

THE SAME RIGHT TO PURCHASE AND LEASE?

A Study of Housing Discrimination
in
Bismarck, North Dakota

By the
North Dakota Advisory Committee
to the
U.S. Commission on Civil Rights

July 1982

TABLE OF CONTENTS

Introduction..... 1

CHAPTER I: The Legal Bases for Federal Fair Housing Requirements..... 8

 Section 1982..... 8

 Title VIII..... 9

 The Housing and Community Development Act.... 12

 Title VI..... 12

 The Equal Credit Opportunity Act..... 13

 Executive Orders 11063 and 12259..... 14

 North Dakota Law..... 15

CHAPTER II: A Statement of the Problems..... 19

 Specific Allegations..... 21

 Absence of Formal Complaints..... 24

 Table I..... 34

 Table II..... 35

 Table III..... 36

CHAPTER III: Some Problems in Public Housing and Rental Assistance Programs..... 37

 Inherent Conflict in Policy..... 37

 Sheltering Those Most in Need..... 39

 Tenants' Rights..... 42

 Table IV..... 52

CHAPTER IV: Fair Housing Enforcement..... 53

 Administrative Enforcement..... 53

 Judicial Enforcement..... 59

 Prospective Approaches..... 62

 Table V..... 68

 Table VI..... 69

Conclusion, Findings and Recommendations..... 70

APPENDIX A: Tenants' Grievance Rights

APPENDIX B: Letter from HUD Supporting State Law

APPENDIX C: North Dakota House Bill 1360 (1979)

APPENDIX D: Right to Response

MEMBERSHIP
NORTH DAKOTA ADVISORY COMMITTEE TO THE UNITED
STATES COMMISSION ON CIVIL RIGHTS

Robert A. Feder, Chair
Fargo

Bruce Austin
Grand Forks

Jose L. Balderas
Grand Forks

Jocelyn Burdick
Fargo

Darrell W. Farland
Mandan

Carol Jean Larsen
Bismarck

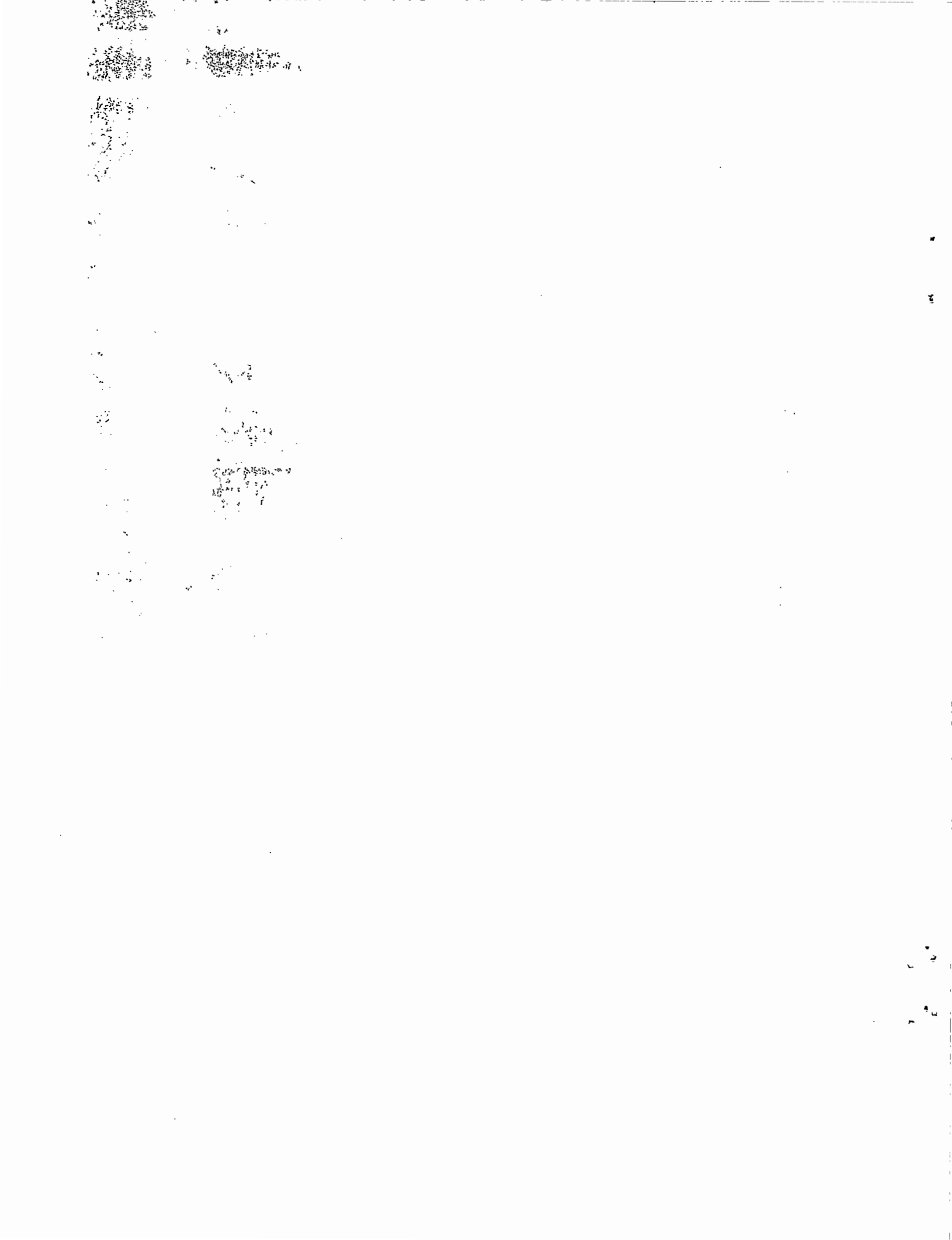
Irvin B. Nodland
Bismarck

Beatrice M. Peterson
Dickinson

Arthur Raymond
Grand Forks

Harriett Skye
Bismarck

Carl Whitman
Parshall



THE SAME RIGHT TO PURCHASE AND LEASE

--A report prepared by the North Dakota Advisory
Committee to the U.S. Commission on Civil Rights

ATTRIBUTION:

The findings and recommendations contained in this report are those of the North Dakota Advisory Committee to the U.S. Commission on Civil Rights and, as such, are not attributable to the Commission.

This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and the Congress.

RIGHT TO RESPONSE:

Prior to publication of a report, the State Advisory Committee affords to all individuals or organizations that may be defamed, degraded, or incriminated by any material contained in the report an opportunity to respond in writing to such material. All responses received have been incorporated, appended, or otherwise reflected in the publication.

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

The Civil Rights Act of 1866
42 United States Code, Section 1982

And, sir, when the constitutional amendment shall have been adopted, if the information . . . be that the men whose liberties are secured by it are deprived of the privilege to go and come when they please, to buy and sell when they please, to make contracts and enforce contracts, I give notice that, if no one else does, I shall introduce a bill and urge its passage through Congress that will secure to those men every one of these rights: they would not be free men without them. It is idle to say that a man is free who cannot go and come at pleasure, who cannot buy and sell, who cannot enforce his rights.

Senator Trumbull of Illinois, author
of the Civil Rights Act of 1866.

LETTER OF TRANSMITTAL

North Dakota Advisory Committee to the
U.S. Commission on Civil Rights
September 1982

MEMBERS OF THE COMMISSION

Clarence M. Pendleton, Jr., Chairman
Mary F. Berry, Vice Chairman
Stephen Horn
Blandina Cardenas Ramirez
Jill S. Ruckleshaus
Murray Saltzman

John Hope III, Acting Staff Director

Dear Commissioners:

The Nation's policy relative to fair housing, although hampered in enforcement and uneven in effect, is forthright and clear. It is created by no less than the Constitution itself and it is repeated in numerous Federal laws and in the civil rights enactment of at least 28 States. However, there exists in the Bismarck, North Dakota metropolitan area a perception that housing discrimination against Native Americans is both real and serious. Testimony at a 1980 factfinding meeting held in Bismarck indicated some discrimination in the area's housing market is purposeful and patterned.

As a result of its study of allegations of housing discrimination against Native Americans, the North Dakota Advisory Committee found that the U.S. Department of Housing and Urban Development (HUD), pursuant to Title VIII of the Civil Rights Act of 1964, is the only Federal, State or local authority engaged in accepting, investigating, and conciliating housing discrimination complaints in North Dakota. HUD resources are inadequate; present Federal budget figures indicate reduced, rather than increased, Federal presence in local fair housing enforcement. The Advisory Committee found that neither State nor local governments in North Dakota have any mechanism to deal with housing discrimination problems. Additionally, the Committee found that many North Dakota citizens are unaware or not adequately informed of their right to equal opportunity in housing and their right to file complaints with HUD.

The North Dakota Advisory Committee has asked that the State Legislature enact a Human Rights Act at its earliest opportunity. This act should include fair housing provisions and should specify how these provisions are to be enforced. Additionally, the Advisory Committee has made nine recommendations to State, county, local, and private agencies and organizations which will serve to remedy housing discrimination against Native Americans in North Dakota and in the Bismarck area specifically.

Before publication of this report, individuals and organizations mentioned in any significant degree have had an opportunity to respond in writing to such material. All responses have been either incorporated, appended, or otherwise reflected in the report.

We urge you to consider this report and make public your reaction to it.

Sincerely,

ROBERT A. FEDER, CHAIR
North Dakota Advisory Committee

U.S. COMMISSION ON CIVIL RIGHTS

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

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

THE STATE ADVISORY COMMITTEES

An Advisory Committee to the U.S. Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 as amended. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend as observers, any open hearing or conference which the Commission may hold within the State.

ACKNOWLEDGEMENTS

This report was produced with the assistance of the Commission's Rocky Mountain Regional Office. The project design, the field interviews, the first draft, and the factfinding meeting were the principal assignment of Dr. Cynthia Valentine*. The final report was written by Joanne Birge, Regional Attorney. Legal review was conducted by Clinton M. Fried, Regional Attorney for the Southern Regional Office. Support assistance was provided by Phyllis Santangelo, Cal E. Rollins, and Yolanda Montoya*. The report was written under the overall supervision of Dr. Shirley Hill Witt, Regional Director of the Rocky Mountain Regional Office.

*No longer with the Commission.

INTRODUCTION

BACKGROUND

In 1979, the U.S. Commission on Civil Rights published The Federal Fair Housing Effort, an evaluation of the Federal endeavor to end discrimination in housing. The report examines the fair housing enforcement efforts of more than 10 Federal boards, agencies and departments between the years 1975 and 1978.¹

As a followup to The Federal Fair Housing Effort, the Commission in 1980--through its 10 regional offices--initiated studies concentrating on local issues. The Commission's Rocky Mountain Regional Office selected for its study the Bismarck-Mandan area of North Dakota.

The Bismarck-Mandan area was selected for three reasons: (1) a changing economy making new demands on housing; (2) apparent housing difficulties expressed by various American Indian residents of the area; (3) the absence of State or local fair housing legislation.

(1) Changing economy

Bismarck leads North Dakota in its percentage of population growth, exceeding 2.7 percent per year since 1970.² Federal estimates of local employment cite an immediate expected increase of approximately 1,900 jobs annually, 40 percent of these directly or indirectly caused by energy development.³ At the same time, unemployment rates ranging from 30 percent to well over 50 percent plague the five

North Dakota Indian reservations, forcing many Native Americans to leave reservation homes and seek urban employment and housing.⁴

North Dakota's 1980 statewide population numbered 653,000. This is a 5.7 percent growth from 1970 to 1980, the largest increase since the 1930's.⁵ Urban residence in North Dakota between 1970 and 1980 rose 16.4 percent; and urban residence in the Fargo, Grand Forks and Bismarck urban areas rose almost 20 percent.⁶ Bismarck's increase was the highest of the three metropolitan areas, more than four times that of Grand Forks.⁷ While Fargo is the largest city in North Dakota, Bismarck is second. Bismarck's 1980 population of 45,000 and Mandan's 1980 population of 15,500 nearly equal the 61,500 living in Fargo.⁸

Housing units in Bismarck nearly doubled between 1970 and 1980.⁹ Yet Bismarck residents still claim the amount of housing in the area is insufficient.¹⁰ American residents, many requiring housing assistance programs, appear to feel a housing shortage most acutely.¹¹

According to an off-reservation census, 1,058 Native Americans resided in Bismarck-Mandan in 1976, one of the largest off-reservation Indian populations in North Dakota.¹² Since 1970, however, only 900 Federally-financed rental units have been constructed or committed in the Bismarck-Mandan area. These, of course, serve not only needy minority families, but "low income" and "very low income" non-minority as well. Of 977 units available, in July 1981,

some constructed before 1970, 485 were committed for the elderly and 492 for families.¹³ Not surprisingly, the U.S. Department of Housing and Urban Development reports that, "No surplus vacancies exist in Bismarck in assisted rental housing."¹⁴ Nevertheless, only 20 Federally-assisted family rental units are currently under construction.

(2) Complaints of discrimination

Federal estimates of assisted housing needs in Bismarck range from 125 to 175 units.¹⁵ The number of households is growing at a faster rate than the population and unsubsidized housing needs through June 1983 are estimated at 1,800 units.¹⁶ Housing shortages are inevitably accompanied by an increase in discrimination complaints; and increased pressures on Bismarck's rental market.¹⁷ Several complaints relating to rental housing and a few relating to financing have been received by staff of the Commission's Rocky Mountain Regional Office and members of the Commission's North Dakota Advisory Committee. (See Table II for 1980 complaints summary.)

(3) Absence of a State fair housing law

Of the 50 States, North Dakota and Mississippi have the least in local or State civil rights laws, have no local or State equal employment or human rights commissions, and in particular, have no law proscribing discrimination in housing on the basis of sex, race or national origin. Nei-

ther does North Dakota have a State or local agency to accept, investigate, or conciliate complaints of housing discrimination.¹⁸

State or local fair housing laws in many States are stronger than Federal anti-discrimination statutes. State and local laws often present more readily available and more appropriate remedies for housing discrimination.¹⁹ Without a State law, North Dakota residents must rely on Federal law, with the nearest enforcement agency in Denver, Colorado.²⁰

METHODOLOGY

Staff of the Rocky Mountain Regional Office conducted field interviews in Bismarck from May through August 1980. These interviews included State and local officials, apartment managers, realtors, representatives of community service agencies and civil rights groups, and numerous individuals and families who had alleged housing discrimination. Data were collected from political, judicial and agency records. Information was also obtained from the media, official government reports and documents, North Dakota legislative meetings and public housing records.

On September 19 and 20, 1980, the North Dakota Advisory Committee to the U.S. Commission on Civil Rights held a public factfinding meeting in Bismarck for the purpose of collecting additional perspectives on Bismarck's housing situation. Over 40 persons representing a wide variety of

interests and backgrounds testified at the meeting. The proceedings were transcribed and used as an additional resource in compiling this report.

ISSUES

During the process of the field investigation and study, several issues emerged as critical concerns:

How effective has Federal fair housing law been in countering discrimination in Bismarck rental properties?

Are individuals experiencing problems in obtaining housing adequately informed of their legal rights?

Do North Dakota residents find the Federal complaint process understandable and accessible?

Does the lack of a State fair housing law impede national fair housing policy?

Do Federal fair housing compliance agencies investigate indications of community patterns of housing discrimination and refer these to the United States Attorney General?

Is appropriate action taken by the U.S. Department of Justice to enforce the Fair Housing Act?

