity would write in 1974: "Efforts . . . to evade the statute illumine their intent with respect to school segregation generally."

Indeed, both in 1966 and 1967, the Boston School Committee (which by then included Louise Day Hicks), challenged the constitutionality of the State law, leading the State supreme court to observe in 1967: "The committee seems bent on stifling the act before it has a fair chance to become fully operative."

The committee fought back and forth over plans, with then State education Commissioner Neil V. Sullivan, who had directed school desegregation in Prince Edward County, Va., out front in the battle. In 1972 the board tried to withhold $52 million in State school aid to Boston until the committee complied.

But this time the State's high court upheld a Suffolk Superior Court decision against the board's action. In the spring and summer of 1973, Harvard law professor Louis Jaffe was appointed by the court to hold hearings on the board's plan, drawn up by its staff with the help of Dr. John A. Finger, a Rhode Island college professor who was a consultant on the Denver desegregation plan and a court-appointed expert in the Charlotte-Mecklenburg (N.C.) case.

Later, the board would adopt most of hearing officer Jaffe's recommendations, except his advice against combining South Boston and Roxbury high schools.

Meanwhile, arguments in a case brought by the National Association for the Advancement of Colored People in U.S. District Court in 1972 were heard in spring 1973. In a class action suit on behalf of a group of black parents, the NAACP charged the school committee with denying black children their right to equal education opportunity in violation of the 14th amendment to the Constitution.

(Chief counsel for the NAACP was J. Harold (Nick) Flannery, now with the Lawyer's Committee for Civil Rights and a veteran of other desegregation battles. For the school committee, the mayor had chosen the prestigious law firm of Hale and Dorr, which fielded James D. St. Clair, assisted by his young former law student, John O. Mirick. By the time the decision came down, St. Clair was working for Richard Nixon.)

While the committee battled with the State board and the NAACP in courts, another blow fell in March 1973, when the U.S. Department of Health, Education, and Welfare announced it had found the city in violation of the 1964 Civil Rights Act by operating a dual, segregated school system—one black and one white.

The object of the finding was the dual grade structure, in which most white children attended grades K-6 elementary schools, 7-9 junior highs and 10-12 high schools, while most black children went to K-5 elementary schools, 6-8 middle schools and 9-12 high schools.

The Office for Civil Rights declared the city ineligible for Federal school aid for new programs. The committee appealed, only to lose later.

In April 1973, the school committee reneged on past promises and legal agreements and voted 3 to 2 to award the city's first new high school in 40 years—the ultra-modern $25 million 10-story tower in the culturally-rich Fenway area—to the nearly all-white Girls Latin School instead of nearly all-black English High.

Parents, teachers, and the city went to court and the State Supreme Judicial Court overturned the committee's decision. Garrity reopened the Federal case to allow this new evidence of "further racial isolation" to be introduced. It was the only time he reopened the case in the 15 months he kept it under advisement.

Resistance to the coming "forced busing," meanwhile, was building among the citizenry, encouraged by politicians who had built political careers on the promise that "busing would never come to pass in Boston."

In April of 1973, some 4500 antibusing Bostonians marched on the State House on Beacon Hill, overlooking historic Boston Common, to press for repeal of the State Racial Imbalance Law—an "unworkable" statute.

Marching in the front row was Mrs. Louise Day Hicks—who by then had gone from the School Committee to the City Council, been twice defeated by Kevin White for mayor, served one term in Congress as John W. McCormack's successor and was back on the council. With her were several school committee members, city councilors, and State legislators from Boston.

Farther back in the procession was John J. Kerrigan, an attorney and school committee member who by then was, next to Mrs. Hicks, the best known antibusing leader.

They called on liberal Republican Governor Francis Sargent to sign the bill repealing the controversial law. He refused; they vowed to be back a year later, and they were.

In 1974, Sargent did sign a bill that took away the State Board of Education's power to redistrict (and order busing) and substituted a voluntary program of magnet schools and financial incentives for school districts that transferred students to reduce or eliminate racial isolation and imbalance.

The Federal Court Rules

The antibusing victory, however, was short-lived. In the next month, the long-awaited word from Judge Garrity came.

W. Arthur Garrity, Jr., had been careful. During the 15 months he considered the NAACP's charges and the evidence, he had kept a full caseload of other civil and criminal cases, sitting daily. He had to wade through the State Supreme Court rulings and the HEW proceedings, as well as the Supreme Court's 1973 decision in the Denver case.

In a 152-page, well-documented decision, he found that the school committee had practiced segregation in student assignments, transfers, and feeder patterns, in teacher hiring and placement, and in the location and use of new schools.

Some excerpts:

> Despite intense pressure from private groups and the State board . . . the defendants defeated or evaded successive redistricting proposals for the purpose of perpetuating the existing segregated system.
>
> The consequence of the feeder pattern changes and discriminatory options, in combination with the opening of four middle schools, was altogether foreseeable, almost immediate, and well-understood by the defendants: a dual system of secondary education was created, one for each race. Black students generally entered high school upon completion of the eighth grade, and white students upon completion of the ninth. High school education for black students was conducted by and large in citywide schools, and for white students in district schools.
>
> When a neighborhood started to change from predominantly white to black, the 'neighborhood school' policy was subordinated to the white students' presumed right to escape to safely out-of-district schools.
>
> The court concludes that the defendants took many actions in their official capacities with the purpose and intent to segregate the Boston public schools and that such actions caused current conditions of segregation in the Boston public schools.
>
> The court concludes that the defendants have knowingly carried out a systematic program of segregation affecting all the city's students, teachers, and school facilities and have intentionally brought about and maintained a dual school system. Therefore, the entire school system of Boston is unconstitutionally segregated.

Throughout his decision, Garrity had underpinned his decision with precedents of the Keyes case in Denver, which had been upheld, but noted in a footnote that the ordering of city-suburb busing was of "challengeable validity." The Detroit decision against such busing came a few months later.

The Denver precedents were insurance against being overturned and proved to be good policy. On December 19, 1974, the Court of Appeals in Boston upheld Garrity, noting that "in the light of the ample factual record and the precedents of the Supreme Court, we do not see how the court could have arrived at any other conclusion."

Preparing for September

With the finding came an order by Garrity for the committee and the superintendent to comply with the State supreme court's order to implement the State racial balance plan. He shortly gave the committee 30 days to offer an alternative to the controversial plan, but the school department staff ran out of time.

Thus began a crash program to prepare for September, and Superintendent William Leary walked a narrow line between a school committee elected to prevent busing and the orders of the court. With committee approval, he began hiring bus monitors and in-school nonteaching aides, engaging buses, carrying out teacher workshops, hiring new black teachers on the court-ordered one-for-one ratio, and keeping the public informed.

But planning was begining to fall victim to the traditional school committee-city hall rivalry, since all city agencies except the schools fell under the aegis of Mayor Kevin H. White. The committee wanted a meeting with White, who cancelled a trip to a White House bill-signing to meet with them. Emerging from the session, he announced consolidation of the rumor and information centers and the computer operations and said: "Leary will call the shots."


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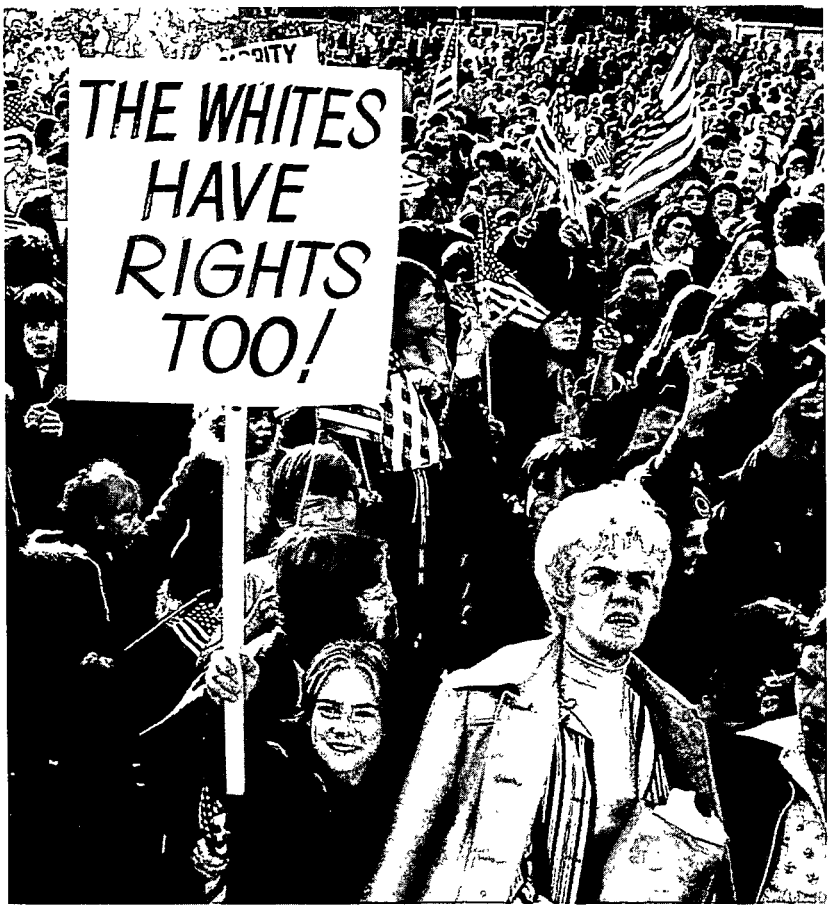
THE WHITES
HAVE
RIGHTS
TOO!

This meant Police Commissioner Robert di Grazia would deal with Leary on safety matters.

Leary asked to delay the opening of school from September 4 to September 12—from before the September 10 State primary to after it. State education commissioner Gregory Anrig got the State board's approval, and Boston teachers had 6 extra planning days.

An incident that made national news 3 days before school opening, however, showed the intensity of antibusing fervor. Senator Edward M. Kennedy was to speak to a City Hall Plaza rally to ask cooperation during the busing and explain his own stand against an antibusing measure that had just been narrowly defeated in the Senate.

Instead, he was booed off the speaker's stand, vilified as part of the Kennedy-Garrity-Brooke enclave and heckled as he walked back to the Federal building that bore his brother's name.

(Garrity had been named to the District Court bench in 1965 by Lyndon Johnson at Kennedy's suggestion.)

Implementing the Plan

On opening day, all attention focused on South Boston High, where di Grazia, in shirtsleeves, personally directed operations. White-haired headmaster William J. Reid, after ushering in black students, walked across G street to try to get boycotting white students to come in or go home. Few did either.

Scattered trouble continued throughout the autumn, and on some days buses of black children were rushed to black community centers because of actual or expected trouble in South Boston. The Boston branch of the NAACP, headed by Thomas I. Atkins, has pressed for continued police protection.

But Garrity has turned down pleas for Federal troops, and while Governor Sargent put the National Guard on alert, it never left the armory. At the peak of trouble, some 900 to 1000 members of the 2600 Boston police corps were assigned to school duty, supplemented by metropolitan and State police.

Outside of South Boston and a few other trouble spots, things have been different.

As weeks passed, elementary and middle schools found attendance near normal and teachers expressed pleasure that things were going well, despite the confusion of busing. From September 12 to Christmas-time, attendance averaged around 75 percent, near normal for big city school systems, but the latest figures show the city has lost 5000 white students. Last year, the system was 38.5 percent nonwhite, compared to 23 percent nearly a decade ago.

This year, the schools are 41.9 percent nonwhite. Resistance to busing, however, has continued.

In October, President Gerald Ford said he disagreed with Garrity's ruling, had always opposed forced busing, but that the people of Boston should obey the law.

The statement produced much adverse criticism, among it that of the mayor of Boston, who charged it would lead to further strife and threaten the safety of Boston children. Other critics in less sensitive positions said simply that Ford had given false hope to busing opponents.

The White House later reported the President stood by his statement, but Ford made a radio spot announcement, at the request of Senator Edward Brooke, encouraging compliance with the court order.

South Boston High did not field a football team last fall, since many of its players are not in school and are ineligible. Earlier this year, both the school department and various public and private agencies launched tutoring programs to help children who have been out of school to catch up, and private academies were being organized in Hyde Park, East Boston, and South Boston.

Until a few weeks before Christmas, an antibusing rally was held nearly every weekend, often with motorcades to the suburban residences of Garrity, Anrig, or Governor-elect Michael Dukakis. (On December 7, a pro-integration rally with Mrs. Coretta Scott King was held on the Common, and a week later an anti-racism rally with Reverend Ralph Abernathy was held.)

But at year's end the scope of resistance was taking on new dimensions. A dozen or so faced possible Federal penalties for obstructing the court order and Federal agents were investigating reports of a conspiracy to blow up access bridges to South Boston before next fall.

Beyond boycotts, many white students have gone to private and parochial schools despite Humberto Cardinal Medeiros' directive to parishes not to allow Catholic schools to be havens for escape from desegregation. There are also reports that parishioners have protested the cardinal's pro-integration stand through the collection box.

