

A Sheltered Crisis: The State of Fair Housing in the Eighties

Presentations at a consultation sponsored
by the United States Commission on Civil Rights
Washington, D.C.
September 26-27, 1983



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CONTENTS

Keynote Address	1
Housing Discrimination: An Overview by Robert C. Weaver	1
Demographic Changes for 1970-1980: Implications for Federal Fair Housing Policy ..	7
Population Growth and Spatial Distribution by Joe Darden	7
Suburban Racial Segregation and the Segregative Actions of Government: Two Aspects of Metropolitan Population Distribution by Yale Rabin.....	31
The Effects of the Recession and Housing Supply on Fair Housing Goals, Public and Private	54
The Effects of the Recession and Housing Supply on Fair Housing by Henry Schechter	54
Housing Vouchers: Its Effects on the Supply and Distribution of Housing by John Palffy	64
Effects of the Recession and Housing Supply on Fair Housing Goals by William North.....	70
Effects of the Recession and Housing Supply on Fair Housing Goals by Cushing Dolbeare.....	75
Creative Financing and Discrimination	83
Discrimination in Home Mortgage Financing by Glenda Sloane	83
Address by Thomas L. Clark.....	90
Creative Forms of Finance Discrimination by Theresa Watson.....	94
Hispanics and Fair Housing: The Neighborhood Development Issue by Jorge N. Hernandez.....	100
Discrimination Against Women	104
Discrimination Against Women in Housing Finance by Dorothy S. Ridings	104
Women With Children in Today's Housing Market by Sue A. Marshall.....	110
Discrimination Against Hispanic Women in Housing by Irene Packer.....	114
Housing Discrimination Against Families With Children: A Growing Problem of Exclusionary Practices by Carol Golubock	128
Overview of Federal Housing Policy: Past and Present	133
Federal Housing Policy and Equal Opportunity by Martin E. Sloane.....	133
Persistent Mechanisms of Racial and National Origin Discrimination	143
A Sheltered Crisis: The State of Fair Housing Opportunity in the Eighties by Diana Pearce.....	143
Housing Discrimination: A New Technology by William R. Tisdale	156
America's Blind Spot: The Devastating Impact of Residential Segregation by Christine Klepper	162

Presentation by W. Scott Davis	171
Hispanic America: Limited Housing Options by Jose S. Garza	174
Urban Revitalization or Gentrification and Dislocation	178
The Extent, Causes, and Consequences of Urban Gentrification by Daphne Spain	178
Urban Revitalization or Gentrification and Dislocation by George R. Genung ...	189
Displacement and Dislocation of Low-Income Asians from Low-Cost Housing Units Due to Urban Redevelopment—San Francisco and Oakland Experience by Edwin M. Lee.....	200
Fair Housing Advocacy in the Crucible of Urban Revitalization by John O. Calmore.....	204
Zoning: Affirmatively to Include or Exclude	209
Statement by Carl Bisgaier.....	209
Report on the Question of Zoning by Richard F. Bellman.....	214
Special District Zoning in New York City's Chinatown: A Design for Destruction by Margaret Fung.....	219
Housing and Development Restrictions and Social Equity by H.M. Franklin	223

Keynote Address

Housing Discrimination: An Overview

Robert C. Weaver*

As in all aspects of American life, race discrimination has been and remains widely prevalent in housing, where it is even more deeply entrenched and stubborn than elsewhere. As in education, segregation in housing breeds discrimination. The consequences are limited supply, fewer options, restricted mobility, and inferior services, facilities, and infrastructure.

Paradoxical as it may seem today, the black ghetto is of comparatively recent origin, although some racial residential homogeneity has always existed in urban America. Slavery required blacks held in bondage to live close to their white owner or the latter's surrogates. Thus the older cities of the antebellum South, such as Charleston and New Orleans, had generally mixed racial residential patterns. Before Emancipation, free urban blacks in the South, aptly described as slaves without masters,¹ lived for the most part in poor neighborhoods and in unbelievably inadequate structures. Yet no unitary ghetto developed. Free blacks, the vast majority of whom were poor and more residentially segregated than slaves, resided in many low-income sections of most South cities. They lived close to whites of similar incomes. The occasionally affluent among them frequently owned homes in the finest residential neighborhoods of many cities of the old South.²

* First Secretary of Housing and Urban Development; President, National Committee Against Discrimination in Housing.

¹ Ira Berlin, *Slaves Without Masters: The Free Negro in the Antebellum South* (New York: Pantheon Books, 1974).

In these cities, the traditional practice of black domestics living either in or in close proximity to their place of employment persisted after slavery. By the beginning of the 20th century, however, decline in the number of domestic servants, exclusion of blacks from newly developed residential areas in the cities, and growth of the black population facilitated a significant increase in residential segregation. The newer cities of the South, like Durham, Tulsa, and Miami, embraced patterns of racial separation in housing more easily and rapidly.

With the exception of Philadelphia, the proportion of blacks in northern cities was quite small throughout the 19th century. Even New York and Chicago had few blacks; the 30,000 in New York at the turn of the century were less than 2 percent of the total. By 1910 the 90,000 in that city, in part a consequence of annexation of additional boroughs, placed a strain upon the supply of housing available to them. This, however, was highly atypical. As in the South, the low incidence of residential segregation in the urban north was due partly to blacks' concentration in domestic service and residence in servants' quarters. Because of their small numbers, black residents did not arouse apprehension of minority inundation, and thus the presence of black

² *Ibid.*, pp. 252, 254, 257.

neighbors did not become a great threat to whites in the area.³ Available data indicate that, in the last decade of the century, blacks in New York and Boston were less spatially segregated than the new European immigrant groups.⁴

In the decade 1900–1910, the number of blacks in many northern cities increased, but their proportion in the total population declined because of the large European immigration. Blacks were still less residentially segregated than were a number of the new European groups. The rate of black migration increased during the next two decades, and their proportion in many northern cities' populations grew sharply as European immigration declined. Racial residential segregation increased too.⁵ As in the South, decline in domestic service employment reduced racial dispersion, and exclusion of blacks from newly developed areas had a similar impact.

The Taeubers summarized the situation in these words:

Those cities in both North and South which already had sizeable Negro populations in 1910 generally gained additional Negroes between 1910 and 1930, and housed them in an increasingly segregated pattern.⁶

The most prophetic development affecting the housing of blacks early in the 20th century was initiation of municipal residential segregation ordinances. In 1910 Baltimore passed such a law which in effect designated white and black residential blocks. Over a dozen cities, including Atlanta, Birmingham, Louisville, New Orleans, and Richmond, followed suit.⁷ These ordinances varied in content, but all were designed to extend over coverage of discriminatory legislation to housing. By 1917 the Supreme Court invalidated the Louisville ordinance and subsequently struck down similar laws in New Orleans and Richmond.

With the first great migration of blacks from the South to northern cities during World War I, there was enormous pressure for shelter at their destinations. This generated intense competition for housing and apprehension that blacks would take over

neighborhoods. Lacking a traditional pattern of segregation laws, northern cities turned to private agreements or covenants to forestall black occupancy in areas delineated in the covenants. Property owners' associations and local real estate boards sponsored promotion of these exclusionary instruments. Both ordinances and covenants supplemented acts of violence, social pressure, paucity of mortgage finance for blacks, and differentiation of the housing supply by real estate agents. Each of these developments interacted; together they perpetuated and accelerated racial residential segregation. In retrospect, however, it appears that the initial resistance to black residents had been concentrated in specific neighborhoods. It found expression in housing segregation ordinances and particularly in racial covenants only after professional advocates of residential separation had spent much time and money to propagandize its necessity and desirability.⁸

Even more crucial was the endorsement and *de facto* seal of approval of racial covenants during the 1930s and 1940s from the principal Federal housing agency, the FHA. This not only made the highly discriminatory instrument respectable but also encouraged the real estate, mortgage, and home building industries to champion unabashedly ghetto patterns of living, downgrade the credit standing of minority purchasers, and articulate the false concept that black occupancy *per se* depressed property values.⁹

Although race restrictive covenants broke down under sustained pressure of mounting nonwhite effective demand for housing, they extracted a considerable toll from blacks and other nonwhites. As I observed some 35 years ago:

Covenants delay the movement [of an expanding population], make the final breakthrough a mass movement, and create vested interests of the part of present occupants to keep Negroes out. They can be and are used as instruments for manipulating the market so as to withhold a segment of the demand until vacancies increase and the new purchaser-groups can be used to sustain prices which otherwise

President's Conference on Home Building and Home Ownership, 1932), pp. 35–37.

⁸ Robert C. Weaver, *The Negro Ghetto* (New York: Harcourt, Brace, and Co., 1948), pp. 39–40.

⁹ For early challenges to this concept, see Weaver, *The Negro Ghetto*, ch. XV; Charles Abrams, *Forbidden Neighbors* (New York: Harper and Brothers, 1955), pp. 285–92; Luigi Laurenti, *Property Values and Race: Studies in Seven Cities* (Berkeley, Cal.: University of California Press, 1960).

³ Stanley Lieberman, *A Piece of the Pie: Blacks and White Immigrants Since 1980* (Berkeley, Cal.: University of California Press, 1980), p. 277.

⁴ *Ibid.*, pp. 268–69.

⁵ *Ibid.*, pp. 290–91.

⁶ Karl E. Taeuber and Alma F. Taeuber, *Negroes in Cities: Residential Segregation and Neighborhood Change* (New York: Anthenum, 1969), p. 55.

⁷ Charles S. Johnson, *Negro Housing* (Washington, D.C.: The

would fall. When a change in occupancy finally comes, the pent-up demand for housing among colored people sustains prices at least until the change has been completed.¹⁰

Thus their impact in the central city was primarily a delay tactic, costly for blacks, occasioning overcrowding, high area densities, and artificially high prices. In new subdivisions and in other neighborhoods removed from the Black Belt, they were a more lasting impediment. This followed from the absence of strong built-up pressure for black penetration upon such locations.

By the mid-1930s the gatekeepers in housing—real estate dealers, mortgage bankers, and related financial institutions, appraisers, and homebuilders—had become committed to the following principles:

- There were three separate housing markets; those for whites, nonwhites, and mixed occupancy.
- Racial homogeneity was essential for stability and desirability of residential areas.
- Inharmonious racial groups should be prohibited from residential developments.
- Change in social or racial occupancy generally contributed to instability and decline in property value.

FHA had articulated those precepts in its early *Underwriting Manuals*. Both the Federal Government and the housing industry acted in accordance with them, and, as a result, blacks were almost completely excluded from new construction and largely denied access to existing structures in the suburbs. The white noose around the central city was firmly in place.

Exclusion of blacks from suburbia inflicted a high level of discrimination upon them. This was especially true after World War II when FHA mortgage insurance and VA loan guarantee programs, as well as massive Federal highway building and income tax policy, fueled the great white trek to suburbia.¹¹ Between 1934 and 1960, FHA single-family mort-

gages covered over 5 million housing starts, some 21 percent of the total.¹² Only 2 percent of the FHA-insured loans were made to blacks.¹³ The economic costs of such discrimination were multiple. Some of the greatest were denial of government-backed, low downpayment, long-term loans, slight participation in enforced or unconscious saving programs, inability to purchase property with great potential for appreciation and a hedge against inflation, and exclusion of the more affluent minorities from significant income tax benefits.

Two major changes occurred between 1960 and 1968. First a Federal fair housing policy emerged. It provided a commitment and some machinery for combatting discrimination in a wide segment of the housing market. The second was a significant expansion in the geographic coverage and volume of the subsidized housing program so that in 1970 subsidized starts constituted 29.3 percent of that year's total starts.¹⁴ The 1968 Housing and Urban Development Act not only authorized two new subsidized housing programs but also removed the requirement for local government approval except for compliance with building and zoning regulations. Despite the lingering impediment of exclusionary zoning,¹⁵ for the first time new housing for lower income families appeared in significant numbers in suburbs.¹⁶

The General Accounting Office characterized the 1968 subsidized rental program as "the foremost example of Government assistance for privately developed rental housing," adding that it "was intended primarily to serve moderate income tenants and it does. . . ."¹⁷ The impact of this program and the improved economic status of blacks contributed to the opening of the suburbs to them. The first increased the supply of standard housing at reasonable rentals (and sales prices), and the second augmented the housing purchasing power of blacks. Lacking was vigorous enforcement of the 1968 fair housing law.

income housing was exclusionary and therefore unconstitutional. The State Supreme Court further ordered rezoning and additional affirmative action, including minimum amounts of lower income housing in new developments, density incentives, and use of Federal subsidies. *Fundamentals Fairness in Zoning: Mount Laurel Reaffirmed* (Washington, D.C.: The Potomac Institute, Inc. 1983), pp. 2-3.

¹⁶ David Falk and Herbert M. Franklin, *Equal Housing Opportunity: The Unfinished Federal Agenda* (Washington, D.C.: The Potomac Institute, 1976), p. 11.

¹⁷ General Accounting Office, *Section 236—An Evaluation with Lessons for the Future*, 1978, pp. 1, 4.

¹⁰ Weaver, *The Negro Ghetto*, p. 235.

¹¹ Weaver, "The Suburbanization of America," *School Desegregation—The Courts and Suburban Migration* (Washington, D.C.: U.S., Commission on Civil Rights, 1977), pp. 29-33, 38-40.

¹² U.S., Department of Housing and Urban Development, *1974 Statistical Yearbook*, 1976, p. 117.

¹³ U.S., Commission on Civil Rights, *Twenty Years After Brown: Equal Opportunity in Housing*, 1975, footnote 1, p. 41.

¹⁴ HUD table, "U.S. Housing Starts 1961-70, by Categories," Dec. 29, 1971.

¹⁵ Early in 1983 the Supreme Court of New Jersey unanimously upheld a trial court's decision that zoning which banned lower

It is difficult to evaluate the impact of fair housing legislation upon racial residential patterns if, for no other reason, because in periods of blacks' increasing spatial mobility, such patterns are fluid. Also, as in many economic and social issues, there is a temptation and tendency to confuse causation with correlation. At the same time, identification of increasing black suburbanization with residential integration is seductive, serving to assuage the consciences of those troubled by the stubborn tenacity of racial discrimination. This much, however, may be said with a degree of confidence: Fair housing legislation has contributed to the spatial mobility of blacks and the improved quality of their housing. It has not lived up to its promise for effectively attacking housing discrimination and accelerating integrated patterns of residence. During the 1960s small reductions in racial residential segregation typified cities in all regions of the Nation. The progress made in this direction during the 1970s was disappointing. For 28 cities with more than 100,000 blacks, the index of racial segregation in housing for 1980 was 81, down from 87 in 1970.¹⁸ Despite a decline of 10 points in the index of racial residential segregation in 8 of the cities during the decade, on the basis of the average decline of 6 points, at the end of 50 years the average city would still have an index of over 50.¹⁹

Census data indicate that the black population of the suburbs rose from 2.5 million in 1960 to 3.6 million in 1970 and nearly 6.2 million in 1980. As might have been expected, the racial residential patterns in suburbia varied from metropolitan area to metropolitan area. In some locations, where the black population was somewhat limited, more affluent blacks tended to live in relatively racially integrated communities and neighborhoods around the suburban perimeters. Where there were large concentrations of blacks, the tendency was for substantial black middle-class neighborhoods to appear in one or more corridors beyond the core areas, with some scattered areas of multiracial living elsewhere beyond the city's limits.

¹⁸ Karl Taeuber, "Racial Residential Segregation 1980," Glenda G. Sloane, *A Decent Home: A Report on the Continuing Failure of the Federal Government to Provide Equal Housing Opportunity* (Washington, D.C.: Citizens' Commission on Civil Rights, 1983), app. pp. 3-4.

¹⁹ *Ibid.*, p. 4.

²⁰ Louis Harris and Associates, "A Study of Attitudes Toward Racial and Religious Minorities and Toward Women," report to the National Conference of Christians and Jews, November 1978, p. 5.

Growth of suburbanization among minority middle-class households has occasioned a false notion that housing discrimination is no longer prevalent among blacks and Hispanics with sufficient money to purchase or rent housing in the private market. As recently as late 1978, for example, a Harris survey reported that only 23 percent of whites believed that blacks were discriminated against in the housing market.²⁰ Actually, however, with the passage of fair housing legislation, discriminatory practices have become more complex and subtle. Redlining is done behind closed doors and off the record. Steering is increasingly prevalent but usually effected with a new finesse, and fewer overt acts of discrimination are committed.

Accelerated suburbanization of blacks occurred at a time the suburbs closest to the cities experienced a shift from single-family to multifamily structures, increased population density, declined in socioeconomic status among residents, and growing conversion of land from residential to nonresidential use. It was this type of inner suburb that received the vast majority of black migrants rather than more remote ones with much better housing in more desirable neighborhoods and possessing characteristics associated with the more traditional image of suburbs.²¹ "There are a few more blacks and a few more Hispanics in a number of formerly all-white suburbs, but the great majority of nonwhite middle-class families are still moving into segregated or rapidly changing neighborhoods. There are more black suburbanities primarily because, in a number of cities, ghettos have expanded beyond the city line and into the inner suburbs."²²

Noting the propensity of blacks to move to suburbs where other blacks already reside, a study of the Joint Center for Political Studies found scant evidence that black suburbanization is effectively integrating the suburbs. "Rather it is more likely that sections of these suburbs are being transformed into predominantly black communities."²³ Since most measures of residential integration are oriented to a

²¹ William P. O'Hare, Jane-Yu Li, Roy Chatterjee, Margaret Shukur, *Blacks on the Move: A Decade of Demographic Change* (Washington, D.C.: Joint Center for Political Studies, 1982), p. 62.

²² Gary Orfield, *Toward a Strategy for Urban Integration: Lessons in School and Housing Policy from Twelve Cities* (New York: The Ford Foundation, 1981), pp. 53-54.

²³ O'Hare and Associates, *Blacks on the Move*, p. 65.

particular time, they do not shed much light upon the stability of multiracial neighborhoods.²⁴

There is evidence, however, that suburbanization usually upgrades the quality of shelter for the blacks involved. In this regard it duplicates many earlier racial neighborhood changes in the inner city. Also, while the proportion of blacks in the inner city declined slightly since 1970, blacks now comprise a much larger proportion of the total population of these cities. This is due to the fact that whites have continued to depart from cities at a decidedly more rapid rate than blacks.

For some time there has been controversy over the reason for this phenomenon. Conventional wisdom frequently ascribes it exclusively or almost exclusively to white flight from blacks. As early as the late 1950s,²⁵ and in a paper prepared for this Commission in 1975,²⁶ I challenged the validity of that assumption. A later study concluded that, while racial factors affected the choice of a suburban site by whites, deteriorating economic and social conditions were principal factors that precipitated the decision to move.²⁷ A subsequent analysis agreed that the gap between the rates of white and black suburbanization was attributable in part to black reluctance because of actual or anticipated racial discrimination in the housing market.²⁸ As recently as the spring of 1983, the authors of the above analysis concluded that the experience or the expectation of discrimination makes it harder for blacks to receive comparable housing and deters them from even looking in some places.²⁹

Fair housing legislation has been a factor in accelerating the suburbanization of blacks and loosening the white noose around the central city. At

the same time this suburbanization, while initially increasing interracial living patterns, may be creating racially transitional neighborhoods. Multiracial suburbs today may no more signify stable multiracial neighborhoods than have or do multiracial cities.

An impressive body of research indicates that racial discrimination in shelter remains widely prevalent.³⁰ This is due primarily to four circumstances, which also adversely affect women:

- inadequacies in the enforcement machinery contained in Title VIII.
- inefficacy of governmental enforcement of antidiscrimination housing laws, with slight improvement in the late 1970s, and culminating in the wholesale retreat of the Reagan administration from vigorous civil rights enforcement, especially in housing and education.³¹
- the 1973 moratorium, cutbacks, and, during the Reagan administration, virtual abandonment of subsidized housing,³² and
- recession for the Nation and depression for minorities.

In 1972 Kain and Quigley delineated that segregation in housing occasioned much more than economic deprivation.

Persistence, a thick skin, a willingness to spend enormous amounts of time house-hunting and minimum requirements for nonwhites who wish to move into white neighborhoods. These psychic and transition costs may be far more significant than out-of-the-pocket costs to Negroes considering a move out of the ghetto. Most blacks limit their search for housing to the ghetto; this limitation is more than geographic. There is less variety of housing services available inside the ghetto than outside; indeed, many

²⁴ Ibid, p. 68.

²⁵ Weaver, "Non-white Population Movements and Urban Ghettos," *Phylon*, vol. 20. (Third Quarter 1959), pp. 335-41.

²⁶ Weaver, "The Suburbanization of America," pp. 40-43.

²⁷ William H. Frey, "Central City White Flight" Racial and Nonracial Causes, *American Sociological Review*, vol. 44 (1979), pp. 425-48.

²⁸ John L. Goodman, Jr., and Mary Streitwieser, "Explaining Racial Differences in City-to-Suburb Residential Mobility," Working Paper 1384-09 (Washington, D.C.: Urban Institute, January 1982).

²⁹ Goodman and Streitwieser, "Explaining Racial Differences: A Study of City-to-Suburb Residential Mobility," *Urban Affairs Quarterly*, vol. 18, no. 3 (March 1983), pp. 301-25.

³⁰ For example: U.S. Department of Housing and Urban Development, "Measuring Racial Discrimination in American Housing Markets," *The Housing Market Practices Survey*, 1979; Glenda A. Sloane, *A Decent Home*; Orfield, *Toward a Strategy for Urban Intergration*; Morton J. Schussheim, "Housing: An Overview," *Housing—A Reader*, prepared by the Congressional

Research Service, Library of Congress, for the Committee on Banking, Finance and Urban Affairs and the Subcommittee on Housing and Community Development, House of Representatives, 98th Cong., 1st sess., 1983, pp. 18-21; *Congressional Record*, May 5, 1983, pp. S.6152-6153.

³¹ Orfield, "Federal Agencies and Urban Segregation: Steps Toward Coordinated Action," *Racial Segregation: Two Policy Views* (New York: Ford Foundation, 1979); Orfield, "Toward a Strategy for Urban Integration," pp. 15-17, 22-27; Sloane, *A Decent Home*, pp. 72-78; Elliot M. Minceberg, "A Retreat on Rights," *New York Times*, Aug. 21, 1983, p. E17; Robert K. Gordon, "Civil Rights Wars: Reagan's 'Sensitivity' Campaign," *New Republic*, issue 3,580 (Aug. 29, 1983), pp. 7-9.

³² Weaver, "Housing Allowances," *Land Economics*, vol. LI, no. 13 (August 1975), pp. 247-57; Robert Guenther, "Housing Vouchers Aren't Bane or Panacea, Tryouts Suggest," *Wall Street Journal*, June 16, 1982, p. 29; Chester H. Hartman, "The Evidence Against Housing Vouchers," *New York Times*, Mar. 8, 1982, p. A14; Weaver, "Fair Housing Policies," *Journal of Housing*, March/April 1983, pp. 33-34.

bundles of housing services are unavailable in the ghetto at any price.³³ The situation so described 11 years ago still exists with only slight abatement.

The history and process by which racial segregation and discrimination in housing have developed and hardened are long and complex. By contrast, the effort to eradicate housing discrimination as an operating force in the housing industry and establish free choice in housing is of only recent vintage—barely 20 years. It would be unrealistic to expect radical changes in racial demographic patterns in so relatively short a time or a complete turnabout so soon in entrenched housing industry practices and precepts.

But one could reasonably have anticipated much more rapid progress toward eradication of discrimination and in achievement of open occupancy. An impressive lesson of the last 50 years is the importance of the Federal Government in molding racial housing policy and patterns. Certain governmental changes, I am convinced, can establish equal hous-

³³ John F. Kain and John M. Quigley, "Housing Market Discrimination, Home Ownership, and Savings Behavior," *American Economic Review*, vol. 62, no. 3 (June 1972), p. 264.

ing opportunity as a fact of American life, and can establish it within the foreseeable future.

Let me state simply what is needed:

First, firm enforcement of existing fair housing laws.

Second, amendments to the Fair Housing Act to strengthen enforcement, so that all relevant parties will know that violations will be dealt with swiftly, surely, and effectively, and so that minorities and others against whom housing discrimination is practiced will gain confidence and assurance that their equal housing opportunity rights will be protected.

Third, a restoration of subsidized housing programs to provide the necessary bricks and mortar without which fair housing can only be a slogan devoid of much substance.

There is no question that the Nation has the legal skills, administrative capacity, and economic wherewithal to accomplish these three objectives. The real problem is whether the Nation—and particularly the Federal Government—is prepared to undertake the commitment and effort to do so.

Demographic Changes 1970-1980: Implications for Federal Fair Housing Policy

Population Growth and Spatial Distribution

Joe T. Darden*

According to the 1980 census, the resident population of the United States was 222.5 million in 1980. This represents an increase of 23 million people or 11.4 percent during the 1970 to 1980 decade. The United States is becoming a more diverse society racially and ethnically. While the total population increased by 11.4 percent between 1970 and 1980, some racial and ethnic groups grew at a more dramatic rate. The black population grew by 17 percent, from 22.6 million in 1970 to 26.5 million in 1980 (U.S. Bureau of the Census, 1981a). Persons of Spanish origin or Hispanics increased by 61 percent, from 9.1 million in 1970 to 14.6 million in 1980. The American Indian, Eskimo, and Aleut population increased 71 percent, exceeding 1 million for the first time since the Census Bureau began recording data on these groups. In 1980 the number of Asian and Pacific Islanders was 3.5 million, representing a substantial increase over the 1970 figure of 1.5 million.

As a percentage of the total United States population, the white majority has been reduced. Census figures show that whites constitute 188.3 million or 83.3 percent of the United States population; blacks,

11.7 percent; American Indians, Eskimos, and Aleutian, 0.6 percent; Chinese, Filipinos, Japanese, Asian Indians, Koreans, Vietnamese, Hawaiians, Samoans, and Guamanians, 1.5 percent. Others accounted for 3 percent of the population.

The spatial distribution of the United States population continues to be uneven as above average growth continues in the South and West at the expense of the North. In the 1970s people moved in substantial numbers from the older urbanized regions of the Nation, the Northeast, and North Central States, to the South and West, giving the South and West population increases between 1970 and 1980 of 20 and 24 percent, respectively, roughly twice the national average. The North Central States grew by only 4 percent and the Northeast by a mere 0.2 percent (Long and De Are, 1980). Every State in the West grew faster than the United States average, as did States in the South except Delaware and Maryland and the District of Columbia.

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The Spatial Distribution of Racial and Ethnic Groups

Among the total population of the United States, the nonwhite and Spanish origin populations have remained highly concentrated. Blacks, for example, constitute more than one-fifth of the population in seven States—Mississippi, South Carolina, Louisiana, Georgia, Alabama, Maryland, and North Carolina. In the District of Columbia 70.3 percent of the population was black in 1980. About half (50.7 percent) of the 1.4 million American Indians, Eskimos, and Aleuts live in the West. Almost 60 percent of the 3.5 million Asian and Pacific Islanders are located in the Pacific division which includes Hawaii, Alaska, California, Oregon, and Washington (Long and De Are, 1980). More than 60 percent of the 14.6 million Spanish origin population reside in three States: California, Texas, and New York. Almost 90 percent of Mexican Americans (Chicanos) live in the five southwestern States of Texas, New Mexico, Arizona, California, and Colorado; about 70 percent of Puerto Ricans outside the island live in New York, New Jersey, and Pennsylvania; about 60 percent of the Cuban Americans live in Florida, and another 21 percent are in New York; about two-thirds of Central/South Americans live in California and New York (National Commission for Employment Policy, 1982, p. 3).