NOTES

-
- 1 March, 1979.
 - 2 U.S., Department of Housing and Urban Development (HUD), Region VIII Economic and Marketing Analysis Division, Housing Market Situation Report, Bismarck, North Dakota (Denver, Colorado, July 1, 1981), p. 1 (hereafter cited as HUD Economic Report). The report lists the Bismarck-Mandan (Burleigh and Morton Counties) 1970 to 1980 population increase at 34 percent. See also: Bismarck Tribune, March 31, 1981, p.1.
 - 3 HUD Economic Report, pp. 2-3.
 - 4 Carl Whitman, tribal planner for the Fort Berthold Reservation, as quoted in the Bismarck Tribune February 5, 1980, p. C-1. Wilbur Pleats, Standing Rock Sioux and president of the Bismarck Tenant's Association estimates unemployment on his reservation to be as high as 90 percent. U.S., Commission on Civil Rights, Rocky Mountain Regional Office, factfinding meeting on fair housing, Bismarck, September 19 and 20, 1980, transcript of the proceedings, Vol. I, p. 14 (hereafter cited as transcript). See also: U.S. Department of the Interior, Bureau of Indian Affairs, Indian Service Population and Labor Force Statistics, December 1981, pp. 4, 5 and 7, citing on-reservation unemployment in North Dakota to be between 52 and 79 percent.
 - 5 U.S., Department of Commerce, Bureau of the Census, 1980 Census of Population: North Dakota, Vol. 1, PC 80-1-A36 (Dec. 1981), p. 36-4 (hereafter cited as 1980 Census).
 - 6 Id.
 - 7 Id. p. 36-8.
 - 8 Id. pp 36-22 and 36-23.
 - 9 U.S., Department of Commerce, Bureau of the Census, Preliminary Reports: 1980 Census of Population and Housing--North Dakota (November 1980); and HUD Economic Report, pp. 2, 4 (Attributing a post-1980 decline in growth from 2.7 percent per year to 1.7 percent per year to a sluggish economy).
 - 10 See: Transcript, Volumes I and II.
 - 11 Id; HUD Economic Report, p. 4.
 - 12 Dakota Association of Native Americans and the North Dakota Comprehensive Employment Training Administration, North Dakota Off-Reservation Census, 1976 (hereafter cited as DANA/CETA census). The 1970 census lists blacks as .004 percent and Hispanics as .003 percent of North Dakota's population. U.S. Department of Commerce, Bureau of the Census, General Social and Economic Characteristics--North Dakota (1970), Table 3. The 1981 HUD Economic Report lists an estimated population for Bismarck-Mandan at 81,730, making the 1,058 Native American population approximately .013 percent.

- 13 HUD Economic Report, p. 7 and Table VI.
- 14 Id., p. 7. Eugene Sandwick, Bismarck manager for both Section 8 housing and the Burleigh County Housing Authority disagrees with these assessments. At the 1980 factfinding he stated: "I believe we have reached the optimum of family housing in Bismarck, as a matter of fact, our latest project we'r having difficulty filling The waiting list," he explained when asked, "is for the elderly, primarily, and certain types of units." Transcript, Vol. II, p. 20. See also: Transcript, Vol. II, p. 37.
- 15 Id.
- 16 Id., p. 6.
- 17 Id., pp 4-5. HUD gives typical costs as \$220 for a studio apartment to \$390 for a three-bedroom apartment.
- 18 Zina Greene, former housing discrimination consultant to the U.S. Commission on Civil Rights, Washington D.C. office, telephone interview, March 1980. According to HUD's Assistant Secretary for Fair Housing, Antonio Monroig, those States with no State fair housing law (but perhaps other State or local anti-discrimination statutes or mechanisms number 22). The Forum (Fargo, N.D.), April 23, 1982. n.p.
- 19 Jeffrey Frant, a former director in regional fair housing, U.S. Department of Housing and Urban Development, interview in Denver, December 14, 1980.
- 20 Id.

CHAPTER I

THE LEGAL BASES OF FEDERAL FAIR HOUSING REQUIREMENTS

The major Federal legislation proscribing discrimination in housing is Title VIII of the Civil Rights Act of 1968, but other Federal laws include fair housing requirements.

SECTION 1982, THE CIVIL RIGHTS ACT OF 1866

In 1866 Congress passed a Civil Rights Act to implement the Thirteenth Amendment to the U.S. Constitution, passed a year earlier.¹ The Thirteenth Amendment bans slavery and involuntary servitude. It states:

Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Congress shall have the power to enforce this article by appropriate legislation.²

Section 2 of the 1866 Civil Rights Act states:

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.³

Because Section 2 is systematically listed in the United States Code in Title 42, Section 1982, it is referred to simply as Section 1982. Not until June, 1968 did the United State Supreme Court hold that Section 1982 constitutionally prohibits all racial discrimination in the sale or rental of real property.⁴ Since that time it has been a significant basis for private enforcement of fair housing. It is broad-

ly read to protect ownership of property as well as the right to use and the right to acquire property on an equal basis with white citizens.⁵

Section 1982 is not limited by complaint filing deadlines or other procedural requirements as are other Federal laws on fair housing.⁶ In these instances, Section 1982 can be utilized independently of and concurrently with other laws and remedies.⁷

TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968

Title VIII of the Civil Rights Act of 1968, also called the Fair Housing Act, prohibits discrimination based on race, color, religion, sex, and national origin in the sale or rental of most housing. The Act covers real estate brokers, apartment owners, home builders, sellers, and mortgage lenders. It also includes federally owned and operated housing units and units provided by federally-insured loans and grants.⁸

Title VIII exempts owners of single-family houses, but only if (1) the house is sold or rented by the owner, (2) the owner does not own more than three such single-family houses at one time, (3) the owner does not use any real estate broker, agent, salesperson or other individual in the business of selling or renting dwellings, and (4) the sale or rental is made without publication, posting, mailing or advertisement. Title VIII also exempts "rooms or units in dwellings containing living quarters occupied or intended to

be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence."⁹

Title VIII prohibits:

Discrimination in the sale or rental of housing,

Discrimination in the terms, conditions, or privileges of the sale or rental of housing.

Indication of a preference, limitation or discrimination in advertising.

Representation to any person because of race, color, religion, sex, or national origin that any dwelling is not available when it is in fact available.

Forms of "blockbusting"--convincing owners to sell property on the grounds that minorities are about to move into a neighborhood.

Real estate "steering" practices which are intended to direct a racial, ethnic or religious group into a neighborhood in which members of the same group already live.

Denial of a loan for purchasing, contracting, improving or repairing a dwelling because of race, color, religion, sex or national origin.

Discrimination in setting the amount or other conditions of a real estate loan.

Denial of access to or membership in any multiple listing service or real estate brokers' organization.¹⁰

Primary responsibility for the administration of Title VIII rests with the Secretary of Housing and Urban Development who has authority to investigate and conciliate complaints of housing discrimination.¹¹ Individual complaints accepted under Title VIII must be in writing and filed with the Department of Housing and Urban Development (HUD) within 180 days of the alleged discrimination.¹² The Secretary is

obligated to address alleged discriminatory practices by informal methods first. These informal attempts at resolution include conferences and conciliations. Where a State or local fair housing law exists, the Secretary must allow the State or local agency 30 days to resolve the complaint before HUD takes any action. Where voluntary compliance cannot be accomplished by State, local or Federal initiative, a civil action can be filed in a State district court, or in a Federal district court if no State or local law exists.¹³

Both Section 1982 and Title VIII are privately enforced by the filing of a lawsuit. In a Title VIII case a victim of housing discrimination may file under Section 810,¹⁴ which requires a complaint first be filed and processed by HUD, or under Section 812,¹⁵ which authorizes a court action immediately without waiting for HUD to act on the complaint. Section 1982 of the Civil Rights Act of 1866 and Title VIII of the Civil Rights Act of 1968 are independent statutes.¹⁶ Many housing discrimination complaints based on race can be brought simultaneously under both; Section 1982, however, does not cover discrimination based on sex, religion or national origin. In some instances where Title VIII may not provide a specific remedy or method of enforcement, Section 1982 permits a court to fashion an "effective equitable remedy" or to award money damages to the aggrieved.¹⁷ In addition to a private and administrative enforcement of the Fair Housing Act, the U.S. Attorney General may prose-

cute civil actions whenever he determines there are housing discrimination issues of general public importance or patterns or practices of housing discrimination.¹⁸

THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

Title I of the Housing and Community Development Act establishes a community development block grant program administered by the Department of Housing and Urban Development.¹⁹ Section 109 of the Act prohibits discrimination in all programs and activities funded under Title I. Section 109 stating:

No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this chapter.²⁰

Securing compliance under Section 109 is another responsibility of the Secretary of Housing and Urban Development. If a recipient of community block grant funds is found to discriminate, the Secretary may terminate, reduce, or limit the availability of payments to that recipient or may refer the case to the Department of Justice for litigation.²¹

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Title VI of the Civil Rights Act prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance.²² Title VI prohibits housing discrimination when local gov-

ernments use Federal funds to operate low-income housing. Unlike Section 109, Title VI of the Civil Rights Act does not prohibit sex discrimination. Title VI covers all federally-funded programs; Section 109 of the Housing and Community Development Act covers only Housing and Urban Development programs.

Responsibility for enforcing Title VI rests with the Federal agencies that provide assistance to recipients.²³ For example, where HUD administers housing grants and programs, HUD has Title VI enforcement responsibilities. Where Department of Energy administers weatherization programs, as another example, the Department of Energy has Title VI enforcement responsibilities. Title VI provides that compliance may be effected by termination of the Federal assistance or by "any other means authorized by law."²⁴

THE EQUAL CREDIT OPPORTUNITY ACT

The Equal Credit Opportunity Act (ECOA) of 1974, as amended in 1976, makes it unlawful for creditors to discriminate against any applicant with respect to credit transactions, including any mortgage transaction, on the basis of sex, marital status, age (provided the applicant has the capacity to contract), or because all or part of the applicants income derives from any public assistance program.²⁵ In the mortgage finance area, ECOA covers many of the same violations covered by Title VIII, but duplicate actions may not be brought.²⁶ ECOA is enforced by a number of Federal agencies, each with authority to make its own

rules defining compliance.²⁷ Overall responsibility for enforcing the Act belongs to the Federal Reserve Board.²⁸ The U.S. Attorney General may also enforce the Act either by accepting referrals from agencies with ECOA enforcement duties or by independently initiating a civil suit.²⁹

EXECUTIVE ORDERS 11,063 and 12,259

Executive Order 11,063, signed by President Kennedy November 20, 1962, prohibits discrimination based upon race, color, creed, or national origin in the sale, lease, rental or other disposition of federally owned or financed property. It declares discrimination in "the provision, rehabilitation, or operation of housing and related facilities" to be "unfair, unjust, and inconsistent with the public policy of the United States as manifested in its constitution and laws."

Executive Order 11,063 provides that in cases of discrimination any executive department or agency

- . may take such action as may be appropriate and may cancel any agreement or contract providing for a Federal loan, grant or other aid;
- . suspend Federal aid under any program it administers;
- . refuse to approve a lending institution as a beneficiary under any program it administers;
- . refer violations to the Attorney General for civil or criminal action.³⁰

Since most of the nation's housing is privately financed rather than Federally funded, however, Executive Order 11063 covers less than one percent of U.S. housing.³¹

Executive Order 12,259, signed by President Carter December 31, 1980, amends Executive Order 11,063 to include discrimination based on sex and religion. Executive Order 11,259 also designates the Secretary of Housing and Urban Development the leadership role in the national fair housing effort. Section 1-202 states:

The head of each Executive agency is responsible for ensuring that its programs are activities relating to housing and urban development are administered in a manner affirmatively to further the goal of fair housing . . . and for cooperating with the Secretary of Housing and Urban Development. . . .³²

NORTH DAKOTA LAW

Although North Dakota has no State or local legislation mandating fair housing, the State does have substantial law regulating landlord-tenant relations.³³ This law, intended in part to protect the property rights of renters, improves fair treatment of all individuals in the renting and leasing of housing.

Of particular interest is the protection of renters' security deposits. A landlord is required to deposit security deposits in a federally insured interest-bearing savings or passbook account established solely for security deposits. The security deposit and any interest must be paid the tenant upon termination of the rental agreement unless there is damage to the property.³⁴ Even if damage is claimed, the landlord must officially notify the renter and justify withholding the deposit. This must be done within 30 days after ending the rental agreement. If the landlord

does not comply with this procedure, he or she is liable for triple damages. Moreover, a landlord may not require a security deposit in excess of one month's rent.³⁵

North Dakota landlord-tenant law is enforced basically by the one aggrieved. Some recourse to local agencies for mediation and conciliation may be available. An individual injured in a rental transaction may file suit in court.³⁶

CHAPTER II

A STATEMENT OF THE PROBLEMS

"I might point out for the record that there is discrimination in housing in this community."¹

Fear is the biggest problem in this rental business, most are just afraid to rent to minorities. I would say probably 60 percent of the people in Bismarck have never had a social conversation with a person of another race. They just don't mingle at all. They can't even communicate and this is one of the big problems.²

A prevailing sense that discrimination exists in Bismarck is not new.³ After a 1976 indictment of Russell Means and Thomas Poor Bear, these two widely-known members of the American Indian Movement requested the Federal Court to move their pending trial out of Bismarck. Counsel presented on behalf of Means and Poor Bear; a statistical survey by sociologists indicating that approximately two-thirds of Bismarck-Mandan-McLean residents "had a strong racial prejudice against Indians" and nine-tenths "reflected strong authoritarian attitudes" or "a tendency to be hostile to cultures and ways of life other than one's own."⁴

Discrimination is most often defined as making a distinction in favor of or against a person on a categorical basis rather than according to individual merit. In a paper recently presented to the U.S. Commission on Civil Rights, several authors were cited emphasizing

. . .the intent to harm lying behind much discrimination may not reflect prejudice or antipathy but simply a desire to protect one's own privileges. Some discriminate because they gain economically

or politically from racial and sexual restrictions on the competition. In the historical struggle over resources, systems of race and sex stratification were established in which the dominant groups benefit economically, politically, and psychologically. They strive to maintain their privileges, whether or not they rationalize the striving in terms of prejudice and stereotyping.⁵

In 1968 the United States Congress, attempting to counter discrimination and its effects, articulated a national policy "to provide . . . for fair housing throughout the United States."⁶ Congress has declared a national housing policy aimed at "a decent home and a suitable environment for every American family. . . ."⁷ Linking this goal to the general welfare, to health, to "living standards," to "an economy of maximum employment, production and purchasing power," and to "advancement of the growth, wealth and security of the Nation,"⁸ Congress has pursued a multitude of plans and programs directed at providing housing.

The Commission's recent housing inquiries in Bismarck, however, indicate many are yet to be aided by Congressional purposes and programs. The executive director of North Dakota's Indian Affairs Commission, stated:

In the whole 12 years I have been in Bismarck there have not been any changes whatsoever. Maybe things are more under the table, because people are more aware of legal rights. But the discrimination is still there.⁹

That discrimination, it appears, inhibits the housing opportunities for minority citizens to critical degrees.

SPECIFIC ALLEGATIONS

The Dakota Association of Native Americans (DANA) reports consistent problems among American Indians attempting to find urban housing.¹⁰ The Peace Pipe Indian Center, a member of DANA, ranks housing complaints third in urgency, after employment and health care problems. In 1981, the Peace Pipe Center handled 29 housing problems in the Bismarck area. Many of these referred to the Denver office of HUD.¹¹

From May through August, 1980, staff of the Commission's Rocky Mountain Regional Office recorded 38 specific complaints of housing discrimination in the Bismarck area. Twenty-seven of these complaints involved rental housing; one of those involved a minority person not Indian. Eight complaints involved public housing and two mortgage credit. (Table I illustrates the type of housing discrimination complaints recorded during the three-month study.)

The most repeated complaint heard by Commission staff was misrepresentation of an advertised rental unit as "already rented" or for some other reason not available. When an Indian family would ask to see a rental unit, they were often told it was no longer for rent, only to find by calling the owner or manager later that the unit was still open.

Another common complaint was arbitrary termination of a lease. In several instances a change in ownership or management of an apartment resulted in notice of termination to Indian families even though no basis for the termination

could be determined. White families in the same complex were allowed to continue living in their units. Mixed marriages in which one spouse was Indian also resulted in lease terminations.

In three of the complaints received Indian families said they phoned real estate agents on advertised rental properties and made appointments to see units. In two cases the families alleged that the realtor failed to appear at the time of the appointment because, in the interim, the realtor had learned the prospective clients were employed by United Tribes. In the third situation, when the family arrived for their appointment, they could see the apartment manager through a window but could not get him to come to the door.

In two of the reported incidents, Indian families discovered they were paying higher rents, higher security deposits or otherwise renting under different conditions than other tenants. In only one reported incident did a landlord openly state that she "did not want to rent to Indians." All other complaints reported from less blatant forms of discrimination.