Meanwhile, "information centers" in white neighborhoods have reportedly raised tens of thousands of dollars but nobody yet knows whether the money will be used to take the legal battle to the Supreme Court or to put into next fall's elections for Boston's school committee, city council, and mayor's chair.

Court-ordered biracial councils have been set up in

many schools, but not yet in South Boston, and Garrity has ruled that black teachers be hired on a one-to-one ratio with whites this fall.

The Contempt Citations

In the courtroom, the judge has now made the mayor a codefendant, along with the school committee and the State board of education. (The board was an original codefendent but Garrity found it had done all it could to end segregation.) Also parties are the teachers' union, the administrators' unions, the Public Facilities Commission, and the Boston Home and School Association.

Garrity ordered the committee to approve and submit to him on December 16 a proposed citywide desegregation plan for 1975, with other parties having until January 20 to offer changes.

The so-called program preference plan, based in part on the Minneapolis solution of magnet schools, was presented to the committee with a "conservative" estimate requiring busing 31,000 students to and from all parts of the city, compared to 17,000 this year from only certain sections.

The panel voted 3 to 2 against the plan, which was delivered to Garrity by a Hale and Dorr attorney acting on his own. Subsequently, the NAACP sought and got civil contempt citations against John Kerrigan, John McDonough, and Paul Ellison. (the majority of three; committee members Paul Tierney and Kathleen Sullivan voted for the plan.) Hale and Dorr resigned and asked Garrity for "leave to withdraw" from the case, which the judge later granted.

Garrity soon ordered that until the three purged themselves of contempt, they would have to pay daily fines and would be barred from participating in any committee action relating to desegregation—a condition that would have left the city virtually without a functioning school committee, since nearly every action by the five-member body now is related to desegregation in some way.

Before the fines were to go into effect, however, the judge agreed to let the three purge themselves by submitting an "authorized" school committee plan based on voluntary busing.

Late in January, Garrity—already with three major proposals and nearly a score of smaller proposals before him and a caseload that includes some of the biggest cases in Federal district court—gave the task of developing his final plan to court-appointed masters and experts.

He named as court experts Robert Dentler and Marvin Scott, dean and associate dean respectively of the Boston University School of Education. A few days later, he named the masters: Retired Massachusetts supreme court justice Jacob Spiegel, who would preside at the hearings; former State attorney general Edward McCormack, nephew of the former house speaker; Harvard education professor Charles Willie, the only black; and former U.S. education commissioner Francis Keppel.

Garrity assigned the masters to hold hearings on all of the proposals and then recommend a plan for him to order for Boston in the fall—either one of the proposals submitted or one they and the experts had fashioned themselves. He set no deadline.

When the February hearings began before the masters, the number of parties and intervenors in the suit had grown to seven: the School Committee, the State Board of Education; the NAACP for the black parents; the Boston Teachers Union; the Boston Home and School Association; the mayor and the city of Boston; and a hispanic parents group called the Parents' Committee for the Defense of Bilingual Education.

As the hearings began, Dentler was urging the masters in confidential memos to reject both the "authorized" School Committee plan and the plan they had turned down, and warned that the NAACP plan "could fail to achieve public acceptance." Dentler's recommendations set the stage for an alternate proposal.

Meanwhile, Mayor White had announced that the city would fund the appeal of Garrity's order to the U.S. Supreme Court, as the committee already voted to do. The mayor subsequently said he would seek a metropolitan remedy.

The Court Stands Firm

Despite the committee's contempt and the talk of metropolitanism, Garrity remained firm. To a jammed courtroom that heard exchanges between him and the three committee members during the contempt hearing, he repeated what he has said time and again;

"We'll have desegregation in this city whether or not these three defendants approve of this plan."

Garrity added that the committee "for years followed a policy of plan, plan, plan; delay, delay, delay." Picking up a copy of the 152-page findings he keeps at his right hand, he noted, "That's a quote in here somewhere . . ."

An Answer to Housing Discrimination

THE NEED FOR A UNITARY MARKETING SYSTEM

By Lawrence Rosser and Beth White

The fact that job opportunities are severely limited in urban areas while they are increasingly available in suburbia is no new phenomenon. Only 89.1 percent of the jobs in Chicago in 1957 were still there in 1971, while all the suburban areas in Cook County showed dramatic increases in jobs. Northwest Cook County, for example, experienced the greatest job increase—546.6 percent from 1957 to 1971.

Unfortunately for workers, moderately priced housing construction has not kept pace with job opportunities in the outlying suburban areas. Typically, new developments are geared towards the upper one third of the market. According to Al Eckersburg of Real Estate Research Corporation, the median price of a single-family home is now $32,000, and only 38 percent of the population can afford that. In 1950, 71 percent were able to pay the median price.

To make matters worse, inner city workers whose jobs have moved out have been unable, for the most part, to take advantage of the small but nevertheless significant stock of moderately priced older homes and apartments that do exist in suburbia.

The problem these workers face is an absence of information about what housing is available in various communities. The real estate industry has not cooperated in breaking down the barriers, both real and perceived, which have kept low- and moderate-income persons from relocating near job opportunities.

What is required in order to alter the patterns of suburban exclusion are new public policies which, if implemented, will help open suburban housing opportunities to low- and moderate-income people.

While the supply of newly constructed low- and moderate-income housing must be increased, the facts of 1975 make this an increasingly difficult task. The recommendations put forth here, therefore, are basically interim measures designed to alleviate part of the housing problem until new tools, such as the Housing and Community Development Act of 1974, can be used to increase new housing opportunities to meet the goal articulated in the Housing Act of 1949—a "decent home and suitable living environment for every American family."

Strategies to increase moderately priced housing opportunities throughout the metropolitan area for minority workers are worth pursuing not only to correct past discriminatory practices, but also in order to give minority people a wider range of options than those few "changing" neighborhoods in the city and the older, traditionally

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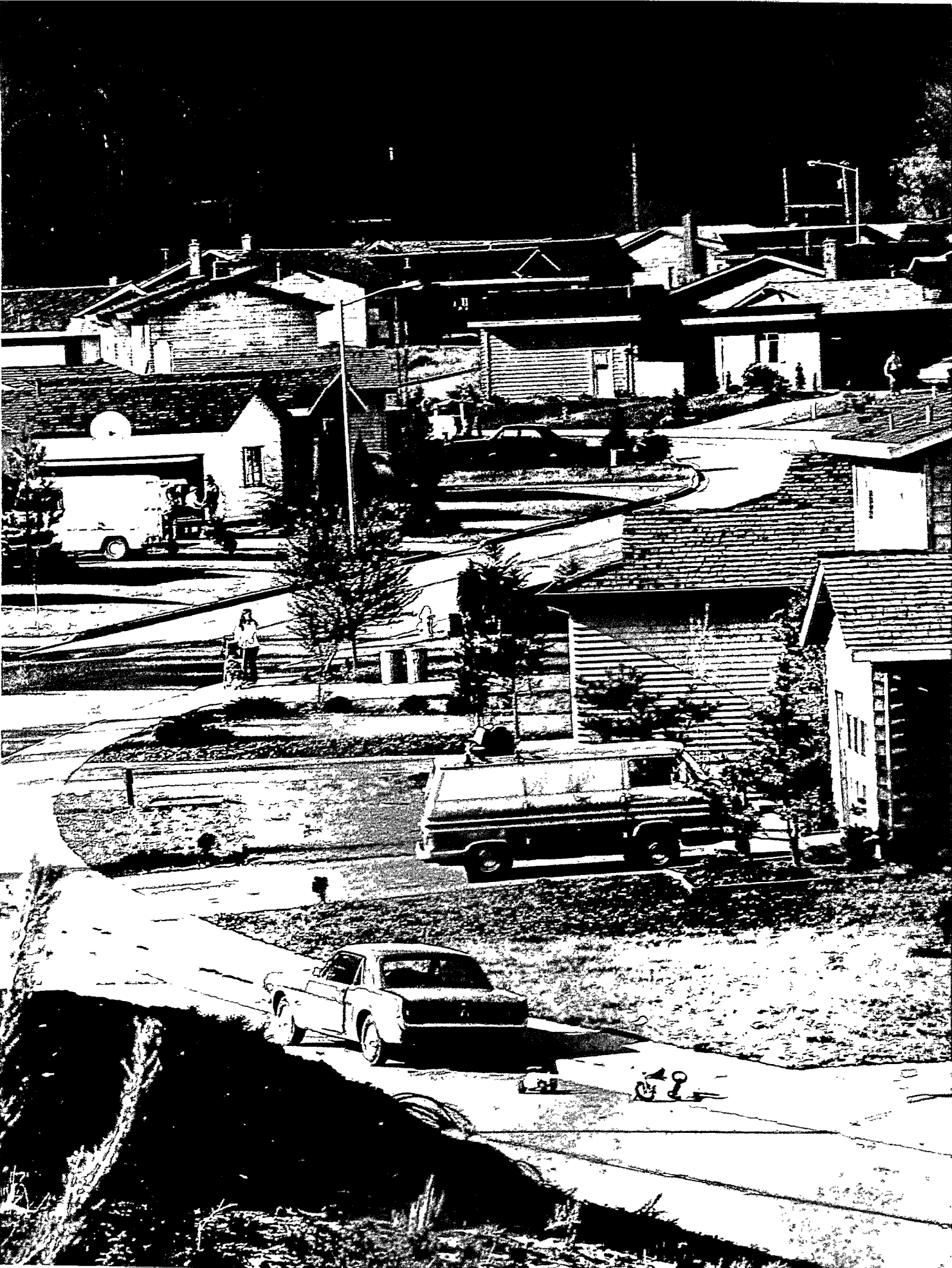

integrated suburbs to which they are currently being "steered" by unscrupulous real estate brokers.

Historically, segregated housing is a product of the dual housing market in rental and sales—a system rooted in law and custom in which there was one market for minorities and one for whites. In this system minority citizens were contained in specific geographical areas and excluded from others by legal devices—such as restrictive covenants—and by physical force.

Although restrictive covenants and other overtly discriminatory practices have been invalidated by courts and legislatures, and in spite of the fact that evidence exists to support the notion that there are substantial numbers of moderately-priced housing units in reasonable proximity to suburban job centers, the fact remains that the vast majority of minority workers continue to live in the inner-city and "reverse commute" long distances to their places of work.

Factors Behind Discrimination

Two factors explain why this pattern continues. One is the continued (and valid) perception by minorities of the suburbs as being "closed" to them; the other is the fragmented nature of the housing marketing system.

Several organizations in Chicago—most notably the Leadership Council for Metropolitan Open Communities and the Home Investment Fund—have developed programs designed to give minority persons housing choices in previously all white neighborhoods, and to counsel them about the "success" stories of minorities who have moved to majority neighborhoods without a great deal of difficulty.

While these programs have benefited many individual minorities, it is estimated that many more black and latino citizens would and could move out of their segregated neighborhoods if they had the assurance that other such moves have been made without psychological or physical intimidation, and if they could secure—from a central source—information about where vacancies occur in time to compete with white residents who already live in these neighborhoods and therefore are more likely to know and be able to take advantage of such listings quickly.

The marketing system for both the sale and rental of property is "fragmented" in the sense that a consumer of either type of housing cannot, in most metropolitan areas, go to a central source to get listings of vacancies throughout the metropolitan area. If a consumer wants to make a move within his immediate neighborhood, he or she can go to a local real estate broker or apartment management firm, or hear of an available unit from someone in the neighborhood.

If, on the other hand, the consumer wants to move out of his present neighborhood, and especially if (for reasons such as being closer to a job, for example) he or she wants to move many miles from a present residence, he or she must rely on intermediaries—usually real estate brokers, management firms, apartment referral services, or newspaper ads—to find available housing at a reasonable price.

The sales marketing system does not appear to be nearly as fragmented as that for rental properties. Most sellers list their houses with a real estate broker. In order to enhance the chances of selling the homes listed with them, most brokers belong to an association of brokers in their immediate vicinity—known as the Multiple Listing Service (MLS)—which pools listings and agrees in advance to split the commission on any listing put into the pool by one broker but sold by another.

The buyer is served by this arrangement because any member broker can provide that buyer with a majority of the listings of all member brokers, thus saving the consumer from having to visit each and every broker in a particular area.

The Chicago metropolitan area contains 29 MLSs. There are no formal agreements, however, to pool listings among all 29 of them. While a buyer could get almost all of the listings available in the northwest suburbs by going to any MLS broker in that area, he or she could not, for example, also get listings for the south suburbs without going to a broker who is a member of a south suburban MLS.

Because of the size of suburban MLSs, which cover a much larger geographic area than MLSs in the city, a buyer might have to go to as many as four or six brokers — each one a member of a separate MLS — to find out about the vast majority of suburban listings in a particular price range.