Because most of the U.S. Spanish origin population (60 percent) is Mexican American, statistics on the Spanish origin population as a whole largely reflect the experiences of Mexican Americans and tend to obscure trends and problems of the other groups. In addition to their differences in spatial distribution, the several groups of Hispanics also differ in other important characteristics (e.g., immigrant status, age, education, and proficiency in English). (See National Commission for Employment Policy, 1982, p. 9.) Due to their different characteristics, the Hispanic groups may have different experiences in the housing market. Furthermore, Hispanics as a whole also have a different set of experiences in the housing market than both blacks and whites. Such differences will be discussed later.

Metropolitan and Nonmetropolitan Trends

The period of rapid metropolitan growth is over. Metropolitan areas, particularly the largest metropolitan areas, grew more slowly in the 1970s than the Nation as a whole (U.S. Department of Housing and Urban Development, 1980, pp. 1–10). In fact,

the lowest growth rates have occurred in the largest metropolitan areas. The New York metropolitan area, for example, the largest of all, experienced a loss of –5.7 percent between 1970 and 1980. In all, 9 of the 32 largest metropolitan areas lost population between 1970 and 1980.

This decline of metropolitan areas is clearly a reversal of previous trends. For many decades prior to 1970, the population of metropolitan areas, i.e., the larger central cities and their suburbs, typically grew more rapidly than that of their nonmetropolitan surroundings. Since 1970, in contrast, 1980 census data show that the metropolitan areas have grown by only 9.5 percent, compared with a 15 percent increase for nonmetropolitan areas (Long and De Are, 1980). Nonmetropolitan growth can be observed throughout the Nation. All regions registered larger increases in population and net migration in nonmetropolitan than metropolitan areas since 1970. Even in the South there has been a market increase in nonmetropolitan growth and a shift from heavy out-migration to net in-migration (U.S. Bureau of the Census, 1979). Who are these nonmetropolitan migrants?

Patterns of Class and Race

Recent migrants tended to be relatively educated—one in four had attended college. Only 10 percent of the households migrating to nonmetropolitan areas during the seventies had income below the poverty level while twice that many had income above the national median. Studies also indicate that most migrants to nonmetropolitan areas have stable or rising incomes. For example, only 26 percent of metropolitan to nonmetropolitan migrants in the Midwest during the mid-1970s reported declining incomes in the year after moving (Williams and Sofranko, 1979). By 1975 more than half of all nonmetropolitan workers were employed in service occupations. Recent migrants to nonmetropolitan areas are even more heavily concentrated in service occupations, especially professional services (U.S. Department of Housing and Urban Development, 1980, pp. 1–22). Nearly one in four nonmetropolitan workers is employed in manufacturing. Fewer than 5 percent are employed in agriculture. Finally, migrants to nonmetropolitan areas were overwhelmingly white. Only 1 in 20 persons moving from a metropolitan to a nonmetropolitan area in the mid-1970s was black (U.S. Department of Housing and Urban Development, 1980, pp. 1–19). Thus, the

relatively high rate of growth of nonmetropolitan areas in the 1970s was largely due to increases in the white population. More blacks and Hispanics moved from nonmetropolitan areas to metropolitan areas than went the other way (U.S. Department of Commerce, 1978). Thus, with respect to nonmetropolitan areas, blacks and Hispanics have been moving in opposite directions than whites (Joint Center for Political Studies, 1982, p. 32).

Differences in movement by class and race are also evident in the metropolitan area. Changes, however, did occur during the 1970s. The population of suburban areas has traditionally been overwhelmingly white and middle to upper income. At the time of the census in 1970, only 5 percent of the suburban population were black and only 8 percent were below the poverty level. By contrast, 22 percent of central city residents were black and 15 percent were below the poverty level (U.S. Department of Housing and Urban Development, 1980, pp. 1-10). Almost 75 percent of suburban households were husband-wife families and fewer than 10 percent were headed by a woman. More recent data indicates that more blacks and Hispanics, i.e., population groups that have been traditionally concentrated in the central cities, began to move to the suburbs in greater numbers during the seventies.

Black Suburbanization

The black population residing in suburban areas increased by almost 2.5 million during the 1970s. This represented an increase of 70 percent in the black suburban population, compared to an increase of only 16.4 percent in the black central city population (Joint Center for Political Studies, 1982, p. 49; U.S. Bureau of the Census, 1981). The substantial growth in the black population of the suburbs in the 1970s was a distinct change from the 1960s. Also, for the first time, there was a significant increase in the proportion of blacks in the total suburban population. The proportion rose from 4.8 percent in 1970 to 6.1 percent in 1980, after remaining constant during the fifties and sixties (Joint Center for Political Studies, 1982, p. 49). One reason for the increase in the black suburban population was the increase in black migration from central cities to suburbs. During the 1970s, net black migration to the suburbs amounted to 937,000.

There was a great deal of regional variation in black suburbanization. The South accounted for about 47 percent of all black suburban growth

during the 1970s. The suburbs in the North Central region and the West each experienced about 20 percent of the total growth in black suburban population, while the black suburban population of the Northeast grew by about 13 percent of the total (Joint Center for Political Studies, 1982, p. 53).

In terms of rate of growth, however the regional results were much different. The West experienced an increase of 69 percent in black suburban population during the 1970s. The black suburban population of the North Central region grew by 58.3 percent and that of the South by 37.8 percent, while the black suburban population of the Northeast grew by only 33.6 percent (Joint Center for Political Studies, 1982, p. 53). In other words, while the South experienced a larger volume of black suburbanization than any other region, the West had the greatest percentage increase.

Black suburbanization also varied by the size of the Standard Metropolitan Statistical Area. Seventy-five percent of the growth in the black suburban population during the decade occurred in the 37 SMSAs with a million or more people. In the North and West combined, 82 percent of the black suburban growth occurred in the largest SMSAs, while the corresponding figure for the South was only 67 percent (Joint Center for Political Studies, 1982, p. 58). There is also variation in black suburbanization between the largest SMSAs. For example, the rates of black movement to the suburbs were close to the rates for whites in Washington, Cleveland, St. Louis, Philadelphia, Newark, Los Angeles, and Miami, all of which experienced a large increase in black suburbanization. On the other hand, the rates of black suburbanization remained less than one-third of the rate for whites in Baltimore, Atlanta, New York, Boston, Chicago, Houston, Dallas, and New Orleans (Nelson, 1980). Despite the increasing rate of black suburbanization in the 1970s, the movement of the number of whites to the suburbs during the period was significantly greater. In fact, the number of whites moving to the suburbs during the period outnumbered blacks by more than five to one (U.S. Department of Housing and Urban Development, 1980, pp. 1-13).

Black Retention in Central Cities

This differential movement of blacks and whites over several decades has resulted in the black population becoming a larger percentage of the central city population even though the total central

city population itself has been declining. Blacks now comprise about 24 percent of the central city population up from 12 percent in 1950, but the portion of the national population that resides in central cities fell from 35.5 percent in 1950 to 30 percent in 1980 (Joint Center for Political Studies, 1982, p. 34).

Although blacks comprise 24 percent of the population of all central cities, several central cities such as Washington, D.C., Atlanta, Detroit, Newark, Gary, Birmingham, New Orleans, Baltimore, Richmond, and Wilmington, Delaware are already more than 50 percent black. These central cities are among the 553 total incorporated places in the United States with black majorities. These places were distributed over 24 States in 1980 (table 1 and figure 1). About two-thirds of the States and 90 percent of the places were located in the South. Majority black places ranged in size from less than 200 people to over 1 million and comprised less than 1 percent of the black population in such States as Tennessee and Texas and more than 68 percent of the black population of Michigan.

In sum, such differential movement of blacks and whites over central cities, suburbs, and nonmetropolitan areas has resulted in continued racial separation over time. In 1950 the index of dissimilarity between blacks and whites over central cities, suburbs, and nonmetropolitan areas was only 13.1 percent. By 1960 the index had increased to 21.4 percent. In 1970 the index had increased to 30.3 percent and in 1980 it stood at 32.8 percent (table 2). Such continued increase in the index which ranges from "0" (no dissimilarity) to 100 (complete dissimilarity) lends support to the observation of more than a decade ago that "America is moving towards two societies—one black and one white separate and unequal" (National Advisory Commission on Civil Disorders, 1968). The continued separation on the basis of race has very important social and economic consequences, not only for blacks, but for Hispanics and other residents who are disproportionately concentrated in central cities. The 1980 census notes the continuing movement of jobs out of central cities and into the suburbs and nonmetropolitan areas. Central cities will continue to offer decreasing opportunities for social and economic mobility.

The Changing Demographic Characteristics of Central Cities

Compared to nonmetropolitan and suburban areas, central cities have become increasingly poorer. Prior to 1960 most poor people lived in nonmetropolitan areas, especially in small towns and rural areas. But by the mid-1970s, 60 percent lived in metropolitan areas and within metropolitan areas, 6 of every 10 lived in the central city (U.S. Department of Housing and Urban Development, 1980, pp. 1-13). The evidence indicates that low-income households have not suburbanized appreciably during the 1970s despite Federal dispersal policy. In 1979 almost two-thirds of all the households that resided in SMSAs and earned less than \$7,000 per year lived in central cities (U.S. Department of Commerce, 1981a). Further, 60 percent of all owner-occupied dwellings in SMSAs valued at less than \$30,000 in 1979 were located in central cities, while 73 percent of all renter-occupied units having gross rents under \$125 per month were in central cities.

Furthermore, the number of households headed by females—a group that includes the poorest American families—increased greatly during the 1970s. Suburban areas shared in the increase but most families headed by women remain in the central cities. The lower incidence of female heads in suburban areas is due partly to differences in racial composition. Female-headed families tend to be disproportionately black and the number of such households in central cities increased from 945,000 in 1970 to over 1 million in 1980. Nearly 50 percent of these households were living in poverty in 1980.

Finally, the socioeconomic gap between central city and suburban residents is widening. This is best demonstrated by controlling for race. In 1979 dollars, black median family income in the central cities declined by 13.9 percent from 1969 to 1979, while median family income for blacks in the suburbs increased by 9.1 percent. In 1979 the median income of central city blacks was only 76.8 percent of suburban black median income, whereas 10 years earlier it had been almost identical (Joint Center for Political Studies, 1982, p. 44). Evidence of a widening socioeconomic gap is also revealed by examining changes in poverty. By 1980 a black family living in the central city was almost 33 percent more likely to be in poverty than a black family in the suburbs, whereas in 1970, such a family was only about 4 percent more likely to be in poverty than a black family in the suburbs. The number of blacks in

TABLE 1
States With Majority Black Incorporated Places
1980

State	Number of Places	Number of Blacks	Number of Blacks in State	Percent of Blacks in State
Alabama	47	269,918	995,623	27.2
Arkansas	39	38,832	373,192	10.4
California	3	249,043	1,819,282	13.7
Delaware	1	35,858	95,971	37.4
Florida	17	42,789	1,342,478	3.2
Georgia	101	704,769	1,465,457	48.1
Illinois	13	88,061	1,675,229	5.3
Indiana	1	107,644	414,732	26.0
Louisiana	46	386,975	1,237,263	31.2
Maryland	5	443,983	958,050	46.3
Michigan	5	824,155	1,198,710	68.8
Mississippi	88	172,749	887,206	19.5
Missouri	17	30,925	514,274	6.0
New Jersey	10	385,666	924,786	41.7
New York	2	55,502	2,401,842	2.3
North Carolina	43	61,504	1,316,050	4.7
Ohio	4	51,770	1,076,734	4.8
Oklahoma	7	2,092	204,658	1.0
Pennsylvania	2	26,890	1,047,609	2.6
South Carolina	71	62,859	948,146	6.6
Tennessee	4	1,027	725,949	0.1
Texas	16	10,522	1,710,250	0.6
Virginia	8	144,089	1,008,311	14.3
West Virginia	2	1,020	65,061	1.6
Total	553	3,998,642		

Source: Computed by the author from data obtained from U.S. Department of Commerce, Bureau of the Census. 1980 Census of Population and Housing. PHC80, Advance Reports. Washington: U.S. Government Printing Office, 1981.

FIGURE 1
Majority Black Incorporated Places, 1980

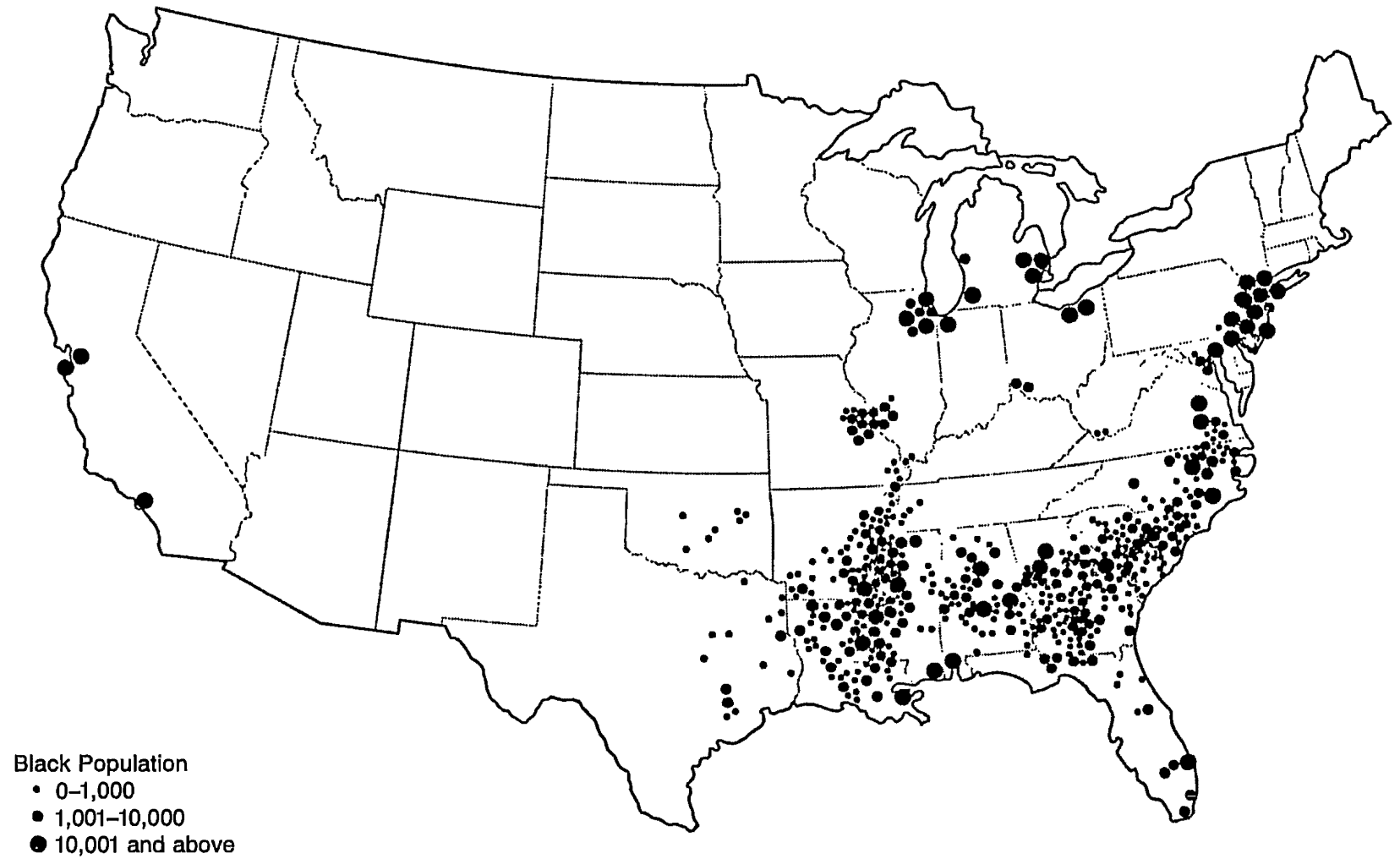


TABLE 2**Indexes of Dissimilarity Between Blacks and Whites Over Central Cities, Suburbs and Non-Metropolitan Areas, 1950-1980**

Year	Dissimilarity Index
1950	13.1
1960	21.4
1970	30.3
1980	32.8

Source: Computed by the author from data obtained from U.S. Bureau of the Census. *Historical Statistics of the United States, Colonial Times to 1970*. Bicentennial Edition, Part 1, 1975; 1980 Census of Population and Housing, *Standard Metropolitan Statistical Areas and Standard Consolidated Areas*: 1980, PC 80-51-5. Washington, D.C.: U.S. Government Printing Office, 1981b.

central cities living below the poverty line increased significantly between 1970 and 1980. Obviously, there has been a movement of higher income blacks to the suburbs.

Given such differential socioeconomic patterns of population distribution, there are those who are quick to state that the Fair Housing Act of 1968 has been successful in that blacks who can afford housing in racially integrated suburbs do indeed move there and those blacks who remain segregated in central cities are there because of poverty.

Ability to Pay and Black Residential Segregation: The Evidence from Michigan

The debate centered around poverty as an explanation for black residential segregation has a long history. At least since the 1950s the empirical evidence has been clear and consistent that poverty or inability of blacks to pay for housing is *not* the major reason for black residential segregation from whites (Wallace, 1953; Taeuber, 1965; Langendorf, 1969; Darden, 1973; Farley, 1977; Massey, 1979). Most past studies have concluded that upper income blacks are no less segregated residentially from whites than lower income blacks and that poor

whites seldom live in the same neighborhoods as poor blacks. Regardless of income, most whites live in predominantly white neighborhoods and most blacks live in predominantly black neighborhoods.

Preliminary analyses of 1980 census data on central cities and suburbs of Michigan suggest the following. Since the passage of the Federal Fair Housing Act (1) black residential segregation in central cities of Michigan remains high, but the level of segregation declined between 1970 and 1980; (2) blacks who live in Michigan's suburbs are only slightly less segregated on the average than blacks who live in central cities; (3) unlike the pattern in Michigan's central cities, black segregation in several suburbs has increased since 1970; (4) blacks in several of Michigan's suburbs are more segregated residentially than blacks in central cities; (5) the segregated distribution pattern of blacks in the central cities and the suburbs is *not* primarily a function of the inability of blacks to pay for housing in predominantly white neighborhoods.

Data and Method

Data for this analysis was obtained from the U.S. Bureau of the Census Tract Statistics for 1970 (U.S.

Bureau of the Census, 1972) and from the U.S. Bureau of the Census Population and Housing Summary Tape File 1-A (U.S. Bureau of the Census, 1982). The data consisted of (1) the number of blacks and whites by census tracts and (2) the median housing value and rent by census tracts for cities and suburbs of the 12 Standard Metropolitan Statistical Areas used in this study.

An index of dissimilarity is used to measure the degree of segregation for each municipality. Residential segregation is defined as the overall unevenness in the spatial distribution of blacks and whites over census tracts within each municipality. The formula can be stated as follows:

$$D=100 \left(\frac{1}{2} \sum_{i=1}^k |x_i - y_i| \right).$$

where x_i = the percentage of the municipality's black population living in census tract i ;

y_i = the percentage of the municipality's white population living in the same census tract i ;

D = the index of dissimilarity, or one-half the sum of the absolute differences (positive and negative) between the percentage spatial distribution of blacks and whites in each municipality (See Darden and Tabachneck, 1980, p. 228).

The index may range from 0, indicating no segregation on the basis of race, to 100, indicating total segregation.

Results

As indicated in table 3, black residential segregation declined from 1970 to 1980 in every Michigan central city except Ann Arbor resulting in a mean decrease in segregation of -12.7 percentage points. Ann Arbor, which had the lowest level of segregation than any central city in 1970, experienced no change in segregation over the decade. But declines in several other central cities were substantial. Bay City, Lansing, and Muskegon experienced declines of more than 20 percentage points. Declines greater than 10 percentage points were experienced by Detroit, Grand Rapids, and Kalamazoo. As a result of such declines, the mean level of segregation stood at 56 percent in 1980, down from 69.3 percent in 1970. Despite these changes, black residential segregation remained high, i.e., above 50 percent in 7 of

the 12 central cities of Michigan in 1980.

The data clearly show that black movement to the suburbs of Michigan was substantial between 1970 and 1980. In several suburbs outside Detroit, for example, the rate of black suburbanization exceeded 1,000 percent. Suburban municipalities with five or more census tracts and located within the Detroit Standard Metropolitan Statistical Area were chosen for an analysis of the residential segregation of blacks in the suburbs. Forty-seven municipalities met these criteria. The results revealed that blacks in the suburbs of Detroit were only slightly less segregated on the average than blacks in Michigan's 12 central cities, including Detroit. The mean level of segregation for blacks in Detroit's suburbs was 53 percent which was only 3 percentage points less than the mean level for blacks in Michigan's 12 central cities. Furthermore, unlike the downward trend in residential segregation in the central cities, segregation actually increased since 1970 in several of Michigan's suburbs. As table 4 indicates, several of the suburbs had substantial increases. Black movement to the suburbs then, does not guarantee a reduction in residential segregation. Some blacks in the suburbs of Detroit in 1980 found themselves in suburbs that were more segregated than the city of Detroit and several Detroit suburbanites were living in areas more segregated than such central cities as Ann Arbor, Benton Harbor, Bay City, Muskegon, and Lansing (table 5 and table 3).

The suburbs with such high levels of blacks residential segregation followed a pattern—all but one—Clinton Township is a declining suburb, i.e. declining in total population. Two—Lincoln Park and Dearborn—are located on Detroit's border or less than 1 mile away. They represent the typical pattern of blacks replacing whites in existing housing units. Few, if any, new housing units were being built in these suburbs. Should the present process continue, black ghettoization appears inevitable. The remaining eight suburbs represent the most common type of black suburbanization within metropolitan Detroit. Blacks were moving to declining suburbs more than 1 mile away from Detroit's border and replacing whites in existing units. Thus, physical expansion of the central city ghetto is not responsible for the high level of black segregation in these suburbs. Instead, separate new evolving black suburban ghettos were occurring at a distance from the central city.

TABLE 3**Changes in Black Residential Segregation in Central Cities of Michigan, 1970-1980**

Central Cities	Black Population	Percent of Total Population	Index of Dissimilarity		Percentage Point Change
			1970	1980	
Ann Arbor	9,957	9.2	41.1	41.1	0
Battle Creek	8,087	22.6	—	60.6	—
Bay City	737	1.8	67.8	45.8	-22.0
Benton Harbor	12,581	85.5	—	33.6	—
Detroit	754,274	62.7	78.2	67.4	-10.8
Flint	65,596	41.1	77.7	77.2	-0.5
Grand Rapids	28,233	15.5	80.0	69.5	-10.5
Jackson	6,053	15.2	67.1	61.4	-5.7
Kalamazoo	12,327	15.5	72.9	57.4	-15.5
Lansing	16,919	13.4	59.2	38.7	-20.5
Muskegon	8,671	21.2	70.8	42.3	-28.5
Saginaw	27,339	35.3	78.4	77.6	-0.8
Mean			69.3	56.0	-12.7

Source: Computed by the author from data obtained from U.S. Bureau of the Census. U.S. Census of Population and Housing: 1970 *Census Tracts* Final Report PHC (17), Washington, D.C.; U.S. Government Printing Office, 1972; U.S. Bureau of the Census, *Population and Housing Summary Tape File 1-A*, 1982.

The Relationship of Housing Cost to Black Residential Segregation in Central Cities and Suburbs

Despite the fact that blacks in central cities and suburbs earn less income than whites, inability of blacks to pay for housing in predominantly white neighborhoods does not seem to be the primary factor related to the high level of black residential segregation. This conclusion was reached after

preliminary statistical analyses were performed in which correlation coefficients were computed between the percentage distribution of blacks and median housing value and rent for all census tracts examined. No significant relationship exists between the percentage distribution of blacks by census tracts and the spatial distribution of median housing value in 7 or 58 percent of the 12 central cities. The strongest relationship between median housing value

TABLE 4**Suburbs Within the Detroit Standard Metropolitan Statistical Area
Where Black Segregation Increased, 1970-1980**

Suburb	1970 Index	1980 Index	Index Change Percentage Point	Number Blacks 1970	1980	Percent Change
Oak Park	7.4	49.2	+ 41.8	72	3,814	5,197
Dearborn	50.2	72.8	+ 22.6	13	83	538
Garden City	26.1	47.6	+ 21.5	10	24	140
Madison Heights	57.8	79.0	+ 21.2	15	240	1,500
Southfield	31.5	46.4	+ 15.1	102	6,976	6,739
Royal Oak	25.9	36.1	+ 10.2	26	116	346
Taylor	57.5	65.2	+ 7.7	20	1,266	6,230
Dearborn Heights	52.8	60.5	+ 7.7	12	63	425

Source: Computed by the author from data obtained from U.S. Bureau of the Census. U.S. Census of Population and Housing: 1970 Census Tracts Final Report PHC, Washington, D.C., and U.S. Bureau of the Census. *Population and Housing Summary Tape File 1-A*, 1982.

TABLE 5**Detroit Suburbs Where Blacks Are More Segregated Than Blacks in Detroit**

Suburban Municipality	Level of Segregation
Plymouth Township	90.6
Roseville	89.7
Allen Park	88.4
Lincoln Park	82.3
Madison Heights	79.0
St. Clair Shores	78.7
Clinton Township	77.5
Westland	77.4
Mount Clemens	75.5
Dearborn	72.8
Inkster	68.4
Detroit	67.4

Source: Computed by the author from data obtained from U.S. Bureau of the Census, *Population and Housing Summary Tape File 1-A*, 1982.

and the percentage black population could be found in Muskegon (-.69) and Saginaw (-.74).

In eight central cities, there were significant negative relationships between the percentage black population by census tracts and median rent. The relationships were weak, however, in all but two cities—Battle Creek (-.61) and Saginaw (-.77) (table 6).

No significant relationship exists between the percentage black population and the distribution of median housing value and rent in most of the 28 Michigan suburbs examined. Significant negative relationships between the percentage black population and median housing value were found in only five or 17 percent of the suburbs. A strong negative relationship was found only in Bloomfield Township (-.74). On the other hand, the strongest correlation between percentage black and median housing value was a positive correlation of .93 for East Detroit (table 7).

The pattern of rent and the percentage black population was also not strongly related. Strong significant negative relationships exist between median rent and percentage black only in Clinton Township (-.63), St. Clair Shores (-.61), and East Lansing (-.61). The strongest relationship between percentage black and median rent was found in East Detroit, where the positive correlation was .88 (table 7).

In sum, the evidence suggests that in most central cities and suburbs of Michigan, there is no strong negative correlation between the spatial distribution of the black population and the spatial distribution of housing cost. Thus, inability of blacks to pay for housing in predominantly white sections of central cities and suburbs is not the primary reason blacks are highly segregated residentially from whites. Instead, past studies suggest that a more credible explanation for the high level of black residential segregation is racial discrimination in housing despite the Fair Housing Act of 1968.