Several of the complaints of discrimination targeted the Burleigh County Public Housing Authority. The most frequent of these complaints involved a manager's entering or authorizing entry to a unit without the resident's knowledge or permission. In several cases the incidents were said to be "housekeeping inspections". In other complaints

Indian families alleged they were told no units were available and long waiting lists existed, while other families received units immediately.¹² The Authority denies both unannounced inspections and deviation from the first come-first served policy,¹³ yet the perception appears to exist among some minority groups that such discrimination is taking place.

Although no attempt was made to determine the validity of individual housing discrimination complaints, certain problems and patterns are readily observable. Bismarck realtors and landlords participating at the fair housing factfinding meeting agreed. Michael Payton, president of the Bismarck-Mandan Apartment Managers Association, said in his testimony at the factfinding meeting:

I might point out for the record that there is discrimination in housing in this community. We believe that is so. On the other hand, one of the things that creates that is where there is a low rate of vacancy. And when the apartment owner can pick and choose his tenants, so to speak, that lends itself to a certain degree of discrimination.¹⁴

Tom Zirbes, a Bismarck homebuilder and realtor, agreed with Mr. Payton that the tightened housing supply has increased housing discrimination in Bismarck. According to Mr. Zirbes, fear that minorities are more likely to damage property or to cause the owner loss accounts for most housing discrimination.¹⁵

Other remarks at the factfinding meeting were more critical of landlords and apartment managers. Testimony indicated that landlords are aware of the Fair Housing Act

and that some intentionally circumvent it. Larry Stockert a housing counselor with the Community Action Program and past director of the Bismarck-Mandan Apartment Managers Association, stated he was present at a local meeting of apartment managers where several of the managers listed "safe" techniques to avoid renting to Indian people: a manager should look through a peephole and if the prospective renters are Indian, refuse to open the door; if an Indian comes to the door, a manager should say that the advertised unit has already been rented; a manager can take the application of an Indian family, tell them that he will get back to them and never do so.¹⁶

Carol Jean Larsen, a North Dakota Advisory Committee member, described similar advice. An acquaintance advised Ms. Larsen to type up a contrived list of prospective tenants. This would show the popularity of the apartment. The list, according to the acquaintance, was an effective means of avoiding rentals to Indian people while at the same time avoiding legal problems. Should a prospective Indian renter ask to see the apartment, the person's name could be added to the waiting list instead.¹⁷

ABSENCE OF FORMAL COMPLAINTS

Although the data collected and the testimony provided at the factfinding meeting indicate a widespread practice of housing discrimination in Bismarck, there have been very few formal complaints filed with enforcement agencies. The North Dakota Real Estate Commission which handles complaints

against realtors, by September 1980, had never received a complaint of discrimination.¹⁸ Out of the 38 complaints reported to staff of the Rocky Mountain Regional Office, only one individual filed with the U.S. Department of Housing and Urban Development.¹⁹

Between 1975 and 1977 the Denver Regional Office of HUD received 84 complaints from North Dakota, principally from Indian persons; but only five North Dakota complaints were received in 1978, four in 1979, one in 1980, and six in 1981.²⁰ This six-year total of 38 compares to a six-year total of 358 complaints in Colorado.²¹ While Colorado's 1980 population is approximately four times that of North Dakota's,²² Colorado's housing complaints numbered well in excess of nine times the number filed from North Dakota. Yet the fact that one Commission staff person in three visits to Bismarck collected 38 explicit allegations of discrimination denies the conclusion that North Dakota has few problems.

The absence of formal housing complaints in North Dakota vis a vis admitted problems of discrimination can be attributed to: (1) lack of public information on Federal civil rights law, (2) inadequate legal assistance, (3) centralization of HUD's enforcement efforts, (4) communication breakdown between HUD and local civil rights groups, (5) absence of State or local fair housing laws, and (6) a sense of frustration with government mechanisms that appear to bring about little response or change.

(1) Lack of public information on Federal civil rights law

Many in North Dakota are unaware of national fair housing legislation and individual rights under these laws. Persons interviewed by Commission staff often were completely unaware of a right to file a discrimination or public housing complaint with HUD's Denver office. Neither does the State of North Dakota nor any local government distribute information on rights to fair housing; and none act as a "substantial equivalent" of the Federal administrative process because of the absence of a State fair housing law.²³ Many interviewed also were not familiar with North Dakota's landlord-tenant law.²⁴

(2) Inadequate legal assistance

Another factor contributing to an absence of formal discrimination complaints is lack of legal assistance for Indian persons with housing problems. At one time, the United Tribes Technical Center and the Dakota Association of Native Americans (DANA) had local attorney services available to assist with housing discrimination complaints. This is no longer the case. Although Indian attorneys are practicing in the Bismarck area, they claim to be financially unable to absorb the large number of discrimination complaints received from persons with little ability to pay for legal advice.²⁵ Even though the Fair Housing Act and other civil rights law provisions give attorney's fees to prevail-

ing parties²⁶ individuals in North Dakota seeking private enforcement of the law appear to be turned away. (3) Centralization of HUD's enforcement efforts

Corresponding closely to the sharp decline in North Dakota housing complaints was a July 1978 reorganization of HUD services. At that time, HUD's North Dakota office, located in Fargo, reduced its staff from 22 to nine. Many of the functions of the office were transferred to the regional headquarters in Denver, Colorado. Denver is 670 miles from Bismarck.²⁷

According to Jim Nemsek, director of HUD's Fargo office, the Fargo staff prior to the centralization in Denver provided housing management services throughout North Dakota. These services included information on Federal fair housing laws and legal rights and the acceptance of formal complaints. Prior to July 1978 the Fargo staff included a community services advisor who provided information on tenant rights and worked with local advocacy groups. This position was eliminated in 1978 and the North Dakota office no longer provides community outreach or public information²⁸ The current function of the North Dakota office is solely loan appraisal and mortgage credit assistance.²⁹

(4) Communication breakdown between HUD and local groups

Many of the Indian people who experience housing problems turn to local Indian advocacy groups such as the Peace Pipe Indian Center and the Dakota Association of Native Americans. There has been an absence of communication and

informational exchanges between HUD and these groups.³⁰ Advocacy group offices often see complaints that are never referred to HUD.³¹ In September 1980, at least, these offices had no HUD information or printed materials on Federal fair housing law or on the complaint and enforcement process. Neither were HUD complaint forms available.³² In one instance where a local advocacy group provided assistance to several families, a misunderstanding developed over whose responsibility it was to submit complaint forms to HUD and the 180-day filing deadline expired with no notice of the alleged discrimination ever reaching HUD.³³

Even the Bismarck area Community Action Program (CAP) personnel expressed a reluctance to work with HUD.³⁴ They, like many encountered by Commission staff visiting North Dakota (in 1980 and on other occasions), expressed a general distrust of Federal agencies and Federal involvement.

(5) Absence of State or local fair housing laws

Civil rights legislation including fair housing provisions has been introduced in the North Dakota legislature three times since 1977. In spite of explicit and pervasive national policies recognizing civil rights as a legitimate priority, and in spite of and numerous State and local statutes in other States proscribing discrimination, except for a paragraph on equal employment opportunities passed in 1977 and a policy statement passed in 1981,³⁵ anti-discrimination measures and enforcement procedures in North Dakota have consistently been defeated.³⁶

In 1981 separate bills were introduced into the House and the Senate: neither passed. One of reasons the proposed civil rights legislation has failed to pass in North Dakota has been strong, well-organized opposition from private and corporate groups and associations including the Greater North Dakota Association, the State Chamber of Commerce, the North Dakota Implement Dealers Association, the North Dakota Automobile Association, Northwestern Bell, and the North Dakota Retail Association.³⁷ Representative Ruth Meiers, one of the sponsors of House Bill 1360 introduced in 1979, states that particularly realtor associations and home-builders provided strong opposition to fair housing provisions.³⁸

Bismarck contractor and property owner Tom Zirbes stated before a North Dakota Senate committee in 1979 that existing discrimination clauses whereby owners have a right to look over prospective buyers or lessors to determine if they want them to be preserved.³⁹ Zirbes steadfastly maintained that a State fair housing law would force sale and rental of housing to minors, to "young single boys whose girl friends like to play outside and sun bath [sic] plus numerous other things an upstairs family would have to witness", to unmarried couples, to those "a little wacky", and to homosexuals "aggressively seeking friendship of some young boys living in other apartments."⁴⁰

Jeffrey Frant, a former director in HUD's Region VIII (Denver) fair housing branch, stated in 1980 that North Dakota housing complaints were particularly problematic because of the absence of a State fair housing law. Without the opportunity for HUD to refer new and unsettled cases to a State agency, few options exist for pursuing difficult complaints other than a request for voluntary compliance or referral to the U.S. Attorney General--an extreme on either side. Where State fair housing laws are in force, HUD refers complaints to the State agency responsible for enforcement. According to Frant, State enforcement can be quicker and more effective than Federal remedies.⁴¹

New HUD policies under the Reagan administration will rely even more heavily on State enforcement and on HUD's use, financially subsidized, of State administrative processes.⁴² The President's proposed budget for 1983 reduces both Federal fair housing personnel and as dollars. From a fiscal year 1982 nationwide HUD civil rights staff of 475, fiscal year 1983 proposals, which would be effective October 1, 1982, call for a staff of 451 to enforce Title VIII provisions in 51 jurisdictions.⁴³

(6) A sense of frustration with government mechanisms that appear to bring about little response or change

No one interviewed was aware that the North Dakota Real Estate Commission accepted discrimination complaints against real estate personnel and most expressed a lack of confidence in enforcement agencies, particularly Federal. Many believed the U.S. Department of Housing and Urban De-

velopment to be unable or unwilling to act with expediency and they saw the complaint filing process as remote and futile. The consensus seemed to be that unless a person could afford--and find--a private attorney to file suit, nothing could be done to counter discriminatory problems and thereby increase real availability of housing for minority persons.⁴⁴

In addition to the frustration of a continual struggle to find housing, then, most of those interviewed expressed a frustration at being without recourse or avenues of redress when faced with discriminatory practices. They had seen no administrative, judicial or private enforcement of fair housing. Most expressed deep feelings of unfairness.⁴⁵

NOTES

-
- 1 Michael Payton, president of the Bismarck-Mandan Apartment Managers Association, Transcript, Vol. I, p. 29.
 - 2 Tom Zirbes, Bismarck homebuilder and realtor, Transcript, Vol III, pp. 47-48.
 - 3 Juanita Helphrey, director of the North Dakota Indian Affairs Commission, transcript, Vol. I, p. 57.
 - 4 Affidavits filed in United States v. Means and Poor Bear, #CR 75-23, U.S. District Court for District of North Dakota, Southwestern Division, 1975. Survey conducted by the National Jury Project of New York City.
 - 5 Joe R. Feagin, "Affirmative Action in an Era of Reaction," Paper presented to the U.S. Commission on Civil Rights in Washington, D.C. March 9, 1981, p. 8.
 - 6 42 U.S.C. sec. 3601 (1976).
 - 7 42 U.S.C. sec. 1441 (1976).
 - 8 Id.
 - 9 Juanita Helphrey, Transcript, Vol. I., p. 57.
 - 10 Harriett Skye, executive director, DANA, telephone interview March 11, 1982; Alvina Patneaud, Peace Pipe Indian Center, interview in Bismarck, July 23, 1980.
 - 11 Letter from DANA to the Rocky Mountain Regional Office, March 11, 1982.
 - 12 Interviews in Bismarck, July and August 1980.
-
- 13 Irv Nodland, chairman Burleigh County Housing Authority Board of Directors, telephone interview, June 21, 1982. Transcript, Vol. I. p.29.
 - 14 Id., Vol. III, pp. 38-57.
 - 15 Id.
 - 16 Id.
 - 17 Vol. II, pp. 86-90.
 - 18 Dennis Schultz, executive secretary of the North Dakota Real Estate Commission, transcript, Vol. III, p. 30.
 - 19 Staff interview notes, July and August 1980.
 - 20 Information provided the U.S., Commission on Civil Rights, Rocky Mountain Regional Office by Lloyd R. Miller, director of the Region VIII Office of Regional Fair Housing and Equal Opportunity, U.S., Department of Housing and Urban Development, March 11, 1982 (hereafter cited as HUD 1982 information.)
 - 21 Id.
 - 22 U.S., Department of Commerce, Bureau of the Census, Preliminary Reports: 1980 Census of Population and Housing: Colorado (November 1980) listing Colorado's population as 2,900,00; U.S., Department of Commerce, Bureau of the Census, Preliminary Reports: 1980 Census of Population and Housing North Dakota (November 1980), listing North Dakota's population as 650,000.
 - 23 HUD 1982 information.
 - 24 Staff interview notes.
 - 25 Vance Gillette, Bismarck attorney, interview in Bismarck, July 23, 1980; Tom Disselhorst, Bismarck attorney, interview in Bismarck, August 13, 1980.

- 26 42 U.S.C. Sec. 1988 (1976); 42 U.S.C. sec. 3612(c) (1976).
 27 Rand McNally Road Atlas: U.S., Canada, Mexico, 52nd
 Annual Ed., 1976, p. 2.
- 28 Id.
- 29 HUD 1982 information.
- 30 Since 1980, HUD has attempted to work more closely with at
 least these two organizations. Id.
- 31 Interview in Bismarck, July and August 1980.
- 32 Staff notes, files of the Rocky Mountain Regional
 Office, Denver. HUD has since mailed "fair housing
 brochures to all North Dakota community agency and
 advocacy groups and HUD-903 complaint forms to DANA and
 the Peace Pipe Indian Center." HUD 1982 information.
- 33 Interview in Bismarck, July 23, 1980.
- 34 Larry Stockert, CAP housing specialist, interview
 in Bismarck, August 21, 1980.
- 35 The declaration of policy statement on employment
 discrimination states: "It is the policy of North
 Dakota to prohibit discrimination because of race,
 color, religion, sex or national origin in all
 employment practices including hiring, firing,
 promotion, compensation and other terms, privileges
 and conditions of employment. The department of labor
 shall receive complaints under the Act and shall have
 sixty days to negotiate settlements to the extent
 acceptable to the parties involved." N.D. Cent. Code
 sec. 34-01-19 (1960): see also: N.D. Cent. Code
 14-02-11.
- 36 Representative Ruth Meirs, Transcript, Vol. I,
 pp. 49-55; Darrel Farland, executive director of the
 Governor's Council on Human Resources, Transcript,
 Vol I, pp. 76-84..
- 37 Senate Committee on Social Welfare and Veterans, Minutes
 of March 8, 1979.
- 38 Transcript, Vol. I, pp. 49-55.
- 39 Senate Committee on Social Welfare and Veterans, Minutes
 of March 8, 1979. This obviously contradicts 42 U.S.C. sec.
 1982 and 42 U.S.C. sec. 3604-3606, both fully applicable in
 North Dakota.
- 40 Id.
- 41 Interview in Denver, December 14, 1980.
- 42 U.S., Office of Management and Budget and Executive
 Office of the President, Civil Rights Activities (Special
 Analysis J: the Budget of the United States Government,
 1983), February, 1982, n.p. (hereafter cited as Civil
Rights Activities).
- 43 Id.
- 44 Interviews in Bismarck, July and August, 1980.
- 45 Id.

Table I
Type of Bismarck Housing Discrimination Complaints
By Race and Action Taken*

Type of Complaint	(a) Race of Complainant			(b) Action Taken				
	Indian	Hispanic	White	Complaint filed with HUD	Complaint lost	No complaint filed	Complaint filed with local agency	Action taken unknown
Discrimination in rental housing	22	0	0	0	5	14	1	2
Discrimination in public housing	8	1	0	0	0	6	3	0
Problems with rental deposits	5	0	0	0	0	2	1	2
Discrimination in mortgage credit	2	0	0	1	0	1	0	0

*This table illustrates general categories of Bismarck-Mandan area housing discrimination complaints recorded by Rocky Mountain Regional Office staff during the period of investigation, June through September, 1980. Some of the incidents complained of occurred prior to this investigative period, but most were recent experiences. No attempt was made to determine the validity of individual complaints, but only to demonstrate particular patterns.