Only one predominantly minority board exists in the Chicago area. This board operates its own MLS covering the south side of Chicago. Because they must protect their economic self-interest, minority brokers have no economic incentive to refer clients to suburban brokers. They keep their "listing' broker's commission intact by keeping clients in their MLS's

"territory". So an inner-city minority homebuyer who starts out by contacting a local broker cannot depend on him or her to supply information on housing outside those areas traditionally reserved for minorities or those neighborhoods currently undergoing racial change.

The inner-city consumer who needs a rental unit in the suburbs has a far more complex set of factors with which he must deal. First, unlike sales property, the majority of apartments are rented by informal means—word of mouth, signs on the buildings, random inquiries—or by management firms which do business only in small geographical areas. There are no pools of rental listings which contain a majority of the vacancies in a particular sector of the metropolitan area the way MLSs do for sales listings.

Consumers who live on the south side of Chicago and who want to locate an apartment in the northwest suburbs must use a combination of intermediaries. Even if they have the patience and time to employ all of these intermediaries in their behalf, they are not likely to find a decent, well situated unit they can afford. Many landlords—and especially those who lease apartments in the price range that moderate and middle income minorities need—never advertise publicly or list units with the plethora of suburban management firms, because the units rent quickly enough through the informal channels mentioned above.

Fragmentation

The following enumeration of the intermediaries in the rental marketing system demonstrates the fragmentation of that system, and points out how the intermediaries differ in certain important respects: 1) their marketing methods and the extent to which they are organized; 2) regulation of their marketing activity by the State; and 3) their equal opportunity policies or lack thereof.

Management firms are hired by owners of buildings and complexes of a few to several hundred units to collect rents, provide maintenance services, advertise for and select new tenants. Both minority and white owned firms manage buildings in which minorities live, while minority owned firms rarely, if ever, manage buildings in which only whites live. The only State regulation of management firms is the requirement that their personnel be licensed real estate brokers or sales persons.

Home builders and developers hire management firms (described above) or have in-house management staffs to perform the functions of selecting tenants, collecting rents, providing maintenance services, etc. It is not known how many homebuilders and developers contract out their management services as opposed to having in-house management teams, but the distinction is important.

As pointed out above, management firm personnel must be licensed, and therefore must abide by the antidiscrimination provisions of the Real Estate Broker's and Salesmen's Act or risk losing their license. In-house management firms are not currently required to be licensed, and therefore have less incentive to act in a manner which promotes equal opportunity.

In addition, it is important to note that since there are so few minority home builders, and that since in almost all cases the in-house management staffs of white building firms—especially in the suburbs—are usually all white, the minority person who finally manages to locate a suburban vacancy is certain to encounter a white management agent.

It is likely that because in-house management personnel have no State license to protect, and no required training in equal opportunity, they will respond negatively to inquiries from potential minority lessees.

Apartment referral agencies, which are commercial central listing services for apartment seekers, are relatively new intermediaries. The following blurb, taken from the promotional material of one nation-wide listing service describes—in this emerging industry's own terms—its purpose and operation:

> The aim of [this company] and its affiliated offices is to offer a viable community service. [This listing service] is an information exchange. By researching, assembling, and categorizing as many possible rental vacancies in any given city or county, [the listing service] is able to provide its clients with real and actual assistance in locating a home.
>
> Through its centralized information exchange, [the service] saves its clients many hours and wasted dollars in their search for a suitable dwelling. A client simply makes one stop or call and receives information regarding the majority of available rentals in any given city or county. This service is provided

daily for as many moves as a client wishes to make during a one-year period. After one year has expired, the client can re-register for a full year of service.

Clients using the [listing service] pay an annual fee of $30.00. Once registered, the client may use the service in any city in the United States or Canada where an affiliated [listing service] office is located . . . .

No listing of any landlord who practices discrimination in terms of race, creed, religion, or national origin will be carried by [the listing service] . . . . Frequently, landlords who practice discrimination place the onus of rejection on our service. They say a listing is no longer available when in fact it is, and our lists carry it as such. In this case, the listing is removed from the catalogue.

[Listings include] information regarding dates of availability, area of town, exact rent price, children and pet restrictions, and miscellaneous information regarding the particular dwelling . . . .

Landlords are requested to inform [the listing service] when a vacancy has been rented. But, in order to fully establish the current availability of rental properties listed, all landlords are called every evening to verify every listing—7 days a week.

Since the listing service described above, and others like it, provide one possible model for centralizing rental information in a way that would be particularly useful to minority apartment seekers, we spent considerable time investigating its Chicago operation.

One aspect of our research involved having someone contact the listing service and pose as a landlord who wanted to list a suburban unit with the service, but who did not want minority tenants referred to her. The listing service employee told our researcher that while the service itself could not and would not discriminate in making information about individual units available, the potential landlord could "protect" herself by telling "unwanted" tenants that the unit in question had already been rented. It is important to note that as of this date the listing and referral services and their employees are not required to be licensed to operate in the State of Illinois.

Community and metropolitan newspapers provide a substantial number of rental listings. The majority of moderately priced listings, however, can be found only in the community newspaper(s) serving the suburb in which the apartment is located. While such newspapers duplicate some of the listings in the metropolitan daily(ies), small apartment owners and managers tend to rely on the local paper, both because the advertising rates are generally lower and because such landlords and their agents consider their best "market" to be those who already live in their suburb.

Obviously, most minority persons living in the inner-city have no access to these publications. While no evidence exists to indicate how many landlords intentionally limit their advertising to local papers to avoid renting to minorities, the results of such advertising policies clearly limit (and, in fact, usually eliminate) minority access to these units.

Various solutions to housing problems are under discussion by interested groups. These solutions include: legal means, such as stricter licensing and/or enforcement of laws already on the books in many States; efforts at new legislation to revise or strengthen regulations; and activities—such as equal opportunity monitoring—that non-profit and/or community groups could undertake on their own with little outside involvement.

The primary strategy proposed here is to establish a central clearinghouse to collect and disburse information to inner-city residents on available suburban units.

A Unitary Marketing System

To be effective, this central clearinghouse—or unitary marketing system—would have to be able to identify and seek out those who most need rental vacancy data, and to deliver vacancy listings and related information to them in a timely fashion. In order to operate efficiently, the system must include four components—assembly, processing, delivery, and monitoring.

Assembly component: The ideal way to compile a complete list of rental vacancies in a metropolitan area would be to require by law that everyone with property to rent disclose this fact to a State-designated clearinghouse. Small building owner-managers would be included in the requirement, because of their numbers and because many small apartment buildings constructed in the suburbs prior to the 1960s are still reasonably priced. (The only exception might be the owner of a

single family home or town house who leases his own dwelling.)

Landlords would be required to list a unit for rent as soon as they receive notification that it is to be vacated by its present occupant. The law might further require the landlord to wait a certain period of time after disclosing the unit's availability before renting the unit, in order to give the clearinghouse a chance to assemble such listings and make them available to minority consumers.

The landlord should be required to disclose the unit's rent, number of bedrooms, children and/or pet restrictions, street address, town, telephone number of contact person, and amenities, such as carpeting and laundry facilities. It is clear that some additional information—such as the racial composition of the community in which the vacancy is located, available job opportunities and public transportation, distance to schools, and presence of social services (legal, medical)—would have to be assembled by any clearinghouse which has affirmative marketing as its primary mission. The clearinghouse should have counselors who can advise clients of their legal rights in seeking units and refer them to sympathetic whites and minority members already living in the area of the vacancy.

The major task of the clearinghouse (private, public, or quasi-public) would be to assemble these listings and process them quickly.

Processing component: The processing component of the unitary marketing system would be critical to the success of the program. Due to the volume of listings that the system would have to handle to be effective, with or without a compulsory disclosure law, mechanized data retrieval equipment would be necessary.

The primary problem of the processing component would be how to keep listings current. Commercial listing services use an ineffective method of relying on property owners to notify the service voluntarily when a unit has been rented. Some services claim that they call every landlord daily to determine the continued availability of a unit.

Either method would be untenable for a metropolitan-wide system. Instead, an obligation to register new leases publicly so the listing could be withdrawn from the system should also be made mandatory.

Delivery component: An effective unitary marketing system must have the ability to identify and actively seek out potential minority clients. The system must be available especially in segregated neighborhoods where minority residents currently have limited information about rental vacancies outside the ghetto or changing neighborhoods on the edge of the ghetto.

Many other factors affect a minority person's perception about the negative consequences of moving into all or predominantly white neighborhoods. These cannot be overcome by a two or three line description of an apartment located many miles from the person's present residence. In addition, as mentioned earlier, a majority of the moderately-priced vacancies in older buildings rent quickly through local channels.

It is crucial, therefore, that any attempt at affirmative marketing of suburban rental units to inner-city minority persons be made with the assumption that the clients will have to be actively sought out and persuaded that they can safely make a move to suburbia. It will also be important for the clearinghouse to make the lists of vacancies conveniently available within the minority community—through churches, social organizations, community organizations, fair housing groups, and other institutions which service minorities, such as employers and unions. In addition, of course, such avenues as radio, television, and newspaper ads should be exploited in order to alert minorities to the existence and purpose of the unitary marketing system.

Assuming that clearinghouse offices were established in minority communities and were easily accessible, the procedure for using the service would be relatively simple. The consumer would select two or three geographical areas—clustered, perhaps, around the suburb where he or she currently held or might find a job—and indicate to a counselor the unit size, rent specifications, and any additional requirements, such as walking distance to local schools. The counselor could then use a computer to retrieve all the listings in the selected areas meeting the consumer's specifications.

The counselor could brief the consumer on other important psychological, social, and cultural factors about the communities in which listings were located, such as the number of minority people living there and the existence of local fair housing organizations. In many cases, it would be possible for the housing counselor in the city to refer consumers directly to a sympathetic white or minority suburbanite who could be available to go with them to look at a vacan-


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cy and help negotiate with the landlord. The important thing is that the delivery component go beyond simply providing data about available units to a consumer.

Monitoring component: To insure that landlords—whether they participate in the system voluntarily or by law—do not circumvent or sabotage its operation, there must be a means to audit the system for discrimination. Monitoring procedures would have two objectives: 1) to determine whether all vacancies are listed, if required by law; and, 2) to determine whether steering and/or outright discrimination occurs at the point of contact between tenant and landlord.

Assuming that the system of reporting vacancies were made mandatory, random visits to rental offices to obtain vacancy listings that could be checked against listings sent to the clearinghouse might fulfill the first objective for most buildings. The second objective could be met by using procedures already developed by fair housing organizations throughout the country, in which black and white "testers" with the same rent and size specifications are sent at different times to an owner or manager and the responses of the landlord to each compared.

Other Marketing Alternatives

Having reviewed the four components necessary for a unitary marketing system, what are the administrative alternatives? Until certain questions about the system are answered—whether or not disclosure of rental vacancies is compulsory and what the demand is for such service in the minority community once people are aware of its availability—it is impossible to estimate the cost of a system.

Commercial locator services charge clients approximately $30.00 per year for the use of their listings, and it would be important to determine the operating cost and profit margin of such systems (which provide minimal service) before preceding to establish a more complex operation.

We would caution against the easy assumption that the consumer should pay a fee for the privilege of using the listing service, because this might discourage people from doing so. A source of revenue which should be investigated—especially if a disclosure law is passed and the start-up funds for the clearinghouse are provided by the State—is a modest State tax on leasing residential property. Ultimately both landlords and tenants will benefit from a unitary marketing system, so it is not unreasonable to expect both to help support it through a tax.

The question of who should administer the unitary marketing system should be answered in light of the primary goal: namely, to assemble the maximum number of listings feasible and make those listings available to the maximum number of inner-city minority persons. Several alternatives are examined below—in order of priority—with some of the advantages and disadvantages of each noted.

First are State-run intermediaries. A new State department with statutory authority to compel landlords to list rentals could be established to operate the service directly. In addition to the problems inherent in establishing another governmental bureaucracy, this option would take longer to create than those listed below because of the anticipated resistance within the State legislature to passing a compulsory disclosure law and funding the agency.

A publicly owned corporation—regulated as a public utility—could be granted a monopoly to establish the system. Its directors would be appointed by the governor to serve specific terms as are members of other publicly held corporations. The advantage of this administrative option is the political attractiveness of utilizing private enterprise methods for public purposes.

A second option might be to have the State—perhaps acting through the Department of Local Government Affairs—contract with a non-profit organization to establish a unitary marketing system in a metropolitan area. The advantage of this approach would be the shortened time it would take to implement. The primary disadvantage would be the relative ease with which the contract could be cancelled by the State. This arrangement would be a good interim step which could test the need for and the operational problems inherent in establishing a State-run intermediary.

Third, the State might contract with a commercial apartment locator service(s). In Chicago, the largest commercial apartment locator claims to have 3,000 listings available daily. While any one commercial apartment locator represents only a fraction of the rental units actually vacant at any point in time, a State could devise a limited experiment using such a service.

A specified number of families might have the cost of their using

the service (approximately $30.00 per year) underwritten by the State. An existing State agency—for example, the State Commission on Human Relations, working with the Illinois Housing Development Authority—could provide the counseling necessary to help families determine the psychological climate, amenities, and job market in various communities where they had found listings which fit their requirements.