Racial Distribution as a Factor in Black Residential Segregation

Historically blacks have been excluded from most white neighborhoods in central cities and suburbs in Michigan. Studies conducted since 1968 suggest that discriminatory tactics persist in the form of racial steering by white real estate brokers. In a study of 97 randomly selected real estate agents in the Detroit Standard Metropolitan Statistical Area between

1974 and 1975, it was found that blacks, more often than whites, were shown houses *not* located in the city where the sales agent's office was located; that is, they were steered out of town. Too, where and whether houses were shown to blacks depended upon the location of the sales office within the suburban municipality. The chances were significantly greater for whites to be shown houses in the same municipality as the real estate office's location (56 percent vs 33 percent, $p < .05$). Moreover, when whites were steered out, about four-fifths of the municipalities where they were shown houses were nearby white suburbs. In contrast, when blacks were steered out, two-thirds of the houses shown were in the predominantly black municipalities of Inkster and Detroit (Pearce, 1979, p. 335). Detroit alone accounted for almost a third of the homes shown to blacks, although only 13 percent of the real estate firms were located in Detroit. Not only did blacks see a disproportionate number of houses in Inkster and Detroit, but they were steered there disproportionately by firms located in the western, southern, and eastern shore suburbs (Pearce, 1979, p. 335). Clearly then, the study revealed a consistent pattern of racially differentiated treatment of homeseekers. The data showed that these were not isolated instances of individual racism. Instead, there was a high level of consistency across the entire metropolitan area. There was a clear existence of practices that exclude three-fourths of black families from ever seeing homes and steers out many of the few that do see homes.

The existence of racial steering and/or racial discriminatory treatment in providing housing information was also revealed by a national study conducted by the U.S. Department of Housing and Urban Development. Of the 40 Standard Metropolitan Statistical Areas studied, Detroit ranked first in discriminatory treatment of blacks in the rental housing market and third behind Cincinnati and Columbus, Ohio, in discrimination in housing sales. In the rental market in Detroit, whites were favored 67 percent of the time and blacks only 10 percent—a statistically significant difference of 57 percentage points. In the housing sales market, whites were favored 64 percent of the time and blacks 22 percent—a statistically significant difference of 42 percentage points (tables 8 and 9).

In Saginaw, the most segregated central city in Michigan, whites in the rental market were favored 50 percent of the time and blacks only 23 percent—a

TABLE 6**Correlation Coefficients Between Percent Black and Median Housing Value and Rent—
Central Cities**

Michigan Central Cities	Median Value	Correlation Coefficients		N
		N	Median Rent	
Ann Arbor	-.23	30	-.34**	31
Battle Creek	-.44	12	-.61**	12
Bay City	-.44	13	-.40	13
Benton Harbor	.32	6	-.39	7
Detroit	-.11**	306	-.34*	310
Flint	-.24	46	-.33**	46
Grand Rapids	-.43*	47	-.25**	48
Jackson	-.39	13	-.40	13
Kalamazoo	-.56*	24	-.21**	25
Lansing	-.13	41	-.31**	41
Muskegon	-.69**	10	-.54	10
Saginaw	-.74*	21	-.77*	21

*Significant at the .01 level

**Significant at the .05 level

TABLE 7**Correlation Coefficients Between Percent Black and Median Housing Value and Rent—Suburbs**

Michigan Suburbs	Median Value	Correlation Coefficients		N
		N	Median Rent	
Ypsilanti City	-.55	8	-.48	9
Ypsilanti Township	-.20	12	-.00	12
Clinton Township	-.42	16	-.63*	16
East Detroit	.93*	5	.88**	5
Roseville	.07	10	-.42	10
St. Clair Shores	.12	12	-.61**	12
Shelby Township	-.50	10	.31	10
Sterling Heights	-.47**	19	.01	19
Warren	-.25	24	-.36**	24
Bloomfield Township	-.74**	8	-.59	8
Farmington Hills	.35	10	-.16	10
Pontiac	-.47**	17	-.34	17
Royal Oak	-.12	16	.10	16
Southfield	-.04	17	.28	17
Troy	-.07	14	.22	14
Waterford Township	-.03	11	.06	11
Port Huron	-.37	9	-.26	9
Canton Township	-.03	10	-.45	10
Dearborn	-.12	9	.68**	9
Dearborn Heights	.24	8	.02	8
Inskster	-.52	10	-.50	10
Lincoln Park	-.34	7	.23	7
Livonia	-.63*	17	-.12	17
Redford Township	.08	11	.36	11
Taylor	-.28	15	-.32	15
Westland	-.43**	18	-.23	18
Wyoming	-.00	13	.13	13
East Lansing	-.33	9	-.61**	12

*Significant at the .01 level

**Significant at the .05 level

TABLE 8**Housing Rental Discrimination in Detroit, Saginaw and Other Selected SMSAs**

Rank	SMSA	No Difference	White Favored	Black Favored	Discriminatory Treatment
1	Detroit, MI (30)	23	67	10	57***
2	Monroe, LA (29)	28	62	10	52***
3	Springfield-Chicopee- Holyoke, MA-CT (29)	35	59	7	52***
4	Vallejo-Napa, CA (29)	28	62	10	52***
5	Indianapolis, IN (28)	21	64	14	50***
6	San Bernardino-Riverside- Ontario, CA (29)	31	59	10	49***
7	Los Angeles-Long Beach, CA (30)	20	63	17	46***
8	Dayton, OH (29)	31	55	14	41***
9	Tulsa, OK (30)	47	47	7	40***
10	Canton, OH (29)	35	52	14	38***
11	Nashville-Davidson, TN (29)	21	59	21	38***
12	Macon, GA (30)	37	50	13	37***
13	Fort Lauderdale-Hollywood, FL (28)	29	54	18	36**
14	Tampa-St. Petersburg, FL (30)	30	53	17	36**
15	York, PA (29)	31	52	17	35**
16	Peoria, IL (30)	50	40	10	30**
17	Fort Wayne, IN (30)	23	53	23	30**
18	Louisville, KY-IN (30)	50	40	10	30**
19	Columbus, OH (29)	24	52	24	28*
20	Cincinnati, OH-KY-IN (29)	31	48	21	27*
21	Akron, OH (26)	27	50	23	27*
22	Saginaw, MI (30)	27	50	23	27*
23	Stockton, CA (28)	32	36	21	25*
24	Fort Worth, TX (28)	32	46	21	25*
25	Asheville, NC (29)	41	41	17	24*
26	Boston, MA (110)	32	46	22	24***
27	New York, NY (29)	35	45	21	24*
28	Oklahoma City, OK (30)	30	47	23	24*
29	Lexington, KY (30)	30	47	23	24*
30	Hartford, CT (30)	43	40	17	23*
31	Lawton, OK (30)	40	40	20	20
32	Savannah, GA (15)	27	47	27	20
33	Atlanta, GA (119)	27	45	29	16**
34	Dallas, TX (114)	36	40	24	16**
35	Sacramento, CA (118)	48	34	19	15**
36	Milwaukee, WI (108)	51	32	18	14**
37	Greenville, SC (30)	40	37	23	14
38	Harrisburg, PA (28)	14	46	39	7
39	Patterson-Clifton-Passaic, NJ (29)	21	38	41	-3
40	Albany-Schenectady-Troy, NY (30)	47	20	33	-13

Note: Numbers in parentheses are the number of observations; tests of significance were performed on unweighted, unadjusted data.

Source: U.S., Department of Housing and Urban Development, Office of Policy Development and Research, *Measuring Racial Discrimination in American Housing Markets, The Housing Market Practices Survey, 1979.*

TABLE 9**Housing Sales Discrimination in Detroit, Saginaw and Other Selected SMSAs**

Rank	SMSA	No Difference	White Favored	Black Favored	Discriminatory Treatment
1	Cincinnati, OH-KY-IN (48)	21	65	15	50***
2	Columbus, OH (40)	23	63	15	48***
3	Detroit, MI (51)	14	64	22	42***
4	Lexington, KY (30)	27	57	17	40***
5	Fort Worth, TX (29)	35	52	14	38***
6	New York, NY (50)	38	50	12	38***
7	Asheville, NC (28)	21	57	21	36**
8	York, PA (29)	45	45	10	35**
9	Indianapolis, IN (50)	26	54	20	34***
10	Milwaukee, WI (80)	28	53	20	33***
11	Akron, OH (40)	33	50	18	32**
12	Tulsa, OK (29)	28	52	21	31**
13	Savannah, GA (30)	37	47	17	30**
14	Canton, OH (30)	17	57	27	30*
15	Paterson-Clifton-Passaic, NJ (30)	20	53	27	26*
16	Fort Lauderdale-Hollywood, FL (45)	33	46	21	25**
17	Los Angeles-Long Beach, CA (50)	40	42	18	24**
18	Macon, GA (45)	24	49	27	22*
19	Vallejo-Napa, CA (29)	27	44	29	15
20	Monroe, LA (29)	24	45	31	14
21	Dayton, OH (43)	35	40	26	14
22	Louisville, KY-IN (39)	21	46	33	13
23	Nashville-Davidson, TN (39)	66	23	10	13
24	Tampa-St. Petersburg, FL (44)	44	34	22	12
25	Atlanta, GA (78)	27	42	31	11
26	Boston, MA (73)	25	43	33	10
27	Sacramento, CA (79)	34	38	28	10
28	Albany-Schenectady-Troy, NY (30)	47	30	23	7
29	Dallas, TX (80)	25	41	34	7
30	Greenville, SC (30)	37	33	30	3
31	Harrisburg, PA (30)	23	40	37	3
32	Saginaw, MI (30)	37	33	30	3
33	Hartford, CT (30)	27	37	37	0
34	Oklahoma City, OK (29)	38	31	31	0
35	Peoria, IL (30)	33	33	33	0
36	San Bernadino-Riverside- Ontario, CA (50)	17	38	45	-7
37	Stockton, CA (30)	47	23	30	-7
38	Lawton, OK (30)	22	31	48	-17
39	Fort Wayne, IN (25)	31	23	47	-24
40	Springfield-Chicopee- Holyoke, MA-CT (30)	30	20	50	-13**

Note: Numbers in parentheses are the number of observations; tests of significance were performed on unweighted, unadjusted data.

Source: U.S., Department of Housing and Urban Development, Office of Policy Development and Research, *Measuring Racial Discrimination in American Housing Markets, The Housing Market Practices Survey, 1979.*

statistically significant difference of 27 percentage points. In the housing sales market, there was less evidence of discrimination against blacks vis-a-vis whites. Whites were favored 33 percent of the time and blacks were favored 30 percent of the time, a difference of only three percentage points. If there were no racial discrimination, one could expect no difference in the percentage of whites and of blacks favored by real estate brokers and hence, the discriminatory treatment index would be zero. The greater the difference in treatment on the basis of race, the greater the discriminatory treatment index (see U.S. Department of Housing and Urban Development, 1979, pp. 180-81).

Black Residential Segregation and the Issue of Choice

The third factor often advanced to explain black residential segregation is choice, or preference by blacks to remain segregated (Wolf, 1981, pp. 34-39). In other words, despite the evidence presented here, there are those who continue to argue that blacks do in fact have freedom of spatial mobility and that blacks who remain in black segregated areas are there by choice (Coleman, 1979, p. 11). It is conceivable that some blacks might desire to live only with other blacks even if they had total freedom to choose their living space. The explanation for their preferences, however, cannot be totally divorced from past and present forces of racism and discrimination (Darden, 1973, p. 64; Goodman and Streitwieser, 1982). Since blacks have never had the total freedom to live in any neighborhood within cities and suburbs, the influence of personal preference cannot be adequately measured. The case for personal preference as a factor in racial residential segregation remains hypothetical. Within this hypothetical context, the black self-segregation or black preference issue has been addressed with surveys of black attitudes toward racially integrated housing. Surveys of black preferences for integrated housing conducted in Detroit and other metropolitan areas have provided little support for the voluntary segregation hypothesis (see Brink and Harris, 1967, pp. 232-33; Campbell and Schuman, 1968; Pettigrew, 1973; Farley et al., 1978). Most blacks surveyed in the study of Detroit by Farley et al. (1978) were willing to reside in racially mixed neighborhoods, whereas the whites were reluctant to remain in neighborhoods blacks were moving into and would not buy homes in already integrated

areas. In a 1980 *Detroit Free Press Survey* 77 percent of the blacks in the survey preferred to live in a neighborhood that had both white and black families (McGehee and Watson, 1980, p. 37).

In sum, the evidence supports the position that black residential segregation is best explained by exclusion and discrimination motivated by racial prejudice. Economic factors are of minor importance, and since blacks are not an ethnic group in the way in which foreign born families once were, voluntary congregation is unlikely except as a response to intimidation. Thus, racial concentration is largely compelled (Wolf, 1981, p. 26). As a result, it remains severe, widespread, unresponsive to economic improvement and impervious to the assimilative processes that dispersed ethnic groups (Wolf, 1981, p. 26).

Why then, does the argument that "blacks prefer to live among their own kind" continue to be advanced? Two factors are probably responsible: (1) some groups have advanced such an argument as a rationale for maintaining the status quo and preventing or delaying any efforts toward decreasing black residential segregation (Darden, 1973, p. 64). Such a rationale allows one to support a community's efforts to "maintain the ethnic purity of its neighborhood" without racist guilt (see Citizens Commission on Civil Rights, 1983, p. 49; *New York Times*, 1976); (2) other groups that advance such an argument do not understand the differences in the historical development of racial and ethnic groups in American cities. They are unaware that unlike white ethnic, i.e., European immigrant groups, blacks clustered together not necessarily to enjoy a common linguistic, cultural, and religious tradition, but because a systematic pattern of racial discrimination left them no alternative (Spear, 1967, p. 228). Blacks have been tied together less by a common cultural heritage than by a common set of grievances. Thus, the observed clustering of blacks can best be described as not primarily by choice, but as an involuntary adaptation to white discrimination (Spear, 1967, pp. 228-29).

Hispanics and Racial Residential Segregation

The Hispanic population represents the second largest minority group in the United States. It is also the fastest growing minority group. As indicated earlier in this paper Hispanics have different experiences in the housing market than either blacks or

TABLE 10**Hispanic Population and Segregation in Central Cities of Michigan, 1980**

Central Cities	Hispanic Population	Percent of Total Population	Index of Dissimilarity H vs. W
Ann Arbor	2,251	2.1	25.9
Battle Creek	679	1.9	26.9
Bay City	1,948	4.7	26.6
Benton Harbor	139	.9	39.7
Detroit	28,970	2.4	52.2
Flint	3,974	2.5	30.6
Grand Rapids	5,751	3.2	49.8
Jackson	807	2.0	31.9
Kalamzoo	1,487	1.9	27.3
Lansing	7,978	6.3	30.7
Muskegon	1,216	3.0	23.2
Saginaw	6,987	9.0	60.0
Mean			35.4

Source: Computed by the author from U.S. Bureau of the Census, *Population and Housing Summary Tape File 1-A*, 1982.

H = Hispanic; W = White

whites. Thus, it is expected that their pattern of residential distribution will be different. Like the black population, however, Hispanics represent a large, highly visible, urban minority with a history of discrimination and socioeconomic exploitation (Massey, 1979). On the other hand, the residential pattern of the Hispanic population may be influenced by both race and ethnicity. In fact, the data seem to suggest that in the housing market, the Hispanic population has had more of a socioeconomic barrier similar to the earlier European immigrants, and less of a color barrier than blacks (Massey, 1981). As a result, Hispanic-white segregation ranges from moderate to high but rarely reaches the very high levels that characterize black-white segregation. An analysis of Hispanic segregation in cities and suburbs in Michigan supports these statements.

The Evidence from Michigan

The data for this analysis were obtained from the U.S. Bureau of the Census' Population and Housing Summary Tape File 1-A. The data consisted of (1) the number of whites and persons of Spanish origin by census tracts, and (2) the median housing value and rent by census tracts for cities and suburbs of the

12 Standard Metropolitan Statistical Areas used in this study. Hispanics consist of persons of Spanish origin or descent who classified themselves in one of the specific Spanish origin categories listed in the 1980 census questionnaire, such as Mexican, Puerto Rican, Cuban or other Spanish origin. Persons of Spanish origin may be of any race (U.S. Department of Commerce, 1981b, p. 3). Thus, the whites of Spanish origin and blacks of Spanish origin were identified and subtracted from the corresponding total white and black population in each census tract.

In 1980, 162,000 Hispanics were living in Michigan. Thirty-eight percent or 62,187 Hispanics resided in Michigan's 12 central cities. Among all the census tracts examined, the mean level of segregation between Hispanics and whites was 35.4 percent. Note that the mean level for blacks and whites was 56 percent. The level of segregation ranged from a low of 23.2 percent in Muskegon to a high of 60.0 percent in Saginaw (table 10; also see table 3).

Clusters of Hispanics are also found in some neighboring suburbs of the central cities. An important question is whether Hispanics in the suburbs are less segregated residentially than Hispanics in the

central cities. Most suburban Hispanics in Michigan reside outside Detroit, but still live within the six-county Detroit Standard Metropolitan Statistical Area. Seventeen percent (27,682) of Michigan's Hispanic population are found here. Those suburban municipalities with at least five census tracts were chosen for analysis. Twenty-eight suburban municipalities met this criterion, almost all of them within the Detroit SMSA.

In general, Hispanics in the suburbs were less segregated from whites than Hispanics in the central cities. The mean suburban index of dissimilarity was 20.4 percent compared to 35.4 percent in the cities, a difference of 15 percentage points. Segregation between Hispanics and whites ranged from a low of 9.0 percent in Canton Township, a suburb of Detroit, to a high of 24.8 percent in East Lansing, a suburb of Lansing (table 11).

It is clear that the level of Hispanic segregation tends to vary among central cities and suburbs, indicating that within some municipalities Hispanics are more evenly distributed between census tracts. In other municipalities, Hispanics are more concentrated. An important factor which influences the spatial distribution of a population in a truly open market economy is the cost of housing. The cost of housing also varies by census tracts.

The Relationship of Housing Cost to Hispanic Residential Segregation in Cities and Suburbs

If Hispanics locate disproportionately in census tracts where the value and rent are low, it would be reasonable to conclude that the segregation of Hispanics may be related to the cost of housing. If, on the other hand, little or no relationship exists, it would be reasonable to conclude that housing cost is probably not an important variable in explaining Hispanic segregation.

Correlation coefficients were computed between the percentage distribution of Hispanics and median housing value and rent for all census tracts examined. In every central city except Ann Arbor there is a negative relationship between the distribution of Hispanics and the value of owner-occupied housing. The relationships are strong in Bay City, Lansing, Jackson, Kalamazoo, and very strong in Saginaw and Muskegon (table 12). The relationship is significant in all but two cities.

The correlation coefficients between the distribution of Hispanics and median housing rent indicated

weaker negative relationships generally than those for actual housing value. Battle Creek and Benton Harbor showed weak positive relationships. The relationships were significant in 7 of the 12 central cities.

The coefficients between percentage Hispanics and housing value and rent were generally weaker for the suburbs. Weak negative relationships were revealed for 10, or 35 percent, of the 28 suburbs when percentage of Hispanics was correlated with the median value of owner-occupied housing. Six of the suburban areas showed moderate negative relationships. Only two showed strong relationships and two revealed relationships that were very strong. In eight of the suburban municipalities, the relationship was positive. The relationship was significant in only seven suburbs—namely Clinton Township (-.55), St. Clair Shores (-.77), Warren (-.58), Port Huron (-.65), Dearborn (-.85), Dearborn Heights (.61), and Livonia (-.41).

Correlation coefficients between percentage Hispanic and median rent revealed weak negative relationships in 13, or 46 percent of the suburban areas. Significant negative relationships were found in only 3 of the 28 suburbs; these areas were Port Huron (-.58), Dearborn Heights (-.66), and East Lansing (-.53) (table 13).

In sum, the pattern of Hispanic residential segregation from whites in cities and suburbs is generally lower than the pattern of black segregation from whites. Segregation between Hispanics and whites in the cities is greater than segregation between Hispanics and whites in the suburbs. This pattern is consistent with assimilation theory and implies that Hispanics in the suburbs who generally have a higher socioeconomic status are more able to find housing on a nonsegregated basis.

The cost of housing is more important in explaining the segregated distribution pattern of the Hispanic population and of lesser importance in explaining the segregated distribution pattern of the black population. The segregated distribution pattern of Hispanics in owner-occupied housing is influenced more by the cost of housing than is the segregated distribution pattern of Hispanics in renter-occupied housing. The segregated distribution pattern of Hispanics in central cities has a strong relationship to the cost of housing, whereas the segregated distribution pattern of Hispanics in the suburbs is not strongly related to the cost of housing. Thus, other factors must also be examined if the segregated

TABLE 11**Hispanic Population and Segregation in Selected Suburbs of Michigan, 1980**

Suburbs	Hispanic Population	Percent of Total Population	Index of Dissimilarity H vs. W
Ypsilanti City	372	1.5	20.2 ¹
Ypsilanti Township	578	1.3	19.8
Clinton Township	781	1.1	18.7
East Detroit	304	.8	18.2
Roseville	633	1.2	20.6
St. Clair Shores	561	.7	13.5
Shelby Township	281	.7	24.3
Sterling Heights	934	.9	14.4
Warren	1,483	.9	13.6
Bloomfield Township	435	1.0	17.2
Farmington Hills	495	.9	10.8
Pontiac	5,007	6.5	24.0
Royal Oak	566	.8	17.3
Southfield	609	.8	15.2
Troy	664	1.0	15.9
Waterford Township	1,176	1.8	10.0
Port Huron	1,007	3.0	23.3
Canton Township	649	1.2	9.0
Dearborn	1,642	1.8	22.3
Dearborn Heights	1,215	1.8	14.0
Inkster	412	1.2	22.2
Lincoln Park	1,154	2.6	10.5
Livonia	980	.9	18.3
Redford Township	577	1.0	13.6
Taylor	1,779	2.3	11.0
Westland	1,244	1.5	14.1
Wyoming	1,218	2.0	17.1
East Lansing	926	1.8	24.8
Mean			20.4

Source: Computed by the author from U.S. Bureau of the Census, *Population and Housing Summary Tape File 1-A*.

H = Hispanic; W = White

TABLE 12**Correlation Coefficients Between Percent Hispanic and Median Housing Value and Rent—Central Cities**

Michigan Central Cities	Median Value	Correlation Coefficients		N
		N	Median Rent	
Ann Arbor	.45	30	-.10	31
Battle Creek	-.47	12	.18	12
Bay City	-.63*	13	-.48**	13
Benton Harbor	-.62	6	.12	7
Detroit	-.17*	306	-.21*	310
Flint	-.40*	46	-.20	46
Grand Rapids	-.47*	47	-.32*	48
Jackson	-.56**	13	-.50**	13
Kalamazoo	-.69*	24	-.67*	25
Lansing	-.54*	41	-.50*	41
Muskegon	-.86*	10	-.49	10
Saginaw	-.73*	21	-.62*	21

*Significant at the .01 level

**Significant at the .05 level

TABLE 13**Correlation Coefficients Between Percent Hispanic and Median Housing Value and Rent – Suburbs**

Michigan Suburbs	Median Value	Correlation Coefficients		N
		N	Median Rent	
Ypsilanti City	.35	8	.17	9
Ypsilanti Township	.14	12	-.02	12
Clinton Township	-.55*	16	-.06	16
East Detroit	-.28	5	-.21	5
Roseville	-.48	10	-.38	10
St. Clair Shores	-.77*	12	.16	12
Shelby Township	-.03	10	.46	10
Sterling Heights	-.00	19	-.26	19
Warren	-.58*	24	-.27	24
Bloomfield Township	-.29	8	-.40	8
Farmington Hills	-.08	10	-.13	10
Pontiac	-.26	17	-.00	17
Royal Oak	-.06	16	-.01	16
Southfield	-.34	17	.29	17
Troy	-.28	14	-.05	14
Waterford Township	-.43	11	-.13	11
Port Huron	-.65**	9	-.58**	9
Canton Township	.34	10	.49	10
Dearborn	-.85*	9	-.19	9
Dearborn Heights	.61**	8	-.66**	8
Inskster	.49	10	.53	10
Lincoln Park	-.14	7	-.08	7
Livonia	-.41**	17	.04	7
Redford Township	.02	11	-.31	11
Taylor	.13	15	.47**	15
Westland	.13	18	.19	18
Wyoming	-.26	13	-.19	13
East Lansing	-.40	9	-.53**	12

*Significant at the .01 level

**Significant at the .05 level

distribution pattern of Hispanics is to be totally understood. One such factor that may prevent further reductions in Hispanic residential segregation is discrimination in housing.

Implications for Federal Housing Policy

It has been 15 years since the Federal Fair Housing Act was passed. The act was supposed to eliminate housing discrimination in both the public and private housing markets. However, it is clear from the demographic data that blacks, whites, and Hispanics have different patterns of population distribution which have resulted from different patterns of buying and renting homes. Since these differences cannot be totally explained by differences in buying power, the patterns suggest that discrimination against blacks and Hispanics continues to be a problem in need of a solution.

Clearly, the role played by the Federal Government has not been effective in counteracting racial residential segregation, presently so deeply ingrained in American residential structures that the mere elimination of existing discriminatory practices may not be sufficient to eradicate it. Just as "affirma-

tive" segregationist policies and practices created racial residential segregation, so it will take "affirmative" integrationist policies and practices to end it. Thus, if all racial discrimination in housing ceased today, America's residential areas would remain largely segregated in the absence of any affirmative policies or plans to integrate them. Therefore, the challenge before the U.S. Commission on Civil Rights, the Congress, and the Courts is to pressure the executive branch of government to carry out its constitutional responsibilities of providing equal housing opportunities for all American citizens. Sure enough the challenge has become more difficult as the present administration has (1) curtailed subsidized housing, (2) eliminated protections for the poor and minorities under the Housing and Community Development Act, (3) adopted a policy of voluntary compliance, (4) reduced data collection on the race and sex of beneficiaries, and (5) retreated on enforcement of the Fair Housing Law (Citizens Commission on Civil Rights, 1983). Despite the prevailing obstacles, the integration challenge must be met.

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Suburban Racial Segregation and the Segregative Actions of Government: Two Aspects of Metropolitan Population Distribution

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Introduction

This discussion deals with two aspects of black population movement in metropolitan areas, spatial distribution and the segregative effects of government actions on spatial distribution. The first looks at the distribution of blacks in the outer rings of metropolitan areas in general and focuses on the patterns of black concentration evident in the rings of seven SMSAs.

The second aspect is examined through examples of a variety of government actions which have had segregative racial effects in the past and which, because of the persistence of their effects, appear to exert important continuing influences on the locations of predominantly black residential areas and on the directions in which they expand.

The Pattern of Black Suburbanization

A widespread expectation during the sixties, whose fulfillment was sought by many and obstructed by others, was that to the extent that blacks could find housing in the burgeoning suburbs of our metropolitan areas their segregation would be reduced and their quality of life improved. In relative terms, substantial numbers of black households did find housing in the suburban rings of metropolitan areas during the decade between 1960 and 1970. Black population outside the central cities of metropolitan areas increased during that period by 758,000 to 3,433,000, an increase of 28.3 percent. Although the absolute numbers were small and the distribution among SMSAs was uneven—nearly one-sixth of the increase was in the suburbs of Washington, D.C, alone—the increase was significantly greater than in earlier decades.