Table II
Types of Rental Discrimination Complaints
By Race and Action Taken*

Type of Complaint	(a) Race of Complainant			(b) Action Taken				
	Indian	Hispanic	White	Complaint filed with HUD	Complaint lost	No complaint filed	Complaint filed with other agency	Action taken unknown
Representation unit unavailable when still on market	6	0	0	0	2	4	0	0
Lease arbitrarily terminated	6	0	0	0	3	3	0	0
Discriminatory rental conditions	2	0	0	0	0	0	1	1
Refusal to show unit because of race	3	0	0	0	0	3	0	0
Refusal to rent based on race	1	0	0	0	0	1	0	0
Other kind of discriminatory actions	4	0	0	0	0	3	0	1
TOTALS	22	0	0	0	5	14	1	2

*This table represents types of rental housing discrimination complaints recorded by Rocky Mountain Regional Office staff during the process of an investigation in the Bismarck-Mandan area, June through September, 1980. Some incidents complained of occurred prior to this investigative period, but most were recent experiences. No attempt was made to determine the validity of individual complaints, but only to demonstrate particular patterns.

Table III
Type of Public Housing Discrimination Complaints
By Race and Action Taken*

Types of Discrimination alleged in public Housing	(a) Race of Complainant			(b) Action Taken				
	Indian	Hispanic	White	Complaints filed with HUD	Complaints lost	No complaint filed	Complaint filed with other agency	Action taken on complaint unknown
Discrimination in application process	2	1	0	0	0	2	1	0
Problems with management or conditions of rental	2	0	0	0	0	0	2	0
Entering unit without permission or knowledge of resident	4	0	0	0	0	4	0	0
TOTALS	8	1	0	0	0	6	3	0

*This table shows types of public housing complaints recorded by Rocky Mountain Regional Office staff during the process of an investigation in Bismarck-Mandan, June through September, 1980. Some of the incidents complained of occurred prior to this investigative period, but most were recent experiences. No attempt was made to determine the validity of individual complaints, but only to demonstrate particular patterns.

CHAPTER III

SOME PROBLEMS IN PUBLIC HOUSING AND RENTAL ASSISTANCE PROGRAMS

INHERENT CONFLICT IN POLICY

John Calmore, staff attorney with the National Housing Law Project, wrote: "Just like the Holy Roman Empire was reputed to be neither holy nor Roman, this fair housing is neither fair nor housing."¹ Calmore's criticisms are directed at the dual objectives of Federally assisted rental housing, goals not always compatible: (1) "to remedy . . . the acute shortage of decent, safe and sanitary dwellings for families of low income",² and (2) to avoid creation or perpetuation of racially segregated neighborhoods and "concentrations of low-income and deprived families with serious social problems. . ."³

The Housing and Community Development Act of 1974⁴ is said to have "represented congressional joinder of civil rights and housing objectives."⁵

The 1974 Act established as a statutory objective "the reduction of the isolation of income groups within communities and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income."⁶

Beginning in 1980, HUD attempted to further this diversity and deconcentration of low-income persons in publically assisted housing by issuing new tenant selection criteria and promoting selection of families from broader

income ranges.⁷ As Eugene Sandwick, Burleigh County Housing Authority manager, commented, however: ". . . Congress has mandated something that makes it extremely easy to discriminate."⁸ Others in Bismarck, both administrators and potential aid recipients, see assisted housing policies as having been in conflict.⁹

HUD's 1980 changes (revoked in 1981) meant a drastic departure from the first-come-first-served procedures existing prior to the Fall of 1980. "Two months ago there were ten on our waiting list," explained Sandwick at the 1980 Bismarck factfinding meeting,

but now we've implemented the broad range concept and maybe there are 30 on the waiting list. And we don't know when it might come up because we don't know when we're going to achieve that level of income.¹⁰

* * *

We have to establish three waiting lists now, one in the upper income range, one in the medium range and one in the low-low income range and we are to achieve a level of income . . . so our mandate right now is to select from those in the higher low income range until such time as we have achieved that goal that has been established for us by HUD.¹¹

Native Americans interviewed in Bismarck by Commission's regional staff alleged that they, as very low income clients eligible for public housing, were denied placement or simply added to waiting lists--while white families of higher income levels were given public housing units immediately. David Bohl of HUD's Denver Housing Management Office states that in some areas misunderstandings were common and housing authorities held units vacant waiting for

higher income applicants.¹² According to the Burleigh County Public Housing Authority, this was never true in Bismarck.¹³ Yet, even if the allegations are not well-founded, the perception itself would seem to present a serious problem.

As John Calmore has pointed out, "the national housing objectives are not limited to neighborhood integration. Those objectives are directed as much to providing decent shelter to those most in need. HUD cannot overcompensate in efforts to achieve the former at the expense of the latter."¹⁴

SHELTERING THOSE MOST IN NEED

Federal housing assistance for low income persons is provided principally by low rent public housing programs¹⁵ and "Section 8" housing assistance payments.¹⁶ In the so-called "Section 8" programs, a developer (private or public) secures Federal funds under a Housing Assistance Program contract and then provides subsidies for tenants' rents. Those eligible for either program are described as low income and very low income families, income defined as "from all sources of each member of the household, as determined in accord with criteria prescribed by the Secretary of Housing and Urban Development."¹⁷

"Lower income families" are defined by the amended Housing Act of 1937 as "those families whose incomes do not exceed 80 percentum of the median income for the area, as determined by the Secretary [of HUD] with adjustments for smaller or larger families. . ."¹⁸ "Very low income fam-

illies" are those whose incomes do not exceed 50 percent of the area's median income, after adjustments for family size.¹⁹

In the Bismarck area public housing is provided and administered by the Burleigh County Housing Authority. The Housing Authority is said by its managing agent to represent 75 percent of rental units available to low income and very low income persons in the Bismarck community. Of the 487 units available in 1980, minorities--Native Americans, Laotians, Vietnamese "and others"--occupied 19 percent.²⁰

The North Dakota Housing Assistance Program, within the Industrial Commission on North Dakota, administers a Section 8 subsidized housing program. In 1981 the Industrial Commission reported assisting 1,875 North Dakota renter households,²¹ 189 of these in Burleigh County.²² The Industrial Commission states that the "Housing Assistance Program has been designed to achieve equal housing opportunity for participants."²³ Approximately nine percent of the Burleigh County recipient households are Native American.²⁴ (See Table IV.) Of the 189 participating households, 111 had total annual incomes under \$5,000; 60 had incomes ranging from \$5,000 to \$10,000 annually; and 18 had yearly incomes exceeding \$10,000.²⁵

The Housing and Community Amendments of the 1981, the latest revisions in Federal housing law, established a preference for low income families, preserving units and vacancies solely for their occupancy.²⁶ Of those public housing

and Section 8 units made available or vacated from July to October 1, 1981, only 10 percent nationally may be occupied by persons whose income falls between 50 and 80 percent of the median income. Of those units available after October 1, 1981, only five percent nationally are to be occupied by those with incomes above 50 percent of the median.²⁷ Although due October 1, 1981, when the new Act became effective, proposed regulations implementing the new policy are still awaiting clearance from the Office of Management and Budget.²⁸ Meanwhile, HUD's regional Office of Housing Management continues to receive inquiries as to whether vacancies can be held for higher income tenants and continues to hear of instances where such a policy is in effect.²⁹

In Section 8 program participation it appears that an additional problem presented to Native Americans in the Bismarck area is again discrimination. In Section 8 assisted housing (subsidized rent) programs once an applicant is selected to participate, he or she receives a certificate of eligibility and has 60 days in which to find housing. If suitable housing is not located within that time, the applicant's file is closed and assistance payments denied.³⁰ In Burleigh County (Bismarck) and Morton County (Mandan), Native American families denied Section 8 assistance because of failure to find housing number twice that of white families.³¹ "It would appear," states the program's director,

"that Native Americans are having more difficulty locating housing here than their white counterparts selected in our program."³²

David Bohl of HUD's Denver office considers discrimination in Section 8 assisted housing to be possibly the deepest and most covert in all of HUD's programs.³³ Jim Davis, Dean of Education with the United Tribes Educations Testing Center in Bismarck, sees many staff members, employed and qualified for rental assistance, having severe difficulties finding housing in Bismarck. "It's unfortunate," states Davis, "Maybe it's not so much attitude, but more behavior--outright discriminatory behavior toward Indians. I think it's really a problem."³⁴

TENANTS' RIGHTS

Even when Native Americans in Bismarck locate suitable units in a public housing project or in Section 8 assisted housing, several participants at the factfinding meeting alleged a persistence of discriminatory practices. (See Tables I and III.) Arlene Andre, legal assistant working in Bismarck and previously associated with the Community Action Program there, believes that many in rent subsidy programs are arbitrarily and illegally terminated from their rental units.³⁵ Working pursuant to a HUD grant to assist low and moderate income minority persons obtain housing, Andre states:

I worked a lot on helping people gain access into HUD programs, especially the rent subsidy programs. . . . And I'd say that the complaints were

not as much on trying to get into housing as much as what happened once they were living in the units.³⁶

Saying "nothing was blatant", Andrea listed arbitrary terminations, unexpected evictions, and lease termination without sufficient notice to permit the family to find other housing and thereby continue Section 8 rental assistance as some of the problems.

"Do you find similar problems with Anglo families?" Andre was asked.

"Not really. There have been complaints, but not as drastic as Indian families."³⁷

Brian Palecek, Bismarck resident and member of the North Dakota Commission on Women, confirms there are problems.

I think there is a view on the part of the people who are in control of housing that you want a certain kind of person, and that generally is a person who is white and fairly well-heeled, I suppose. . . . I think it is important to make a distinction between being some kind of redneck who says I refuse to rent to those people and a person who says, if I have that choice between a white person and an Indian person, and one with children, I will choose the one that would be easiest for me and the one that makes my profit risk the least. So it's a matter of making distinctions on some subtle kinds of things.³⁸

In public housing units, the Federal government prescribes (1) eligibility, admissions criteria and assignment, (2) tenant rent schedules, and (3) conditions of occupancy, including tenant-management relations, grievance procedures and termination policies.³⁹ While public housing agencies are to have a "maximum amount of responsibility in the ad-

ministration of their housing programs,"⁴⁰ they must maintain adequate records to permit HUD's review of their policies and procedures.⁴¹

Public housing authorities are often required to undertake outreach activities directed at potential applicants. In addition to posting notices in public and conspicuous locations, HUD suggests outreach should include radio, television, newspapers and local publications. Application and admission policies must be published and posted in a conspicuous place "for examination by prospective tenants." Public housing authorities must use written applications and cannot refuse to accept applications unless a temporary suspension has been previously posted. All applications must be dated, time-stamped and referred to a central assignment office.⁴²

All applicants "must be promptly notified . . . as to their eligibility or ineligibility." An eligible applicant must be given an approximate date of occupancy; and notification of changes in waiting period or status is recommended. An ineligible applicant must be provided the reason for ineligibility and, on request, an opportunity for an informal hearing. The Public Housing Authority also is required to maintain records indicating the action taken on all applications, including those which have become inactive.⁴³

Assessing repair costs to tenants for damage to their rental units requires: (a) notice of the charges to the tenant with an opportunity for the tenant to contest the charges, and (b) a grievance hearing, if requested, to determine fault and fair costs.⁴⁴

The grievance-hearing process, whether in regards to damage assessment, lease termination and eviction, income reexamination, or any other matter pertinent to the right to obtain or maintain public housing, can be "the most important right a tenant has."⁴⁵ Although HUD is proposing to withdraw tenant grievance rights,⁴⁶ an established grievance procedure is currently a required part of every public housing lease.⁴⁷ (See Appendix A for HUD's publically distributed summary of grievance rights.)

In addition to the above categories where complaints--either of improper or incomplete procedures or discriminatory application of procedures--can be frequent, Commission staff interviewing in Bismarck also heard complaints regarding apartment searches, or "inspections", without notice. (See Tables I and III.) According to HUD, public housing apartment inspections can be conducted without cause and without warrant if written notice is conspicuously posted at least 48 hours in advance.⁴⁸

At least four Native Americans while residents of subsidized housing, alleged inspections of their rental units without notice and with entry undertaken when they were not at home. These persons believed the procedure to

be discriminatory, they believed only Indian residents of public housing and Section 8 units in Bismarck's Prairie View apartment complexes were subjected to these inspections.⁴⁹ Harriett Skye, director of the Dakota Association of Native American and Advisory Committee member, verifies reports of unnoticed inspections in subsidized housing units.⁵⁰ Commission staff attempted to find white residents in public housing or in Prairie View who had encountered similar unnoticed inspections, but none were located.⁵¹ David Bohl, on the other hand, who regularly works with management of subsidized housing programs in Bismarck, states that white residents have complained of improper inspections and that the procedures, though in error, were not particularly directed at Native American occupants.⁵²

Two factors seem to contribute significantly to Native American dissatisfaction with public housing and Section 8 rental assistance programs: lack of education and lack of communication. Several at the factfinding meeting agreed that North Dakota Native Americans, in general, either do not know or have no faith in their civil rights. Most have had only poor experiences with Federal agencies.⁵³

On monitoring reviews of public housing authorities and HUD-assisted housing projects, HUD personnel from the regional office provide fair housing information and requirements to "responsible officials", but none to potential clientele or to tenants.⁵⁴ HUD's regional office of Fair Housing and Equal Opportunity has, since 1981, mailed fair

housing brochures to "all North Dakota community agency and advocacy groups", but has little control over their distribution.⁵⁵ HUD's regional Office of Housing Management provides information on tenant rights to Community Action Program staff and others, but has not been involved with the Peace Pipe Indian Center, Dakota Association of Native Americans or similar civil rights advocacy groups.⁵⁶ (See Appendix A.)

The Burleigh County Public Housing Authority, by its own admission, advertises or posts public notices of eligibility criteria and available assistance only when a new project opens.⁵⁷ New persons in the community receive information from the housing authority only if they know to request it.⁵⁸ Claus Lembke, executive director of the North Dakota Association of Realtors states that after an agreement with HUD, local real estate boards were to do "a certain amount of advertising and displaying equal opportunity type logo in advertisements. Most of the local boards and the State association complied with that," he said; "I know they don't all."⁵⁹

In addition to lack of information as to what they are, and are not, entitled to, Native Americans in Bismarck are cynical and embittered at being turned away from Federal housing assistance without explanation.⁶⁰ According to those the Commission interviewed in 1980, no reasons are provided when subsidized housing applicants are denied placement.⁶¹ No notification of complaint or appeal rights are given;⁶² and

there are no minority persons among either the staff or the board of directors of the public housing authority⁶³ for those minority persons who might be reluctant to question or to pursue information. Eligible applicants, according to the Authority's manager, are not advised of an anticipated occupancy date or of status on a waiting list.⁶⁴ At least as of the Fall 1980, the Authority also admits to no procedure for notifying applicants when their status or their place on the waiting list changes, even if the change is significant.⁶⁵

The Burleigh County Public Housing Authority's manager states: "I think sometimes there's a difficulty on the part of the applicant to understand that we have certain regulations. . ."⁶⁶ The burden, however, both to educate potential recipients and to communicate with applicants and tenants rests by Federal regulation and procedure not with the individual needing assistance, but with the housing authority providing aid.⁶⁷