The experience of these families could be watched closely to determine: a) whether they were able to find appropriately priced units; b) whether units chosen by the families were rented to them on a non-discriminatory basis; c) whether the families moved to the suburbs as a result of the availability of the service; and d) if they did move closer to suburban job centers, whether easier access to jobs and suburban amenities—schools, city services, etc.—made an impact on the families' socio-economic status.

The primary disadvantage of using a commercial locator, even for an experiment of this type, is the limited range of listings to which the families will have access. If our assumption—that the majority of units moderate-income minorities can afford are rented locally—is correct, using a large commercial locator would not give the minority consumer access to these listings.

It is easily conceivable that none of the aforementioned alternatives will be adopted due to legislative resistance. A fourth alternative is possible. Some preliminary work has been done in Chicago to try to determine the feasibility of setting up a referral system, using metropolitan and community newspaper listings.

In the experiment, information from various newspaper real estate sections would be transferred to computers and disseminated through some of the same organizations listed earlier. The experimental listing service could be made available on a voluntary basis to any apartment building owner or manager.

The outreach component of the system will have the same purposes outlined above but will depend for its success on the ability to find a sufficient number of listings from newspapers and a dependable volunteer corps to administer it.

A System for Sales

A unitary marketing system as outlined above should also encompass all sales listings. Since a plethora of sales listings pools (MLSs) already exist in most metropolitan areas, we start from a different perspective. A unitary marketing system incorporating sales listings would utilize the same components as the unitary rental marketing system. Adding sales listings, however, would permit the system to utilize licensed brokers as outreach agents.

Establishing a metropolitan-wide unitary marketing system for the sale and rental of real estate is an idea whose time may have come. Courts in New Jersey, for example, have taken judicial notice of the "restraint of trade" impact of the current sales marketing system. A government commission in Illinois is considering proposals to recommend statutory creation of a unitary sales and rental marketing system for the Chicago and St. Louis metropolitan areas.

Thus far, legal challenges to the MLS system have not gotten beyond the lower courts because the National Association of Realtors has actively discouraged local boards which do lose cases from appealing, thereby avoiding the possibility of establishing damaging precedents nationwide. A case worth citing in this regard is *Grillo v. Board of Realtors of Plainfield, N.J.* In discussing the traditional marketing system built on the MLS concept, the court said:

> In effect, the multiple listing service operates as an exchange for the sale of real estate. The multiple listing system can potentially stimulate competition in the real estate field by placing listings in the hands of all brokers in the area.
>
> Yet under the rules and regulations governing multiple listing, each member of the board has agreed that he will not supply information to non-member brokers, but only to members of the board through the multiple listing service.
>
> The commitment to furnish information about properties for sale only to a fellow member may be characterized as a concerted refusal to deal with non-members or as a group boycott.

Its rulings included the following:

> Insofar as the board seeks through its combination to protect the public in real estate dealings, it is proceeding as an extra-governmental body in a pre-empted field . . . . I conclude that the Board and its members are engaged in an unreasonable and hence illegal restraint of trade in violation of the common law.

The court went on to find:

> Listing information collected by the multiple listing service [and]

maintained by the defendants shall be made available to all real estate brokers licensed by the State of New Jersey whether they be members or nonmembers of the defendant Board of Realtors . . . . [Further the] multiple listing service maintained by the defendants shall receive and distribute listings secured by nonmember participating brokers.

The defendants, in other words, were ordered to create a unitary marketing system in Plainfield (the location of Grillo's office). The order did not apply to other boards in the State, however, since the Board chose not to appeal. So the MLS "system" was not broken.

Meanwhile the Illinois Governor's Commission on Mortgage Practices has just concluded hearing testimony and developing recommendations for legislative action to deal with the problems of redlining.

The authors have called upon that Commission to ask the Governor to support legislation that would have the effect of creating a unitary sales and rental marketing system in the Chicago metropolitan area.

Our rationale for this recommendation is simple: namely, that the resegregation of neighborhoods results in large part from the lack of housing choices throughout the metropolitan area for minorities. Lenders who withdraw conventional financing from changing neighborhoods on the edge of the ghetto do so on the basis of what they consider to be the historically demonstrated inevitability of resegregation.

If a unitary listing system were developed, minority buyers could look for housing beyond neighborhoods already undergoing racial transition, which would lessen the probability that transitional neighborhoods would become an extension of the ghetto. Lenders would have to find substantial reasons besides the fear of resegregation for refusing to approve mortgage and home improvement loans in the kind of stable, integrated areas that would result.

The remedies proposed by the Governor's Commission include a bill to initiate a unitary real estate marketing system under the auspices and control of the Commissioner of Real Estate.

The bill would provide that:

1) Every licensed real estate broker in the State of Illinois report to the Commissioner of Real Estate every residential sale and rental property being handled by the broker, along with a continuing monthly update of the disposition of the listing.

2) The Commissioner of Real Estate organize and computerize the information reported to him by Illinois county and for the Chicago SMSA (6-county metropolitan region). The Commissioner would make such comprehensive listings available to the public on a monthly basis at convenient sites in counties throughout the State.

3) Any broker refusing to participate in the unitary marketing system would immediately lose his license to do business in Illinois.

Congress recognized as long ago as the 1930s that a clear public interest is served by matching workers with job opportunities. Hence the enactment of the first of a series of Manpower Acts which provided public funds to create State employment services which assist workers in finding jobs and employers in finding employees.

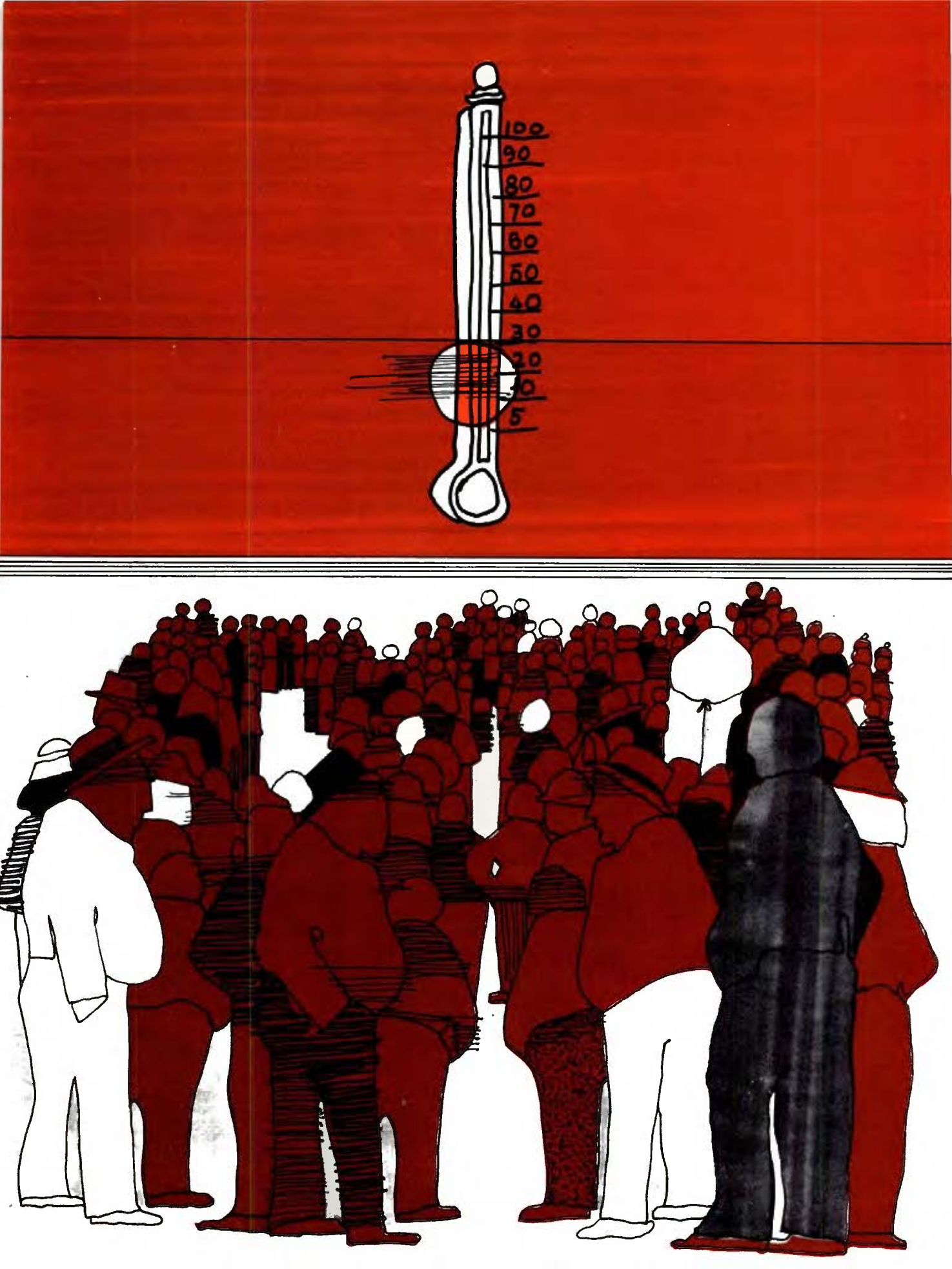
Equal Access

Yet, for more than a decade and a half, jobs have been leaving the cities and moving to the suburbs. During much of that same period, overt and covert forms of racial discrimination have operated to prevent minority workers from following their jobs.

With the passage of the 1968 Civil Rights Act, formal restrictions against renting and selling to minority persons were outlawed. While this legislation has helped some minority families to gain equal access to housing opportunities in the suburbs, the vast majority of moderate-income workers still find housing only on the edge of the ghetto.

The next step in the struggle to open the entire housing market must be to change the real estate marketing system from one that is fragmented—and therefore difficult, if not impossible, for most minority consumers to employ in their behalf—to a system that is unitary and that will serve the needs of all the people.

The abolition of the present marketing system—the heart of which is the monopolistic MLS—will not come easily; but come it must if we are to succeed in matching jobs and people and if we are to make good on the congressional pledge mentioned at the outset: "... a decent home and a suitable living environment for every American family."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TURNING UP THE HEAT

THE ROLE OF HUMAN RIGHTS AGENCIES TODAY

By Fred Cloud

When winter winds come whistling down off the Rocky Mountains and the temperature drops sharply, we expect the thermostats in our houses and office buildings to react by turning up the heat. Functionally, human rights agencies are like thermostats: when the cold winds of political cynicism, racism, or indifference to human needs begin to chill human rights, then effective agencies turn up the heat. Agencies that have enlisted in the battle for human rights cannot be mere "thermometers," simply registering the social climate; anyone can tell that it is cold. Rather, they must be advocates, working for life-preserving, life-enhancing change.

In considering the role of human rights agencies in today's atmosphere, we must focus our attention first on the social changes that have far-reaching implications for the work of human rights professionals. Those changes can be viewed in two categories: evolutionary changes—that is, ground swells that have been in the process of formation for years or even decades; and crises—changes that are harsh and demanding but which were not anticipated by most Americans more than a few months ago. Both kinds of changes require responses from human rights agencies, but the strategies employed will often be different.

The New Crises

Heading the list is unemployment. A former White House economist who headed the Council of Economic Advisers under President Lyndon Johnson, Arthur Okun, predicted on December 3rd that America's unemployment rate will probably reach 8 percent by the summer of 1975. (In fact, unemployment soared to 8.2 percent in January.) That is the highest rate since the early 1940s, when the Nation was coming out of the Great Depression.

Bad as that sounds, the present reality is already worse for blacks and browns in many urban areas. The November 1974 issue of *Race Relations Reporter* stated that "the unemployment situation among minorities is approaching catastrophic levels . . . Especially among blacks and browns, unemployment has already reached astronomically high levels—as high as 45 percent of the adult male population in some ghettos.

And in Chicago, a State employment counselor stated that in the Garfield and Lawndale neighborhoods unemployment of minority persons between the ages of 16 and 21 is 65 percent. This is social dynamite.

Human rights agencies have special responsibilities and challenges in this time of widespread unemployment. One of

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the oldest and cruelest dilemmas is the "last hired/first fired" situation. Large scale layoffs in many industries are pushing minorities and women out of jobs which they won only after extended effort. Several class action suits have been filed contesting this practice on the grounds of its discriminatory effect.

Human rights agencies, it seems to me, must contend for fairness in layoffs and cutbacks—"spreading the load" so that it is not all dumped on those persons who have experienced discrimination for many years. Further, since income from work is the most basic of needs and rights, our agencies need to push for public employment programs now in those areas where unemployment is already above the "trigger figure" set by the Government.

Closely allied to the problem of unemployment in the private sector is the matter of employment in Government at the city and State levels. Since the 1972 amendments to the 1964 Civil Rights Act, we have been challenged to remedy racial and sexual inequities in government employment. Human rights agencies can help (and, in many instances, have helped) in this crucial area by securing the adoption of strong affirmative action plans in our own governments. As an employer, government should set the pace in fair employment. The current recession must not be accepted as an excuse for retreating from the goal of fair employment in government.