However, a number of observers soon pointed out that in many metropolitan areas the spatial distribution of blacks in the suburbs bore little resemblance to those earlier expectations. Emerging patterns of segregation were noted and described by Reynolds Farley, Harold Rose, Eunice and George Grier, Phoebe Cottingham, and Thomas Clark, to name but

a few. Several segregated patterns of settlement were identified which accounted for substantial proportions of the black movement to the suburban rings of metropolitan areas.

In many cases central city black neighborhoods had simply expanded to reach and cross over city boundaries, thus extending into contiguous areas of the suburbs. In other cases large numbers of the new black suburbanites were crowded into the deteriorated housing of declining older industrial cities in the suburban rings. Many others had settled around the nucleus of presuburban black rural enclaves or had moved to older all-black municipalities within the suburban ring.

During the decade of the seventies the number of blacks who found housing in the suburban rings was nearly four times as great as during the sixties (see table 1), and a disproportionately large share of this movement was to the largest SMSAs. The 33 SMSAs, which in 1970 each had populations of 1 million or more (see table 2), included in 1980 about half the total population of all metropolitan areas and 81 percent of the black population of all metropolitan areas.

Among these 33, 7 SMSAs each had black populations in their outer rings in 1980 of 200,000 or more (see table 3). These seven: Washington, Los Angeles-Long Beach, Philadelphia, Chicago, Newark, Atlanta, and St. Louis accounted for about 17 percent of all metropolitan population in 1980 but contained 55 percent of all blacks in the suburban rings of all metropolitan areas.

A cursory examination, at a relatively coarse level of detail, of the spatial distribution of blacks in the rings of these seven SMSAs which focused on large concentrations of majority black census tracts (see explanatory note, table 3) reveals a persistent continuation of the pattern of suburban segregation which were described earlier. Chicago has the largest number of separate suburban centers of black concentration, nine in all, including the virtually all-black city of Robbins, Illinois. Philadelphia is also

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TABLE 1**Population Change by Race in Metropolitan Areas*, 1960-1980**

Population (Millions)	Total	Inside Central Cities	Outside Central Cities
Black			
1960	12.3	9.6	2.7
1970	16.3	12.9	3.4
1980	21.5	15.3	6.2
White			
1960	104.2	48.8	55.3
1970	118.9	48.9	70.0
1980	138.1	47.0	91.1
Percent Change			
Black			
1960-70	32.5	34.4	28.3
1970-80	31.9	18.6	82.3
White			
1960-70	14.1	0	26.6
1970-80	16.1	3.9	30.1

*Metropolitan areas in 1960 and 1970 are as defined in 1970. Metropolitan areas in 1980 are as defined in 1980. No adjustment is made for changes in SMSA boundaries between 1970 and 1980 or for additional SMSA's designated in 1980. Overall, the effect of both of these changes on the number of blacks in metropolitan areas is minimal. Data is from the U.S. Census of Population for 1970 and 1980.

characterized by noncontiguous centers of suburban black concentration in Camden, Chester, and Norristown, and also has a small, but growing, spillover of the West Philadelphia black community into adjacent Delaware County. In the remaining five of the seven the dominant pattern of segregation is characterized by spillover from the principal black majority area in the central city.

The largest spillover concentrations are in the Washington, Atlanta, and Los Angeles-Long Beach SMSAs. These three also experienced the greatest growth in the number of blacks in the outer ring during the seventies. Over 239,000 blacks were added to the Washington suburbs, over 40 percent of them to contiguous spillover areas in adjacent Prince Georges County, Maryland. The most dramatic increase occurred in the Atlanta SMSA where the number of blacks in the outer ring grew by 161,000, an increase of nearly 300 percent. These are concentrated mainly in contiguous areas southeast of the city in DeKalb County and in smaller contiguous areas southwest in Fulton County.

Approximately 157,000 blacks moved to the Los Angeles-Long Beach suburbs extending the earlier spillover pattern of concentration into Carson, West

Athens, East Compton, West Compton (all these except Carson are now majority black) and other adjacent municipalities. However, Pomona, northeast of the central cities and noncontiguous, also experienced a large black population increase. These three SMSAs alone accounted for more than two out of every five blacks added to the suburbs of the 33 large SMSAs.

In the St. Louis area just over a quarter of the suburban ring black population is across the Mississippi River in East St. Louis, Illinois, which experienced only a very small increase in black population. The bulk of the new concentrated area was formed by the extension of the earlier majority black area in University City northward into Wellston along the western edge of the city.

In the Newark SMSA there were substantial black population increases in East Orange, which was majority black in 1970 and 83 percent black in 1980, and in Plainfield and Orange which have become majority black since 1970. Significant increases in black population also occurred in Montclair, Irvington, and Hillside.

In summary, it is clear that the volume of movement by blacks to the outer rings of metropoli-

TABLE 2

Changes in the Number of Blacks Living Outside the Central Cities of the 33 SMSA's Which Had Populations of Over 1,000,000 in 1970 (Figures in 1,000 rounded to nearest 1,000)

	1970	1980	Change	% Change	1980 Total SMSA Pop
* New York	217	156	- 61	- 28.1	9120
Los Angeles-Long Beach	241	398	157	65.1	7478
Chicago	126	231	105	83.3	7102
Philadelphia	191	246	55	28.8	4717
* Detroit	97	131	34	35.1	4353
San Francisco-Oakland	109	146	37	33.9	3253
* Washington	166	405	239	144.0	3060
Boston	22	34	12	54.5	2763
Pittsburgh	65	74	9	13.8	2264
* St. Louis	125	201	76	60.8	2355
Baltimore	70	126	56	80.0	2174
Cleveland	45	94	49	108.9	1899
* Houston	66	88	22	33.3	2905
Newark	141	226	85	60.3	1965
* Minneapolis-St. Paul	2	8	6	300.0	2114
* Dallas	38	66	28	73.7	2975
Seattle-Everett	3	11	8	266.7	1607
Annaheim-Santa Anna- Garden Grove	3	13	10	333.3	1932
Milwaukee	1	4	3	300.0	1397
* Atlanta	55	216	161	292.7	2030
Cincinnati	27	43	16	59.3	1401
+ Patterson-Clifton-Pasaic	26	1	- 25	- 96.1	448
San Diego	9	27	18	200.0	1862
Buffalo	14	19	5	35.7	1243
Miami	114	193	79	69.3	1626
* Kansas City	39	50	11	28.2	1327
* Denver	3	17	14	466.7	1620
San Bernadino-Riverside-	27	46	19	70.4	1557
Indianapolis	3	5	2	66.7	1167
San Jose	7	15	8	114.3	1295
New Orleans	57	79	22	38.6	1187
Tampa-St. Petersburg	23	41	17	73.9	1569
Portland, OR	2	6	4	200.0	1242
Totals	2,134	3,416	1,282	60.1	85,007

* SMSA's to which cities and/or counties were added after 1970.

+ Bergen County transferred to N.Y. SMSA in 1973.

Source: Bureau of the Census, Standard Metropolitan Statistical Areas and Standard Consolidated Statistical Areas: 1980.

TABLE 3**Distribution of Black Population Outside the Central Cities of 7 SMSAs, 1970 & 1980**

	Washington	Los Angeles- Long Beach	Philadelphia	Chicago	Newark	Atlanta	St. Louis
Black population outside central city							
1970	166,033	240,247	190,509	128,299	140,884	55,581	124,625
1980	404,813	398,020	245,527	230,826	226,042	215,915	201,470
Percent of SMSA black pop. outside central city							
1970	23.6	31.5	22.6	10.4	40.5	17.9	32.9
1980	47.4	42.2	27.8	16.2	54.1	43.3	49.4
Black pop. outside central city but in concentrated areas**							
1970	63,657	162,218	75,746	86,257	87,958	9,607	69,873
1980	169,328	211,330	83,056	128,882	158,587	99,838	100,642
Black pop. in concentrated areas as a percent of black pop. outside central city							
1970	38.3	67.5	39.8	67.2	62.4	17.3	56.1
1980	41.8	53.1	33.8	55.8	70.1	46.2	50.0
Percent change in total SMSA population 1970-80	5.2	6.2	-2.2	1.8	-4.5	27.2	-2.3

*SMSAs to which counties were added between 1970 and 1980. No adjustment is made; impact is negligible.

**Concentrated areas include: majority black tracts contiguous to central city majority black tracts plus edge tracts with higher percent black than the percent black in the municipality; in municipalities with minority black and total black population of 5,000 or more all majority black tracts plus edge tracts with higher percent black than the percent black in the municipality; and all blacks in municipalities which are majority black.

Source: Bureau of the Census, Census of Population by Tracts for each of the above SMSAs 1970 and 1980.

tan areas has substantially increased; that these new black suburban residents continue to be disproportionately concentrated outside the central cities of a small number of large SMSAs; and that their spatial distribution there is dominated by strong patterns of racial segregation. It is also noted that, with the exception of the Atlanta SMSA to which 10 counties were added between 1970 and 1980, the 7 metropolitan areas with the largest volumes of black suburban growth during the decade of the seventies all experienced low or declining overall rates of growth during the same period (see table 3). In sharp contrast with the expectations of the sixties, the evidence strongly suggests that the prospects for the eighties are for the continuing racial and economic polarization of metropolitan population.

The Segregative Effects of Government Actions

The picture of black suburbanization presented above was readily drawn from census data, systematically gathered at regular intervals, standardized in format, and conveniently available, enabling direct comparisons to be made from time to time and from place to place. In sharp contrast the anecdotal nature of the following discussion of the segregative effects of government actions is an inevitable outcome of the multiplicity of data sources involved and the variety of data gathering methods employed.

The descriptions of government actions are derived from the findings of ad hoc case studies conducted by this writer over a period of 17 years in about 30 cities. Each of these studies was initiated in response to allegations that a government or agency of government was guilty of racial discrimination, usually against blacks but often against Hispanics and sometimes against native Americans, in some land-use related activity such as the provision of municipal facilities, the location of public housing, the administration of public education, the construction of highways, urban renewal, the relocation of displacees, and the exercise of development controls.

The studies were often, but not always, carried out in support of litigation and were commissioned by a number of sponsors, including the NAACP Legal Defense Fund, the National Committee Against Discrimination in Housing, the Mexican-American Legal Defense Fund, the U.S. Commission on Civil Rights, the U.S. Department of Housing and Urban Development, the New Jersey Department of the Public Advocate, and community

legal services agencies in several cities. These studies usually involved the comparison of demographic change over time at fine scale levels of detail with the findings of historical research in agency documents, public records, and newspaper and library archives. In addition, numerous interviews were conducted, sometimes informally, but often in the form of legal depositions. The studies varied in depth and duration depending on the complexity of the issues and the availability of resources.

Important relationships between government action and racial segregation were identified, relationships which fall entirely outside the conventional data on income and housing from which inferential conclusions are customarily drawn to explain shifting patterns of residence by race. It was found that government actions, sometimes local but often in combination with programs of State or Federal government, had significant segregative effects on the location of predominantly minority residential areas and on the directions in which they expand. The persistence of the changes brought about strongly suggests that the inertia of these actions continued to influence racial distribution.

These actions, singly or in combination, fall into three general categories, although overlapping effects place some actions in more than one category.

1. Those which eliminate entire enclaves of minority housing.
2. Those which create barriers to the direction in which or extent to which a minority area may expand.
3. Those which foster the movement of minorities into minority areas or promote the transition of majority areas to minority areas.

Each case cited is typical rather than unique, and is presented to illustrate widespread practices. Examples cited are limited to those which have segregated effects. Government actions which have had other seriously adverse impacts such as the disruption of minority social institutions or the elimination of minority businesses are not included.

Elimination of Minority Enclaves

The term minority enclave is used to describe relatively small concentrations of minority housing spatially separated from the principal minority housing area. Several such enclaves were to be commonly found in the central cities of many metropolitan areas as recently as the early sixties and many still exist in the outer rings. The elimination of minority

enclaves has been brought about by several common types of government activity ranging from clearance and displacement to the bringing to bear of pressures resulting in more gradual elimination. One of the most important consequences of enclave elimination has been the segregative reinforcement of single areas of minority concentration.

While the intention to produce this effect has rarely been made a matter of public record, there have been exceptions. One notable one was contained in the Workable Program recertification application to HUD by the city of Selma, Alabama, in 1968. An element of the application entitled "Housing Conditions and Neighborhood Analysis" included the following frank disclosure:

Area No. 1 is a small Negro Area completely surrounded by good standard white houses. The area is definitely substandard and is exerting a blighting effect on the good nearby houses. It is proposed to redevelop the area into lots of zoning district R-1 which will largely insure white residential reuse.

In Easton, Pennsylvania, during the mid-sixties there were three predominantly black enclaves north of the Lehigh River and a somewhat larger black community south of the Lehigh River. Through the combination of a series of urban renewal projects which cleared the three northern enclaves and the timely construction of subsidized housing in the majority black area south of the river (a category 3 action) a more rigid pattern of segregation was created.

Sometimes the principal minority area to which displacees are forced to move is in another municipality. In Hamtramck, Michigan, during the late sixties the city carried out several urban renewal projects in black enclaves in order to provide land for the expansion of adjacent automobile plants. Nearly a third of the city's black population was displaced and because no relocation housing was provided most moved to Detroit. In the northwestern corner of Hamtramck the route of a highway was diverted to isolate a black enclave between the highway and an automobile plant rendering the area suitable only for the expansion of the automobile plant. This is also an example of the barrier effect. These activities are illustrated on the maps which follow.

A common influence on the disappearance of minority enclaves has been the closing of the minority schools which served them. In Austin,

Texas, the school board closed black schools in five black enclaves in north and west Austin leaving black parents with the burden of transporting their children to black schools in the principal black area in southeast Austin. Within 10 years four of the enclaves had disappeared.

In Mt. Laurel, New Jersey, the homesites in an existing black community have been zoned as nonconforming, providing the local government with a rationale for the refusal of permits for the replacement or renovation of the housing. A systematic process of inspections, condemnations, and demolitions is slowly but steadily eliminating the minority community there. Since no relocation housing is available in Mt. Laurel within the means of the displacees, they are forced to move to another jurisdiction. In Baltimore County, Maryland, some black enclaves are zoned for nonresidential uses, thus promoting their redevelopment and elimination.

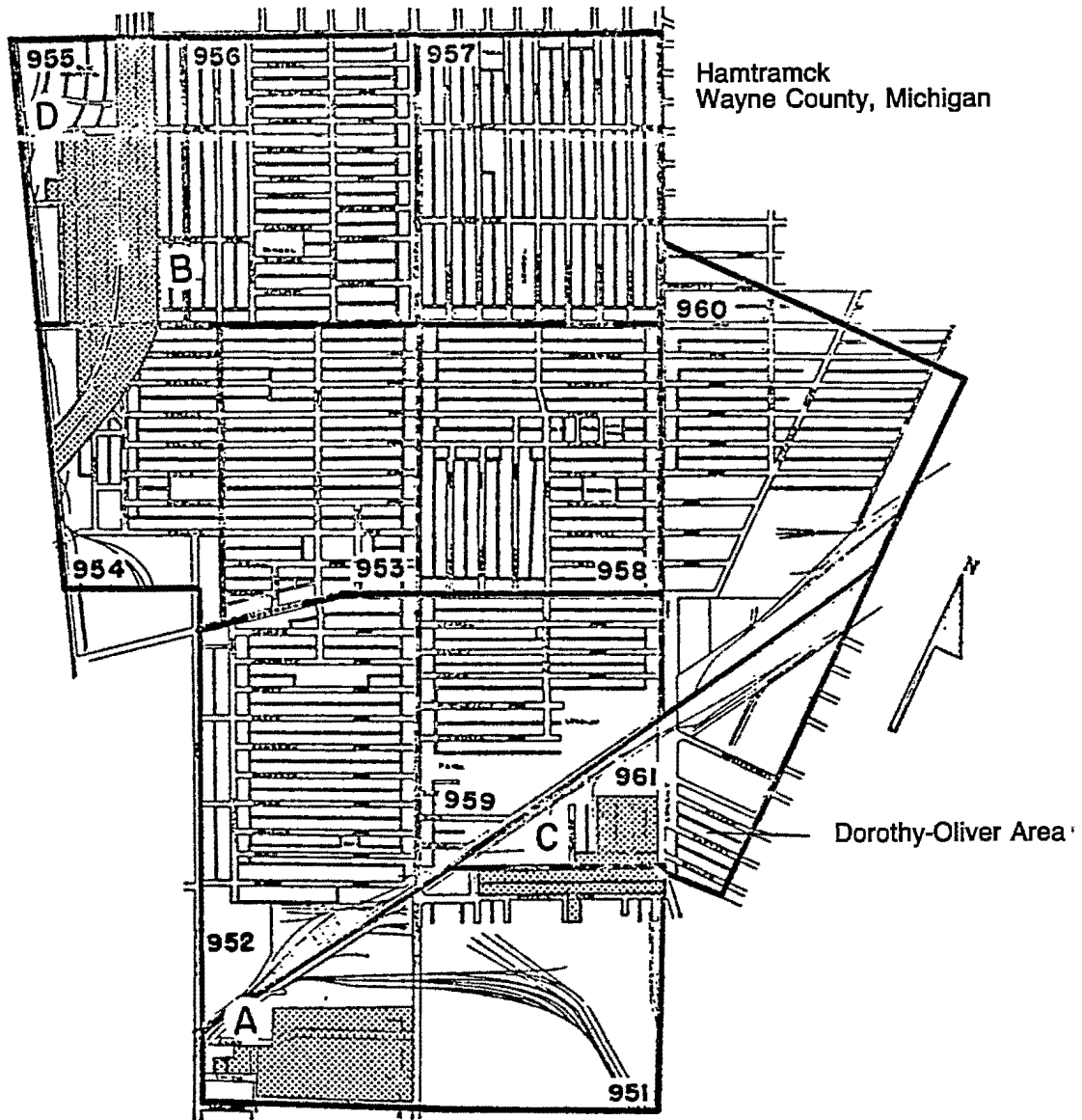
The Creation of Racial Barriers

Among public actions whose effect it is to create racial barriers, exclusionary zoning has been recognized for a long time. This practice, which prevents the construction of low-cost housing by regulatory provisions which establish large lot single-family zones, or restrict multifamily housing, or impose other cost-inflating requirements on development, has frequently been challenged in the courts, and was struck down recently in a sweeping decision by the New Jersey Supreme Court in what has come to be known as the Mt. Laurel II decision. In theory at least, the segregative effects of regulatory barriers such as exclusionary zoning, unlike those of physical barriers, do not persist in their influence after the barriers have been removed. To date their removal in some places has had little meaningful effect on access by low-income minority groups to those places because market-based economic barriers still remain.

Among physical barriers, the limited access highway is by far the dominant form. These roads are most often built at grade or on embankments, and are provided with only widely spaced opportunities to cross from one side to the other. Superimposing highway maps on racial distribution can provide clear evidence of this barrier effect in many metropolitan areas. In El Paso Interstate 10, which runs through the city from southeast to northwest, was aligned precisely between the Hispanic barrio to the south and the Anglo area to the north, restricting the

FIGURE I

Principal Areas From Which Black Households Have Been or Are Being Displaced

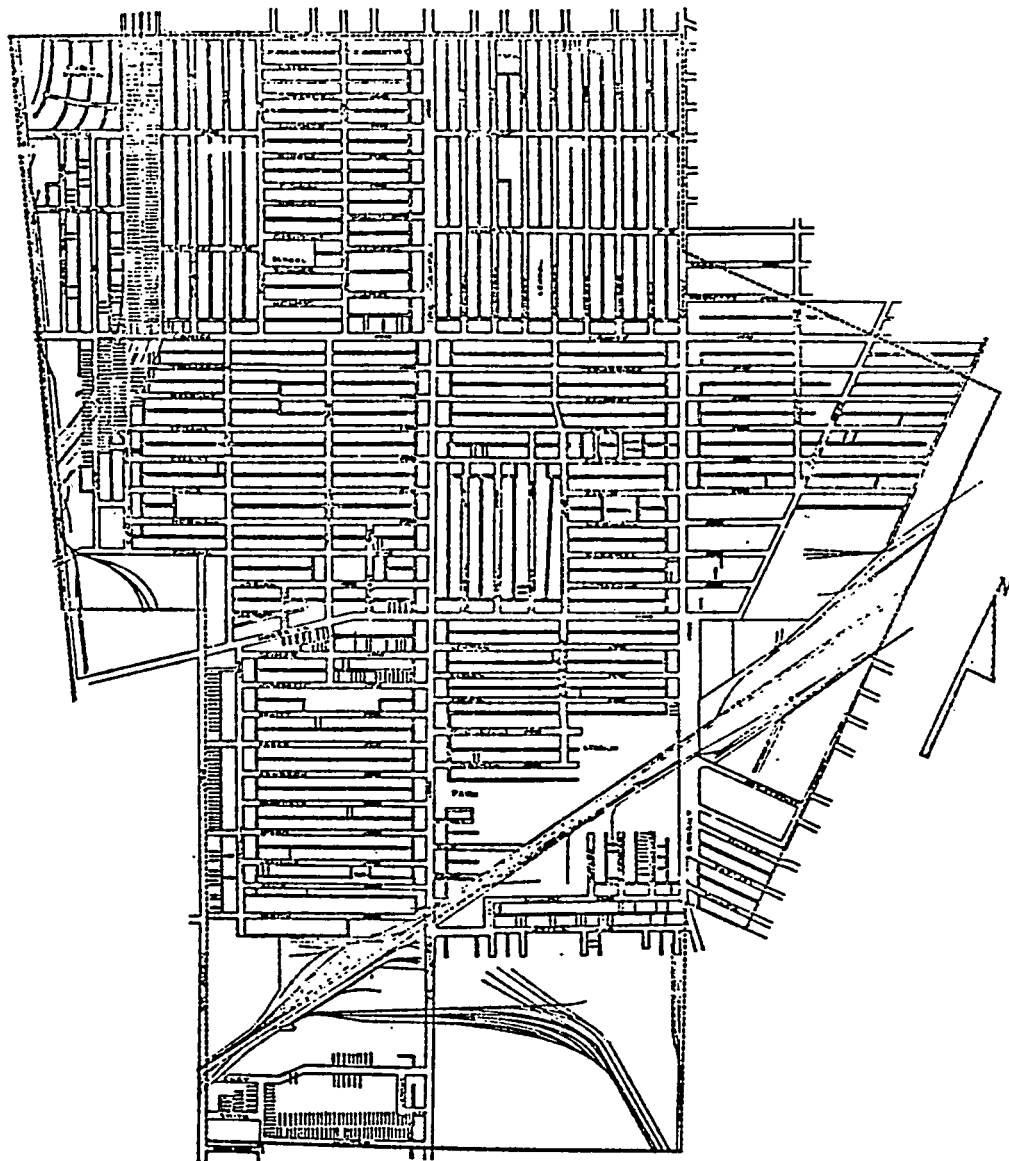


- A Smith-Clay Urban Renewal Area
- B Chrysler Expressway Right-of-Way
- C Denton-Miller Area
- D Grand Haven-Dyar-Dequindre Area

— Census Tract Boundary

955 Census Tract Number

FIGURE II
Demolished Residential Structures



These data were compiled from a comparison of aerial photographs taken on May 30, 1961 and April 26, 1970. Each line on the map represents one residential structure which was demolished during this time period. Total 560.

expansion of the Hispanic community and substantially increasing the cost of implementing a school desegregation plan.

In Nashville, Tennessee, urban renewal land was provided to create an extension of the Music City area which would serve as both a buffer and a barrier between the Vanderbilt University campus area to the west and the all-black Edgehill neighborhood to the east. Another form of physical barrier results from the existence in many black residential enclaves, particularly in the south, of street systems which are discontinuous with streets in adjacent white areas. Access to such black enclaves is usually via a single street connecting to a major artery or nonresidential street. The Catonsville area of Baltimore County provided a striking example of this condition. There one could look from the black neighborhood across a 50 foot wide stretch of trees and underbrush to the continuation of the same streets in the white neighborhood.

In suburban areas where there are numerous old black enclaves which frequently predate post World War II suburbanization, barriers are more often regulatory than physical. The most common regulatory barriers around these enclaves are created by zoning the surrounding area for nonresidential uses or for large lot, low density residential. Several such zoning bound communities were found in Baltimore County. The existence of these conditions can be readily disclosed by the appropriate combination of zoning and demographic information.

Increased Racial Concentration and Racial Transition

Perhaps the most potent and persistent segregative action by government has been the concentration of public and other assisted housing in the principal minority areas. Relocation assistance to displacees from public programs has also been an important factor in both the reinforcement of existing minority concentrations, and in promoting the transition of some neighborhoods from majority to minority. The increased ease with which zoning changes from low to high density may be obtained has been noted as a tacit acknowledgment by local government that racial transition is acceptable.

In Kansas City over 1,400 black households displaced by right-of-way acquisition for a contested freeway have been relocated into a single highway department designated zone along the path of the freeway, a process which greatly accelerated the

transition of that zone from white to black. In Nashville the concentration of 3 public housing projects and 1 rent subsidy project, totalling nearly 900 units, in a single urban renewal area greatly intensified the levels of both racial and economic segregation there.