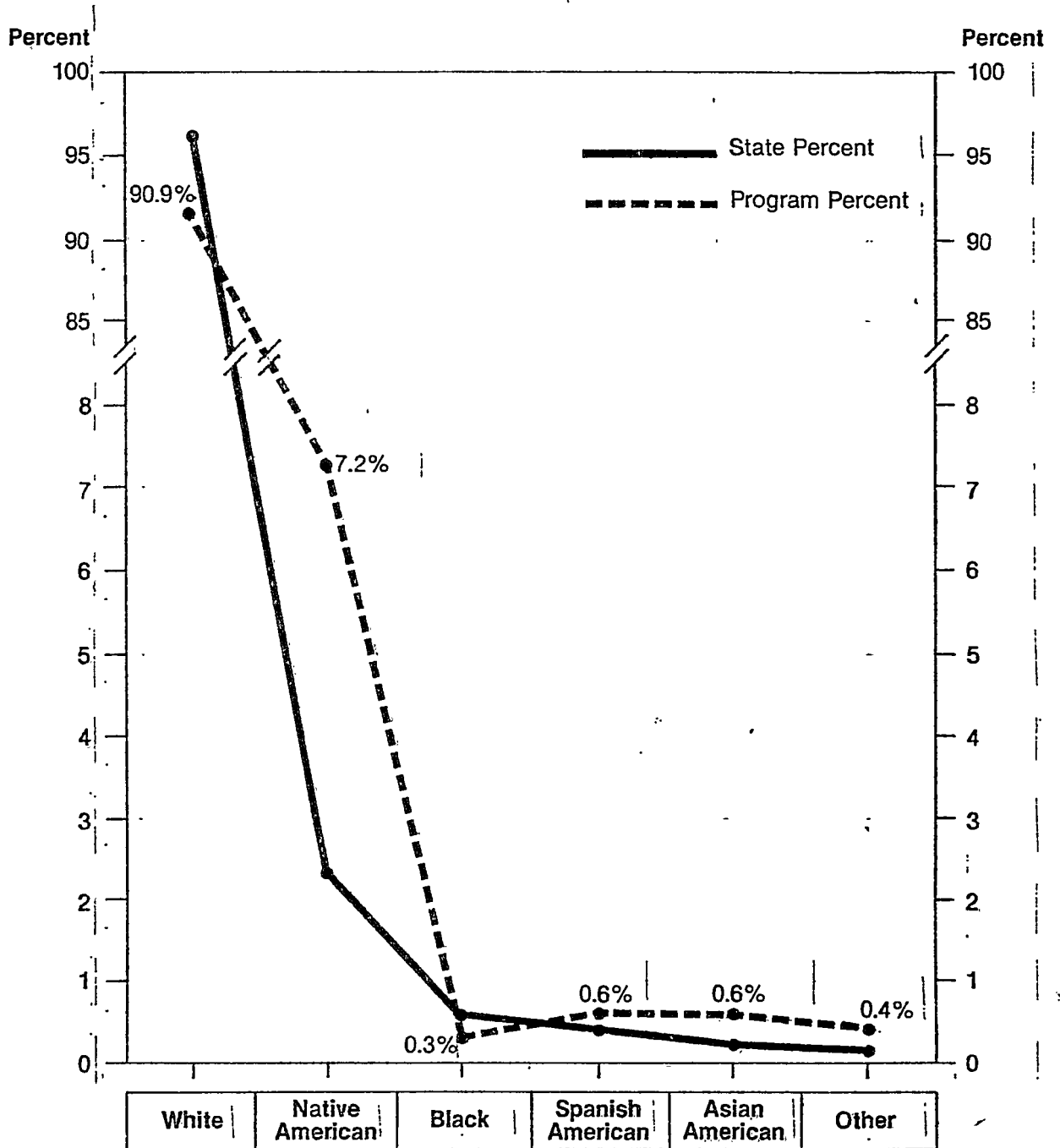
NOTES

- 1 "Fair Housing vs. Fair Housing: The Problems with
Providing Increased Housing Opportunities Through Spatial
Deconcentration," 14 Clearinghouse Review (1980), p. 7
(hereafter cited as Calmore).
- 2 42 U.S.C. sec. 1437 (1976), the Housing Act of 1937.
- 3 42 U.S.C. sec. 1437d(4)(A) (1976).
- 4 42 U.S.C. secs. 5301-5317 (1976).
- 5 U.S. Commission on Civil Rights, Civil Rights: A National,
Not a Special Interest, Washington, D.C., June 1971, p. 88.
- 6 Id., p. 87, citing 42 U.S.C. sec. 5301(c)(6) (1976).
- 7 24 C.F.R. 880.603(c).
- 8 Transcript, Vol. II, p. 22.
- 9 David E. Bohl, HUD Region VIII Housing Management
Officer, interview in Denver March 19, 1982; see also
Florence Wagman Roisman, "Preventing or Ameliorating
Displacement in Connection with Section 8", 14 Clearing-
house Review, 1980, pp. 303-319.
- 10 Transcript, Vol. II. p. 23.
- 11 Id., p. 22.
- 12 Interview in Denver, March 19, 1982.
- 13 Irv Nodland, chairman Burleigh County Housing Authority
Board of Directors. telephone interview, June 21, 1981.
- 14 Calmore, p. 16.
- 15 42 U.S.C. sec. 1437-1437k (1976).
- 16 42 U.S.C. sec. 1437f (1976).
- 17 Amended the last full session of Congress by the Housing and
Community Development Amendments of 1981, to be codified at
42 U.S.C. sec. 1437f(f)(3), 1437a(b)(4), and 12 U.S.C. sec.
1715z-1(m). The previous definition of income was all
sources from every member in the household who is over 18
years of age and not a full-time student. The first \$300
of a second wage earner was excluded, as was \$300 for each
household member under 18, five percent of the total gross
income and extraordinary medical or other expenses.
Whether or not the Secretary, under his new discretion,
will take into account, for example, the number of minor
children in the household is not yet determined as new
regulations have not yet been issued.
- 18 42 U.S. C. sec. 1437f(f) (1976).
- 19 Id.
- 20 Transcript, Vol. II, pp. 16-17.
- 21 North Dakota Industrial Commission. North Dakota Housing
Assistance Program, Quarterly Report, June 1981, p. 1
(hereafter cited as N.D. Industrial Commission).
- 22 Id., p. 4.
- 23 Id., p. 1.
- 24 Id., p. 6, listing for Burleigh County 170 white
households assisted, 17 Native American and 2 Asian American.
- 25 Id., p. 15. At page 5, the Industrial Commission's report
also indicates that 18 families receiving assistance had 5

- or more persons in the household. Whether these are the same 18 with incomes over \$10,000 is impossible to determine from the report.
- 26 Conference Report, H.R. Rep. 97-208, 97th Cong. 1st Sess, July 29, 1981; 42 U.S.C. sec. 1437n (1976).
- 27 42 U.S.C. sec. 1437n (1976).
- 28 David Bohl, interview in Denver, March 19, 1982.
- 29 Id.
- 30 Robert Barr, director North Dakota Housing Assistance Program, Transcript, Vol. II, p. 55.
- 31 Id. At p. 59 of the Transcript, Mr. Barr states that Native Americans in Burleigh County disqualified for failure to find housing amount to 30.8 percent.
- 32 Id.
- 33 Interview in Denver, March 19, 1982.
- 34 Transcript, Vol. II, p. 64.
- 35 Transcript, Vol. II, p. 48.
- 36 Id., p. 50.
- 37 Id.
- 38 Id., p. 36.
- 39 U.S., Department of Housing and Urban Development, The Public Housing Occupancy Handbook, Washington, D.C.: October 1978, p. 1-1 (hereafter cited as HUD Handbook).
- 40 42 U.S.C. sec. 1437 (1976).
- 41 Id.; HUD Handbook, p. 1-5.
- 42 HUD Handbook, pp. 2-11, 2-12.
- 43 Id. Complaints or inquiries with regard to any of the above requirements should be made to David Bohl, HUD Housing Management Officer, U.S. Department of Housing and Urban Development, 1405 Curtis, Denver, Colorado 80202. Collect calls can be made to area code 303-837-5666 and someone will take the caller's name and number. In many instances, however, the publicly posted local grievance procedures should be utilized first.
- 44 David Bohl, interview in Denver, March 19, 1982. See also: Chavez v. Davey, Civ. No. 77-1307, U.S. District Court for the District of New Mexico, February 6, 1980.
- 45 Id.
- 46 Id.
- 47 24 CFR Part 866, Subpart B; see also: 24 CFR 882.215, pending change pursuant to the recently amended 42 U.S.C. 1437f(d)(1)(B) (requiring public housing agencies to be part of the Section 8 housing eviction process).
- 48 David Bohl, interview in Denver, March 19, 1982.
- 49 Interviews in Bismarck, July and August 1980.
- 50 Letter to the Commission's regional office dated June 8, 1982. Rocky Mountain Regional Office files, Denver.
- 51 Staff interview notes, July and August, 1980, Rocky Mountain Regional Office files, Denver. At pp. 30-34 of the Transcript, Vol. II, Eugene Sandwick denies that unannounced inspections take place.
- 52 Interview in Denver, March 19, 1982. Mr. Bohl and the Region VIII director of the Assisted Housing Management Division, Louistine E. Tuck, state that pre-1980 leases provided for unannounced inspections and that the clause was

- removed at HUD's insistence. By letter to the Commission's regional office dated May 21, 1982, Director Tuck states that allegations of unannounced "maintenance inspections" by the Burleigh County Housing Authority have been addressed to HUD subsequent to the 1980 lease change. Rocky Mountain Regional Office files, Denver.
- 53 Transcript, Vol. I., p. 25; Transcript Vol I, p. 59; staff interview notes, July and August, 1980.
- 54 HUD 1982 information.
- 55 Id.
- 56 David Bohl, interview in Denver, March 19, 1982.
- 57 Transcript, Vol. II, p. 19.
- 58 Id.
- 59 Id., p. 18.
- 60 Id., Vol. II, p. 50; and Vol II, p. 75; staff interview notes, July and August, 1980.
- 61 Staff interview notes, July and August, 1980, Rocky Mountain Regional Office files, Denver. Manager Eugene Sandwick confirmed that reasons for denial of placement and changes in status are not given. Transcript, Vol. II, p. 23-24. In response to a question as to whether providing reasons for denial of a unit and notice of status on a waiting list would not help resolve alleged problems in communication with the minority community Mr. Sandwick stated: "I think it would be administratively cumbersome to contact these people. We do, however, periodically send letters to all our applicants on a waiting list asking them if they are still interested in housing." Transcript, Vol. II, p. 25.
- 62 Transcript, Vol. II, p. 20.
- 63 HUD files, regional Office of Housing Management, Denver.
- 64 Transcript, Vol. II, p. 24.
- 65 Id., p. 23.
- 66 Id., p.30
- 67 24 CFR 860.207; 24 CFR Part 866, Subpart A and Subpart B; 24 CFR 866.5; HUD Handbook, pp. 2-13, 2-15, 2-16 and 3-20.

Table IV
Housing Assistance Program
Household Racial Distribution by Percent



*Based on 1970 census data: White — 96.8%, Native American — 2.3%, Black — 0.4%, Spanish American — 0.3%, Asian American — 0.1%, Other — 0.1%

Source: North Dakota Industrial Commission, *North Dakota Housing Assistance Program*. Bismarck, North Dakota, June 1981, p.7.

CHAPTER IV

FAIR HOUSING ENFORCEMENT

Enforcement of fair housing law can be accomplished administratively, by a local, State or Federal government agency, or judicially, by the enforcing authority or aggrieved individuals (separately or as a group) utilizing court processes. Enforcement authorities, community, civil rights, and advocacy groups can also promote the law by preventive and educational measures.

ADMINISTRATIVE ENFORCEMENT

No State or local government agency in North Dakota is specifically charged with implementing or enforcing anti-discrimination requirements. On the Federal level, the Secretary of Housing and Urban Development (HUD) is responsible for coordinating all fair housing efforts.¹ HUD is also charged with administration of Title VIII of the Civil Rights Act of 1968² and most of the statutes aimed at the provision or the improvement of housing in the United States.³

All civil rights activities are centered in HUD's Office of Fair Housing and Equal Opportunity (FHEO). (See Table V.) HUD is divided into the traditional ten Federal regions and has an FHEO office in each. The Denver regional office services six States: Montana, Wyoming, Colorado, Utah, North Dakota and South Dakota.

Each regional FHEO office has a Division of Fair Housing and Equal Opportunity Compliance which investigates Title VIII complaints and also includes a systemic unit to investigate cases that appear to represent a pattern and practice of discrimination. Each regional office also has a Division of Contract Compliance which is responsible for compliance and enforcement activities under Title VI of the Civil Rights Act and Section 109 of the Housing and Community Development Act of 1974.⁴

Even though the U.S. Commission on Civil Rights,⁵ the U.S. Department of Justice,⁶ and HUD itself⁷ have concluded that HUD's small staff size "has had a crippling effect on its fair housing program,"⁸ Office of Management and Budget fiscal year 1983 proposals include a civil rights staff reduction nationwide of 24--and a fiscal year 1983 budget of 16 million dollars, \$15 million for fair housing complaint processing and technical assistance and \$1 million for Department of Justice litigation.⁹ (For comparison, the fiscal year 1979 appropriation for HUD fair housing enforcement was \$18.8 million and for the EEOC's equal employment enforcement was \$301.1 million.)¹⁰

Particularly because of budgetary limitations, regional FHEO priority goes to complaint investigations.¹¹ "Very few complaints come from North Dakota," HUD explains, and as a result, less HUD resources are spent in North Dakota as compared with a higher number of complaints--e.g. Utah and South Dakota."¹²

Complaints are received by HUD by telephone, in person or in writing. An individual may fill out a complaint form or HUD personnel will fill it out for them according to the information received.¹³ Complaints received by mail are acknowledged immediately. A response letter informs the complainant whether or not HUD has jurisdiction and suggests a date when investigation of the complaint might begin.¹⁴ "Resolving a complaint", explains Lloyd Miller, director of the regional FHEO office,

means that there is [in the final investigative report] a preponderance of the evidence [supporting the complaint] for us to bring the two parties to the table to try to achieve some resolution. On the other hand, if we make a determination not to resolve that means there is not enough evidence to support the allegations of the complainant.¹⁵

If a Title VIII complaint, when substantiated by evidence, cannot be resolved by voluntary compliance, HUD may file a civil action in Federal district court to enforce the complainant's rights.¹⁶ Under the Fair Housing Act, "If the court finds that a discriminatory housing practice has occurred or is about to occur,"¹⁷ the court may issue an injunction to stop the practice or order "such affirmative action as may be appropriate."¹⁸

In those States where local or State fair housing laws provide remedies, the suit is filed in State court.¹⁹ Many State laws provide, in addition to an injunction or order to take corrective measures, that a court may also grant the complainant money damages for actual injuries or loss resulting from the discriminatory practice.²⁰

The Fair Housing Act permits an individual to file suit in court so long as the action is filed within 180 days after the alleged discriminatory practice occurred.²¹ A third alternative is suit filed by the United States Attorney General.²²

From January 1975 to February 1982, the Region VIII FHEO office did not refer any cases for litigation.²³ Although in the years 1969 to 1972, the U.S. Department of Justice participated annually in approximately 23-30 fair housing cases nationwide,²⁴ in 1981, the Department of Justice did not file a single housing or credit discrimination case.²⁵

In those complaints where Title VI can be used as the basis of fair housing enforcement (for example, public housing projects and Section 8 contract units), when substantiated by the evidence, HUD can cut off all or part of the Federal funds.²⁶ From 1975 to February 1982, HUD-Region VIII only once initiated the lengthy administrative and legal procedures necessary to cut funds. (In a community development block grant case not related to housing). In that instance, an appeals court blocked the fund cut-off. In two other instances related to housing, HUD, Region VIII, proposed fund cut-offs, but settled for letter commitments to comply with the law voluntarily.²⁷

According to Phyllis Semsch, FHEO Region VIII branch chief for contract compliance, 14 compliance reviews of funded agencies were completed by her office in 1980, and 14

in 1981.²⁸ Assuming there were 14 for each of the years from 1975 through 1979,²⁹ the regional office conducted approximately 84 funded-agency reviews between 1975 and the end of 1981. In addition to the two cases where fund cut-offs were proposed, four other funded agencies during that period were found to be "in apparent non-compliance", but all of the cases were closed after letter commitments to discontinue discriminatory practices.³⁰

Because of its inherent limitations administratively and geographically HUD has been working aggressively to encourage State and local governments to take on more fair housing efforts. In 1981 the Federal government allocated 3.7 million dollars in grants to defray the costs of 42 State and local agencies accepting fair housing complaints. State and local agencies participating in complaint processing increased by 30 percent in 1981 and President Reagan's administration hopes by fiscal year 1983 to increase the number of these agencies to 70.³¹ HUD is required by Title VIII to take any housing discrimination complaint first to a local or a State agency--if one exists.

Wherever a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter, the Secretary shall notify the appropriate State or local agency of any complaint filed under this subchapter which appears to constitute a violation of such State or local fair housing law, and the Secretary shall take no further action with respect to such complaint if the appropriate State or local law enforcement official has, within thirty days from the date the alleged offense has been brought to his attention, commenced proceedings in the matter, or, having done so

carries forward such proceedings with reasonable promptness. In no event shall the Secretary take further action unless he certifies that in his judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice requires such action.³²

Thus, not only the executive branch of the Federal government, but also the legislative recognizes that local problems can best be addressed by local solutions. "A solution worked out locally," states Silke Hansen, professional mediator for the Community Relations Service, U.S. Department of Justice, "will have local support."³³

In addition to formulating a solution better tailored to the problem, local remedies can be a great deal speedier, and thereby much more effective, than Federal ones.³⁴ Federal administrative processes are often encumbered. When Fred Browning, chief of rural housing for the Farmers Home Administration (Department of Agriculture) was asked about complaints of discrimination filed with his offices in North Dakota, he responded that a local FHA employee would take the complaint.