The second crisis that concerns us is food—the first of the necessities. Although it is not written into our ordinances as a right to protect, I am sure we agree that "the right to eat" is a basic one. We see almost daily expressions of the callousness of high government officials toward the problem of hunger, both here and abroad. In considering a proposed $4.6 billion cut in the national budget, President Ford recently talked in terms of cutting "people programs"—welfare, food stamps, and aid to education. What upside-down logic: when times are hard, cut allocations to the needy!

Here is an area where human rights agencies should throw their weight behind food stamp coalitions and other groups that are contending for the rights of the poor and the elderly, who otherwise will not have enough food to sustain life. We do not always have to be out front; in many areas of human need and human rights, we can work most effectively in coalitions—sometimes initiating them, sometimes enabling them to become effective, sometimes just being good supporters of them. Human rights today are under fire—we need one another.

The Housing Crunch

Next in order of urgency is the housing crunch. The present crisis began, perhaps, with the Federal moratorium on low-income housing, especially the "235" and "236" programs. And despite the Housing and Community Development Act of 1974, that moratorium is still in effect. On September 26 of this year, former HEW Secretary Robert Weaver stated that the Federal Government has "placed the responsibility of making sure the poor and blacks get equal access to decent housing on local government."

"And we who are black know what happens when it is left up to local governments," Weaver said. "We get left out, because the decisions aren't made with us in mind."

Weaver indicated he thought the Government had been remiss in eliminating several low-income housing subsidy programs, including the 235 programs which helped low-income families purchase their own homes.

"They have replaced those programs, which were working, with a new program that is suspect at best," he said.

Ensuring housing for minorities requires two things: available supply and equal access. A recent court decision of great interest to human rights agencies with regard to supply and the price paid for housing was rendered by the U.S. Court of Appeals in Chicago. In a case regarding Universal Builders, Inc., the Court held that charging blacks higher prices for property than whites would have to pay for comparable property constitutes discrimination "as surely as unequal hiring policies do."

Basing its decision on an 1866 civil rights law, the court stated: "When a seller in a black market demands exorbitant prices and onerous sales terms relative to the terms and prices available to white citizens for comparable housing, it cannot be stated that a dollar in the hands of a black man will purchase the same thing as a dollar in the hands of a white man."

This decision has been appealed to the U.S. Supreme Court. If it is sustained, it has potentially far-reaching effects in eliminating discrimination in the cost of housing.

This audience hardly needs reminding that human rights agencies must be vigilant in enforcing the 1968 Fair Housing Law. Non-

discrimination in housing is, in some respects, the keystone of human rights, for it involves access to jobs which increasingly have moved to the suburban rings. It holds the ultimate possibility of truly integrated neighborhoods, with integrated schools achievable without extensive busing.

Schools: A Perennial Problem

That brings us to a human rights issue which is long-term, yet which heats up to crisis proportions periodically: school desegregation. Many of us believed in 1954, with the *Brown v. Board of Education* decision, that we were "in sight of the promised land." Yet 20 years later, we are witnessing the spectacle of racial hatred and violence in Boston, reminiscent of earlier reactions in the South. Why does this still occur?

One of the obvious answers is political opportunism and cynicism. Candidates for city, State, and national office often have tried to outdo one another in attacking busing. One of the most recent and flagrant examples was unfortunately provided by President Ford in October 1974, when he criticized the Boston school decision. Many persons and groups, including the National Association of Human Rights Workers, were outraged by the President's statement, because it would have the effect of undermining the law.

As the *New York Times* editorialized last October:

> The President may disagree with a law and attempt to have it changed, but once it has been enacted and interpreted by the courts, his obligation is to execute the law, encourage respect for it and, if possible, make it easier for those directly engaged in the law's enforcement to discharge their duties. He clearly has no business making it harder for embattled judicial officers, civic authorities, law enforcement officers, and private citizens to restore order in an inflamed community.

In writing about busing and integration, Fred M. Hechinger said last November:

> To dismiss the Nixon-Ford line as the last gasp of a dying American racism begs all the basic questions. The reality is that the racism represented by that position remains deeply imbedded in American society and indeed in every society—a form of xenophobia that is a human rather than merely American vice.
>
> It is not, however, a vice to which American society can afford to surrender without grave self-injury. The need for school desegregation remains paramount, not because black and white children cannot learn in segregated schools, but because America as a free society can survive only as an integrated society.

What special roles can and should human rights agencies fulfill to facilitate school desegregation? Some useful roles which I have observed include:

- Serving as a catalyst to rally groups in the community supportive of compliance with the law, and publicizing through the media the constructive programs carried on by such groups.
- Cooperating with the human relations department of the board of education to help carry out human relations training for teachers, principals, and other administrators.
- Convening interested groups—such as the Panel of American Women, the National Conference of Christians and Jews, and representatives of teachers' organizations—to develop strategies of mutual support and cooperation in making school integration work in the community.
- Serving on the advisory boards mandated by the Elementary and Secondary Education Act in order to push the human relations dimension in the schools.

Emotions often run high when school desegregation is discussed. There is frequently an excess of heat and an absence of light. Our task, at that point, is to "cool" the community and illuminate the issues with facts and rational approaches to the problems.

Police Relations

Another chronic problem which flares up repeatedly is police-community relations. In 1968, the National Advisory Commission on Civil Disorders reported that "almost invariably the incident that ignites disorder arises from police action. Harlem, Watts, Newark and Detroit—all the major outbursts of recent years—were precipitated by routine arrests of Negroes for minor offenses by white police." The report continues:

> Police are inevitably involved in sharper and more frequent conflicts with ghetto residents than

with the residents of other areas. Thus, to many Negroes police have come to symbolize white power, white racism, and white repression.

And the fact is that many police do reflect and express these white attitudes. The atmosphere of hostility and cynicism is reinforced by a widespread perception among Negroes of the existence of police brutality and corruption, and of a "double standard" of justice and protection—one for Negroes and one for whites.

What's happened since that report was written, with special reference to police-community relations? Three developments are of special interest.

First, a nationwide push has been mounted to employ minority policemen. In the November 1974 *Race Relations Reporter* John Egerton related the results of a survey of the Nation's 49 State police forces to determine their racial composition. He found "an increase since 1970 of more than 150 percent in the number of blacks and almost 40 percent in the number of other minorities serving on those forces." Still, "almost 97 of every 100 State police officers are white males."

Earlier in 1974, the International Association of Chiefs of Police published the results of a survey that covered 493 State, county, and municipal police forces in the Nation. They estimate that nationally "the proportion of minority group males who are sworn police officers is approximately 4 percent." This is, of course, far less than proportionate to our minority population. Through affirmative action programs, this figure can be substantially increased.

Second, the number of human relations training programs for police officers has grown considerably. In many cities, human relations is part of the training that every group of police cadets receives. Tied to it is psychological screening of candidates for the police force, to eliminate (hopefully) those who are sadistically inclined.

Third, there has been considerable study by human rights groups of the use of deadly force by police departments. On the basis of their findings, a number of groups have negotiated agreements with police departments to exercise more restraint in the use of firearms.

Sometimes human rights agencies have worked as part of a coalition on police-community relations. Goals of such coalitions have included: recruitment of minority officers; improved human relations training for the police force; modification of firearms policy; and improved pay.

Women's Rights

At the outset, we spoke of some evolutionary changes in society, some ground swells in the area of human rights that are cresting today. The most prominent of these is, of course, women's rights. The drive to ratify the Equal Rights Amendment is a symbol of that change.

Recently, the Equal Employment Opportunity Commission hosted a number of regional celebrations of the 10th anniversary of the 1964 Civil Rights Act. At these celebrations, it was pointed out that the prohibition against sex discrimination in employment was originally inserted as a joke or as a deterrant to passage of the law. But it proved to be (as they say in the movie industry) a "sleeper". Today, almost half of the complaints received and processed by EEOC are sex discrimination cases. And recent class-action suits—such as the AT&T case—have resulted in multimillion dollar settlements that are radically changing employers' attitudes and practices.

Even so, we have a long way to go before women are accorded equal treatment in employment. As John A. Buggs, Staff Director of the U.S. Commission on Civil Rights, told the National Association of Human Rights Workers convention in New York on October 8 of this year:

> In all instances in which women and men share the same educational attainment level, men have higher income than women, regardless of race or ethnicity. In addition, women consistently have lower incomes than do men with less education. For example, women who have completed 1 to 3 years of high school have lower median incomes than men with less than 5 years of elementary education.
>
> Within each racial/ethnic group, the figures are similar ....Within each age group, women consistently earn less than men.
>
> The earnings gap between women and men of each racial/ethnic group, computed over a lifetime of work, further illustrates the disparity between female and male income. In no case do women earn more than 60 percent of the amount earned by men of their racial/ethnic group.

Women's rights are the concern of all persons who care about an open and equitable society, not merely a concern of "women's libbers." We do well to resist all attempts to set women's rights over against minorities' rights. We heartily agree with John Buggs that "neither minorities nor women can, in this era of the attempt to push back the gains of equal rights for minorities and the uphill fight to secure those rights for women, afford to be other than friends, neighbors, and supporters of our mutual goals."

Ground Swells of Change

Another ground swell is the extension of the boundaries of human concern to include groups previously ignored or mistreated. Notable among these are juvenile offenders, prisoners, retarded and handicapped persons, and mental patients.

Notable strides have been made, principally through class action suits, to secure treatment for persons in mental hospitals who formerly had been kept primarily in custodial care. And in several States—including Minnesota, Michigan, and California—prisoners' unions have been formed to negotiate for prisoners' rights. The right to be treated with dignity and respect even though imprisoned—that is an assertion of the human spirit which human rights agencies should encourage and expedite. In a number of cities and States, coalitions have been formed to work for reforms in corrections, and to provide humanizing services for juveniles and prisoners who formerly were locked away and forgotten about.

A third ground swell in America regarding human rights is the emergence of cultural pluralism. James Cass commented helpfully in a *Saturday Review/World* article when he wrote:

> The primary thrust of our society has been to assimilate the strangers who came to American shores, to erase differences rather than to honor them. The ideal was the "melting pot," in which cultural differences were lost and the schools were seen as the primary instrument for achieving the goal.
>
> Today much has changed. After the thrust of the black civil rights movement began to shift from integration to an emphasis on black identity in the late 1960s, a new ethnic consciousness and pride emerged within many groups—not just among the Spanish-speaking and Asian Americans but among white ethnic groups as well. Increasingly, individuals are seeking their own ethnic or group identity and, in the process, are demanding that cultural differences be accepted and respected—that the rhetoric of our pluralist society be translated into reality. The evidence of the changes that are taking place comes from many directions.

Judith Herman gives advice to teachers that applies equally to human rights workers: "It is the avoidance of differences, pretending they do not exist, that generates confusion and conflict. If we can help children learn that 'different' does not need to imply 'better' or 'worse'—then the schools will be helping to create a new and vital American pluralism."

Individuals today are demanding that cultural differences be accepted and respected. A fascinating new project to push this approach has just been completed. It involved public TV station WTTW in Chicago, HEW (which funded the project), and a team of professors in the field of ethnic and race relations from the University of Chicago. Together, they produced 30 public service TV spots for showing over some 500 stations throughout the United States.

It is a truly liberating experience to come to the point where one rejoices in diversity, rather than being threatened by it. I believe that the future of human relations in America lies in a positive acceptance of cultural pluralism. This means we must recognize the inadequacy and misleading nature of the "melting pot" concept of intergroup relations. In its stead, we can celebrate our common humanity in all its diversity.

Staying on the Case

Human rights workers are challenged to act on a dozen different points, *all* of them important. The temptation is to feel overwhelmed. A realistic stance for the long haul is to examine our options, determine our priorities, and go to work where we believe we can make the greatest difference.

In some cases, that will mean working for structural change in the society; in other cases, it will mean providing relief and redress for individuals whose rights have been violated.

What keeps us "on the case" is the confidence that the future belongs to all of us who believe in the dignity and worth of every human being.

DESEGREGATING BLACK PUBLIC COLLEGES

WHAT WILL IT MEAN?

This discussion is adapted for use in the *Civil Rights Digest* from a program presented on the National Public Radio series "Options in Education." Participants include Dr. Elias Blake, president of the Institute for Services to Education; Dr. Wendell P. Russell, president of Federal City College; Elliott C. Lichtman, attorney with Rauh and Silard; Peter Holmes, director of the Office of Civil Rights in the Department of Health, Education, and Welfare; and Herbert O. Reid, Sr., professor of law at Howard University Law School. John Merrow is the moderator.

The focal point of the discussion is *Adams v. Richardson*, a case brought by the NAACP Legal Defense and Education Fund, Inc., against the U.S. Department of Health, Education, and Welfare to force HEW to require the States to desegregate their public colleges.

Dr. Blake begins by outlining the importance of black colleges to blacks and to the country.