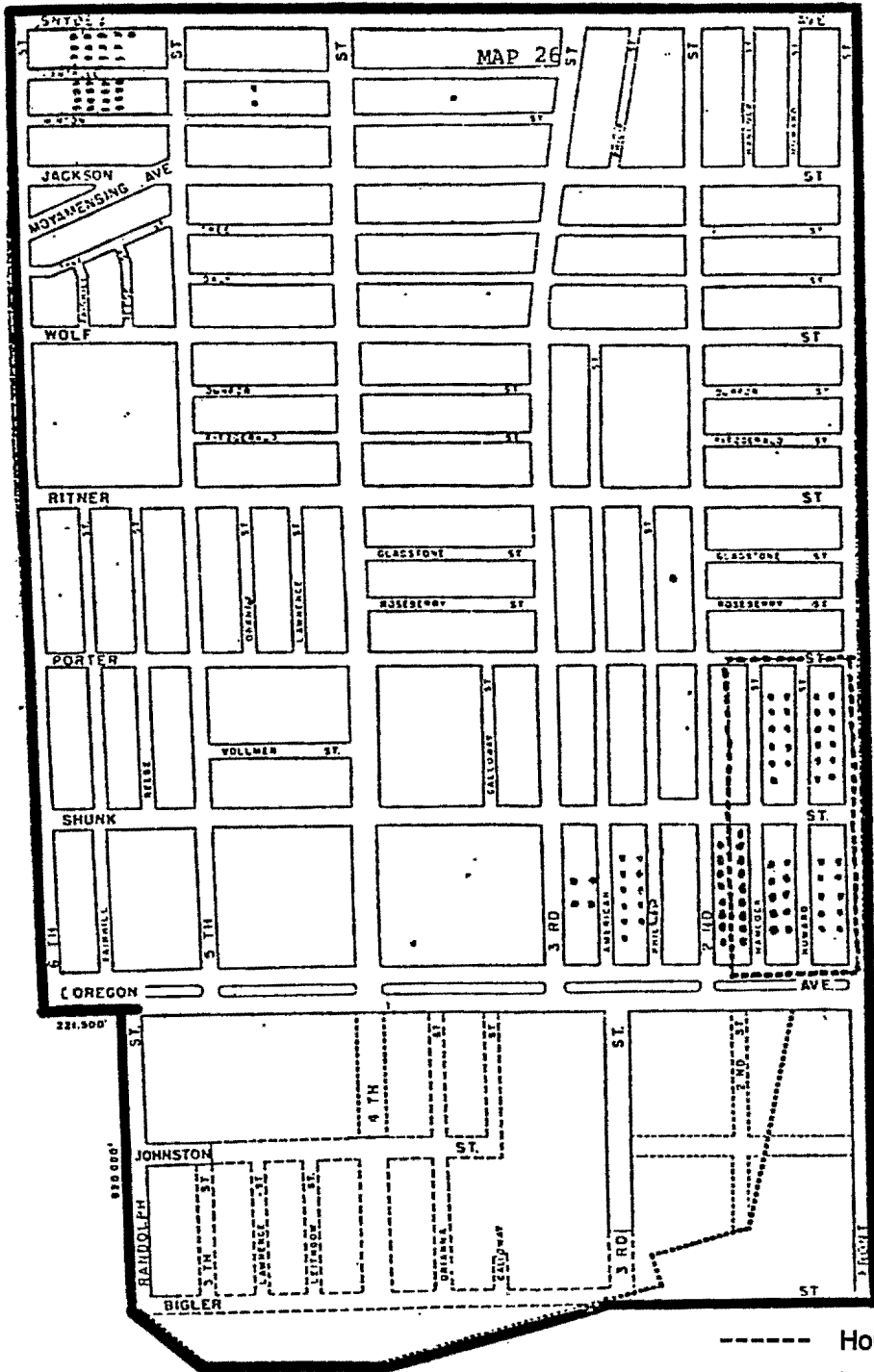
Philadelphia and the Whitman Project

A somewhat more coherent picture of the interacting effects of segregative government actions is provided by reference to the findings from a Philadelphia case study conducted in 1975. At issue was the withdrawal by the Philadelphia Housing Authority of a commitment to build a public housing project in the all-white Whitman Park neighborhood in southeast Philadelphia on a site it had already acquired and cleared. An organization of public housing tenants filed suit in Federal court to seek the construction of the project claiming the failure to build it was racially discriminatory and was part of a pattern and practice of racial discrimination by the city, its housing authority, and other agencies of government.

The study focused mainly on the relationship between racial distribution of population and the federally sanctioned site selection practices of the Philadelphia Housing Authority. A review of agency records revealed that for a period of over 25 years the housing authority had concentrated the construction of public housing in majority-black areas and had on numerous occasions withdrawn proposals to build projects in white areas when those proposals aroused neighborhood opposition. The locations of public housing projects in relation to black housing concentrations are shown at 10-year intervals on the accompanying series of maps. In addition, the city council had restricted the area within which the housing authority could acquire over 6,600 single-family units under the Used House Program to existing black-majority areas. The effect of these practices was to reinforce segregation by limiting all low-income blacks in need of and eligible for public housing to opportunities within the ghetto area only.

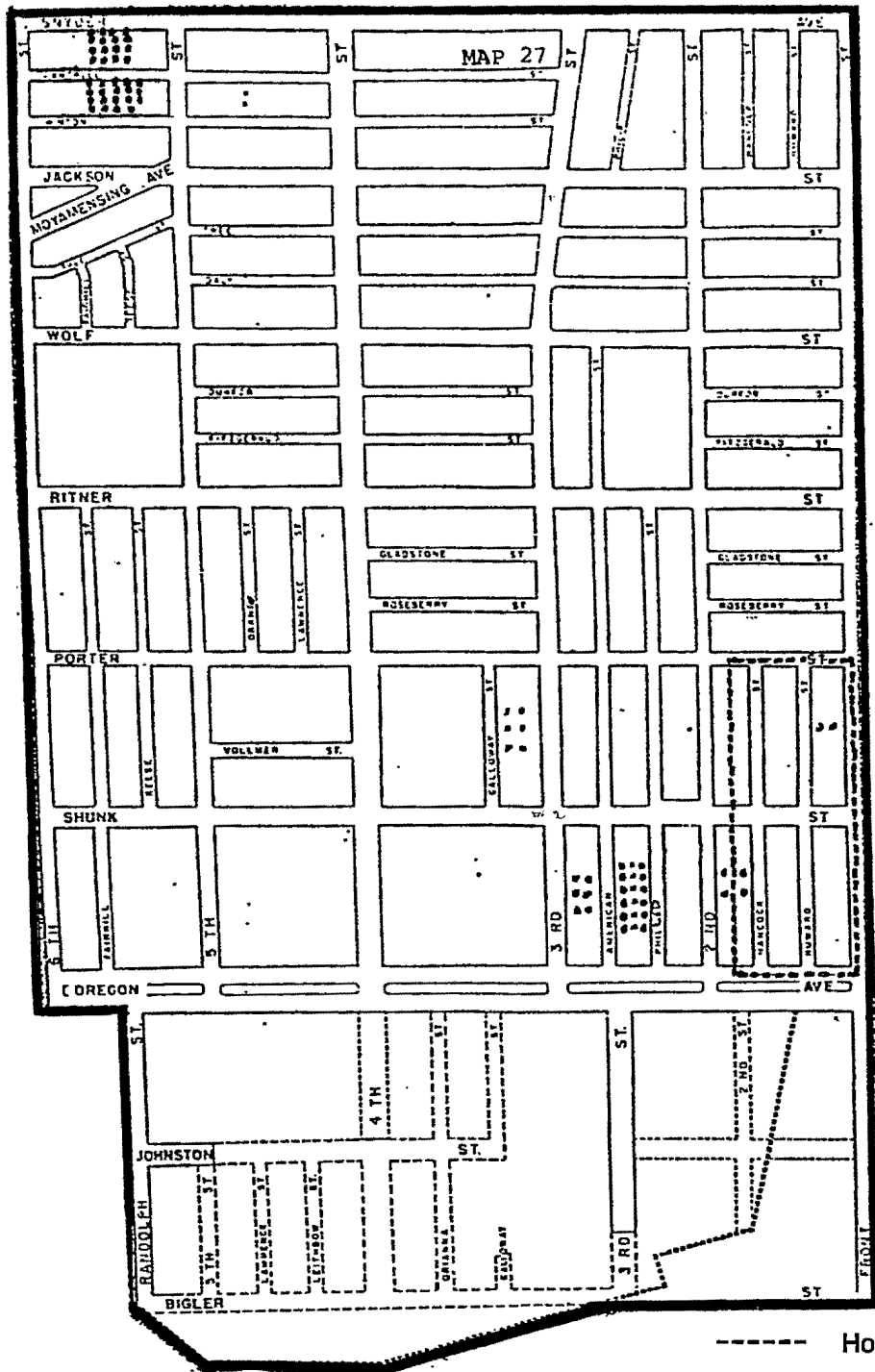
Opposition to the construction of the housing project was led by a vociferous white neighborhood organization which loudly, and sometimes violently, asserted its right to defend and preserve the "character of the neighborhood." The housing site had been cleared 15 years earlier in 1959 and 1960. Early construction of the project had been delayed, not by

Whitman Park Urban Renewal Area 1950

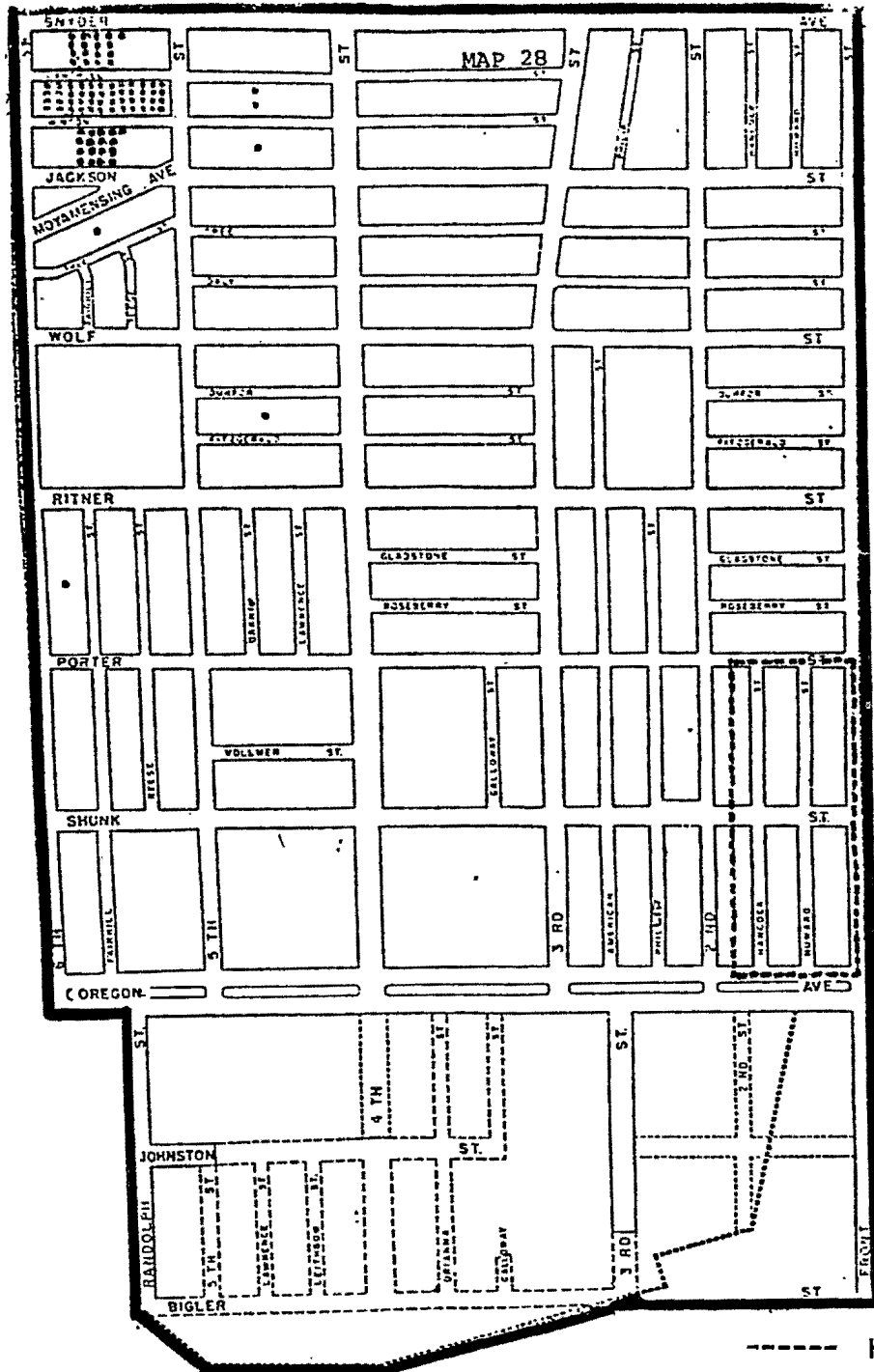


- Housing site boundary
- Renewal area boundary
- One black occ. d.u.

Whitman Park Urban Renewal Area 1960



Whitman Park Urban Renewal Area 1970



- Housing site boundary
- Renewal area boundary
- One black occ. d.u.

opposition to public housing per se, but by disagreement over the number of units to be built and the housing authority's proposal to build a tower building in the predominantly row-house neighborhood. This controversy had taken nearly 10 years to resolve and had resulted in an agreement to build townhouses. Contracts had been let and construction had just begun when the racial opposition issue emerged fueled by the campaign rhetoric of mayoral candidate, Frank Rizzo. So violent were the protests that the contracts were cancelled, the contractor was compensated, and the proposal was withdrawn.

An examination of census data and agency records revealed that 60 black families had lived in the six-block area which formed the housing site, and they comprised 42 percent of the families who were displaced by its acquisition and clearance. In addition, the census block statistics showed that prior to clearance of the site there were 15 black-occupied housing units in the blocks adjacent to the site, and that after clearance this number increased to 30. These changes are shown on the maps which follow.

An examination of Redevelopment Authority records disclosed that the larger area enclosed by the heavy line on the accompanying maps was designated in 1962 as the Whitman Park Urban Renewal Area, a "Spot Clearance and Rehabilitation Project." In the years between 1962 and 1970 just over 100 of the several thousand houses in the Whitman Urban Renewal Area were demolished including, coincidentally, every black-occupied house east of 4th Street.

These facts, among many others, were presented at the trial held in late 1975 which resulted in an order that the contested housing be built. The city appealed, and in 1977 the Third Circuit Court of Appeals affirmed the district court order to build and the U.S. Supreme Court declined to review.

After several more years of delay the project was at last built and was finally occupied in 1983. While compelling the construction of this housing is a significant legal and symbolic achievement, its impact in reversing the effects of years of cumulative segregative actions by government agencies in Philadelphia is negligible.

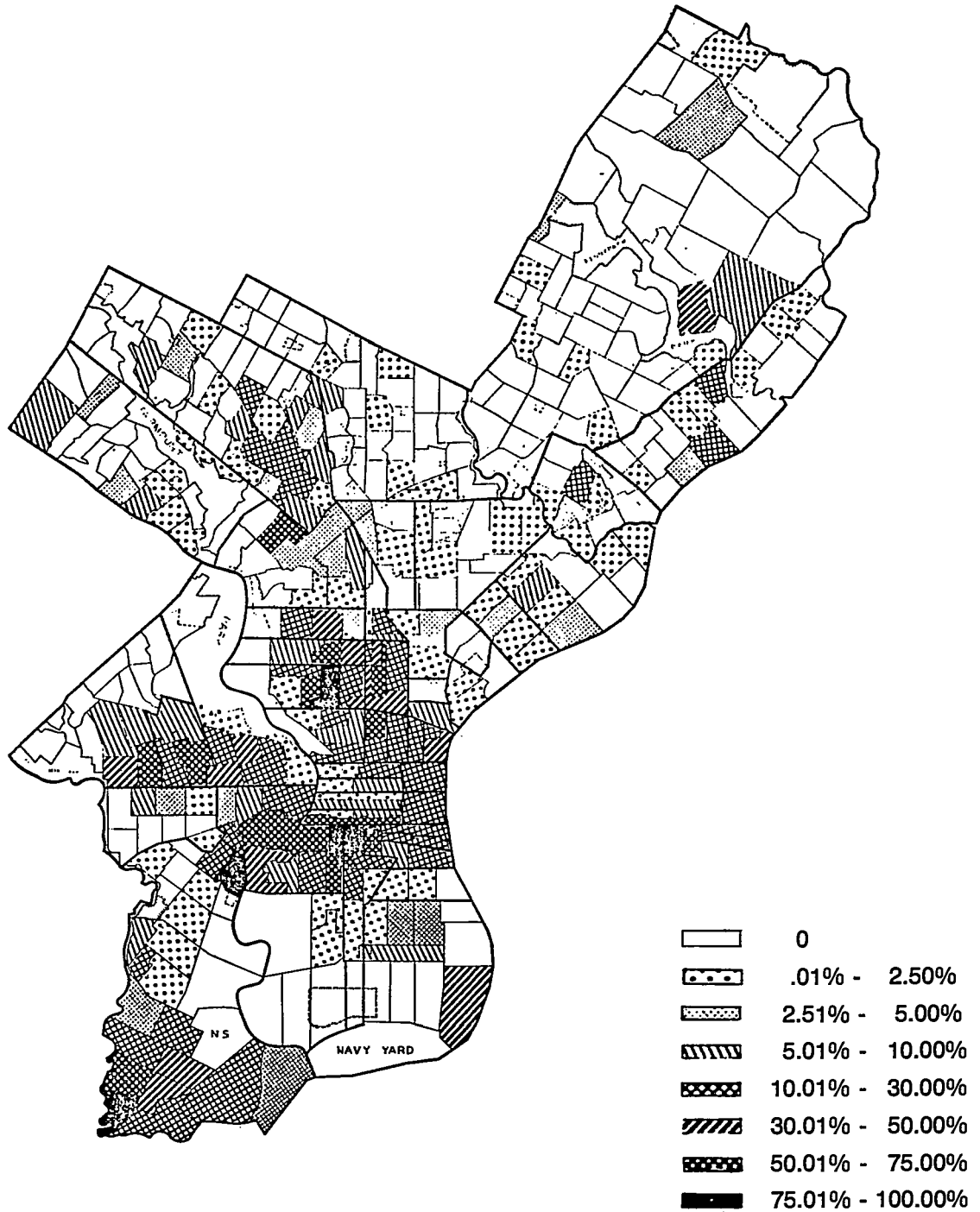
The examples of segregative actions cited above, while illustrative only, have their counterparts in every metropolitan area. Except for Philadelphia, no specific relationship can, or should, be inferred between these examples and the seven SMSAs described earlier. Nevertheless, familiarity with most of these SMSAs suggests several possible relationships which at least warrant further investigation. These include:

1. Displacement and relocation from urban renewal in southwest Washington and the continuing expansion of black population to the northeast.
2. Location of public housing by the Chicago Housing Authority and the location of black concentration in Chicago.
3. Responses by St. Louis County to requests for apartment zoning and the spillover of black areas across the western and northern city limits.
4. Displacement and relocation from the Century Freeway and the spread of black concentrated areas into Compton and beyond.

No court is likely to order relief from the widespread cumulative effects of segregative actions by agencies of government, but an understanding and recognition by those who make policy of the role played by government in creating this segregated society must provide an improved basis for the formulation of rational and equitable responses which promote integration as affirmatively as past practices have promoted segregation.

Map 1

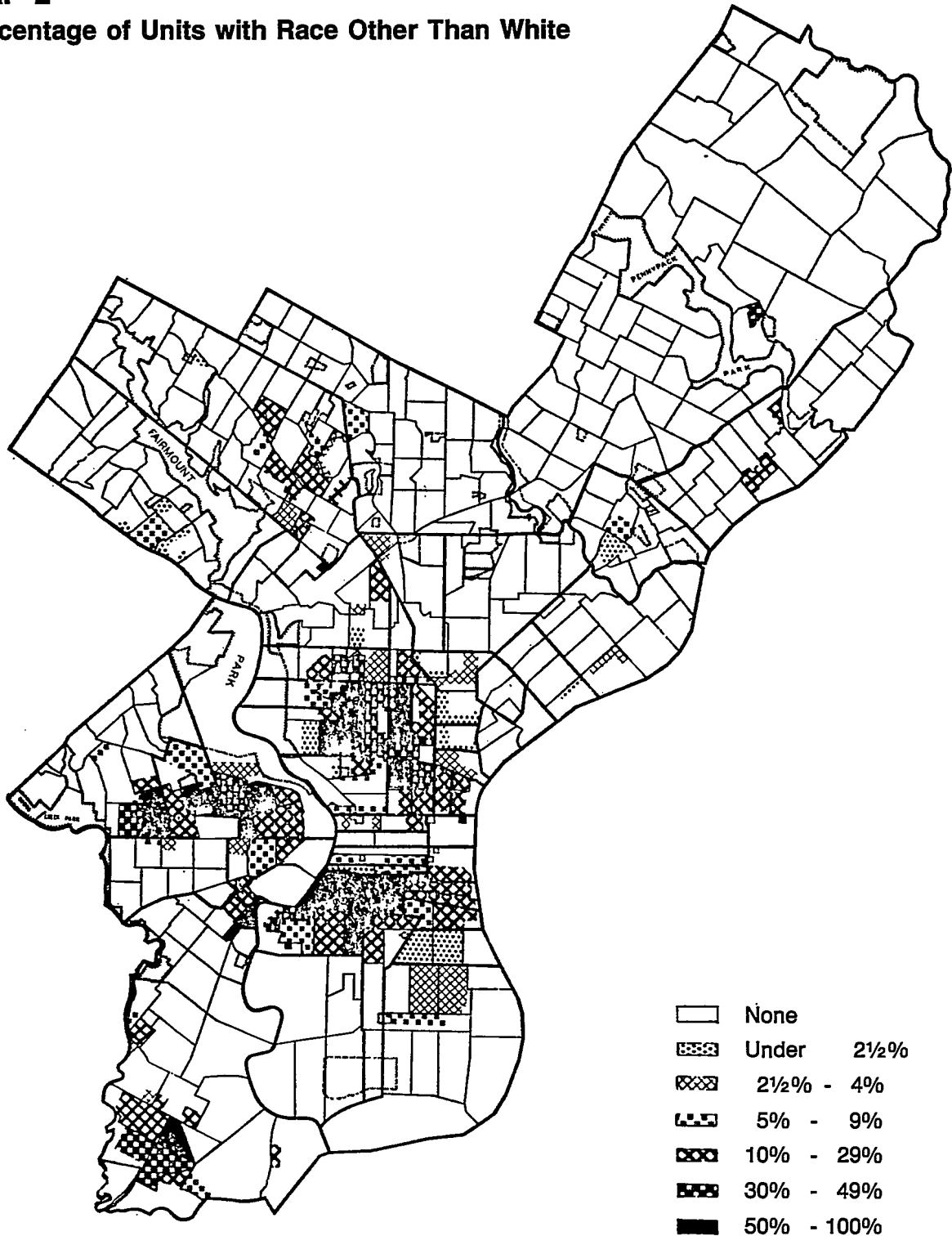
Percentage of Dwelling Units Used for Colored Housing