He then in turn submits it to the State director, who then submits it to our national office--our equal opportunity officer--who then, in turn, sends it to the regional office of HUD.³⁵

When U.S. Attorney for North Dakota James Britton was asked about housing discrimination complaints filed with his office, he responded: "I don't want to make light of this, but I would forward it to Washington.... I'm not sure what they would do with it, but I have some suspicions...it would end up in Denver."³⁶

JUDICIAL ENFORCEMENT

Because there are no State or local fair housing laws in North Dakota, private litigants in the State can only file suit pursuant to Federal law. Most will first find it necessary to engage in time-consuming and long distance information gathering from Denver's HUD offices. In addition, Federal court suits often result in far greater expenditures, both in time and in money, than local court actions.³⁷ Consequently, judicial enforcement of fair housing in North Dakota has not been significant.

"There has been a reluctance or an inability," states Bismarck attorney Tom Disselhorst, "for Indian people to trust the non-Indian attorney in the area."³⁸ In addition, many attorneys refuse to represent Indian renters alleging discrimination because they would prefer to, or often do, represent landlords or management associations. "This leaves very few attorneys", says Disselhorst, "who are even willing to discuss these kinds of cases with prospective Indian clients" because of the potential conflict of interest.³⁹

Even though Title VIII⁴⁰ and other provisions of the Civil Rights Acts⁴¹ specifically provide for payment of attorney fees to a successful complainant, few attorneys nationwide file private Title VIII actions. Since 1968, in all 50 States combined only an approximate 1,100 Title VIII cases (apart from those filed by the Department of Justice) have been filed.⁴² Attorney Disselhorst believes that in Bismarck, at least, those alleging discrimination in housing

have difficulty locating professional legal help because attorney's cannot afford to invest in time-consuming cases.⁴³ In discussing a successful civil rights attorney,

Disselhorst comments:

It occupies all of his time in investigation . . . and he does it one case at a time. Very few attorneys have either the skill or the resources to do that. So that results in a lack of enforcement effort as far as private remedies go ⁴⁴

Even though judicial enforcement of fair housing mandates is less desirable and far slower than other methods, successful court actions can create pressure and impact "felt even in the most reluctant quarters . . ."⁴⁵

The most recent Title VIII decision from the United States Supreme Court may place new emphasis on court actions. In Havens Realty Corporation v. Coleman, the Supreme Court legitimizes the use of fair housing "testers" affirms their right to file suit, and emphasizes the right to truthful information regarding the availability of housing.⁴⁶ "Testers," as the decision defines them, "are individuals who, without an intent to rent or purchase a home or apartment, pose as renters or purchasers for the purpose of collecting evidence of unlawful steering practices."⁴⁷

"Section 804(d) [of the Fair Housing Act]," states the Court, "establishes an enforceable right to truthful information concerning the availability of housing. . . ." When a tester is told that an apartment is not available, when in

fact it is, the individual (whether or not in the market for housing) has suffered the kind of specific injury that creates a right to sue.⁴⁸

In the Havens Realty case, in addition to the testers who were given inaccurate information, another joining in the suit against the realty company was HOME, a non-profit corporation that informed individuals and families in equal opportunity rights and otherwise helped them locate housing. "Its activities", the Court pointed out, "included the operation of a housing counseling service, and the investigation and referral of complaints concerning housing discrimination."⁴⁹ The decision held that HOME also had a right to file suit:

If, as broadly alleged, petitioners' steering practices have perceptibly impaired HOME's ability to provide counseling and referral services for low-and moderate-income home seekers, there can be no question that the organization has suffered injury-in-fact. Such concrete and demonstrable injury to the organization's activities--with the consequent drain on the organization's resources--constitutes far more than simply a setback to the organization's abstract social interest.⁵⁰

HUD does not use testers.⁵¹ In the face of drastic and immediate cutbacks in an already meager administrative enforcement process, community groups such as HOME may be presented with new avenues for enforcement of fair housing through judicial processes. In addition, the Havens decision clearly states that where the practices challenged are not just one incident of conduct but a "continuing violation" of the Fair Housing Act manifested in a number of incidents, a court action "is timely when it is filed within

180 days of the last asserted occurrence of that practice."⁵² Thus, where plaintiffs allege an unlawful practice that is a policy or a continuing pattern, the 180-day filing period set out in the Fair Housing Act is not a bar to court action. These cases are to be treated differently, according to Havens. "Wooden application" of the statute's filing limitation, states the Court, "only undermines the broad remedial intent of Congress embodied in the Act."⁵³

PROSPECTIVE APPROACHES

Affirmative action or preventive measures are an important means of encouraging fair housing. Yet, they are also the most dependent on local community support and local attitudes.

Although HUD has organized, encouraged and subsidized local fair housing groups called CHRB's, only one in North Dakota currently meets on a regular basis. The CHRB--Community Housing Resource Board--is composed of volunteers from various segments of the community including civil rights advocacy groups, real estate owners, brokers, and salespersons, financial institutions and others. Six formally exist in North Dakota, but only the Bismarck-Mandan organization is active.⁵⁴

The chairman of the Bismarck-Mandan CHRB states that the group has tried

to alleviate the discrimination in the rental housing market by providing a sure base for persons who would be renting In doing that we've looked at standard forms, standard contract forms, preinspection, post inspection forms. We've

tried to work with the local landlord group. We've tried to facilitate communication between renters and the building proprietors.⁵⁵

Claus Lembke, executive director of the North Dakota Realtor's Association, also stresses the CHRB's communication service. As he describes it, the CHRB provides "a dialogue" between minority groups and the association. Even though the Bismarck-Mandan CHRB includes only one American Indian board member, Mr. Lembke states "We have a perfect communication within our association and the minority groups."⁵⁶

Some Native American involved with the CHRB, however, saw communications between the CHRB or realtors' groups on the one hand, and minority persons, on the other, as poor.⁵⁷ According to a representative for the Peace Pipe Indian Center, Indian representatives to the CHRB received notice of meetings after the meeting had been held.⁵⁸ In those meetings attended, Diane Marshall saw people "who represented low income programs" on one side of the meeting room and realtors on the other. "I personally wasn't too pleased with the Board," she commented at the 1980 factfinding meeting; "I felt it was really divided."⁵⁹

Arlene Andre questions whether the work of the CHRB has done anything to open up the rental market. "It really didn't affect individuals," she said; "I think that we need compliance and enforcement and the Board just doesn't have the authority to do that now."⁶⁰

Lloyd Miller, HUD's regional director for fair housing and equal opportunity, when asked about the CHRB at the factfinding meeting, stated:

I don't know that I have any real tangible evidence that there's been a great deal happening one way or the other We are very much appreciative of the good faith exercised by the boards . . . so I will not be critical . . . other than say that some tangible results at this point in time I'm unable to pinpoint⁶¹

In addition to CHRB's, HUD has also promoted an Affirmative Marketing Agreement signed in 1975 by the North Dakota Realtors' Association.⁶² The agreement calls for equal opportunity logos in advertising, fair housing information sessions for new members of the association, and fair housing information to all North Dakota real estate licensees.⁶³ The Association does not distribute fair housing information to the public or, in particular, to those who come to the association with a complaint; nor does it hear or monitor practices of members that might indicate racial steering or other discriminatory practices.⁶⁴

Despite its Affirmative Marketing Agreement which stands at least as a policy statement against discrimination in housing, the North Dakota Realtors' Association has consistently opposed a State fair housing law.⁶⁵ According to executive director Claus Lembke, the Association's "primary objection" is to "expanded government bureaucracy."⁶⁶

As the U.S. Commission on Civil Rights has previously

stated:

This complex network of mortgage lenders, land developers, builders, real estate brokers and salesmen probably exercise more control over where people live than any of the other forces in housing and community development.⁶⁷

Thus, since the Nixon administration, the Federal government and others have relied more heavily on the real estate network for aggressive activity in furtherance of fair housing.⁶⁸ At least in Bismarck, evidence of this aggressive stance in favor of a national priority is yet to be documented.

In spite of some work in the direction of fair housing, then, by the CHRB and realtors' associations--but with no monitoring of local realtor practices (requests received, units shown, etc.) and no means for hearing complaints against members and no indication that rental availability to minority persons has been increased--it is difficult to say how much current affirmative programs have accomplished in a real sense.

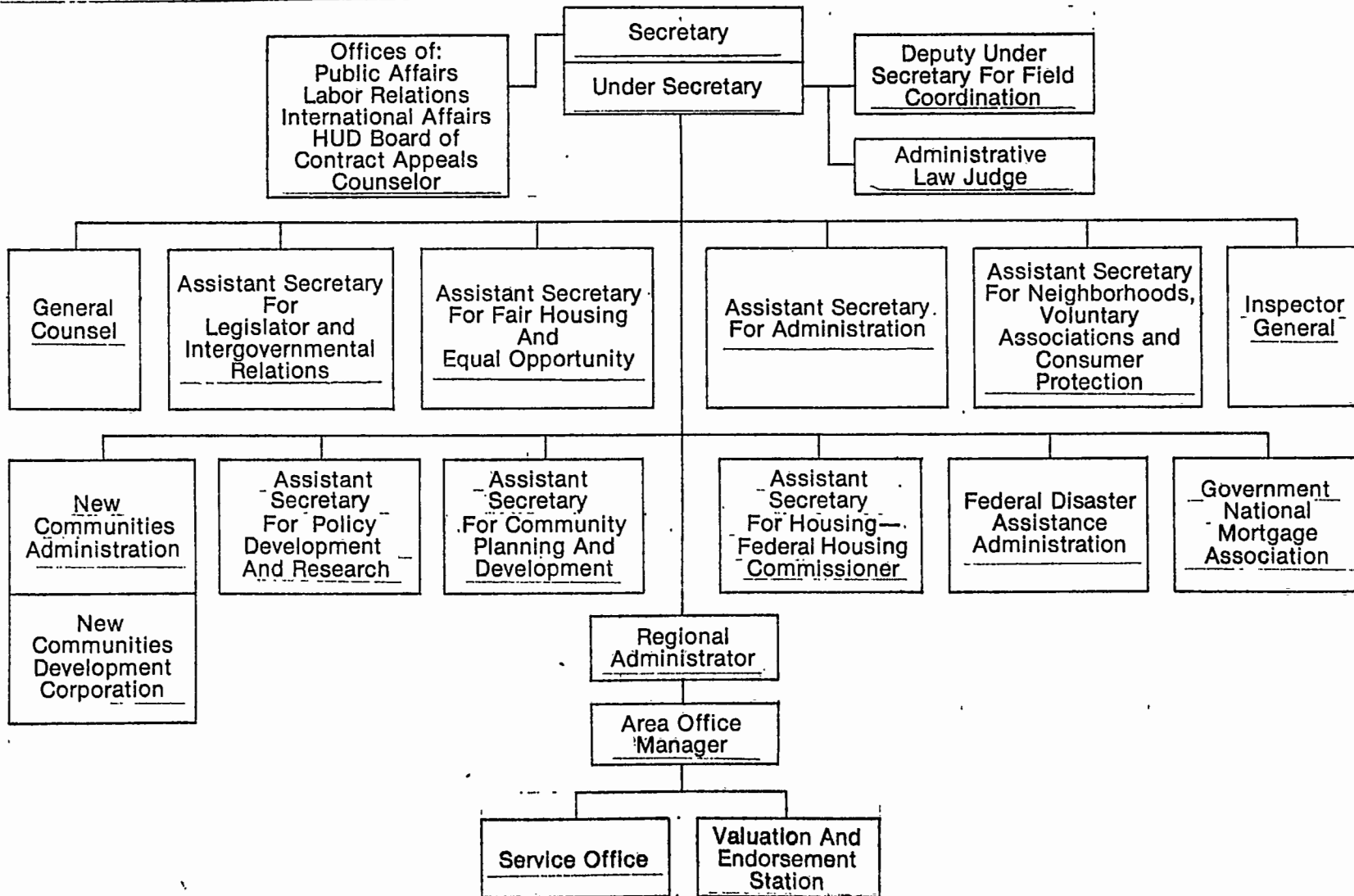
NOTES

-
- 1 Executive Order 11063 (November 20, 1962), 3 C.F.R. (1959-63 Compilation).
 - 2 42 U.S.C. sec. 3608 (1976).
 - 3 E.g.: 42 U.S.C. sec. 5300-5317; 42 U.S.C. sec. 1437f; 42 U.S.C. sec. 1437-1440 (1976).
 - 4 Fair Housing Enforcement, p. 14-15.
 - 5 Id., pp. 16-18.
 - 6 U.S., Department of Justice, Interagency Survey Report, 1977, p. 14.
 - 7 U.S., Department of Housing and Urban Development, Headquarters Report: On-Site Operational Performance Evaluation, 1975-77.
 - 8 Fair Housing Enforcement, p. 16.
 - 9 Civil Rights Activities, n.p.
 - 10 Fair Housing Enforcement, pp. 17-18.
 - 11 HUD 1982 information.
 - 12 Id.
 - 13 Lloyd Miller, Transcript, Vol. II, p. 106-107; see also: The Fair Housing Act, 42 U.S.C. sec. 3610 (1976).
 - 14 Transcript., Vol. II, p. 107.
 - 15 Id., p. 108.
 - 16 42 U.S.C. sec. 3610(d) (1976).
 - 17 Id.
 - 18 Id.
 - 19 Id.
 - 20 See e.g.: Colo. Rev. Stat. secs. 24-34-501 to 24-34-510 (Supp. 1980).
 - 21 42 U.S.C. sec. 3610(f) and 3612 (1976).
 - 22 42 U.S.C. sec. 3613 (1976).
 - 23 HUD 1982 information.
 - 24 Above Property Rights, p. 25. The more than 100 suits filed between January 1969 and June 1972 involved 300 various defendants in 27 States and the District of Columbia.
 - 25 Betsy Dineen, paralegal specialist, General Litigation Section of the Civil Rights Division, U.S. Department of Justice, Washington, D.C. telephone interview, March 10, 1982. The Department's first Title VIII action under the Reagan administration, U.S. v. Commonwealth Avenue, was filed February 4, 1982.
 - 26 Exec. Order No. 11, 063, 15 U.S.C.A. sec. 1691(e) (1982),n.
 - 27 Lloyd Miller and Phyllis Semsch, Region VIII Office of Fair Housing and Equal Opportunity, interview in Denver, April 8, 1982.
 - 28 Telephone interview, March 16, 1982.

- 29 As the present branch chief, Phyllis Semch, has been in the position only since 1980, she did not know.
- 30 HUD 1982 information; Phyllis Semch, telephone interview, March 16, 1982.
- 31 Civil Rights Activities, n.p.
- 32 42 U.S.C. sec. 3610 (c) (1976).
- 33 Transcript, Vol. II, p. 139.
- 34 Jeffrey Frant, interview in Denver, December 18, 1980.
- 35 Transcript, Vol. II, p. 128.
- 36 Id., p. 122.
- 37 Willis Caruso, general counsel, Chicago Leadership Council for Metropolitan Open Communities, remarks to the Colorado Civil Rights Division, Denver, July 29 1982 (hereafter cited as Willis Caruso).
- 38 Transcript, Vol. II, p. 73.
- 39 Id.; Vance Gillette, Bismarck attorney, interview in Bismarck, July 23, 1980.
- 40 42 U.S.C. sec. 3612(c) (1976). See esp.: Open Housing Law, pp 25, 26, stating that "Fee awards have been increasing in recent years."
- 41 42 U.S.C. sec. 1988 (1976).
- 42 Willis Caruso. (Of these, Mr. Caruso has filed 700.)
- 43 Transcript, Vol. II, p. 73.
- 44 Id.
- 45 Above Property Rights, p. 26.
- 46 Decided February 24, 1982. 50 U.S.L.W. 4232 (February 23, 1982) (hereafter cited as Havens Realty).
- 47 Id., p. 4234.
- 48 Id., p. 4235.
- 49 Id., p. 4233.
- 50 Id., 4236.
- 51 Lloyd Miller, Transcript, Vol. II, p. 101.
- 52 Havens Realty, p. 4237.
- 53 Id., pp. 4236-4237.
- 54 HUD 1982 information.
- 55 William Wolken, chairman, Bismarck-Mandan CHRB, Transcript, Vol. II, pp. 4, 5.
- 56 Transcript, Vol. I, p. 43.
- 57 Diane Marshall, Business Women's Resource Council and Peace Pipe Indian Center, Id., p. 11; Arlene Andre, Id. p. 49.
- 58 Id., p. 12; Brian Palacek, interview in Bismarck, March 30, 1980.
- 59 Id., p. 11.
- 60 Id., p. 49.
- 61 Id., pp. 111-112.
- 62 Claus Lembke, executive director, North Dakota Realtors' Association, Transcript, Vol. I, pp. 18-19.
- 63 Id.
- 64 Id.
- 65 Id., p. 21-22.
- 66 Id. p. 21.
- 67 Above Property Rights, p. 23.
- 68 Id., p. 24.