ELIAS BLAKE: Black colleges have almost singlehandedly created, prior to the 1960s, the black middle class. These schools in 1973 turned out 25,000 baccalaureates and almost 30,000 degrees generally. They have been the dominant source of college trained black manpower in America for almost 100 years.

Only in the last 5 to 10 years has a flow of college graduates begun to come out in any significant numbers from outside of the black colleges. Without them, we just simply wouldn't have a very large class of college-trained black Americans.

JOHN MERROW: It is said that *Adams v. Richardson* presents a dilemma for black colleges. What is this dilemma?

BLAKE: The dilemma of the case revolves around the fact that we don't have a real definition of integration or desegregation. And this case draws that issue very sharply.

For example, one or two or three or four black youths in a white college or high school, or as little as three to five percent, will result in that school being identified as a school that has been desegregated or integrated. Yet the law in some of the desegregation cases sets desegregation in predominantly black schools as either a racial balance or majority white school.

In the case of black colleges, where they have made the kind of contribution that I am talking about, everyone is afraid that those kinds of approaches might be taken toward desegregation, while at one the same time historically white institutions will simply not respond to the education needs of blacks. So that one will

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This program, "The Desegregation of Black Public Colleges" was presented on "Options in Education" October 7, 1974. It was produced for the Institute for Educational Leadership at George Washington University and National Public Radio by Midge Hart and John Merrow.


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FAYETTEVILLE STATE TEACHERS COLLEGE
The South's oldest normal school. Established 1867; state-supported since 1877. For Negroes.
ARCHIVES, CONSERVATION AND HIGHWAY DEPARTMENTS 1959

find the pillars of black education destroyed and no viable alternatives developed.

I think that the principle at stake here is whether black Americans have the same kind of equitable rights and privileges in the process of desegregation that whites have. If black educators have spent their careers developing institutions to educate black youth (just as white educators have spent their careers developing white institutions), then as one works through the education process, the burden to desegregate should not fall on black educators to have to defend their handiwork, while the white educators don't have to defend theirs. I think the principle is really a kind of fair and equitable treatment of both races in the process of desegregation, with neither being a dominant one in the decision-making process.

MERROW: But should we be spending public money on racially identifiable schools?

BLAKE: Well, I don't know what "racially identifiable" really means in the elementary and secondary school cases, but that's the issue which I would say is in conflict. I don't believe there are any nonracially identifiable institutions in America. That's just a myth.

To say that an institution that is historically white is not racially identifiable and an institution that is historically black is racially identifiable is another form of racism to me. It says that an institution that has substantial numbers of blacks in it is somehow bad and an institution that has substantial numbers of whites in it is somehow good.

I think you have to go beyond that and get into some other substantive issues about goodness and badness. There are some issues, but I think just the racial composition of an institution doesn't go to those issues.

MERROW: Dr. Wendell P. Russell has been a professor, dean, and president of black colleges. Dr. Russell, would you describe the contribution of black colleges?

WENDELL RUSSELL: Black youngsters throughout the South, who during their lives have not had a single opportunity for progress, have been subjugated to the "back of the bus"both literally and figuratively. They have not had any opportunities to attend schools which brought the best in education to them in their most formative years, and have come to colleges where there was much lacking.

But then they have met teachers, counselors—people who were concerned about them—who helped to lift them out of the quagmires in which they were imbedded as a natural solid ground and send them out into the world of work. The continuation of such colleges is going to be meaningful and valuable and necessary, as long as we are denied the aspects of life which are available to all other citizens.

It is my considered opinion that until there is full integration in society, there is going to be a very special need for education for those who have been sidestepped by society.

MERROW: Are you saying then that black colleges are going to play essentially a compensatory role in the future? Is there a role for a black college that meets the standards of excellence of predominantly white colleges?

RUSSELL: You are making the assumption that predominantly white colleges have some standard of excellence. I am not certain that I am going to accept that, because I remember a study made by McGrath back in the mid-1960s which indicated that predominantly black colleges are of about the same stripe as other colleges throughout the Nation. Obviously, there is one Harvard and one Cal Tech, but you'll find the black colleges run the gamut just like other colleges.

Unfortunately, when we think of higher education we assume that every white college is a Cal Tech or a Harvard or Yale, or something like this. Obviously, this isn't true. There are good white colleges and lousy white colleges. There are some good black colleges and some lousy black colleges, so the initial assumption leaves me completely cold.

Secondly, I make no apology for the fact that many black colleges, as do many white colleges, must be engaged in compensatory education. If universal education isn't a myth, then we must provide those facilities which will allow bright and able young people, who have not had the opportunity to extend and expand their minds fully in a given atmosphere and with a group of people who are really turned on, to get back where they should be in order to start. Yes I don't make any apologies for it.

A number of black colleges have to do this, and it is not the fault of the black college—it is the fault of the system which allows people to go through elementary and high schools and to graduate without being able to go right into the areas of study which colleges usually start with.

However, I would also make the point that it would be stupid, absolutely wild, for Harvard and Cal Tech to take upon themselves this type of role. It would be stupid even for universities of the caliber of say, the University of Virginia or the University of Pennsylvania to take on this role, when there are other colleges which have had the history and have had the experience and who have shown through what they

have done that they are successful in filling this role.

MERROW: You probably know the legal situation surrounding this case as well as anyone. What is the best way out of this dilemma?

RUSSELL: I admit that it is a dilemma, because in a nation which prides itself on creeds which point to the possibility of each man being an integral part of the democratic system, obviously there isn't any place for any type of divisiveness or any form of categorization which isn't necessary for some reason other than race and class and that sort of thing.

I know that our creeds would say that a segregated system of education is wrong. But I know also that the reality of the situation tells me that for some time yet to come there are going to be very good reasons why some people will function better in a system where they are far more comfortable, in which they have people who are far more concerned about them. The dilemma is how do you equate the needs of young people to the creeds and yet allow them to reach their highest possibilities?

I think as long as colleges are open, as long as they do not deny the opportunity to any student who wishes to come there, that is all right. I think that there are white students who could profit from the experience of a black college which takes people away from where they are and puts them where they should be, and once we can break through and persuade whites as well as blacks to accept the fact that there is nothing wrong with integrated education without white dominance, then you are on the road to recovery.

MERROW: You're suggesting then, I think, a kind of whitening, a gradual whitening of black institutions, but not white dominance. Does the term "black college" mean that the student body is 100 percent black and the faculty is 100 percent black?

RUSSELL: No, it doesn't. Whenever we have said black colleges it has not been quite accurate, because from the very beginning faculties were integrated in our first schools. I can remember in the '40s when we had white students, and there have been other white students at private colleges throughout the years. The public colleges never took white students until the mid-'40s.

MERROW: What are the circumstances that led to the filing of *Adams v. Richardson?*

ELLIOTT LICHTMAN: The law suit was filed (in October 1970) because HEW had found that many States in the South were operating segregated systems of higher education and since the law required that States which received Federal funds not discriminate and not segregate, we believed it was incumbent upon HEW to take steps to end the segregation which the agency itself had found.

Specifically, between early 1969 and early 1970 HEW had sent 10 letters to 10 separate Southern States and also some Border States, finding that the States were operating systems of higher education which were segregated and requiring that outlines of desegregation plans be submitted to the agency. Those plans in some cases were not forthcoming at all, and in the other cases, the plans which were forthcoming were sadly deficient. Yet, the agency failed to follow up and hundreds of millions of dollars, of Federal dollars, continued to flow.

So we tried to get HEW to enforce the statute. The statute is very clear: the agency must do something where there is discrimination. It can't continue to fund the districts or the States with Federal money if discrimination is occurring.

To be sure, there is a period required by the statute for conciliation and negotiation. But once the agency makes the finding that there is discrimination or segregation, the statute, and indeed the Constitution, require that after a period of negotiation passes and compliance is not secured, the agency must commence proceedings leading to the ultimate cutoff of Federal funding, or the Justice Department must prosecute a civil suit.

HEW did nothing at all when the States failed to respond adequately and for that reason we filed a lawsuit.

MERROW: So the lawsuit is not specifically aimed at public higher education?

LICHTMAN: No. The lawsuit is much broader than that. The lawsuit is aimed specifically at HEW's failure to enforce Title VI of the 1965 Civil Rights Act which encompasses elementary and secondary education as well as higher education, and indeed major parts of the lawsuit apply exclusively to elementary and secondary education.

MERROW: Now, give me the lineup. Who's on which side?

LICHTMAN: On our side are those people who believe that HEW must enforce the statute. I think many individuals at HEW would like to enforce the statute, but for political or other reasons it hasn't been possible to do so.

You will recall back in July of 1969 that then Attorney General John Mitchell and then HEW Secretary Robert Finch issued a famous statement in which they indicated that they would not utilize the fund termination route. Instead, they would litigate.

Well, that's fine and good if they had chosen to litigate, but they abandoned the litigation route. From that point on the Nixon administration just didn't permit its own officials to enforce the law, and for that reason Judge Pratt in the Court of Appeals found that judicial redress was necessary.

MERROW: Who has opposed this case?

LICHTMAN: Well, the defendant, of course, was the United States Government. It's not an easy question to answer. I would think that we now know from the rather modest deesegregation plans, to say the least, which were offered by the States (after the court required HEW in turn to require the States to submit plans) that many State officials are not the least bit interested in desegregating their higher education institutions.

We didn't hear from them very much during the lawsuit, but we know with hindsight that their failure to really comply with HEW's directives indicates that they indeed don't want to desegregate their systems of higher education.

MERROW: What would compliance with the law mean for the black colleges?

LICHTMAN: From the outset, we have been very sensitive to avoiding a repetition of the mistakes which occurred on the elementary and secondary level. As you know, in the late '60s and early '70s literally thousands of black administrators lost their jobs through discharges or demotions on the elementary and secondary level. Numbers of black schools were closed. Those mistakes, we were convinced, could not be permitted to occur again on the higher education level.

For that reason, at the outset of the lawsuit we asked Elias Blake, who is the chairman of a consortium of black colleges, to give a deposition and act as an expert witness for us, spelling out his views of what a desegregation plan should have. Similarly, after the court required HEW to put pressure on the 10 States and to begin proceedings if they failed to submit desegregation plans, we submitted to HEW a series of criteria, and in fact, a long memorandum, outlining in some detail what we thought desegregation on the higher education level meant.

We made clear at the outset that there could be no

demotion or discharge of any black administrators. There could be no closing or downgrading of any black institution. To the contrary, we emphasized that black institutions should be upgraded, that the inequalities and discrimination which they had suffered had to be substantially expanded.

There had to be retention programs to compensate for past discrimination on the elementary and secondary levels against black students. There had to be blacks on the governing boards. There had to be systemwide reform. The matter to be sure is complicated and sophisticated, but we emphasized throughout that desegregation must not be at the expense of the black institutions and the black administrators.

PETER HOLMES: To be brutally frank, there was not a consensus within HEW or within the community as a whole as to what the appropriate remedy was involving the situation of vestiges of the former dual racially segregated system of higher education in these States. Unlike in the area of elementary and secondary education, where numerous court decisions since the *Brown* decision in 1954 had produced rather clear standards as to how such vestiges at the elementary and secondary education level should be eliminated, there have been very few court cases in the area of higher education.

To make a long story short, as a result of a lack of understanding on HEW's part, and the community's part, as to how to remedy this situation, no follow up action was taken. The issue sort of became dormant, quite frankly. It was not until February 1973 that a decision was handed down in that *Adams v. Richardson* case.

Judge John Pratt of the U.S. District Court of the District of Columbia in his decision issued in February 1973 concluded that HEW "had abused its discretion" and therefore must take action to secure from these 10 States either an acceptable plan or take legal action against the States.

MERROW: Did the Government appeal?

HOLMES: Yes. In June 1973 the Circuit Court of Appeals for the District of Columbia upheld Judge Pratt's decision, but, as a result of an "amicus" brief filed by Dr. Reed and the National Association for Equal Opportunity in Higher Education (representing a large number of public black college institutions), the Court of Appeals extended the time period in which we could secure a plan by 300 days.

MERROW: Bring us up to date, if you would, on what's happened in the case. You've talked about the plans that the States have been required to submit . . . .

HOLMES: We began intensive negotiations with the States even prior to the circuit court decision, and this summer we accepted plans from 8 of the 10 States. One State, Louisiana, refused to submit any plan. Back in September of 1973 they notified us of their intent not to submit any plan to us, and we moved to take legal action against Louisiana as we are required to do under the Adams case. We could either move to terminate Federal financial assistance or move to refer the matter to the Department of Justice and ask them to file a suit.

MERROW: Wouldn't it have been quicker to move administratively to cut off funds?

HOLMES: No, it was our opinion that it would not have been quicker. Many people don't understand the Title VI mechanism as it was passed by the Congress, but there is built into the Title VI mechanism a very lengthy due process procedure. You cannot arbitrarily cut off funds to any recipient of Federal funds.