City of Philadelphia Census-Tracts
Philadelphia Surveys 1934

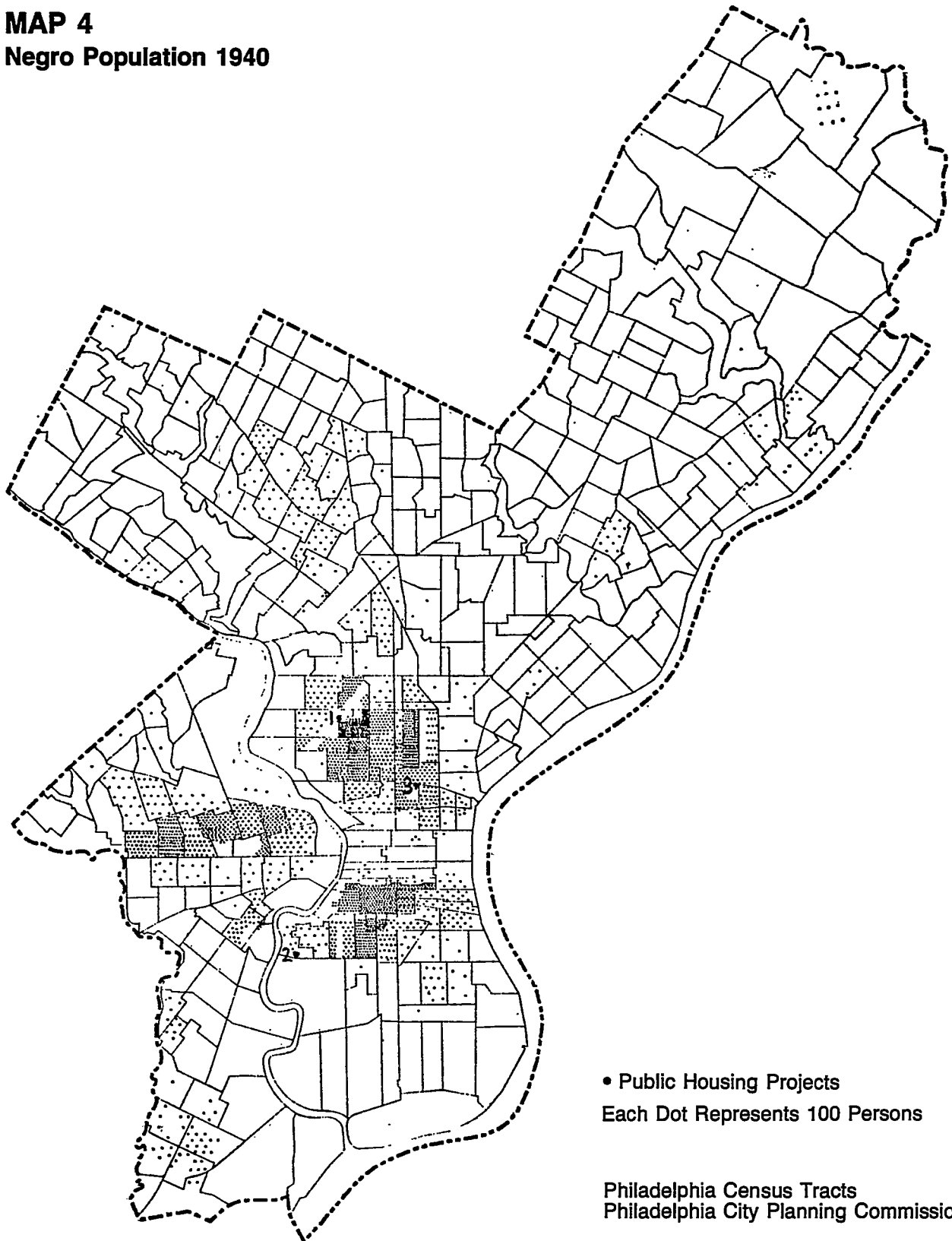
MAP 2

Percentage of Units with Race Other Than White

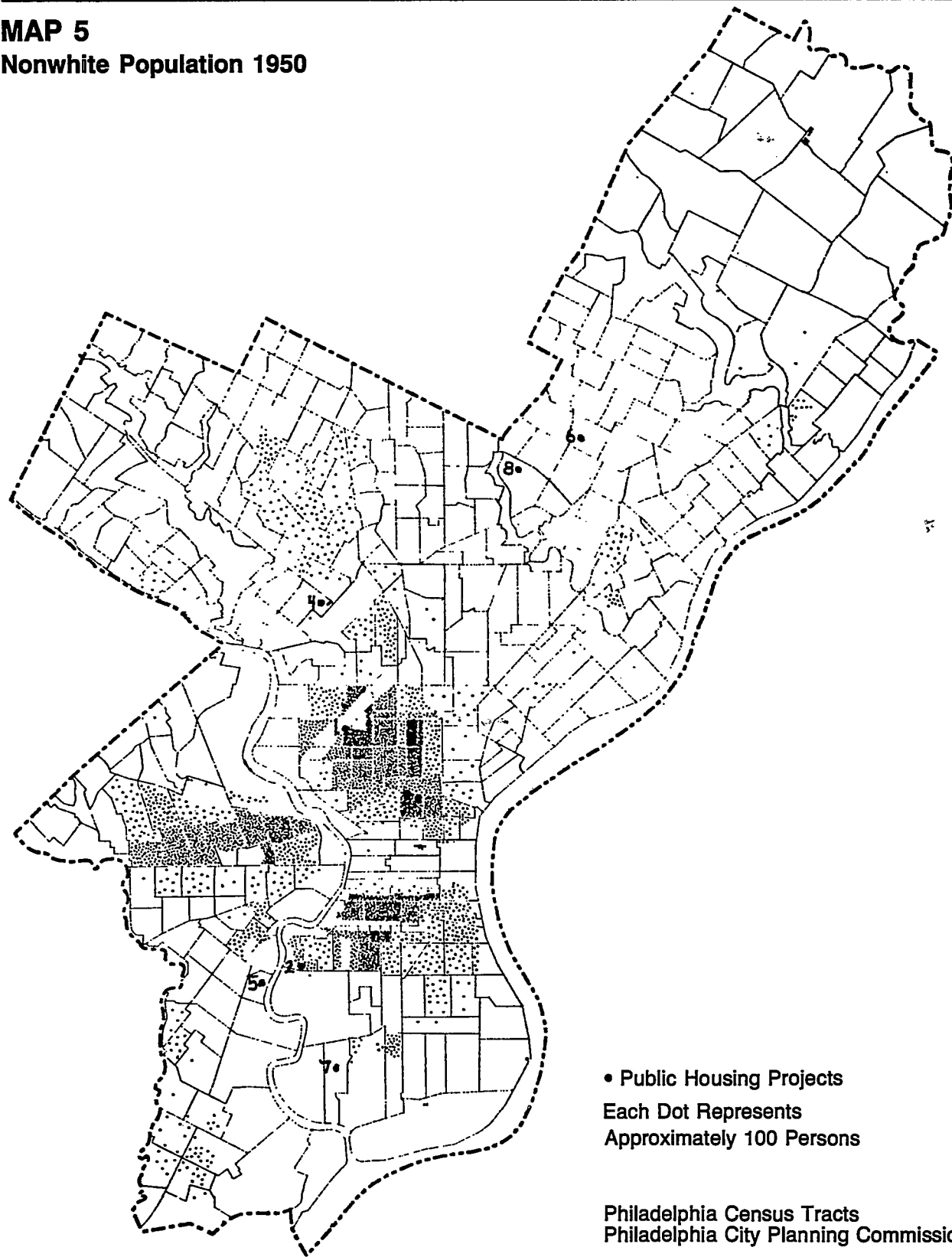


City of Philadelphia Census-Tracts
Real Property Survey 1939

MAP 4
Negro Population 1940



MAP 5
Nonwhite Population 1950

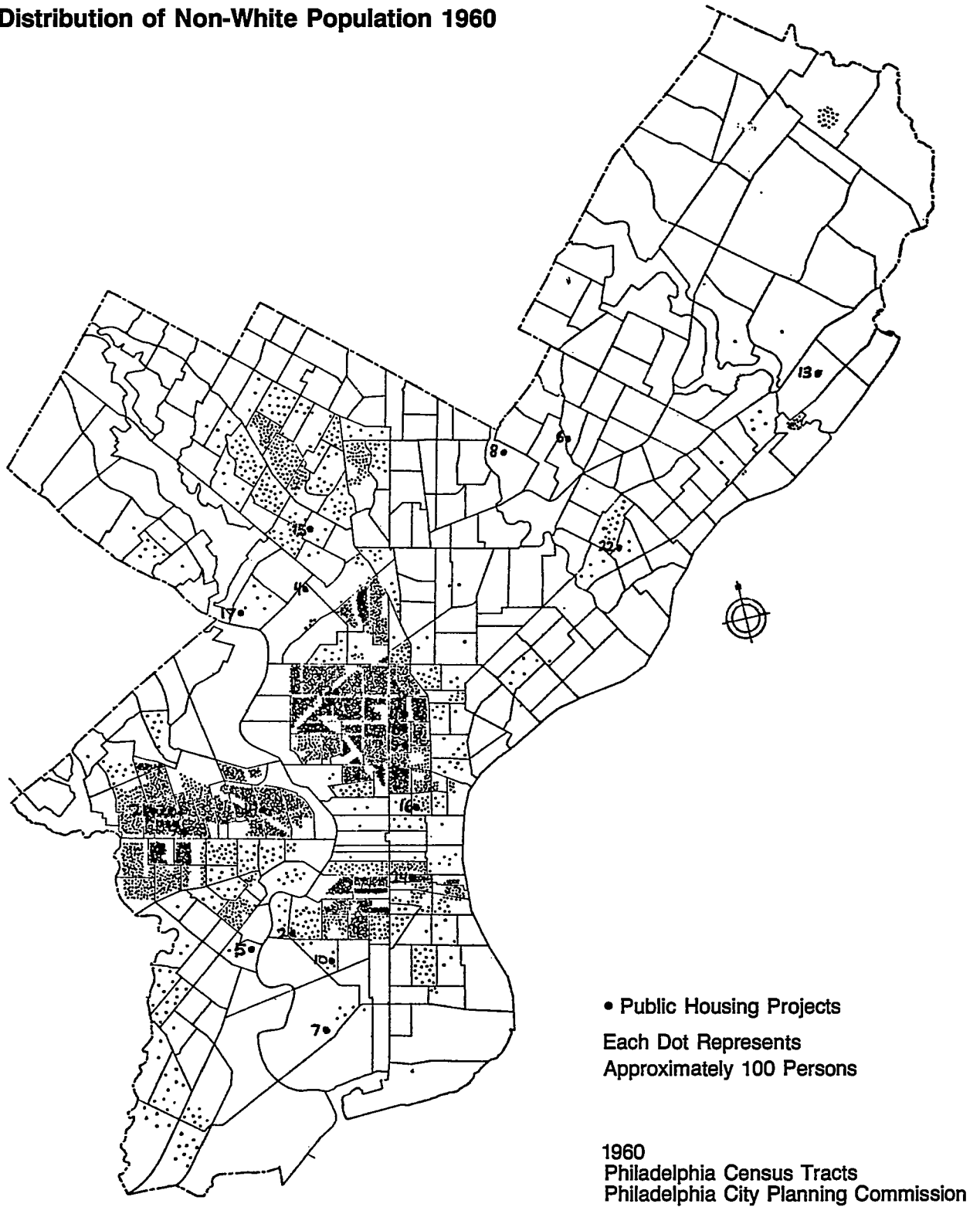


• Public Housing Projects
Each Dot Represents
Approximately 100 Persons

Philadelphia Census Tracts
Philadelphia City Planning Commission

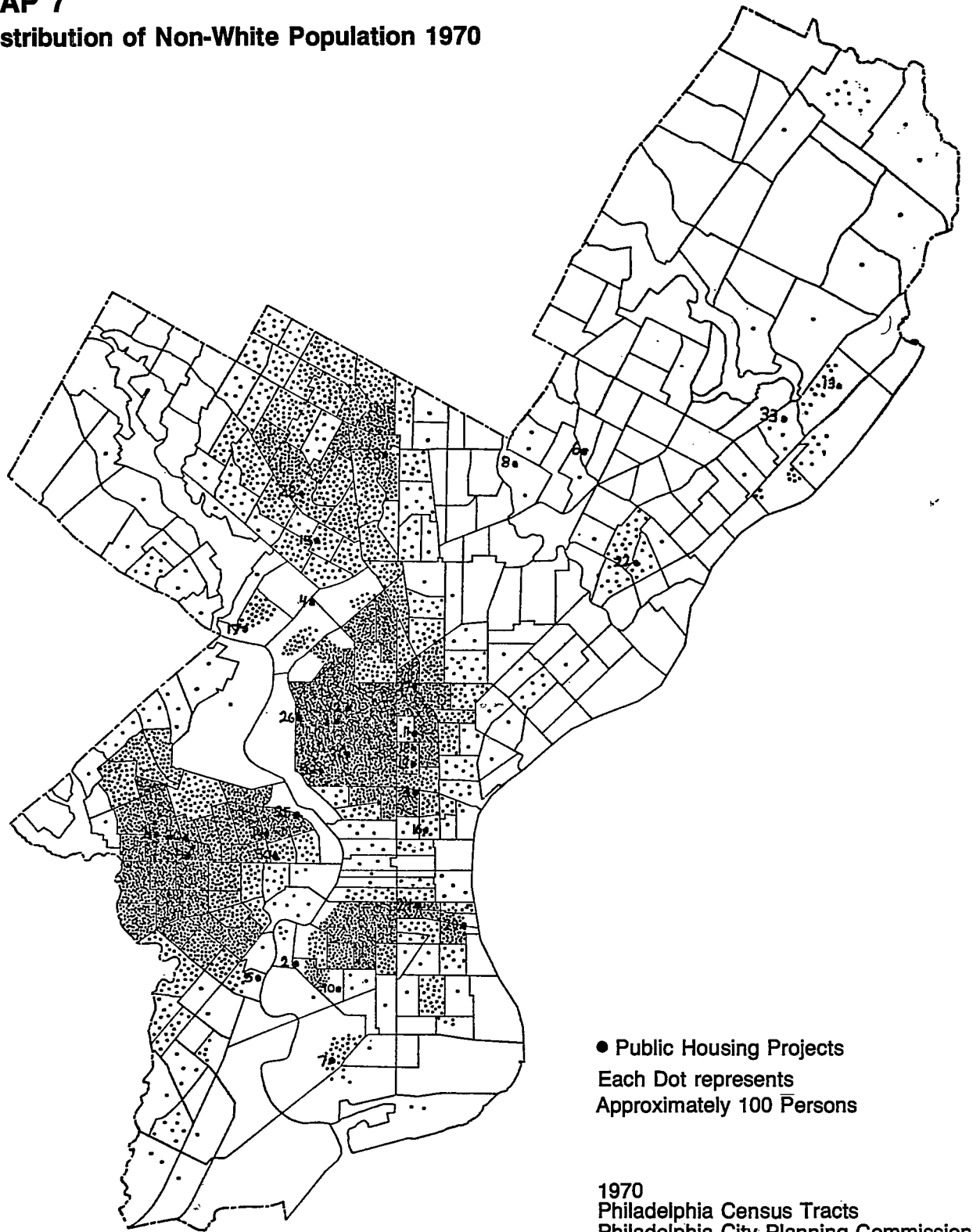
MAP 6

Distribution of Non-White Population 1960



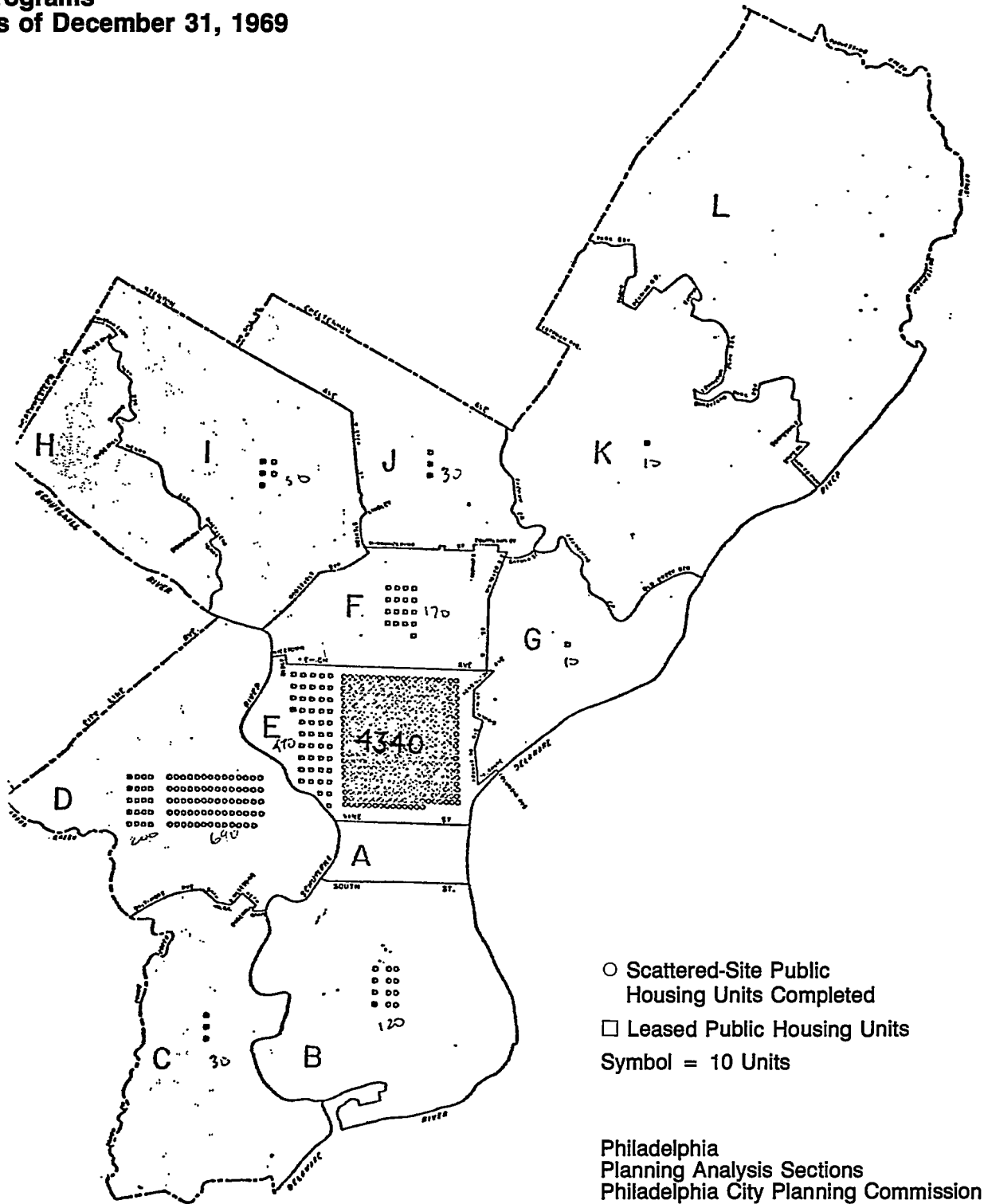
MAP 7

Distribution of Non-White Population 1970

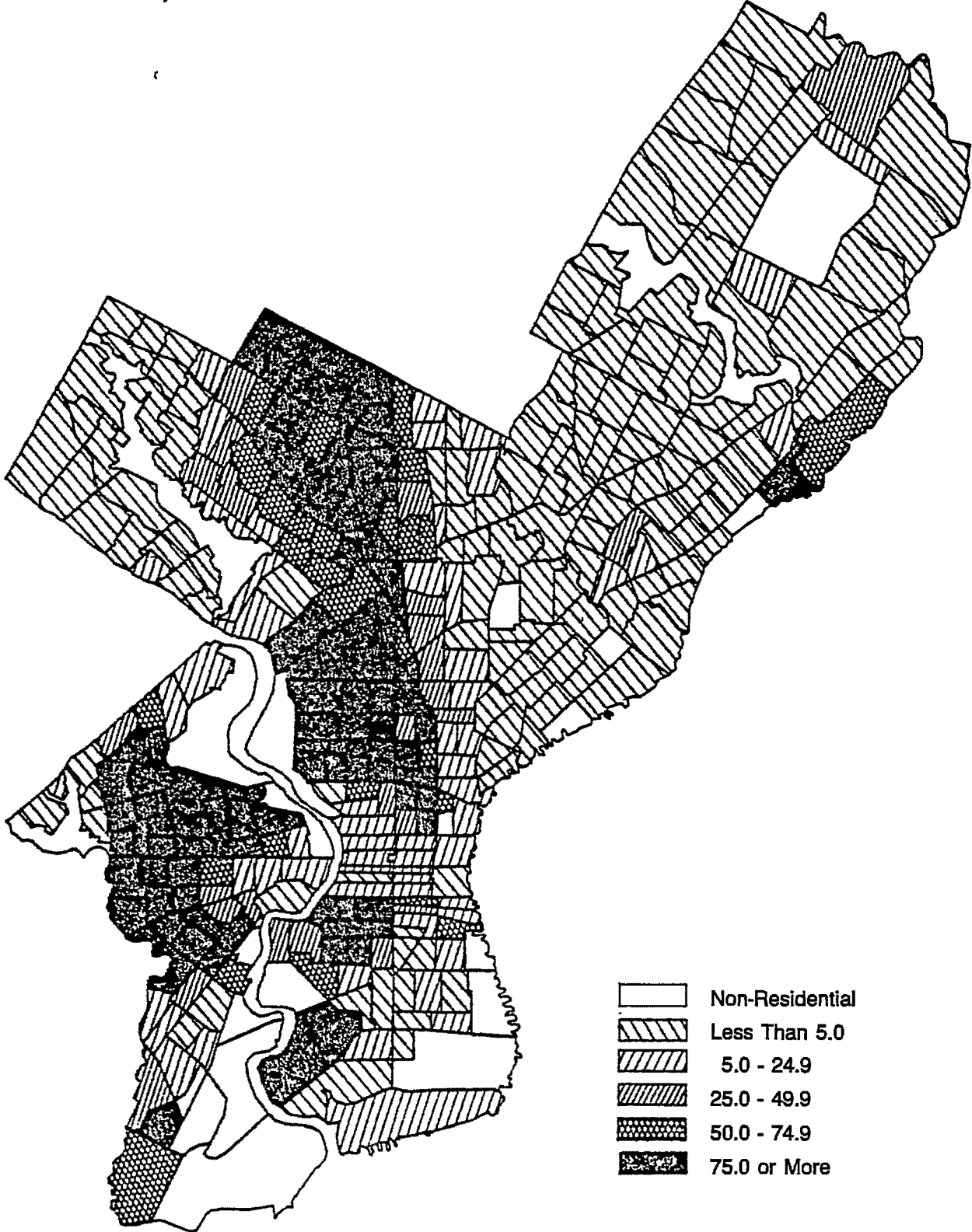


MAP 8

Housing Units in Philadelphia Housing Authority Scattered-Site and Leasing Programs As of December 31, 1969



Percent Black, 1980



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The Effects of the Recession and Housing Supply on Fair Housing Goals, Public and Private

The Effects of the Recession and Housing Supply on Fair Housing

Henry Schechter*

Introduction

It is a pleasure to participate in the Commission on Civil Rights Housing Consultation to discuss the views of the AFL-CIO on trends in housing and the economy as they relate to fair housing.

While the focus of the discussion is on fair housing, that subject cannot be divorced from the adequacy of the housing supply. Limited available evidence suggests that tight housing market supply conditions also encourage an increased frequency of racial discrimination. Also, importantly, if decent housing is not vacant and available in local markets at prices and rents that families of limited income can afford, then, for them, the right to buy or rent without discrimination becomes a cruel hoax. Fair housing cannot be achieved in a practical sense until such time as decent housing for all at affordable rents and prices is available. In that light, the financial and economic aspects of housing, as well as the amplitude and condition of the housing stock will be examined.

The physical condition of housing and its affordability for low-income and minority households will

be discussed in terms of changes over the decade of the 1970s. The present and projected effects of the economic recessionary conditions since the beginning of the Reagan administration are examined, and the proposal for housing vouchers as an alternative to assisted housing production programs will be evaluated. Finally, recommendations will be made for improving both the availability and the accessibility of housing for lower income, minority, and other special groups.

Housing in the 1970s

The physical condition of housing improved in the period of the 1970s for all households—both minority and nonminority. The President's Housing Commission report in 1982 pointed to the long-term improvement in housing, citing a trend back to the end of World War II. Overcrowding, the incidence of inadequate plumbing, and dilapidation have, in general, declined, according to the Commission report, (Advance Edition, pp. 7-9.) and as documented in published surveys of the Bureau of the

* Prepared with the collaboration of Frank Parente, Housing Specialist, Department of Economic Research, AFL-CIO.

Census and the Department of Housing and Urban Development.

The number of physically inadequate and overcrowded housing units declined in the period from 1970 to 1980, both for minorities and for nonminorities. At the same time, in 1980, as was true in 1970, minorities have worse and more crowded housing than Americans as a whole.

Between 1970 and 1980, according to the HUD and Census Annual Housing Survey, the proportion of owner-occupied units lacking some or all plumbing declined from 4.2 percent to 1.5 percent for the entire population. For renter-occupied units, there was a drop from 7.8 to 3.6 percent.

For minorities, there has been a drop also, but to ratios that were still far more unsatisfactory than for the overall population. For example, black renter-occupied units lacking plumbing declined from 17.6 percent in 1970 to 7.1 percent in 1980, a level that is still double the rate for all renters.

While the presence of full plumbing facilities is a necessity in any house, it can no longer be considered as *the* criterion of housing adequacy in the 1980s. For one thing, even if the plumbing facilities are there, do they work? And a similar question might be raised about kitchen facilities and heating and electrical systems. Also, is the roof leakproof; are there holes in walls, etc.? Based on a reasonable consideration of 15 housing condition items, the President's Housing Commission classified the condition of housing occupied by different population groups and published the results in its report in 1982. The incidence of inadequate housing for certain groupings were as follows:

Owners	4.2 percent
Renters	13.3 percent
Very low income renters.....	18.8 percent
Black households.....	19.1 percent
Hispanic households	12.3 percent
Female-headed households	10.1 percent

Of course, there is great overlap among some of these groups. The very low-income renters category no doubt includes many of the black and Hispanic households. And both of the latter groups as well as the very low-income renters grouping includes many female-headed households.

Another criterion of housing adequacy—from an occupancy viewpoint—is the degree of overcrowding. A unit is generally considered overcrowded if it has more than one person per room. The overall rate of crowding declined from 6.4 to 3.1 percent for

owners and from 10.2 to 6.2 percent for renters. Between 1970 and 1980 Spanish origin renters reduced their incidence of crowding from 28 percent in 1970 to 22 percent in 1980. Black renters progressed from 22 percent in crowded units in 1970 to 10 percent in 1980—still well above the national rate.

An overriding influence affecting the adequacy of the housing supply as the 1970s progressed was the huge population wave known as the post-World War II baby boom. It was during the seventies that this huge cohort of young people began to establish their own households, either as single persons who had left their parents' house, or as young married—or unmarried—couples.

Despite some high housing production years, including a few record years of subsidized housing production—under the 10-year housing goal program enacted toward the end of the Johnson administration, housing prices and rents kept moving up. This was due in part to the domestic population pressures, as well as to the impact of the multiple oil price increases, worldwide food shortages, and rising prices, which created general inflationary pressures.

As result, more of available income was being paid for housing in 1980 than in 1970. The median gross rent for the overall populace, for example, rose from 20 percent of income to 27 percent in 1980. Half of all renters paid more than a quarter of income in 1980, compared with 36 percent of the renters in 1970. This trend, of course, held for minorities who have consistently had a greater incidence of higher rent-to-income ratios. More than 53 percent of blacks and Spanish origin households in 1980 paid more than one-fourth of income for rent, up from 43 percent for blacks and 40 percent for Spanish origin renters in 1970.

The seeming paradox of improved housing conditions and rising rent-to-income ratios probably is explained, in part, by the 1970s activity of the Federal Government in expanding the low-income housing supply by new construction under assisted housing programs as well as by substantial subsidized middle-income residential financing in the mid-seventies.

While the physical quality of housing improved for minorities during the previous decade, in the eighties, the ability to pay for adequate housing has eroded. The incidence of poverty has increased, and families' income in constant dollars has declined

TABLE 1.
Median Family Income

	1982 Income	1982 Income as percent of all-family income
All families	\$24,433	100.0%
Black families	13,398	57.2
Spanish origin	16,227	69.2
Female householders	11,484	50.6
65 years and older	16,118	68.8

since 1980 under the economic conditions of the Reagan administration.

The number of Americans below the poverty line increased from 25 million in 1970 to 29 million in 1980, and to 34 million in 1982. The proportion living in poverty rose from 13 percent to 15 percent of the population in the 1980-1982 period.

The national median family income in constant dollars rose from \$24,500 in 1970 to a high of about \$26,000 in 1978 and 1979. In 1980 it declined to \$24,600, and between 1980 and 1982 it declined by over \$1,000 to \$23,433, due to the recession and record levels of joblessness.

The incomes of minority families were below the overall level of \$24,300. Median constant dollar black family income of \$13,398 in 1982, for example, represents only 57.2 percent of the median of all families. See table 1 for incomes of other groups.

The Role of Assisted Housing

During the 1970s, government assistance programs made a big contribution to improving the housing situation of lower income people and minorities. This can be seen in the assisted housing production figures for the 1970s.

In the decade of the 1970s, the number of occupied housing units increased by about 16.6 million units to over 80 million units in 1980. Most of the net additions were made through the private housing production system. In addition, in the 10-year period 1970 to 1979, the Federal Government provided aid for 2.8 million new and rehabilitated units for lower income families by way of major government programs. These units, which averaged 280,000 yearly and accounted for about 1 in 6 of the net increase in occupied housing units over the decade, largely would not have been built otherwise because the private housing market does not provide adequate production for lower income people. Especially important to the lower income housing production were new and rehabilitated units provided by the low-rent public housing program (375,000 units), section 8 rental assistance (445,000 units), section 236 rental (450,000 units), Agriculture Department Farmers Home Administration assisted single-family homes (733,000 units), and HUD section 235 single-family program (413,000 units). These programs accounted for the majority of the overall assisted production which helped improve the quality of housing for lower income and minori-

ty families in the 1970s. The minority tenure in subsidized housing shows that such housing has been of crucial importance to these groups.

Nationally, in 1977, almost half the tenancy in low-rent public housing was made up of blacks, according to records of the Department of Housing and Urban Development. In 19 States, however, blacks accounted for over half the tenants in public housing. Although American Indians occupy only 1.5 percent of all public housing in the Nation, public housing is more important in a number of States, such as Arizona, Montana, New Mexico, and South Dakota, where Indians constitute from one-third to one-half the public housing tenancy. Similarly, in Arizona, California, Colorado, New Mexico, Puerto Rico, and Texas, "Spanish American" residents occupy at least one-fourth of low-rent public housing, although nationally this minority group accounted for only 12 percent of all public housing tenants. Oriental and other minorities occupy over 90 percent of public housing in Hawaii and Guam, although less than 1 percent nationally.

Female-headed households, who represent almost one-half of all persons in poverty, are heavily dependent on subsidized housing. In 1979 female-headed families accounted for 70 percent of all families reexamined for continuing public housing eligibility and 66 percent of all families reexamined for continuing public housing eligibility and 66 percent of families moving into public housing. In 1978 almost half of all public housing units were occupied by the elderly. Obviously, curtailments of activity under programs in which minorities participate in large numbers can particularly hurt these groups.

The Present Situation in the Economy and Housing

The economic recessionary period beginning in 1980 has made conditions worse. Recent data also suggest that the economic recovery is losing steam. In July manufacturers' durable goods orders, housing sales, and new unit starts all declined. In August the (civilian) unemployment rate remained at 9.5 percent. Measured from July 1981, the official beginning of the last recession, to August 1983, the effects of the economic decline on the entire population and on minorities can be seen in official unemployment figures published by the Labor Department.

The August 1983 national unemployment rate of 9.5 percent represents 10.7 million unemployed persons. This was 2.8 million or 2.3 percentage points more than in July 1981. The black unemployment rate, for example, rose from 14.9 percent to 20.0 percent over the 2-year period, with 2.3 million blacks unemployed. The table also shows that in August 1983 there were about 800,000 jobless Hispanics and over 650,000 jobless women who maintain families. In both August 1983 and July 1981 the unemployment rates for minorities were worse than for the overall populace. (See table 2.)

Poverty has increased due to the recession, particularly for minorities who were worse off to begin with—and are still in a recession despite some economic improvement—including blacks, Spanish origin people, female-headed households. Median income as a percent of all family median income is still less for minorities than for the overall population. It should be no surprise that the recession has brought about record home mortgage default and foreclosure rates and has resulted in numerous evictions from owner-occupied and rental units in areas worst hit by the recession and in cities across the country.

Housing production, which helped minorities to share in the overall level of improvement in housing quality in the 1970s, has lagged in large part due to high interest rate policies of the government, an anti-inflationary tool which repeatedly adds to higher long-run costs rates and brings about prolonged high unemployment.