Table V

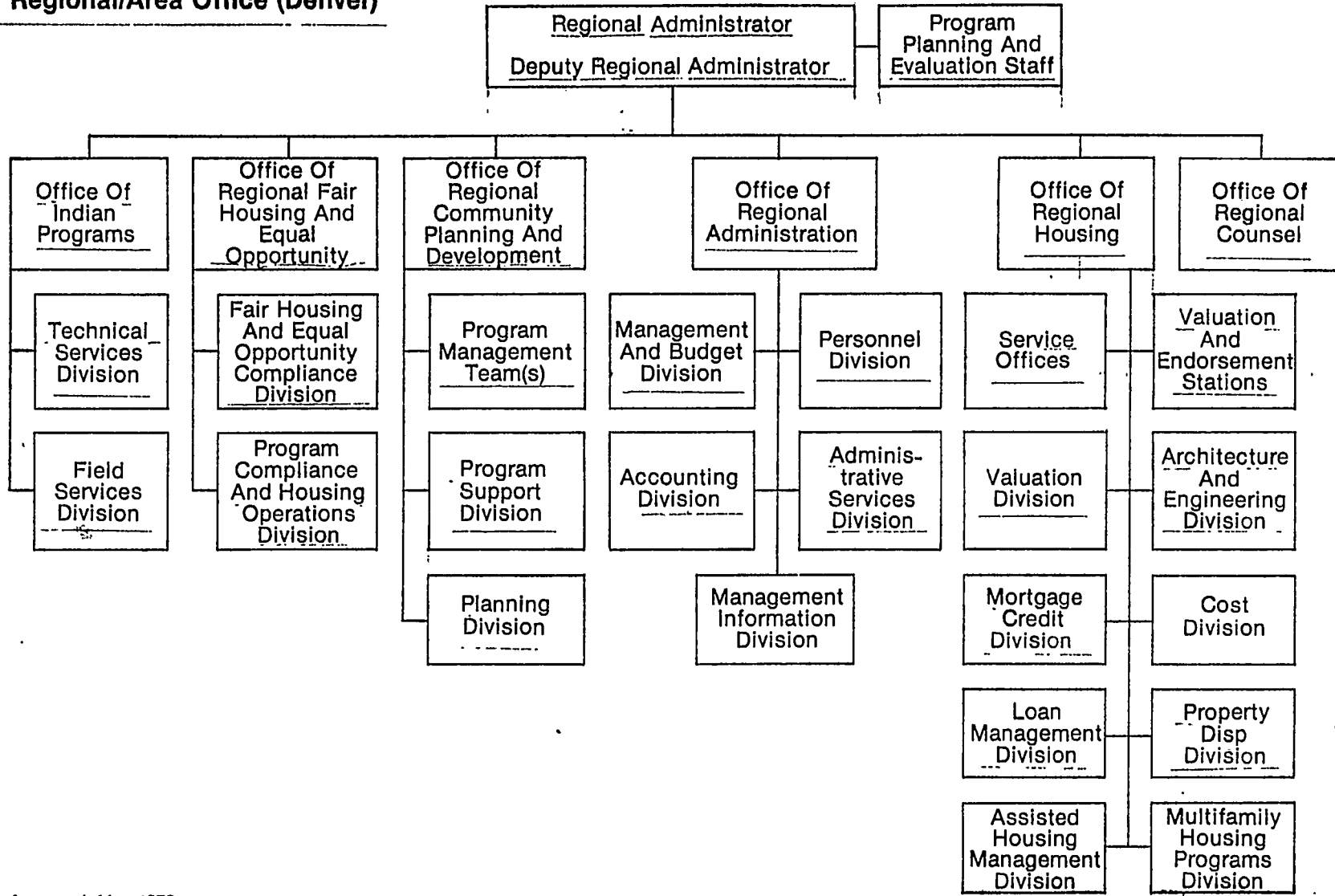
Department of Housing and Urban Development



68

Table VI

**Department of Housing and Urban Development
Regional/Area Office (Denver)**



CONCLUSION, FINDINGS AND RECOMMENDATIONS

COUNTERING DISCRIMINATION

Law provides more than explicit public policy. It also reinforces rights and affords remedies. The nation's policy relative to fair housing, although hampered in enforcement and uneven in effect, is forthright and clear. It is created by no less than the Constitution itself and it is repeated in numerous Federal laws and in the civil rights enactments of at least 28 States. The question presented here, and in all of the foregoing, is one of remedy. "It is idle to say that a man is free who cannot go and come at pleasure, who cannot buy and sell, who cannot enforce his rights"1

Testimony at the Bismarck fair housing factfinding meeting and before committees of the North Dakota House and Senate indicate a fear among some that State fair housing legislation, by creating new rights in some, would take away rights from others. Tom Zirbes spoke at the factfinding meeting of the landlord's freedom to rent to whom he chooses. "What a lot of people perceive as discrimination is really tenant selection process," he said.²

"I think that to be realistic," said Michael Payton many property owners will perceive the Anglo American to be the least troublesome to them."³

"They're just actually scared of Indians," said Tom Zirbes. "They're scared of anybody that ain't German, Russian or Norwegian. What they don't know, they're scared of."⁴

Making choices is an essential part of everyday life for individuals and organizations. These choices are shaped in part by social structures that set standards and influence conduct in such areas as education, employment, housing and government. When these choices limit the opportunities available to people because of their race, sex or national origin, the problem of discrimination arises.⁵

The problem becomes a community rather than an individual problem when the fear, the failure of social interaction, the protection of property, or the insistence on one's own rights (where perhaps there is no right, e.g. to choose one's neighbors) denies the fundamental rights of a specific and identifiable group of Americans. And in Bismarck, North Dakota, at least, Native Americans struggle to find basic housing.

Theodore Roosevelt addressed this subject in 1913:

I believe in property rights; I believe that normally the rights of property and humanity coincide; but sometimes they conflict, and where this is so I put human rights above property rights.⁶

FINDINGS:

-
1. There exists a general perception that housing discrimination against Native Americans in the Bismarck metropolitan area is both real and serious. Testimony at a 1980 factfinding meeting held in Bismarck indicated some discrimination in the area's housing market is purposeful and patterned.
 2. The U.S. Department of Housing and Urban Development, pursuant to Title VIII of the Civil Rights Act of 1964, is the only Federal, State or local authority engaged in accepting, investigating and conciliating housing discrimination complaints in North Dakota. HUD resources are inadequate; present Federal budget figures indicate reduced, rather than increased Federal presence in local fair housing enforcement.
 3. Neither State nor local governments in North Dakota have any mechanism to deal with housing discrimination problems.
 4. Many North Dakota citizens are unaware or not adequately informed of their right to equal opportunity in housing and their right to file complaints with the U.S. Department of Housing and Urban Development.

RECOMMENDATIONS

-
1. The legislature of the State of North Dakota should enact a Human Rights Act at its earliest opportunity. This act should include fair housing provisions and should specify how these provisions are to be enforced.
 2. The North Dakota Department of Public Instruction should give priority to development of elementary and secondary course materials in history and social science areas that include the history, cultures, and contributions of American Indians, and should encourage North Dakota public schools to use these materials.
 3. The North Dakota Indian Affairs Commission should continue to take an aggressive and visible role in implementing those powers and duties set out in North Dakota Century Code by working closely with other State and Federal agencies to become a clearinghouse for the complaint process for Indian people, by coordinating a functioning referral system between agencies, and by developing and expanding informational programs to reach the minority public.
 4. If a Human Rights Act, or a Fair Housing Act should be passed by the North Dakota Legislature, the North Dakota Indian Affairs Commission should become a strong advocate for referrals to the monitoring agency.
 5. The North Dakota Indian Affairs Commission should continue a close working relationship to the Director of Indian Education Programs and assist, when necessary, in

fulfilling the goals of the Department of Public Instruction relative to Indian Education issues, specifically, the promotion of Indian study courses in schools and colleges of North Dakota.

6. More Native American residents of North Dakota should actively pursue State and local office, whether elective or appointive, in order to have more input in policy and decision-making and in order to react to those State and local policies which have immediate detrimental effect upon the State's American Indian population.

7. The Governor should officially encourage all State and local officials with power to appoint policy-making public administrators to include more minorities in government affairs; and the Governor should continue affirmative steps to seek out and appoint qualified minority citizens for government positions.

8. The North Dakota Board of Realtors and the North Dakota Realtor's Association and all local realtors' associations should develop or enhance educational programs for those in the construction, financing, selling or renting of housing to include, but not be limited to, the needs of minority clients and group cultural differences. Further, these groups should expand their informational programs to reach the general public and should insure that all information distributed includes a description of the complaint process.

9. The Bismarck-Mandan Community Housing Resources Board and the Community Action Program should take a more active role in furtherance of fair housing, specifically to include:

(1) education both by written materials and public contacts, of the community at large (as opposed to realtors) regarding fair housing rights and remedies;

(2) referral of fair housing complaints directly and immediately to HUD's Denver office for investigation and conciliation;

(3) public advocacy and support of equal opportunity in housing; and

(4) initiation, through application for HUD monies, of innovative housing programs such as a Fair Housing Center to plan policy, to counsel those with housing problems, and to organize support for equal housing throughout the North Dakota community.

10. The Burleigh County Housing Authority and the Burleigh County Commissioners should work together to establish a minority advisory committee to the Authority's board of directors. The advisory committee, preferably small in number, should include Native Americans nominated by and representative of local American Indian groups, as well as off-reservation Indians living in the Bismarck-Mandan area. The purpose of the advisory committee would be (a) to receive complaints from minority members of the community and

refer these complaints to the board, and (b) to make recommendations to the Burleigh County Housing Authority with respect to community relations and tenant policies.

NOTES

-
- 1 Senator Trumbull of Illinois in Senate debate, Congressional Globe, 39th Cong., 1st Session, p. 43.
 - 2 Id., Vol. III, p. 40.
 - 3 Transcript, Vol. III, p. 63.
 - 4 Id., p. 52.
 - 5 U.S., Commission on Civil Rights. Affirmative Action in the 1980's: Dismantling the Process of Discrimination. Washington, D.C., November 1981 p. 6.
 - 6 Above Property Rights, p. 1.

APPENDIX A

QUESTION: WHAT ARE TENANTS RIGHTS CONCERNING GRIEVANCES?

Grievance procedures are to be established and implemented by Public Housing Authorities (PHA's) to assure that PHA tenants are afforded an opportunity for a hearing if the tenant disputes within a reasonable time any PHA action or failure to act involving the tenant's lease with the PHA or PHA regulations which adversely affect the individual tenant's rights, duties, welfare, or status. This grievance procedure must be in the lease.

This grievance procedure is applicable to all individual grievances between the tenant and the PHA and is not used to settle disputes between the tenants, class grievances, or as a forum for initiating or negotiating policy changes between a group of tenants and the PHA. The term tenant limits access to the grievance procedure to the lessee, but the PHA may permit other members of a household to use the grievance procedure.

Any grievance shall be personally presented, either orally or in writing, to the PHA office or to the office of the project in which the complainant resides so that the grievance may be discussed informally and settled without a hearing. A summary of the discussion shall be prepared within a reasonable time and one copy shall be given to the tenant and one retained in the PHA's tenant file. The summary shall contain the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefor, and shall specify the procedures by which a hearing may be obtained if the complainant is not satisfied.

If a formal hearing is necessary, the complainant shall submit a written request for a hearing to the PHA or to the project office within a reasonable time after receipt of the summary of discussion. The written request shall specify the reason for the grievance and the action or relief sought. Grievances shall be presented before a hearing officer or hearing panel. A hearing officer or hearing panel shall be selected as follows:

(1) The hearing officer shall be an impartial, disinterested person selected jointly by the PHA and the complainant. If the PHA and the complainant cannot agree on a hearing officer, they shall each appoint a member of a hearing panel and the members so appointed shall select a third member. If the members appointed by the PHA and the complainant cannot agree on a third member, such member shall be appointed by an independent arbitration organization or by any other third party agreed upon by the PHA and the complainant.

(2) In lieu of the above procedure a PHA may provide for the appointment of a hearing officer or hearing panels by any method which is approved by the majority of tenants voting in an election or meeting of tenants held for the purpose.

If the complainant does not request a hearing then the PHA's disposition of the grievance shall become final. However, failure to request a hearing shall not constitute a waiver by the complainant of his right thereafter to contest the PHA's action in disposing of the complaint in an appropriate judicial proceeding.

Before a hearing is scheduled in any grievance involving the amount of rent which the PHA claims is due, the complainant shall pay to the PHA an amount equal to the amount of rent due and payable as of the first of the month preceeding the month in which the act or failure to act took place. The complainant shall thereafter deposit the same amount of monthly rent in an escrow account monthly until the complaint is resolved by decision of the hearing officer or hearing panel. These requirements may be waived by the PHA in extenuating circumstances. Unless so waived, the failure to make such payments shall result in a termination of the grievance procedure.

Upon completion of the requirements for requesting a hearing as stated above, a hearing shall be scheduled by the hearing officer or hearing panel promptly for a time and place reasonably convenient to both the complainant and the PHA. A written notification specifying the time, place and the procedures governing the hearing shall be delivered to the complainant and the appropriate PHA official.

The hearing shall be held before a hearing officer or hearing panel as appropriate. The complainant shall be afforded a fair hearing providing the basic safeguards of due process which shall include: The opportunity to examine before the hearing and, at the expense of the complainant, to copy all documents, records and regulations of the PHA which are relevant to the hearing. Any document not so made available after request by the complainant may not be relied on by the PHA at the hearing; The right to be represented by counsel or other person chosen as his or her representative; The right to a private hearing unless the complainant requests a public hearing; The right to present evidence and arguments in support of his or her complaint, to controvert evidence relied upon by the PHA or project management, and to confront and cross-examine all witnesses on whose testimony or information the PHA or project management relies; and has a right to a decision based solely and exclusively upon the facts presented at the hearing. The hearing officer or hearing panel may render a decision without proceeding with the hearing if the hearing officer or hearing panel determines that the decision of the issue has been previously decided in another hearing. If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for not more than five business days or make a determination that the party has waived his rights to a hearing. Both the PHA and the complainant shall be notified of the determination by the hearing officer or hearing panel. At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the PHA must sustain the burden of justifying the PHA action or failure to act against which the complaint is directed.

The hearing shall be conducted informally by the hearing officer or hearing panel and oral or documentary evidence pertinent to the facts and issues raised by the complaint may be received without regard to admissability under the rules of evidence applicable to judicial proceedings. The hearing officer or hearing panel shall require the PHA, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer or hearing panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of relief sought, as appropriate.

The complainant or the PHA may arrange, in advance and at the expense of the party making the arrangements, for a transcript of the hearing. Any interested party may purchase a copy of such transcript.

The hearing officer or hearing panel shall prepare a written decision, together with the reasons therefor, within a reasonable period of time after the hearing. A copy of the decision shall be sent to the complainant and the PHA. The PHA shall retain a copy of the decision in the tenant's folder. A copy of such decision, with all names and identifying references deleted, shall also be maintained on file by the PHA and made available for inspection by a prospective complainant, his representative, or the hearing officer or hearing panel.