You must provide a hearing to the recipient before an independent third party. They have a right to appeal that decision in two stages, up to the Secretary of HEW. Before you even terminate the funds you have to send a notification to the Congress for 30 days and let it sit there before public Congressional committees, and then the recipient has a right to judicial review of the whole process.

MERROW: What areas are covered by the plans? You mentioned resources, and you mentioned recruitment also. Are there other areas that you can generalize about?

HOLMES: Yes, there are. First of all, let me note that the Court of Appeals in the *Adams* case said that a plan has to be developed on a statewide basis. It cannot be an individual institution's plan. So what we did require very strongly is coordination by a State-level body in each of the States we were dealing with, to develop the plan in each State. The elements of the plan included not only the question of comparability of resources and increased recruitment of students, but also recruitment of faculty as well.

We asked the State, in situations where predominantly black institutions were located in the same city virtually next door to predominantly white institutions, to see whether there was an unnecessary duplication of curriculum between those two institutions, and to look at possibilities for enhancing the curriculum of the predominantly black institutions so as to differentiate it more from the predominantly white institutions, thus giving students in those areas a real choice as to where they wanted to go to school.

MERROW: And your office is satisfied with the plans that have come in from 8 out of 10 States?

HOLMES: We are satisfied at this point in time with the plans that we have received from the States. Some are better than others, some are stronger than others, and I think that the success of the plans are going to be determined as they unfold during the implementation period.

MERROW: Which is how long?

HOLMES: They have run from 4 to 6 years in duration.

LICHTMAN: To our great sadness, HEW chose very recently to accept every desegregation plan that was submitted to it, despite the very many shortcomings in really all of those plans. To answer your question, we are now at a stage where HEW has just accepted a lot of meaningless and insufficient plans, which are to be implemented for the first time this fall and in the coming years.

I suppose nothing adverse has happened in the way of demotions or discharges. I should say to HEW's credit that HEW also made it very clear that compliance could not include the closing of any black institutions and could not include the demotion or discharge of any black administrators.

MERROW: You got involved in 1969 or 1970. It is now the fall of 1974. Have you ever had occasion to regret bringing this suit in regard to its impact or potential impact on the black public colleges?

LICHTMAN: Not at all. Prior to the bringing of the lawsuit the Office for Civil Rights at HEW had really stopped enforcing the law. The agency had become moribund. Leon Panetta, Director of the Office for Civil Rights from the first days of the Nixon administration through March of 1970, had made valiant efforts.

When his successors failed to enforce the law, and the court so found, our lawsuit did have a salutory effect on enforcement at HEW, particularly on the elementary and secondary level and on the higher education level also. There has been a great deal of activity, in the sense that HEW has now required the States to make submissions to desegregate their higher education institutions.

As I indicated a moment ago, we think the plans were grossly insufficient and it may be necessary to go back to the court again to require the agency in turn to require the States to submit proper plans, but there will be a lot of progress, I believe, in the area of desegregation. I think the lawsuit has made at least a modest contribution toward that.

MERROW: Isn't there a danger that the black public colleges will lose their identity, lose their historic role?

LICHTMAN: Well, I don't think that will happen at all. In fact, a number of the plaintiffs' suggestions are designed to bring about just the opposite result. For ex-

ample, in upgrading black institutions and making them prestige institutions, in giving them a role and a scope which is unique in their particular State, those institutions will become stronger and will draw black as well as white students, and in that way they will become desegregated.

MERROW: Clearly attorney Lichtman is optimistic about the future. He anticipates that black institutions will develop special strengths in specific academic areas that will attract black and white students.

But that seems to beg the question of the compensatory role that black colleges are and have been filling, according to Dr. Russell. Mr. Lichtman's optimism notwithstanding, there has been a deep split in the black educational community from the very first over the *Adams v. Richardson* case. Some black educators fear that the public black colleges will suffer the fate of the black elementary and secondary school, that is, they will be closed down, with a loss of thousands of jobs for black professionals.

Other black educators reject the "salt and pepper" test of desegregation; they don't believe that the Constitution necessarily requires racial mixing at the college level. Still other black educators simply favor the status quo: "Half a loaf is better than no bread at all," according to that way of thinking.

In fact, when the government appealed the decision, 120 presidents of public and private black colleges entered the case on the government's side, as Peter Holmes said. Herbert Reid, a Howard University law professor, represented the black college presidents.

HERBERT REID: Well, at the higher education level, unlike the lower level, you can only go to college if you're ready to go to college, if you're prepared. If you have been a prior victim of a system, you are not able to go on a mechanical basis. We felt that a mechanical merger at this particular time would end up without any educational facilities for blacks.

Because there were educational disabilities, what we really needed was program of compensatory education, and some of us felt that compensatory education was necessary in order to close the gap—in order to merge at the higher education level.

MERROW: Is there an open split in the black community or the black educational community about the merits of this case?

REID: Well, I don't think it is so much of a split as there is ignorance of the problem; I think it is a great tragedy that black educators and others are really not aware and forceful where they are aware about coming to grips with a real problem, and that is that we have been severely disabled by the system. We are now experiencing a kind of different kind of disability because of poverty and the center city with its educational problems, and then the taking of the social problems to the educational institutions, so they no longer can engage in education. What I am saying is that I think the "mechanical" approach may even be unconstitutional, and we may end up without any educational facilities whatsoever, because what we needed was something in the transition.

MERROW: I don't quite know how to get out of this complexity. I am struck by the idea that the Office of Civil Rights has been severly criticized for failure to pursue compliance of civil rights actively, and here is Holmes being supported by the National Association for Equal Opportunity in Higher Education, which consists of 120 or so Presidents of predominantly black colleges. Is that. . .

HOLMES: If I may interject, I think you have misread Dr. Reid's statements. What you're trying to suggest is that Dr. Reid and the black college presidents' association are somehow supportive of relaxation of civil rights laws, which is of course not the Government's purpose either.

We feel that we have been enforcing the civil rights laws, and Dr. Reid is saying that because of discrimination at the elementary and secondary education level, which has hampered the black child's ability to compete on an equal basis either for higher education positions or for faculty positions, there is a need for the "black college" to educate students at the higher education level.

Now, I disagree with that point of view in part. To be sure, discrimination against blacks in this country is a matter of record. To be sure, many blacks in this country do not graduate from high school at the same level, for example, as whites and thus they are disadvantaged in their efforts to get into higher education. I don't think however, and this is my own personal view, that just one college in a State, i.e., the black college, should have to assume the sole burden for helping these types of children secure a higher education opportunity.

I think that burden as a result of past discrimination in the States must be shared by all public institutions of higher education. And I think that we'll see in the plans that we have negotiated with a number of these States, under the *Adams v. Richardson* order, a greater effort on the part of the predominantly white institutions to enroll larger numbers of black students and to provide the necessary compensatory or supportive programs. I think that is the point at which there is disagreement,

and it is a disagreement in terms of educational philosophy and principle.

REID: What this approach leads to is compensatory activity at a "white university" and "affirmative action programs." As far as I am concerned these programs have been disastrous because of the lack of money for support and the lack of a genuine attitude of acceptance. I have some questions in my mind as to whether or not it really can work in a society like ours.

Let me say this: I have seen disadvantaged blacks who have worked together, worked hard to get qualified to get into the mainstream and compete on an equal basis. Once into the mainstream with a disability, it seems as though the disability stays with you. You go in with a black ribbon around your head, you know, and you graduate with it around your head, with a separate degree and what have you.

What I would also like to inject here is that the Federal Government's role in this problem has not been what I would like. The Federal Government has taken the role of supervising the States in terms of administration, law and Title VI. And what I think we need in the country today is an affirmative governmental action program that is designed to compensate for the educational disabilities that this group has suffered.

Once that's taken care of, then I think the free flow of people into the water will seek its own level. Right now we have adequate remedy for the qualified black student. Anyone who studies this problem really knows that that is not the problem. We are not talking about the qualified people who are now ready to go. We are talking about increasing the pool, which is a desirable goal. There is no program directed specifically to that.

MERROW: And therefore black colleges should not be denied their historical role?

REID: I would like to see the black colleges continue a role of compensatory remedial education for all those who might need it. What I am afraid of is that to tell a particular white university mechanically to accept more blacks—that artificial mix might be struck down by the courts. The artificiality might be declared unconstitutional and then you have no mix and then you have no black institutions.

HOLMES: I have got to interrupt, John. The work "artificality" is I think too loosely applied. First of all, the Government has not in its negotiations with the States sought any particular degree of mix, and I want to make that absolutely clear. It contrasts sharply with the elementary and secondary education desegregation efforts, where the extent of physical desegregation in terms of numbers is really one of the primary determining factors as to whether a plan is acceptable or not.

MERROW: Are you saying the numbers are not used in determining whether the plan is acceptable?

HOLMES: No. In higher education we have not focused primarily on the results, on the numbers, that are projected to be achieved in higher education. Our focus has been on processes.

MERROW: But you did say, or you were quoted as saying in the *Chronicle of Higher Education*, that "in large part we will use the racial percentages as measures of progress?"

HOLMES: That's right, but let me make this clear. We did not go to these States in our negotiations and say, "you project that such and such a school is going to be 25 percent black 5 years from now and such and such a black school is going to be 25 or 30 percent white." We did ask them to project goals of their best estimates. We asked them to look at process, the steps they are undertaking, the programs, equalizing aid between predominately black and predominately white institutions, intensifying recruitment, and what have you.

And we anticipate, as the States anticipate, that as these processes, these steps, are undertaken, they will yield results. But the determining factor at the outset in the acceptability or unacceptability of the plans that were submitted to us this summer was not the result that would be achieved, but the steps that the State was going to undertake in order to try to improve educational opportunities in each of these States for black students.

REID: Give me a chance to defend "artificiality" before you leave here. The reason I used the term was because in the first instance the Department's thesis is that there is discrimination based on the "salt and pepper" test. The premise of the plaintiff's complaint is that there is discrimination based upon the "salt and pepper" test—that is, the number of blacks in one place and the number of whites in another. I use "artificiality" because under existing law any qualified black or white may now enter any institution.

That's been settled by the courts years ago, so we really are talking about something else. We are talking about a mixture, and we are talking about how to bring about that mixture, and I call it artificial in the sense that it is not the normal flow of competition, but it's plugging something in. My only objection to the "plug in" is 1) I don't know whether it's constitutional and 2) I don't know whether it would work and 3) if it does not work, where are we if it falls out?

HOLMES: I think you have to look at an institution, whether it's an elementary school or a college, that is all black or virtually all black sitting beside, in the same community, an institution that is all white or virtually

all white. You have got to ask the question as to whether free and unfettered choice of high school students to select the institution they desire is really there or not, or if there is not built into the admissions and recruitment programs (as well as the whole spectrum of educational programs of each of the institutions) some things that are discouraging students of the other race from attending that institution. I think that is a legitimate question.

MERROW: OK. Dr. Reid, how do you feel about the plans themselves?

REID: I think they are a waste of time, just "make work." I don't mean that disparagingly to the activity of a Government office. I think everybody is caught in the bind, and they have gone along with a certain mechanism that was really developed for something else, and things are not going to be corrected until some court looks at it and rejects the premise upon which *Adams v. Richardonson* is based, and that is the "salt and pepper" test.

If the black university takes on a character of a specialized business college, how does that help answer the question that the black colleges themselves tried to avoid, and that is compensatory education? That to me is the real tragedy of the period we are in, and nobody really wants to face up to it, including a number of black educators. The real problem is where black education actually is and how, for a period of time, to direct ourselves to that in order to put these people in school or college.

If we don't do that, we are going to end up following large places like Michigan and California that have developed junior college systems. And we are going to get tracked right out of education.

HOLMES: If I may interject again, I am suprised to hear Dr. Reid characterize the plans as a waste of time. I am particularly surprised in light of the fact that a number of the representatives, including the former president of the association he represents, had indicated on a number of occasions to the Office for Civil Rights of HEW that the tack the HEW was taking in negotiating this issue with the States was one that was supported by the association.

There may be other avenues that could be approached or should be explored, to be sure, but I think under the circumstances in a most complex and difficult issue (if this discussion has demonstrated nothing else, it is that it is a most complex and difficult issue), I think that HEW has approached it in a most responsible way. And we have testimony from the National Association for Equal Opportunity in Higher Education to that effect.

REID: I hope that the larger community will take more of an interest in this problem. Black education itself is a product of white interest, and white southern interest too. And, it was decided that education of blacks was in the interest of the Republic, generally. I hope that that sensitivity will return, and when it does, then I think some of the nonsense is going out the window.

There is no question in my mind that some of the college presidents and college officials have been very happy with what is going on, because it has insured a job for them; it has insured that their offices will be painted and that they would have facilities that they never had before, and that is what I am concerned about. After all of this fauntleroy, where do we end up in terms of the real victims of this system—the poorly educated black student? How best do we get him in the mainstream? I do not see these programs doing that.

MERROW: What has been happening to the black public colleges all this time? How have the pressures affected these institutions?