Overall housing production, measured by housing starts, sank to just over 1 million units per year in both 1981 and 1982, down from the level of 2 million starts in 1978. Housing starts, although improved in 1983, will amount to only about 1.6 million units for the year. Subsidized housing, which has been particularly important for minorities because of their lower income, has been cut by the Reagan administration budgets.

For example, since fiscal year 1980, the annual number of new and substantially rehabilitated units for which funds were reserved under the section 8 rental and low-rent public housing programs² has declined as follows: FY 1980 (actual)—129,490; FY 1981 (actual)—110,500; FY 1982 (actual)—39,100;

TABLE 2.**Number of Unemployed Persons and Unemployment Rates, Seasonally Adjusted, 1981–1983, in thousands**

		July 1981	August 1983
Overall	Number	7,850	10,699
	Rate	7.2%	9.5%
White	Number	5,975	8,029
	Rate	6.3%	8.2%
Black	Number	1,640	2,347
	Rate	14.9%	20.0%
Hispanic origin	Number	595	790
	Rate	10.0%	12.9%
Women who maintain families	Number	619	670
	Rate	11.2%	11.6%

Source: U.S., Department of Labor.

FY 1983 (estimated)—16,600; and FY 1984 (estimated)—21,500.¹

About 330,000 new and rehabilitated standard units will be lost to the lower income housing supply for the 4 years 1981–1984 under these programs because of the Reagan administration budget cuts. Instead, there is proposed an increased reliance on existing housing and conversions of existing subsidized units to other programs, reflecting the budget priorities of the administration.

Another way of looking at the reduction in assisted housing effort is to note the number of net additional units per year under the same programs—regardless of whether the units are new, rehabilitated, existing, or converted. By this measure, the number of added units is as follows: 1980 (actual)—105,892; 1981 (actual)—189,159; 1982 (actual)—69,326; 1983 (estimated)—98,146; 1984 (estimated)—100,000.²

Thus, about 267,000 fewer additional units over the years 1981–1984 will be made available for lower income households under these programs than

would have been added if the 1980 level had continued.

The faltering rate of production of nonsubsidized and subsidized housing in the early 1980s will make conditions worse for minorities as time goes on. As housing production falls, further improvements in the quality of the housing stock through infusions of new construction fail to materialize. The average age of housing increases, and the existing stock must accommodate a burgeoning populace. Despite the hope that over time there could be an increased reliance on the existing housing stock as a source of additional units by way of conversions or through other means, without new construction, the housing stock deteriorates.

According to the 1980 Census Components of Inventory Change study, (HC 80–51–2, June 1983) despite net additions from conversions (e.g., 2 out of 1) in excess of mergers (e.g., 1 out of 2), over the period 1973–1980, there was a net loss of about 150,000 units each year from the housing supply, apart from the production of newly constructed

¹ Low Income Housing Information Service, from HUD Budget Summaries.

² Low Income Housing Information Service, from HUD Budget Summaries.

homes and apartments. Thus, the first 150,000 units of new housing production each year goes to make up for units lost from the supply over the year in order to keep the overall number of housing units the same as before.

The effect of reduced housing production during the first 3 years of the eighties will be a slowdown in the housing quality improvements which have been experienced in the past, unless steps are taken to compensate for lost production. In addition, other effects will include tighter market conditions, decreased vacancies, and higher housing prices and rents.

Housing vacancy rates in the first quarter of 1983 at 5.7 percent for rentals and 1.4 percent for homeownership units are on the low side in historical perspective. Price rises due to recent underproduction may already be visible in recent median new home price rises from \$70,900 in July of 1982 to \$75,000 a year later. Likewise, over the year ending in July 1983 the Consumer Price Index for residential rents rose at more than twice the rate of the overall price index.

Racial discrimination and condominium conversions will serve to exacerbate the problems faced by minorities, in many cases confining them to the dwindling available housing stock in segregated locations.

Existing Housing and Housing Vouchers

Housing vouchers have been put forward as an alternative to the production oriented assisted housing programs which have operated in the past. Housing vouchers are an unsatisfactory approach, however, because vacancies are low in many places and vouchers creating additional demand will result in inflation in rents. Also, vouchers will not necessarily augment the supply of quality housing through fix-ups as has been claimed. Finally minorities would not necessarily have more choice in housing with vouchers, as has been argued by advocates.

Lower income families—both minority and non-minority—would not necessarily find places to live via vouchers in areas with low vacancies. The result would be an increased demand for housing without a commensurate increase in supply, thus causing inflationary runups in rents.

Vacancies vary from place to place. They may not exist in sufficient volume to permit housing choice to be exercised outside of segregated specific market or submarket areas, or for special types of shelter such as apartments for large families, or for specially adapted housing for the handicapped or the frail elderly. Vacant units may not be physically adequate. They may be available but rundown.

To illustrate, in the first quarter of 1983 the national rental vacancy rate was 5.7 percent. Selected other rental vacancy rates suggest that a lower income family armed with a housing voucher would have no trouble finding shelter if seeking a rundown apartment, one with high rent, or a unit 40 to 50 years old. However, there would be less in the way of choice if the family sought an adequate apartment in a central city, lived in the Northeast, or needed a large apartment. The vacancy rates were as follows: units lacking plumbing—12.5 percent; in central city with all plumbing—5.2 percent; \$400 or more monthly rent—6.9 percent; 6 or more rooms—3.6 percent; structure built 1939 or earlier—6.0 percent; and in the Northeast—4.2 percent.³

The 1980 census showed a national rental vacancy rate of 7.1 percent. The rate prevailing in many States and counties, however, was lower. For example, according to the census, the statewide rental vacancy rate in California was only 5.1 percent. However, in 6 of the 10 largest California counties, those with more than 250,000 housing units, the rental vacancy rate was even below the statewide rate. In populous Los Angeles County, where almost one-third of the housing units in the State are located, the rental vacancy rate was only 3.9 percent (1980 Census of Housing, Supplementary Report. HC 80-51-1).

At the same time, there is a crushing need for additional low-income rental housing. This was documented in a survey of waiting lists of 25 local housing authorities around the country made by the Council of Large Public Housing Authorities in 1982. It was found that the 25 housing authorities which, in total, had 359,075 housing units, had waiting lists which totalled 221,837. This total would have been larger if some of the authorities had not closed their lists to additional family applicants because they considered it the perpetration of a hoax to accept an application from families who would not be able to obtain a unit for years.

³ U.S., Department of Commerce, Housing Vacancies, First Quarter, 1983, H. 111-83-01.

TABLE 3.**Distribution of Enrolled HUD Experimental Housing Allowance Program Participants**

Dwelling Status	Percent of Enrollees	
	Brown County	St. Joseph County
Pre-enrollment dwelling certified:		
without repair	47%	40%
after repair	29	30
Moved before certification	9	9
No dwelling ever certified:		
enrollment terminated	13	16
still enrolled	3	5
Total	100%	100%

Source: Fourth Annual Report of the Housing Assistance Supply Experiment sponsored by the U.S., Department of Housing and Urban Development, Office of Policy Development and Research, October 1976–September 1977 (R-2302-HUD, May 1978), The Rand Corporation, table 4.7, p. 65.

While many authorities reported that elderly households might obtain a unit in from 1 to 6 or 12 months, for nonelderly families the outlook generally was for a wait of at least 1 year, more often 3 years, and sometimes as long as 10 years.

In view of these conditions, it is not surprising that 36 percent of New York City families given section 8 certificates—a form of vouchers—were unable to use them because they could not find decent units in existing private structures, according to a 1982 study by the Pratt Institute's Center for Community and Environmental Development.⁴ Minorities and families with children were least able to use their certificates.

Perhaps the most significant aspect of the HUD Experimental Housing Allowance Program (EHAP) Supply Experiments of the 1970s, which are cited as the experimental justification for a housing voucher program, was that the great majority of the housing allowance recipients never moved. The fourth annual report on the two supply experiments showed the percentage distribution of enrolled program partici-

pants after the second year of program participation at each experimental program site with respect to pre-enrollment occupancy or nonoccupancy of a dwelling that had been certified as meeting standards (see table 3). The sites were Brown County, Wisconsin City, with Green Bay as a central city, and St. Joseph County, Indiana, with South Bend as a central city. The data also show the percentage that moved in order to qualify for a housing allowance.

Thus 76 percent of enrollees in Brown County and 70 percent in St. Joseph County had remained in their pre-enrollment dwelling. In fact, excluding those who had terminated their enrollment before obtaining a certified dwelling and those that were not yet in a certified dwelling, about 90 percent of the program participants receiving an allowance remained in the dwelling they had been living in before they received a housing allowance. Thus, it would be wrong to conclude from these experiments that a housing voucher program would lead to a great deal of mobility among lower income program

⁴ Results of study conducted by Frank De Giovanni and Mary Brooks (Impact of a Housing Voucher Program on New York City's Population), cited by Chester Hartman, "Housing Allow-

ances, A Bad Idea Whose Time Has Come." Working Papers, November–December 1982, p. 57.

TABLE 4
Percentage Distribution of Items Repaired

Item Repaired	Percent of All Repairs			
	Brown County		St. Joseph County	
	Owners	Renters	Owners	Renters
Handrail or steps	24%	14%	21%	12%
Window, door, or partition	24%	27%	30%	28%
Paint	21%	27%	18%	26%
Plumbing	12%	11%	13%	12%
All other	19%	21%	18%	22%

Source: Experimental Housing Allowance Program: Conclusions; the 1980 Report, U.S., Department of Housing and Urban Development, Office of Policy Development and Research, Division of Housing Assistance Research, February 1980 (HUD-PDR-640), table V-4, p. 52.

participations and that this would lead to increased housing choice for minorities.

There is a claim that despite the lack of moves by experimental housing allowance recipients, housing was upgraded by repairs that were made to recipients' dwellings. The nature of these repairs can best be evaluated from the percentage distributions of repairs by type of repair and by costs. The percentage distributions for items repaired are in table 4.

Thus at both sites the three most frequent types of repairs were generally of a routine, minor nature. This also is borne out by the distribution of dwellings evaluated by cash expenses for initial repairs (see table 5).

Thus, about 65 to 70 percent of all the dwelling units occupied by allowance recipients either required no expense for repairs or repairs cost \$20 or less. Less than 10 percent required repairs of over \$100.

What Should Be Done

There is considerable evidence that racial discrimination exists and is a deterrent to minorities securing adequate housing. A HUD study, summarized in The President's National Urban Policy Report for 1980, measured the degree to which blacks and

whites seeking to rent or to buy homes encounter discriminatory barriers. The study, which monitored the experience of paired black and white prospective renters and buyers in 40 metropolitan areas, found that 27 percent of rental agents and 15 percent of sales agents engaged in some form of discriminatory practice. Since many people looking for housing visit more than one sales or rental agent, the level of discrimination experienced by households is even higher. For example, 72 percent of black households visiting four rental agents could expect to encounter discrimination, while 48 percent of black households visiting four sales agents could expect some type of discrimination. A similar HUD study reported that Mexican American households also experience discrimination when they look for housing: light-skinned Mexican Americans in Dallas met discrimination about as frequently as blacks, and dark-skinned Mexican Americans encountered discrimination even more frequently.

The number of fair housing complaints to HUD and to other fair housing agencies for recent years is as follows: FY 1979—2,800; FY 1980—3,100; FY

TABLE 5**Distribution of Dwellings by Cash Expenses for Repairs**

Cash Expenses \$ per Dwelling Unit	Percentage Distribution of Dwellings Evaluated			
	Brown County		St. Joseph County	
	Owners	Renters	Owners	Renters
No repairs reported	3.3%	3.8%	4.8%	6.5%
Repairs at no expense	17.3%	22.7%	22.8%	24.3%
Repaired by expense amount				
\$ 1-20	52.7%	48.2%	41.9%	40.1%
\$21-40	9.0%	10.4%	12.4%	12.7%
\$41-70	6.6%	5.4%	6.8%	7.9%
\$71-100	3.0%	2.8%	3.2%	3.5%
over \$100	8.1%	6.7%	8.1%	5.0%

Source: Experimental Housing Allowance Program: Conclusions; the 1980 Report, U.S., Department of Housing and Urban Development, Office of Policy Development and Research, Division of Housing Assistance Research, February 1980 (HUD-PDR-640), table V-5, p. 53.

1981—4,200; FY 1982—5,100; and FY 1983 (6 months)—2,100.⁵

In view of the persistence of discrimination and the lack of equal access to housing, strong measures should be taken to make the promise of equality in past legislation a reality.

Under the current fair housing law, HUD has a procedure that enables a victim of housing discrimination to report a violation. But the Department can do little to stop that violation. No official has authority to issue "cease and desist" orders to those found guilty of discriminating. HUD can only investigate and try to bring the two parties together to conciliate their differences. But without any power to back up its conciliation efforts, HUD has been unable to get landlords and sellers of housing to take the process seriously.

The proposed Fair Housing Amendments Act of 1983, S. 1220 and H.R. 3482 would amend the 1968 law to put teeth into the enforcement process. A key change provides for hearings of individual housing discrimination complaints by administrative law

judges who would make findings of fact and issue final orders.

Either party could appeal the proposed final order of an administrative law judge to a three-member Fair Housing Review Commission and/or to the Federal court of appeals. A full court review of the case, to determine if there is sufficient evidence in the record to justify the decision, would be available.

Civil penalties up to \$10,000 could be imposed by the administrative law judge. The judge could issue a cease and desist order, violations of which are punishable by fines of up to \$1,000 per day.

Beyond this, a number of actions are needed to assure the availability of reasonably priced and physically adequate shelter, including the maintenance of a growing economy with full employment and monetary policies which keep interest rates at affordable levels. More specifically, unless sufficient housing is produced to increase the stock to meet all needs within a reasonable time period, fair housing remains an ideal rather than a reality for many who are the intended beneficiaries.

⁵ The President's National Urban Policy Report, 1980, p. 10.

It can be estimated that there is an annual need for roughly 2 million new housing units to be constructed in the remaining years of the 1980s in order to keep housing conditions nationally from worsening. This estimate of need is based on a conservative estimate of the annual number of new households for the 1980s based on census projections of 1.6 million, an estimate for units lost to demolitions and disasters of 260,000 units, an allowance of 140,000 units for required added vacancies. To this must be added some portion, perhaps one-sixth or 300,000, of the roughly 1.5 million housing production shortfall attributable to recessionary conditions in the period 1980-1984. And from the 2.3 million total an estimated 300,000 mobile home units to be produced annually is deducted.

Included in the housing production total cited above, there should be a number of government assisted housing units each year, equal to at least 10 percent of the total, or 200,000.

The Federal Government, both traditionally and at the present time, has an important role in helping to supply lower income people with adequate housing. This includes lower income people with special housing needs such as the elderly, handicapped, large families, and families headed by women. It also includes taking steps to produce shelter for those lower income citizens, including minorities, who will not have access to housing because of discrimination or because the regular housing market fails to produce adequate new housing for low-income occupants. We need the housing production programs slated for extinction by the Reagan administration. Reliance on the private market alone or depending on a housing voucher-type of housing assistance is not sufficient and will result in the housing situation of minorities and lower income people becoming worse instead of better.

Housing Vouchers: Its Effects on the Supply and Distribution of Housing

John Palfy*

Introduction

Federal housing assistance grew out of the coincident severe shortages of housing and employment in the Great Depression. In accordance with the political and economic disposition of the age the Federal Government undertook construction of new housing projects in order to stimulate economic recovery, increase directly the supply of housing, and provide the poor with adequate housing.

The notion that successful housing programs must impact the supply of new housing, however, ignores the documented successes of existing housing experiments and programs phased in during the last decade and a boom in the supply of adequate private housing that makes new public construction unnecessary. It also underpins the current prejudice against section 8 existing housing and the proposed housing certificates or voucher program.

Against the traditional benchmark, the results of all Federal housing programs are disappointing. Recent evidence demonstrates that such programs have an insignificant effect on the supply of *new* housing. However, the programs do positively effect the supply, quality, and distribution of the housing stock by stimulating the rehabilitation and maintenance of *existing* housing. In an era when the affordability, not the availability of adequate housing, is the primary concern of low-income renters, the section 8 existing and voucher programs offer the best opportunities to mitigate the inefficiencies and inequities prevalent in preceding programs.

Description of the Voucher Program

The proposed housing certificates or voucher program would replace the current section 8 existing housing program. The technical modifications are slight, but the resultant savings and behavioural changes would be considerable. The guidelines of and hopes for the program are based on nearly 10 years of experience with section 8 existing housing

and the findings of the Experimental Housing Allowance Program of 1970.

Briefly, the current section 8 existing program operates in the following manner:

Low-income households meeting Federal eligibility guidelines may apply for program assistance applicable only to a unit found to meet Federal health and safety guidelines at or less than a HUD determined "fair market rent" for that area. An eligible low-income household occupying the unit pays the landlord 30 percent of his income as "tenant contribution" towards rent. The difference between the "tenant contribution" and the fair market rent of the unit is then paid to the landlord by the housing authority. Importantly, low-income households are very restricted in their rental choices. They are limited to renting from participating landlords and cannot live in units exceeding the area fair market rent—even if they are willing to pay more for housing.

There are several significant advantages to such an existing housing or "demand oriented" program vis-a-vis new housing or "supply oriented" programs. Most notably existing housing programs are considerably less expensive than housing projects or subsidized new construction programs. Many studies, such as Mayo's,¹ report that Federal red tape, delays, regulations, such as Davis-Bacon, and cost-plus pricing can make public construction as much as twice as expensive as similar privately constructed housing. Consequently, section 8 new housing subsidies cost over \$6,000 per year, compared with \$2,300 for section 8 existing. In addition, existing housing allows for short-term flexible commitments, greater freedom for the low-income renter, and often a more favorable socioeconomic neighborhood in which to raise a family. The General Accounting Office and the Congressional Budget Office have cited other inequities and inefficiencies in the prevailing programs in their reports.²

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¹ Stephen K. Mayo, Shirley Mansfield, David Warner, and Richard Zwetchkenbaum, *Housing Allowances and Other Rental Housing Assistance Programs—A Comparison Based on the Housing Allowance Demand Experiment*, Abt Associates, Inc., June 1980.

² *Federal Housing Assistance: Alternative Approaches*, Congressional Budget Office, May 1982 and *Rental Housing: A National Problem That Needs Immediate Attention*, Report to the Congress by the Comptroller General, General Accounting Office, Nov. 8, 1979.

The proposed certificate plan improves upon section 8 existing housing by providing low-income households directly the difference between the payment standard and tenant contribution. This allows the household to choose any unit anywhere and at any price, and without the necessary compliance of the landlord, as long as it meets government safety standards. This program affords the same advantages as the current section 8 program, but in addition could cost 10 percent less and allow tenants complete freedom in choosing the rental unit and neighborhood of their choice.

Criticisms of the Voucher Program

As with any new program that promises simple free market solutions to complex problems, the voucher program has sprout considerable critics, despite the success of its prototypes. As a result vouchers were not included in the House version of the FY 1984 HUD authorization bill and the Senate version, which includes voucher legislation, has not passed.

For one, the sad fact is that, given Congress' liberal interpretation of program eligibility and generous benefits, it is impossible to provide housing benefits to all who may need them or are eligible. Fortunately the flexibility and reduced cost of the voucher program can reduce significantly the gross inequities rabid in our current housing programs and allow for several times more participating units. Several modifications of the payment standard, tenant contribution, and eligibility standards that could make the program even more equitable were proposed in "Revitalizing Low Income Housing."³

Second, conservative Senator William Armstrong (R-Co.) stalled Senate action because he fears that liberal spending inertia could eventually form vouchers into a \$20 billion plus entitlement program. Though eligibility and benefits were liberalized in the short distance between the White House and Capitol Hill one would hope that Congress would not expand vouchers to that degree. These concerns could be mitigated by implementing vouchers as a State block grant as advocated also in "Revitalizing Low Income Housing."

The third criticism, which the bulk of this essay addresses, contends that a successful housing pro-

gram must increase the supply of *new* housing directly. It rests on the assumption that the demand for rental housing is greater than the existing supply. Consequently, a housing allowance program which increases the already excess demand for rental housing will only result in rent increases and landlord windfalls.

Housing Programs Do Not Increase the Supply of New Housing

The assumptions and conclusions of what has been called the "supply-side" school (with all due apologies to Professor Laffer) must be debunked. Even if there were a general market shortage of housing rental units it is clear that no housing program, past, current, or proposed, can significantly increase the supply of *new* housing.

A hypothesis persists that a "supply" strategy, based on new construction, yields greater increases in housing supply than a "demand" strategy, based on maintaining existing housing induces. This ignores the indirect effects of each strategy, however. On the surface the traditional supply strategy appears to add a housing unit per participant. The demand strategy, only upgrades substandard housing units when participants join the program. Clearly, adding an entire housing unit per participant increases housing supply more than merely repairing some housing units. However, consideration of overwhelming indirect effects demonstrates that new housing programs result in only marginal increases in housing supply as expensive public units "crowd-out" existing private units in the marketplace.

A study by Craig Swan indicates that for every 100 units added by the supply strategy housing starts in the market decrease by 86 units because private dwellings vacated by program participants become excess supply, thus decreasing the demand for private new construction.⁴ A HUD analysis, which also accounts for the increased removal of private units from the market as they are abandoned, as well as decreased new construction, finds that the private market offsets 89 percent of government supplied housing.⁵

³ John Palfy, *Revitalizing Low-Income Housing*, Heritage Foundation Backgrounder, no. 269, May 26, 1983.

⁴ Craig Swan, "Housing Subsidies and Housing Markets," *Housing in the Seventies Working Papers 2*, HUD, 1976.

⁵ Peter C. Rydell and John E. Mulford, *Consumption Increases Caused By Housing Assistance Programs; Housing Assistance Supply Experiment*, Rand Corporation study sponsored by OPR-HUD, April 1982.

There is No General Market Shortage of Rental Housing

Despite the evidence that housing programs cannot increase significantly the stock of new housing, and the economic conclusions about supply and demand that follow from that evidence, critics maintain the fact that there is excess demand for rental housing. According to such critics a rising rent/renter's income ratio and lower vacancy rates indicate an existing shortage of rental units. They also cite rising operating expenses, the aging rental stock, abandoned unprofitable properties, and condominium conversions as reasons for a growing shortage of rental units.

A Rand Corporation report by Ira Lowry, however, demonstrates there is no such shortage of rental housing, in fact, and that the past two decades have seen steady improvement in the housing circumstances of renters, especially those with low incomes. Rents in constant dollars have dropped, indicating excess supply; per capita housing consumption by renters has increased; and the incidence of both overcrowding and major housing defects has diminished sharply.⁶

Although the median income of all renters fell in the 1970s, when measured in constant dollars, there was a radical change between 1970-78 in the composition of renter households, the effect of which was to divide income among more households but not among more persons. Thus, with less people in the household it is not surprising or distressing that the median income per rental unit declined. Likewise since many middle-income renters abandoned the rental market to purchase homes it is not surprising that the average rent/income ratio increased over the period.

In short, while average renter income and occupants per unit are falling, real rents were not rising. By one index the price of rental services rose 103 percent in the 1970s, but the consumer price index rose by 113 percent. Thus the real price of rental housing certainly did not increase and may have fallen slightly. In fact, Lowry contends that there was an 8 percent increase in real consumption per renter household during the years 1970-78.

As HUD Secretary Samuel R. Pierce notes, a rental crisis exists only at the lowest income levels;

"our research has confirmed that in most localities the supply of housing is sufficient to meet the demands of low-income families. The major problem is the inability to afford rents. The housing certificate program is ideally suited to solve that problem at a minimum cost to the Treasury."⁷

The crisis is one of affordability, and thus one of selective economic demand. It is not one of availability, or general supply of dwelling units. There is not a shortage of units, in other words, but rather a lack of sufficiently maintained units at low rents. To an unmeasurable degree this situation is brought about as public housing crowds out private landlords and rent control depresses rental income, thus discouraging maintenance and new construction and encouraging abandonment. One estimate by the Annual Housing Survey claims that over 2.8 million units were removed between 1970 and 1977 in this way.⁸

This analysis suggests that if the goal of contemporary housing assistance is to provide low-income households with safe and adequate housing two objectives must be fulfilled. Landlords must have the profit incentive to provide such units and tenants must have the monetary means to afford those units. The voucher program addresses these objectives.

Impact of Housing Allowances on Supply

Though no government housing program, including the proposed voucher program, results in any significant amount of *new* housing, vouchers do have significant effects on the supply of *adequate* housing. Much of today's deteriorating housing could be profitably repaired or maintained if landlords had an economic incentive to do so. Because they require that recipients live in standard housing, vouchers provide tenants with the cash required to stimulate landlords to bring their units up to standard and keep them there.

It is not surprising that housing allowance programs do not result in measurable program induced rental increases. Recipient rental demand accounts for less than 8 percent of aggregate rental demand in any given market and most of the increase in housing demand resulting from the allowance program is met by an increase in the supply of adequate housing.

⁶ Ira S. Lowry, "Rental Housing in the 1970's: Searching for the Crisis," unpublished draft prepared for the Office of Policy Development and Research, HUD, April 1982.

⁷ Letter to the Editor, *New York Times*, Mar. 23, 1983.

⁸ Lowry, "Rental Housing in the 1970's."

There are many housing units that need and will undertake the amount of repairs that are induced by the assistance payments in order to bring them up to standard. In the section 8 existing housing program, between a quarter and a half of the units selected by certified households failed the initial inspection by the public housing agency. In both EHAP and section 8, over 75 percent fixed their units rather than move. That astonishingly high repair rate is made possible by the low average cost of the necessary repairs; only about \$100 per housing unit repaired.⁹

Further, on an annual basis, the stock is maintained as a result of annual inspection of the units. In the Experimental Housing Allowance Program fully 90 percent of those units which failed the annual inspection were repaired and remained in the program. Thus the housing assistance program can be expected to prevent the loss of units from the stock of standard housing by keeping these units from deteriorating through undermaintenance.

According to an analysis of the HASE experience by Peter Rydell of the Rand Corporation, regardless of rental conditions, housing markets do respond to demand subsidies. In the two contradistinct housing markets employed in HASE,¹⁰ supply responses to the allowance program's demand shifts reduced the potential price increases for standard housing to less than 1 percent. There was a 23 to 27 percent decrease in demand for substandard housing and a 9 to 15 percent increase in the demand for standard housing in the two trial counties. He notes that if there were no compensating adjustments in the supply of housing services, the price of standard housing would rise 17 percent to 29 percent. In both locations the repair of substandard housing to standard condition reduced the potential price increase for standard housing by two-thirds. Repair and supply adjustment¹¹ together reduce the potential price increase by four-fifths. Repair, supply adjustments, and occupancy rate adjustment¹² together reduce the potential price increase by 97

⁹ J.L. McDowell, *Housing Allowances and Housing Improvements: Early Findings*, Rand Corporation, September 1979.

¹⁰ Peter C. Rydell, *Supply Response to the Housing Allowance Program*, Rand Corporation, October 1980. The two counties studied are Brown County, Wisconsin, with a growing, nonsegregated population and a tight housing market (4 percent rental vacancy rate) and St. Joseph County with a shrinking, segregated population and a loose housing market (10 percent rental vacancy rate).

¹¹ Rydell describes supply adjustment as the change in the supply

percent. Other studies¹³ indicate that EHAP actually increased the number of adequate units in the HASE markets from 4 to 11 percent.