The decision of the hearing officer or hearing panel shall be binding on the PHA which shall take all actions, or refrain from any actions, necessary to carry out decisions unless the PHA Board of Commissioners determines, within a reasonable period of time, and promptly notifies the complainant of its determination, that the grievance does not concern PHA action or failure to act in accordance with or involving the complainant's rights, duties, welfare or status; or that the decision of the hearing officer or hearing panel is contrary to applicable Federal, State or local law, HUD regulations or requirements of the annual contributions contract between HUD and the PHA.

The costs of the administration of the grievance procedure must be borne by the PHA unless otherwise provided in the regulations.

Source: David Bohl, Housing Management Officer, U.S. Department of Housing and Urban Development, Region VIII Office of Housing Management, Denver, Colorado, March, 1982. Distributed as public information throughout North Dakota by HUD and other agencies.



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
 REGIONAL/AREA OFFICE
 EXECUTIVE TOWER - 1405 CURTIS STREET
 DENVER, COLORADO 80202

1337

February 26, 1981

REGION VIII

IN REPLY REFER TO:

8ES

Honorable Ernest Sands
 Lieutenant Governor of North Dakota
 Presiding Officer, North Dakota Senate
 North Dakota State Capitol Building
 Bismarck, North Dakota 58505

Dear Mr. Sands:

The U.S. Department of Housing and Urban Development, Office of Regional Fair Housing and Equal Opportunity, Denver, supports House Bill 1399, currently being considered by the North Dakota Senate. On September 19-20, 1980, we participated in a fact finding meeting on Fair Housing issues in Bismarck, North Dakota, sponsored by the North Dakota Advisory Committee to the U.S. Commission on Civil Rights. Testimony provided during this two-day meeting indicated widespread problems of discrimination against Indian people particularly in rental housing.

Mr. Michael Payton, President of the Bismarck/Mandan Apartment Managers Association, testified at the fact finding meeting:

"I might point out for the record, that there is discrimination in housing in this community. We believe that is so. On the other hand, one of the things that makes that is a low rate of vacancy. And when the apartment owner can pick and choose his tenants, so to speak, that lends itself to a certain degree of discrimination."

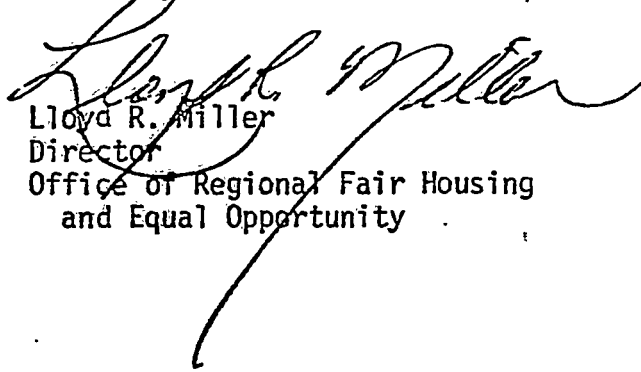
Mr. Payton's statement that the low vacancy rates and high demand for housing results in greater discrimination against minority groups would indicate the possibility of more housing discrimination problems in North Dakota's future. Housing discrimination may be particularly problematic in communities such as Bismarck which are experiencing population growth combined with housing shortages.

Page 2

The vast majority of North Dakota citizens who participated in the September Fair Housing meeting preferred working with State and local agencies on civil rights problems. Very few of these individuals testifying about housing discrimination experiences had ever filed a formal complaint. The major reason for not filing these complaints appears to be the absence of state or local fair housing laws. The federal enforcement agencies in Denver are considered too distant for many North Dakota people to feel comfortable about filing a complaint.

We strongly support House Bill 1399 and hope that this legislation will contain adequate funding provisions to ensure effective enforcement.

Sincerely,



Lloyd R. Miller
Director
Office of Regional Fair Housing
and Equal Opportunity

EXCERPTS FROM PROPOSED HUMAN RIGHTS LEGISLATION

NORTH DAKOTA LEGISLATIVE ASSEMBLY 1979

HOUSE BILL No. 1360

A BILL for an Act to provide a Human Rights Act to prohibit discrimination against persons; to amend and reenact section 23-21.1-10 and subsection 11 of section 26-30-04 of the North Dakota Century Code, relating to penalties for unlawful acts by cemetery organizations, and unfair insurance practices; and to repeal section 23-21.1-08 of the North Dakota Century Code, relating to denying privilege of interment because of race or color. .

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. DECLARATION OF POLICY.) It is the policy of North Dakota to prohibit discrimination because of race, color, religion, national origin, sex, age, the presence of any mental or physical disability, or status with regard to public assistance. It is also the policy of North Dakota to prevent and eliminate discrimination in all employment relations; all places of public accommodation; housing; the provision of any state or local government services to its citizens; education; credit transactions; insurance transactions; and to deter those who aid, abet, or induce discrimination, or those who coerce others to discriminate.

SECTION 2. DEFINITIONS.) In this Act, unless the content or subject matter otherwise requires:

1. "Court" means the district court in the judicial district in which the alleged discriminatory practice occurred.

2. "Discriminatory practice" means any act or attempted act which because of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, or status with regard to public assistance results in the unequal treatment or separation or segregation of any person, or denies, prevents, limits, or otherwise adversely affects, or if accomplished would deny, prevent, limit, or otherwise adversely affect, the benefit or enjoyment by any person of employment, labor union membership, housing accommodations, property rights, education, public accommodations, public services, credit transactions, or insurance transactions.

10. "Public accommodations" means each and every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuitously. Public accommodation shall not mean any bona fide private club or other place, establishment, or facility which is by its nature distinctly private, except when such distinctly private place, establishment, or facility caters or offers services, facilities, or goods to the general public for fee or charge or gratuitously, it shall be deemed a public accommodation during such period of use.

11. "Public service" means any public facility, department, agency, board, or commission, owned, operated, or managed by or on behalf of the state of North Dakota, any political subdivision thereof, or any public corporation.

SECTION 3. EMPLOYER'S DISCRIMINATORY PRACTICES.) It is a discriminatory practice for any employer to fail or refuse to hire a person; to discharge an employee; or to accord adverse or unequal treatment to any person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or any term, privilege, or condition of employment, because of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, or status with regard to public assistance.

SECTION 5. LABOR ORGANIZATION'S DISCRIMINATORY PRACTICES.) It is a discriminatory practice for any labor organization to deny full and equal membership rights to an applicant for membership or to a member; to expel, suspend, or otherwise discipline a member; or to accord adverse, unlawful, or unequal treatment to any person with respect to the person's hiring, apprenticeship, training, tenure, compensation, upgrading, layoff, or any term or condition of employment because of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, or status with regard to public assistance.

SECTION 6. CERTAIN EMPLOYMENT ADVERTISING DEEMED DISCRIMINATORY.) It is a discriminatory practice for any employer, employment agency, labor organization, or the employees, agents, or members thereof directly or indirectly to advertise or in any other manner indicate or publicize that individuals of any particular race, color, religion, sex, national origin, age, mental or physical disability, or status with regard to public assistance are unwelcome, objectionable, not acceptable, or not solicited for employment or membership.

SECTION 8. QUALIFICATION BASED ON RELIGION, SEX, NATIONAL ORIGIN, AGE, OR THE PRESENCE OF ANY MENTAL OR PHYSICAL DISABILITY NOT DISCRIMINATORY.) Notwithstanding sections 3 through 6, it is not a discriminatory practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment, on the basis of religion, sex, national origin, age, or the presence of any mental or physical disability in those circumstances where religion, sex, national origin, age, or the presence of any mental or physical disability is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

SECTION 9. SENIORITY, MERIT, OR OTHER MEASURING SYSTEMS AND ABILITY TESTS NOT DISCRIMINATORY.) Notwithstanding sections 3 through 6, it is not a discriminatory practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, or status with regard to public assistance; nor is it a discriminatory practice for an employer to give and to act upon the results of any professionally developed ability test, provided that such test, its administration or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, or status with regard to public assistance.

SECTION 12. DISCRIMINATORY HOUSING PRACTICES BY OWNER OR AGENT.) It is a discriminatory practice for any owner of rights to housing or real property or the owner's agent or any person acting under court order, deed of trust, or will to:

1. Refuse to transfer any interest in real property or housing accommodation to any person because of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, or status with regard to public assistance.
2. Discriminate against any person in the terms, conditions, or privileges of the transfer of any interest in real property or housing accommodation because of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, or status with regard to public assistance.
3. Indicate or publicize that the transfer of any interest in real property or housing accommodation by persons is unwelcome, objectionable, not acceptable, or not solicited because of any particular race, color, religion, sex, national origin, age, the presence of any mental or physical disability, or status with regard to public assistance.

SECTION 13. DISCRIMINATORY HOUSING PRACTICE BY FINANCIAL INSTITUTION OR LENDER.) It is a discriminatory practice for any person, or agent or employee of the person, who lends or provides other financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair, or maintenance of any real property to discriminate in lending or financial assistance decisions, or in the extention of services in connection therewith, based on the race, color, religion, sex, national origin, age, the presence of any mental or physical disability, or status with regard to public assistance of the person or group of persons seeking the loan or financial assistance.

SECTION 15. PUBLIC ACCOMMODATIONS - DISCRIMINATORY PRACTICES.) It is a discriminatory practice for any person engaged in the provision of public accommodations to fail to provide to any person access to the use of any benefit from the services and facilities of such public accommodations; or to accord adverse, unlawful, or unequal treatment to any person with respect to the availability of such services and facilities, the price or other consideration therefor, the scope and equality thereof, or the terms and conditions under which the same are made available, because of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, or status with regard to public assistance.

SECTION 16. PUBLIC SERVICES - DISCRIMINATORY PRACTICES.) It is a discriminatory practice for any person engaged in the provision of public services to fail to provide to any person access to the use of and benefit thereof, or to provide adverse or unequal treatment to any person in connection therewith because of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, or status with regard to public assistance.

SECTION 17. ADVERTISING PUBLIC ACCOMMODATIONS OR SERVICES - DISCRIMINATORY PRACTICES - EXCEPTIONS.) It is a discriminatory practice for any person to advertise or in any other manner indicate or publicize that the patronage of persons of any particular race, color, religion, sex, national origin, age, mental or physical disability, or status with regard to public assistance is unwelcome, objectionable, not acceptable, or not solicited. This section or this Act does not relate to notices or advertisements banning minors from places where alcoholic beverages are being served.

SECTION 18. CREDIT TRANSACTIONS - DISCRIMINATORY PRACTICES.) It is a discriminatory practice for any person, whether acting as an individual or for another, to deny credit, increase the charges or fees for or collateral required to secure any credit, restrict the amount or use of credit

extended, impose different terms or conditions with respect to the credit extended to any person, or any item or service related thereto because of race, color, religion, national origin, sex, age, mental or physical disability, or status with regard to public assistance. This section does not prohibit any party to a credit transaction from considering the credit history of any person or from taking reasonable action thereon.

SECTION 19. INSURANCE TRANSACTION - DISCRIMINATORY PRACTICES.) It is a discriminatory practice for any person in connection with an insurance transaction to fail to issue or renew insurance to any person because of race, color, religion, national origin, sex, or status with regard to public assistance.

SECTION 20. CONCEALING, AIDING, COMPELLING, OR INDUCING UNLAWFUL DISCRIMINATION - THREATS OR REPRISALS.) It is a discriminatory practice for any person to conceal any unlawful discrimination or aid, abet, compel, coerce, incite, or induce another person to discriminate, or by means of any trick, artifice, advertisement, or sign, or by the use of any form of application, or the making of any record or inquiry, or by use of any device whatsoever to bring about or facilitate discrimination, or to engage in or threaten to engage in any reprisal, economic or otherwise, against any person by reason of the latter's filing a complaint, testifying, or assisting in the observance and support of the purposes and provisions of this chapter because of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, or status with regard to public assistance.

SECTION 21. DISTRICT COURT JURISDICTION AND VENUE OF PROCEEDING.) A civil action may be brought in the district court in the county in which the alleged discriminatory practice under this Act occurred. The district court may enter any order or judgment which it deems appropriate, including preliminary and permanent injunctions.



North Dakota
ASSOCIATION
of REALTORS

518 N. 5TH ST. • BISMARCK, NORTH DAKOTA 58501
PHONE (701) 258-2361

1981-82

June 1, 1982

JUN 7 1982

PRESIDENT
Robert Weymouth, CRS, GRI

PRESIDENT ELECT
Sandi Frenzel, GRI

VICE PRESIDENT
Delmaine Scholler

SECRETARY
Gary Gonser, CRS, GRI

TREASURER
Robert Willer, CRS, GRI

DIRECTORS-AT-LARGE
Bill Daniel, GRI
Sue Navrat, GRI
Bernard Pellenwessel, CRS, GRI

NATIONAL DIRECTORS
Betty Lou Alberts, CRS, GRI
Chuck Huber, GRI

EXECUTIVE VICE PRESIDENT
Claus H. Lombke, GRI

ADMINISTRATIVE ASSISTANT
Barbara Massot

Past Presidents

- 1981 . Barbara Buchanan, CRB, GRI
- 1980 Bob Freeberg, CRB, CRS
- 1979 John Dardis, GRI
- 1978 Jerome Dwyer
- 1977 Lillian Vonnett, GRI
- 1976 Fred Bartholomew, GRI
- 1975 Roland Gorder, GRI
- 1974 George Platt, GRI
- 1973 Reuben Liechty, GRI
- 1972 Dan Halvorson, CRS, GRI
- 1971 Jim Jensen, GRI
- 1970 E. J. Collette, Jr., GRI
- 1969 George Gaukler
- 1968 Harry Arneson, Jr.
- 1967 Duane Liffbrig
- 1966 Robert Peterson
- 1965 Charles Johnson
- 1964 Ray Fladland, CRB, GRI
- 1963 Walter Sapa
- 1962 Ernest Szarkowski
- 1961 James W. Johnston
- 1960 Clayton Johnson
- 1959 Stanley A. Gorder
- 1958 Oral Holm, GRI
- 1957 Fred Hettick
- 1956 Clair Watne
- 1955 B. T. Rodgers
- 1954 Fred Ackerman
- 1953 J. S. Fevoid
- 1952 Art Fredericksen
- 1949-51 W. H. Linwell
- 1948 J. M. Schmierer
- 1944-47 T. Clem Casey

Joanne Birge
Regional Attorney
U.S. Commission on Civil Rights
Brooks Towers - Suite 2235
1020 15th Street
Denver, Colorado 80202

re: Civil Rights report draft

Dear Ms. Birge,

Thank you for sending me excerpts of the proposed draft report and allowing for my comments.

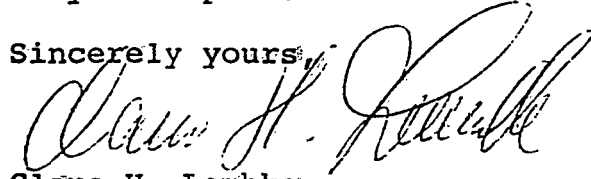
I would like to call your attention to the last paragraph of page 70 and the entire page 71. There must be some inaccurate recording regarding my testimony.

1. The North Dakota Association of REALTORS in cooperation with all its 8 local Boards actually distributes 5 different Brochures on equal opportunities in Housing to each and everyone of its members. In addition to these brochures, that are directed at individual REALTORS and Board officers, all local Boards advised all their members that special complaint forms are available at each local Board office for the use of the general public.
2. In contradiction to your report, I would like to inform you that our Association and in particular the Professional Standards Committees are constantly monitoring the practices of members that might indicate discriminatory practices. Upon being informed of any alleged violation these committees will instigate and hold hearings as prescribed in detail in our code of ethics, the By-laws and the Affirmative Marketing Agreement. Upon request, I'll gladly furnish copies of our rules and regulations that specifically dictate and provide a means of hearing complaints against individual members or REALTORS owned companies.

I firmly believe that our vigorous education and information programs over the past years have to be credited with the fact that very few if any complaints have been filed against any of our members in regard to discriminatory practices in the sale and purchase of housing in North Dakota.

Please let your records reflect this corrected information as we are just as interested as you to have the truth published in your report.

Sincerely yours,



Claus H. Lembke
Executive Vice President
North Dakota Association of REALTORS

CHL/vlp

2.

10.