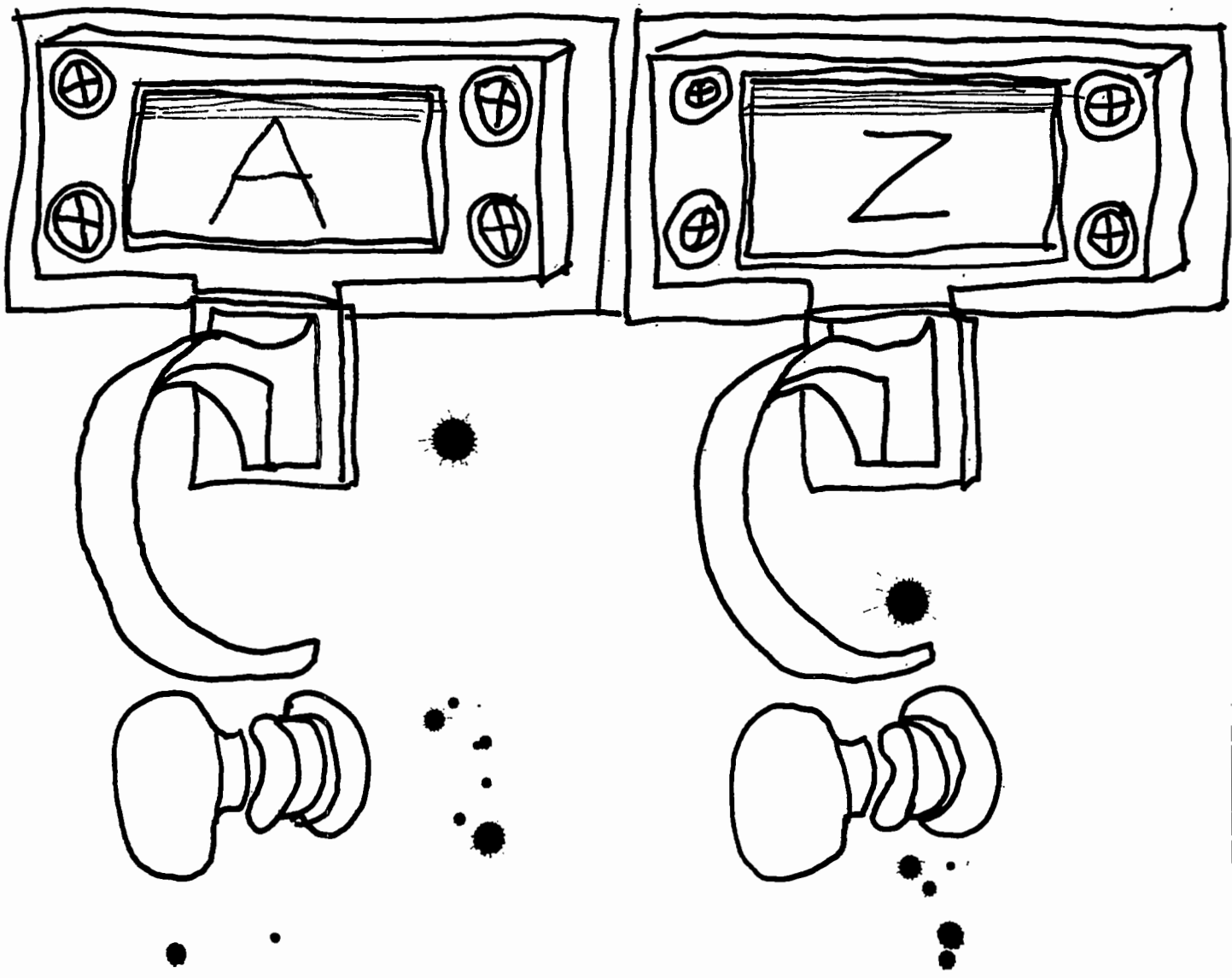
BLAKE: Well, the pressure has not, I think, affected the schools in a direct way yet. For example, it does not seem to have affected their enrollment patterns. They still seem to be maintaining their enrollment in most places; in some places they are increasing in size, and in some others enrollment has dropped, but in general there has not been direct impact.

I think the impact is one of increased levels of anxiety and in some instances, very difficult problems of esprit de corps and morale within the faculty staff, administration, and student bodies of some of the institutions, which over a long run, I think can be negative and devastating.

MERROW: Is there any pattern among black kids as far as their choosing to go to majority white colleges or to the black colleges?

BLAKE: Oh, I think the new thing is that many more are choosing to go to historically black institutions. That's one of the most dramatic factors in college enrollment over the last 5 years. But a study that we did which looked at enrollment over 8 years in the black colleges indicated that there seemed to be enough black kids to go around. The black colleges have been growing in enrollment over this period, along with the growth of black enrollment in historically white institutions, so in that instance they are doing well.

I think in terms of financial support from the States and the development of new kinds of programs, the States are still not being aggressive enough in putting the kinds of broad range curricula in these institutions which would enable them to attract larger numbers of white students more easily.



Del Harrod

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Breakthrough for Bilingual Education: Lau v. Nichols **and the San Francisco School System,** Dexter Waugh and Bruce Koon, 6:4 (Summer 1974), 18–26.

David Tsuneishi is a bibliographer in the National Clearinghouse Library at the Commission on Civil Rights.

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S

READING AND VIEWING

Commission Reports

The publications listed below have all been released by the Commission on Civil Rights within the last several months. Single copies may be obtained free of charge by writing the Office of Information and Publications, U.S. Commission on Civil Rights, 1121 Vermont Ave. N.W., Washington, D.C. 20425.

Above Property Rights, by Simpson F. Lawson. A report on the rigid restrictions that keep minority families confined to the central cities, despite fair housing laws. Based on an 18-month Commission investigation which closed with a hearing in Washington, D.C. (Clearinghouse Publication 38) 29 pp.

Catalog of Publications. A list of Commission publications in stock. 15 pp.

Counting the Forgotten. *The 1970 Census Count of Persons of Spanish Speaking Background in the United States.* A critique of methods used by the Bureau of the Census to count Spanish speaking persons which, the report says, resulted in an undercount of 7.7 percent. Contains findings and recommendations. (Statutory Report) 112 pp. English and Spanish.

Equal Opportunity in Suburbia. The results of a study of metropolitan area development and its social and economic impact on urban minorities, including information gathered at Commission hearings held in St. Louis, Baltimore, and Washington, D.C. Contains findings and recommendations. (Statutory Report) 72 pp.

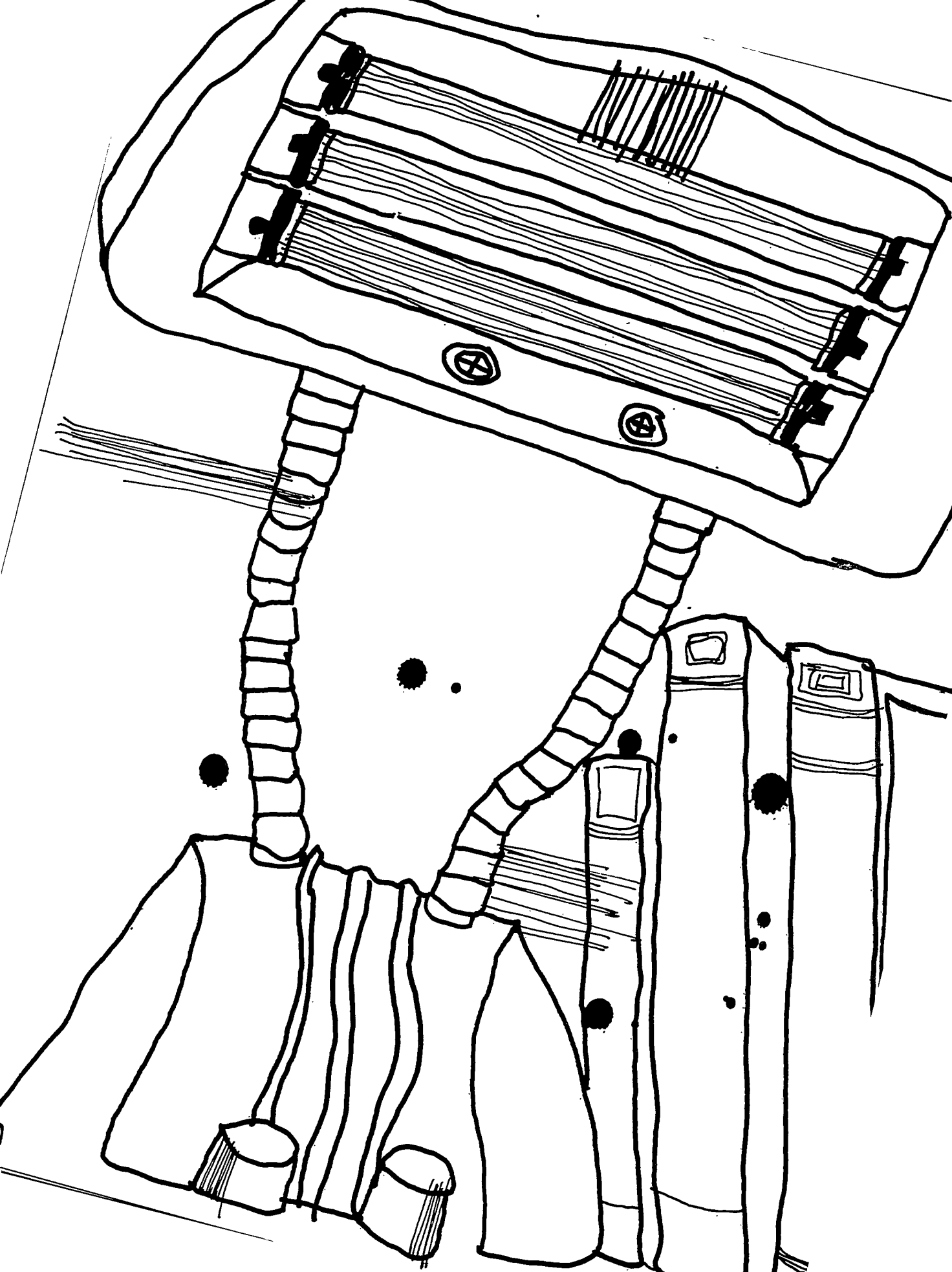
The Federal Civil Rights Enforcement Effort—1974

Volume I: To Regulate in the Public Interest. An evaluation of the civil rights activities of six regulatory agencies, which finds them weak on civil rights enforcement. Contains findings and recommendations. (Statutory Report) 237 pp.

Volume II: To provide . . . for Fair Housing. An examination of the Department of Housing and Urban Development and other Federal agencies with fair housing responsibilities. The report finds much left to be done. Contains findings and recommendations. (Statutory Report) 361 pp.

Volume III: To Ensure Equal Educational Opportunity. Evaluates the efforts of the Department of Health, Education, and Welfare, the Internal Revenue Service, and the Veterans Administration. Deficiencies in HEW efforts still exist, the report notes, while IRS and VA efforts have been inadequate. Contains findings and recommendations. (Statutory Report). 396 pp.

Volume IV: To Provide Fiscal Assistance. Reviews the performance of the Office of Revenue Sharing and finds one of the most poorly staffed and funded civil rights compliance programs in the Federal Government. Contains findings and recommendations. (Statutory Report) 139 pp.



Making Civil Rights Sense out of Revenue Sharing Dollars. Explains how revenue sharing works, in hopes of stimulating public interest and participation in revenue sharing programs, particularly among those concerned with the rights of minorities and women. (Clearinghouse Publication 50) 135 pp.

Mortgage Money: Who Gets It? *A Case Study in Mortgage Lending Discrimination in Hartford, Connecticut.* An examination of the system of mortgage finance and its effect on home ownership opportunities for minorities and women. (Clearinghouse Publication 48) 75 pp.

Para Los Niños—For the Children, by Frank Sotomayor. A highly readable argument for bilingual-bicultural education, drawn from the findings of the Commission's Mexican American Education Study, as well as the writer's own research. (Clearinghouse Publication 47) 28 pp.

Report of Investigation: Oglala Sioux Tribe, General Election, 1974. Information gathered by Commission staff "shows a pattern of widespread abuses and irregularities in the conduct of the election." (Staff report) 28 pp.

Toward Quality Education for Mexican Americans. *Report VI: Mexican American Education Study.* Last in a Commission series. This report focuses attention on specific problems in the education of Mexican American children. Contains findings and recommendations. (Statutory Report) 98 pp.

Twenty Years After Brown: The Shadows of the Past. The historical background to the famous decision outlawing "separate but equal," from slavery to the present. (Statutory Report) 119 pp.

Twenty Years After Brown: Equality of Educational Opportunity. Outlines advances and setbacks in school desegregation since the landmark Brown decision. Contains findings and recommendations. (Statutory Report) 94 pp.

The Voting Rights Act: Ten Years After. Reviews progress and problems under the Voting Rights Act since 1971, and advocates its extension with suggestions for improvement in the act's effectiveness. Contains findings and recommendations. (Statutory Report) 483 pp.

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