A Rand Corporation analysis of EHP notes that, dollar for dollar, existing housing programs bring about larger increases in housing consumption than public housing programs. In other words, each dollar spent on existing housing programs increases the supply of adequate housing more than a dollar spent on public housing.

Some program participants improve existing units to meet minimum standards while other participants who already live in standard housing move to better housing due to increased income generated by the demand subsidies. The statistics indicate the flow of government dollars for these programs; public housing projects, a voucher program requiring tenants to live in adequate housing, and an unrestrained cash transfer. As expected, the nonsubsidy cost of the PHA is greatest as program dollars are siphoned off by unions and contractors. The cash transfer is the least wasteful program, but results in half the increase in housing consumption as the voucher program (see table 1).

Note that many of the benefits of any housing program are funneled into nonhousing consumption. Typically only 25 percent of a housing subsidy (allowance or new unit) is actually spent on increased housing. Because tenant income is fungible, nearly three-quarters of the subsidy is used to reduce the rent burden and thus is funnelled into the purchase of other consumer goods. Thus one may conclude the operative nature of a housing allowance program is the requirement that it be applied to an adequate rental unit. The payment provides the means and the incentive for the poor household to meet this end.

Integration Aspects of Existing Housing Programs

Potentially, housing allowance programs are an important avenue of escape from public housing

of standard rental housing services arising from four ways. One, new construction exceeds demolition. Two, upgrading via repairs and capital additions exceeds deterioration. Three, tenure changes from owner-occupied to renter-occupied dwellings exceeds the converse. Four, conversions of substandard units to standard units exceeds the converse.

¹² Rydell measures occupancy rate by 1.0 less the fraction of rent lost because of vacancies.

¹³ *Experimental Housing Allowance Program, Conclusions, The 1980 Report*, HUD, February, 1980.

TABLE 1**Housing Allowances Compared with Public Housing**

Factor	(percentage of subsidy to each factor)		
	PHA	Housing Allowance	Cash
Housing consumption increase	.054	.134	.073
Nonhousing consumption increase	.288	.710	.816
Nonsubsidy cost	.658	.151	.111
Total	1.000	1.000	1.000

Source: Peter C. Rydell and John E. Mulford, *Consumption Increases Caused by Housing Assistance Programs; Housing Assistance Supply Experiment*, Rand Corporation study sponsored by OPR-HUD, April 1982.

projects for poor and minority households. Freedom of mobility is important to anyone, but especially to poor families with youths. All too often poor children in housing projects are subject to excessive crime and other forms of behavior that lead to abbreviated educations, poor job prospects, teenage pregnancies, and broken families, traits that foster dependence on welfare. Yet, welfare families that move into a working class neighborhood often increase the economic and social prospects and their children break out of the "poverty cycle." By empowering participants to choose housing anywhere and at any price the voucher program increases the freedom and mobility of the poor.

Obviously public low-income housing concentrates poor families in exclusively disadvantaged environments. Also, housing provided by construction programs sometimes forces households into poorer or more heavily minority areas than they would normally occupy. However, the early results from EHAP did not offer much hope that households fully utilized the significant opportunity of the voucher program. Detailed analysis by Reilly Atkin-

son and Dowell Myers¹⁴ suggests that the allowance offers had little impact on the neighborhoods chosen by allowance households in terms of low-income concentration.

Housing allowance programs do tend to lead to increased racial integration. While the existing housing program has had little impact on overall integration within cities, it has had an impact on the location of the participating families. Overall, participating households achieved a mean decrease in the percentage of minorities in their destination census tracts—the areas in which they received the subsidy. For movers this was about a 7 percentage point decrease on average. Of the minority households participating, 61 percent moved in order to participate. Of these, 35 percent moved to areas with a lower minority concentration than their original neighborhood while 25 percent moved to areas with higher minority concentration.

There remains, of course, the fear that minorities face discrimination in the open housing market, and hence that public housing projects are necessary to assure fair and adequate housing. The subsidies

¹⁴ Reilly Atkinson, William Hamilton, and Dowell Myers, *Economic and Racial/Ethnic Concentration in the Housing Allowance Demand Experiment*, Abt Associates Inc., January 1979.

provided by the section 8 existing housing program and the housing payments certificate program, allow low-income families to obtain adequate rental units at a reasonable price. Should they encounter discrimination in their search for housing, the public housing agency is required to provide assistance in accordance with the fair housing act.

There is insufficient evidence, however, to determine whether or not minorities are discriminated against in existing housing programs. In EHAP, minorities applied at higher rates, but their participation rates were about the same, because participation was most closely linked to two factors: the quality of the dwelling unit at enrollment and prior mobility. Poor or large families, and minority households—all of whom are less likely than other households to meet the housing standards in their original units—are less likely to participate in a voucher program if housing standards grow more stringent because they would have to move or make repairs. This would be costly and not necessarily desirable from their point of view.

To the extent that minority families tend to be larger and poorer, it is these conditions, not race, which are more likely to affect their ability to find an adequate unit. For instance, there is a marketwide shortage of rental units for large families, making it more difficult for such families of any income to find satisfactory rentals. In order to meet higher participation goals, therefore, it might be appropriate to liberalize housing adequacy requirements, thus making it less necessary to move or easier to find a suitable unit. As the above analysis suggests, such a strategy would reduce projected increases in housing consumption as more of the voucher would be transferred to nonhousing expenditures.

Other appropriate action may be to fund public support groups for disadvantaged persons. These support agencies may act as a clearinghouse between

landlords and prospective tenants or assist tenants in finding suitable places, but would obviously negate some of the administrative cost advantage of vouchers.

The most favorable alternative, however, is to encourage private organizations to form such self-help housing support groups. These groups could not only act as clearinghouses and assist in locating units but could also offer labor assistance to families who wish to bring their units up to adequacy standards much in the spirit of homesteading.

Conclusion

The voucher program should be encouraged as the most efficient and equitable means of providing rental assistance to most low-income households. "Demand-oriented" housing programs have one primary objective; to assist low-income families in acquiring and paying for adequate rental housing. Unlike supply-oriented construction programs, they are not designed to be an economic stimulus or affect directly the stock of housing. Past construction programs have been costly failures in their quest to meet these latter two objectives. Federally constructed housing is also wasteful—it "crowds out" 90 percent of the housing it seeks to create and tends to lock tenants into poor neighborhoods. Both EHAP and the section 8 existing housing program have demonstrated their superiority in achieving the primary objective.

Housing allowance programs, on the other hand, significantly affect the stock of *adequate* housing and reduce the rent burden on recipients. The voucher program would, in all probability, accomplish the same purposes as its predecessor, the section 8 existing housing program, but it has two significant advantages. It would cost the American taxpayer up to 10 percent less, and it would offer poor families real freedom of choice, the opportunity of truly equal housing, and a better future for their children.

Effects of the Recession and Housing Supply on Fair Housing Goals

William North*

The starting point in any discussion of the effects of the recession and housing supply on fair housing goals is necessarily the identification of the goals of fair housing. While such goals can be, and certainly have been, variously defined and in recent years have increasingly been the subject of disagreement and dispute, the private real estate community has historically understood the goals of fair housing to be essentially two: first, to assure that every person, regardless of race, creed, color, sex or national origin has an equal opportunity to purchase or rent the housing he or she desires and can afford; and second, to maximize the capacity of every person to afford the quantity and quality of housing required to satisfy his or her housing needs.

With respect to the first goal, freedom of housing choice, the effects of recession and housing supply appear to be indirect, to the extent they impact attainment of the goal at all. Achievement of this goal appears to depend not on the vagaries and variations of the business cycle, but rather on the political, social, cultural, and other noneconomic barriers to housing access. Bias and prejudice limiting housing choice are prompted by a variety of popular perceptions and stereotypes concerning the effect of the presence of minorities on the quality of education, the crime rate, the tax base, property maintenance, and other conditions and amenities which, in the aggregate, influence property value, personal security, and community desirability. Such bias and prejudice can also be exacerbated by majority fears of shifts in political control, in business favor, and cultural dominance.

While such perceptions and stereotypes of the effect of minority presence rarely reflect the reality of any particular time or place, they do generate fears which economic prosperity seems unable to correct or diminish. Likewise, at most, the effect of recession on housing bias and prejudice is reflected, if at all, as a by-product of resentment generated in the intensified job competition which recession

usually produces between members of minority and majority groups at the lower end of the skill spectrum.

With respect to the second goal, maximization of housing quantity and quality, the impact of recession, and the business cycle more generally, has a significant impact on its attainment. This is because maximization of housing quality and quantity is essentially a function of housing affordability and housing affordability is vitally affected by the state of the economy.

Fundamentally, housing affordability is determined by two factors; first, the amount and quality of housing which is needed and, second, the money available to pay for the housing needed. While every person is limited by considerations of affordability in seeking housing, the affordability limitations applicable to minority homeseekers are generally exacerbated by the fact that minorities tend to need more and larger housing units than do nonminorities, yet the money they have available to satisfy those needs is significantly less.

Minority housing needs reflect, among other things, the higher birthrate experienced by minorities and the resultant larger family size. For example the fertility level of black women relative to white women is approximately 60 percent greater, while the fertility rate of black women 18 and 19 years old is double that of white women of the same age.¹

On the other hand, the income available to minority persons on the average is significantly below that of nonminorities. In part this reflects the fact that minorities are predominantly employed in lower paid, unskilled or semiskilled occupations; in part it reflects the fact that 41 percent of all black families are maintained by a woman with no husband present;² in part by the fact that 49 percent of black children live in one-parent homes;³ in part by the fact that the income of a single woman is well below that of a single man and significantly below that of a minority married couple;⁴ and in part by the fact

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¹ U.S., Department of Commerce, *America's Black Population: 1970 to 1982, A Statistical View* (Spec. Pub. P10/PoP-83-1) at 20 (hereafter cited as *America's Black Population*).

² *Id.* at 4.

³ U.S., Department of Commerce, *News*, Aug. 22, 1983.

that minority unemployment rates, at least since 1970, have consistently been at least double nonminority unemployment rates, whether in boom, bust, or in-between.⁵

While recession will usually have little impact on the need for housing which is decisively determined by cultural, religious, and social values relating to family formation and fertility, recession will, of course, have a significant impact on the capacity to pay for housing and on the availability and price of housing.

During the period 1979 through 1981, 9 million blacks representing 34 percent of that minority had incomes below the poverty level.⁶ During that same period black unemployment rose from 11.3 percent to 14.2 percent as compared with a rise in white unemployment from 5.8 percent to 7.6 percent.⁷ In the same period, the median income of white households rose from \$17,259 to \$20,153, while the median income of black and Hispanic households increased from \$10,133 to \$11,309 and \$13,042 to \$15,300, respectively.⁸

The large percentage of minority families at the poverty level, the higher unemployment rate, the relatively low median income and its relatively slower growth all represent in absolute and relative terms a decline in housing purchasing power during the recession. This decline is confirmed, first, by a decline in home ownership rates and, second, by a decline in mobility.

During the years 1979 through 1981 there were declines in home ownership for essentially every income status and for minority and majority groups alike. However, for the highest income group (incomes over 125 percent of median income) the decline was a modest 2.7, 3.5, and 3.2 percent for whites, blacks, and Hispanics, respectively.⁹ On the other hand, for the group having incomes between 75 and 125 percent of the median, the rate of decline was 8, 12, and 13 percent.¹⁰ While in the lowest income group, the rate of black and Hispanic decline

was 4.6 and 11.6 percent, respectively, with the rate of white home ownership increasing by 1.3 percent.¹¹

The impact of the 1979 to 1981 recession on minority household mobility is reflected in the fact that prior to that period blacks moved from the central city of an SMSA to the rest of the SMSA at a rate of 2.6 percent while Hispanics moved at a rate of 4.2 percent.¹² With the onset of the recession, the rate of exodus from the central city decreased by over 50 percent for both groups.¹³

These declines in home ownership and mobility, of course, suggest that the recession has retarded the process of integration, independent of any bias or prejudice, by reducing the number of minorities, or at least racial and ethnic minorities, able to purchase or rent in the relatively higher price housing market outside the center city. These distinctions in homeownership also reflect the inherently greater economic vulnerability of minorities to recession. Loss of income through unemployment is less likely to be cushioned by accumulated savings. Thus, homeowners with incomes under \$17,500 (an income level nearly 44 percent more than the black median income) had total savings of approximately \$7,400 for whites, \$4,400 for blacks, and \$2,000 for Hispanics.¹⁴ Among renters, average savings in the same income group were \$3,300 for whites, \$300 for blacks, and \$900 for Hispanics.¹⁵ These limited levels of savings make minority homeowners substantially more exposed to mortgage default and foreclosure.

Although the recent recession has brought the affordability problems of minorities into sharper focus, these problems, in no small measure, have their origin in the rampant inflationary period which preceded it. Thus, in the period 1976 through 1981, the median sales price of existing single-family homes increased from \$38,100 to \$66,400 and the average price of such homes from \$42,200 to \$78,300.¹⁶ At the same time, during the same period

⁴ U.S., Bureau of Census, *Current Population Reports*, series P-60, no. 137 (hereafter cited as *Current Population Reports*); series P-23, no. 100, *Statistical Portrait of Women in the United States*; and *America's Black Population* at 4.

⁵ U.S., Bureau of Labor Statistics, *Employment and Earnings, Unemployment Rates by Various Categories of Workers*, 1970 and 1974-June 1982 (hereafter cited as *Employment and Earnings*).

⁶ *America's Black Population* at 4.

⁷ *Employment and Earnings*.

⁸ *Current Population Reports*, series P-60, no. 137.

⁹ National Association of Realtors®, calculated from data reported in the 1973 to 1981 Annual Housing Survey, *Financial Characteristics of the Housing Inventory*, tables A1, A4, and A7.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Current Population Reports*, series P-20, no. 368.

¹³ *Id.*

¹⁴ National Association of Realtors®, calculated from survey data from the University of Michigan, Survey Research Center, Study of Consumer Credit, 1977.

¹⁵ *Id.*

¹⁶ National Association of Realtors®, *Existing Home Sales*, July 1983, at 9 (hereafter cited as *Existing Home Sales*).

the median income of black households rose from \$8,000 to a little over \$11,000.¹⁷ Moreover, adjusted for inflation, the median income of black households actually declined by 10 percent.¹⁸

The growing affordability crisis is further reflected by a comparison of the overall "affordability index" for all potential homebuyers over the period 1977 through 1982 and with minority homebuyers. The "affordability index" is a means of measuring potential capacity for homeownership. It equates median family income with the qualifying income required by the Federal National Mortgage Association to purchase a home with a 20 percent downpayment.

Using this index, with 100 on the scale occurring when qualifying income equals median income, the capacity of all potential homebuyers to afford to buy has declined from 120.6 in 1977 to 70.6 in 1982.¹⁹ This means that a median income household has only 70 percent of the income necessary to qualify to purchase a median price home.

As serious as this deficiency is as regards potential homebuyers generally, the median income of black potential homebuyers in 1982 represented only 33 percent of the income necessary to qualify to purchase a median price home. Of course this explains why such a disparity exists between the median value of minority-owned houses and that of nonminority-owned houses. For example, in 1980 the median value of a single-family house owned and occupied by a black was \$27,000 as compared with a median value of \$48,000 for such a house owned and occupied by a white.²⁰ This value differential is indicative of the continuing quality deficiency in minority housing which found, in 1980, nearly one-half million black-occupied housing units still lacking complete plumbing facilities, a number five times greater than white-occupied units.²¹

In terms of affordability, minority housing access problems have been stubbornly unresponsive to the changes in the business cycle of the last decade. The income gains of the seventies were eroded by inflation which saw housing as a percentage of family income rise from 20 to over 35 percent. The rapid escalation of interest rates from 9 percent in 1977 to a peak of 15.5 percent in 1982 particularly disadvantaged minorities who are especially credit

cost sensitive. Beyond this, however, the effective withdrawal of traditional lenders, such as savings and loan companies, from long-term lending activities and the consequent shift of real estate financing to forms of owner financing and adjustable rate mortgages impacted uniquely on minority housing costs and access.

The greater reliance on owner-financing, of course, denied minorities those hard-won safeguards against "redlining" and against the "stereotyping" of minorities as poor credit risks applicable to institutional lenders. At the same time, the variable rate mortgages, while offering a lesser interest rate than the traditional fixed-rate contract, have further enhanced the financing uncertainties and complexities experienced by minorities and increased the potential impact of changes in the job market, interest rates, and other economic developments beyond their control on their capacity to protect their home investment.

While the recession has reduced inflation, interest rates, and housing cost escalation and has broadened access to institutional financing, these affordability gains have been offset in large measure, if not entirely, by income loss through unemployment.

The decline in homeownership by lower income households which has occurred through the stagflation and recession of the past decade, has inevitably increased the demand for low-cost rental housing. This increased demand, moreover, has developed at a time when the housing market, until very recently, has experienced a high level of condominium conversion activity which has intensified competition for rental units. One recent study estimated that at least 61,220 minority households have been displaced by condominium conversion.²² Such conversions and the trend in many major cities for higher income nonminority groups to return and upgrade inner-city neighborhoods are estimated to cause the involuntary displacement of from 600,000 to 850,000 minority households annually.²³ This competition has been further intensified by the increasing longevity of the elderly and their increasing proportion of lower income persons. The consequence of this is that, according to the 1980 Annual Housing Survey, there were 13 million very low income renters of

¹⁷ *Current Population Reports*, series P-60, no. 137.

¹⁸ *Id.*

¹⁹ *Existing Home Sales* at 12.

²⁰ *America's Black Population* at 23.

²¹ *Id.*

²² Congressional Research Service, *Economic Prospects for Blacks in the 1980's*, Rpt. no. 81-267E, Dec. 18, 1981 at 44.

²³ *Id.*

whom 7.5 million paid more than 35 percent of their income in rent.²⁴ This compares with the situation reported just 3 years earlier in the 1977 Annual Housing Survey which showed only 10.5 million very low income renters of whom only 6.5 million paid more than 30 percent of their income in rent.²⁵

There can be no question that housing affordability is the paramount barrier to the attainment of fair housing goals. Compared to the barrier to housing opportunity and mobility represented by housing unaffordability, the barrier represented by bias and prejudice, however immoral, illegal, and pernicious, is barely significant and could become irrelevant if the affordability problem could be solved.

Federal housing subsidy programs currently assist approximately 3.2 million households, predominantly minorities.²⁶ Moreover, between 250,000 and 400,000 families are being added to these programs each year.²⁷ By any measure the denial of fair housing resulting from housing bias and prejudice, albeit unconscionable, illegal, and inexcusable, is nothing compared to the denial of fair housing resulting from affordability limitations.

Of course, identification of housing affordability as the primary barrier to fair housing is not a new discovery. Since the first national housing program for low-income people was enacted in 1937, innumerable governmental programs have been undertaken to make housing more affordable. At various times, the focus of these programs has been to increase the supply of low-income housing through programs to subsidize new construction or to rehabilitate and renovate existing low-income housing. At other times, the focus of these programs has been to increase the capacity of households to afford housing through low-income loans and rent subsidies in a variety of forms. In recent decades, through such initiatives as the Experimental Housing Allowance Program (EHAP), mandated by the 1970 Housing and Community Development Act, the housing affordability problem has been addressed concurrently from both the "supply" and the "demand" side.²⁸ Likewise the problem has been addressed

from both the supply and demand side by the Federal Government not only directly through federally administered programs but also through community-administered programs.

Throughout the 1970s, as the problem of housing affordability stubbornly persisted and resisted amelioration, more and more money was committed to its solution until at the end of 1980 obligated budget authority stood at \$110.2 billion for section 8 alone, and the obligations for all directly assisted housing reached \$220.5 billion.²⁹ This obligation is in addition to the indirect government assistance provided housing through tax expenditures incurred by GNMA financing assistance, tax-exempt bonds issued by State finance and public housing agencies, and other tax provisions encouraging construction or rehabilitation of low-income housing.

The Housing Payment Certificate Program which the administration proposes to substitute for the section 8 new construction program represents an effort to bring under control the future commitment of national and governmental resources to the solution of current housing affordability problems. In its focus on the effective demand for low-income housing, the voucher program does not address the present and potential shortages in the low-income rental housing supply. On the other hand, the low-income housing construction and rehabilitation provisions enacted in 1981 in the Economic Recovery Tax Act as well as the existing multifamily mortgage revenue bond program represent significant potential incentives to rental housing construction and, if allowed time, may prove a more efficient and cost effective alternative to section 8.

We would certainly not suggest that the Housing Payment Certificate Program or the economic Recovery Tax Act is a solution to the affordability barrier to fair housing. But they do represent alternative initiatives to the programs of the past decade which have failed to fulfill their promise.

And perhaps if there is any benefit to be realized from the trauma and travail of recession, that benefit is the fact that we are compelled to reexamine the

²⁴ U.S., Department of Commerce, Bureau of Census, and U.S., Department of Housing and Urban Development, Office of Policy Development and Research, *Annual Housing Survey: 1980*, 1982.

²⁵ U.S., Department of Commerce, Bureau of Census, and U.S., Department of Housing and Urban Development, Office of Policy Development and Research, *Annual Housing Survey: 1977*, 1979.

²⁶ Congressional Research Service, *Housing Vouchers: An Alternative to Current Housing Programs?*, Jan. 14, 1983.

²⁷ *Id.*

²⁸ At least 18 Federal programs in support of low- and moderate-income households and low- and moderate-income housing are administered by HUD. U.S., Department of Housing and Urban Development, *Programs of HUD*.

²⁹ Congressional Research Service, *Housing the Urban Poor: Urban Housing Assistance Programs* by Grace Milgram, at 132.

extent to which the source of our problems is lack of resources or is lack of organization, commitment, and responsibility. Certainly, as long as the money resources which are available are substantially unlimited, there is little or no incentive to examine anything other than the ways in which the resources can be expended.

Recession, by limiting access to money resources, tests the reality of need in the crucible of individual involvement and choice. It is in this context that the effects of housing supply on fair housing goals will be determined. And there is no question as to the difficulty and controversiality of the involvement and choices required.

The issues to be addressed and the choices to be made include:

a. What is to be done about the rapidly deteriorating family structure of low-income households.

b. What is to be done about the legal and practical incapacity to manage low-income housing units so as to assure their maintenance and security and that of the neighborhoods in which they exist.

c. What is to be done about the influx of illegal aliens and their impact on the supply of available low-income housing and on employment opportunities for minorities and low-income groups.

d. What is to be done about the displacement of low-income families prompted by "gentrification" of the central city, condominiumization, and the shift of job opportunities outside of the city core.

e. What is to be done about equipping minorities and other low-income groups to accommodate the shift from an industrial to an information/service economy and to mitigate the impact on earning potential of the obsolescence of job skills.

While the responses to these issues will require significant money resources, the more important requirement will be the acceptance of individual responsibility and the refusal to make or excuse illegal or irresponsible conduct.

The fact that we understand the burdens which child support obligations impose on low-income males cannot be permitted to excuse such obligations when housing affordability is at risk. The fact that we understand the problems of disciplining children without parental supervision or support cannot be permitted to excuse or justify the damage they do to their housing and neighborhood.

And most particularly, the fact that we appreciate the desire of illegal aliens to enjoy the opportunities of America cannot be permitted to obscure the reality that their presence is a violation of the law and effectively displaces upwards of 4 million Americans in the housing market and between 1.3 and 2.6 million Americans, primarily minority and lower income people, in the job market.

Just as the elimination of bias and prejudice as a barrier to fair housing requires us to change the social and cultural attitudes and institutions of the dominant majority, so the elimination of the affordability barrier to fair housing will require us to change the social and cultural attitudes and institutions of the disadvantaged minorities. This is a process of change which cannot be dictated by the business cycle or be permitted to be influenced by it because it represents the only means of accommodating over time the demand for housing with the supply. It is a process which this recession may initiate but it is one which must be sustained through the recovery to come.

Effects of Recession and Housing Supply on Fair Housing Goals

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This paper will focus primarily on the housing problems of low-income people, particularly minorities, resulting from the lack of decent, affordable, available housing. While the problems are intensified by the recession, they are underlying and would need to be addressed by Federal action even in times of "full employment."

Our major housing problems are caused by either low income, which makes decent housing unaffordable, or discrimination, which makes it unavailable, or both. In turn, the primary cause of low income is past or present unemployment, underemployment, or inadequately paid employment. Conversely, an adequate level of housing production and rehabilitation can have a major impact on providing employment opportunities. Housing deserves to be considered, along with other approaches, as a major component in a long-term economic policy to create and sustain full employment.

Both because lower income households are predominantly renters and because Federal low-income housing assistance programs are almost exclusively rental programs, this analysis is addressed primarily to renter households and the cost and supply of rental housing.

This Nation has much to be proud of when we consider our housing accomplishments. Homeownership has become regarded as the norm, and the vast majority of nonminority households with a steadily employed member have, in fact, become homeowners. According to the latest available figures, in 1981, 65 percent of all households were owners, but 88 percent of all households consisting of married couples with no nonrelatives were owners. The proportions for minorities were, however, much lower. Only 43 percent of all black households, and 62 percent of married couples with no nonrelatives were owners. And only 42 percent of all Hispanic households, and 54 percent of married couples were owners.

Housing quality has also improved dramatically. The first census of housing was taken in 1940 and found 45 percent of all occupied dwelling units were

either dilapidated or lacked basic plumbing facilities. While truly comparable data for 1980 are not available, the figure is almost certainly below 5 percent.

We also have much to be ashamed of. There are still several million households living in housing without basic plumbing or so seriously substandard that they are dangerous to health or safety. A disproportionate number are minority and rural households. Even more millions of households are unable to obtain shelter without spending more than half their incomes for it—and these are our lowest income households, who then cannot afford the other necessities of life.

Almost half a century of providing assisted housing for low-income people has produced fewer than 4 million occupied, subsidized housing units—about 3 years production of unsubsidized housing units. Through a historical accident, the Federal Government provides billions of dollars annually in homeowner subsidies through the tax system, which cost many times as much as direct housing subsidies, for middle and upper income people. These subsidies are believed by many to be sacrosanct. But, while we have entitlements to housing assistance for middle and upper income homeowners, we have refused to provide comparable assistance for low-income households. Not only is there no entitlement to assistance, but we do not even have subsidized homeownership programs for low-income people.

The disparity between housing assistance provided for low-income people and subsidies for higher income groups is dramatic and growing. The cost to the Treasury of homeowner mortgage interest and property tax deductions alone has risen by 63 percent since 1980: from \$23 billion in 1980 to an estimated \$37.5 billion in 1984 (see table 1).

Discrimination and discriminatory practices have been built into the operation of private housing markets. The Federal fair housing law does not even contain meaningful enforcement provisions and the proportion of State and local governments which

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TABLE 1**Housing Tax Subsidies, New Budget Authority and Housing Payments, 1980–84**

(Billions of dollars)

1980	
Tax subsidies	\$26.5
Budget authority	\$26.7
Housing payments	\$ 4.5
1981	
Tax subsidies	\$33.3
Budget authority	\$30.2
Housing payments	\$ 5.7
1982	
Tax subsidies	\$36.6
Budget authority	\$17.4
Housing payments	\$ 6.9
1983	
Tax subsidies	\$39.8
Budget authority	\$ 8.7
Housing payments	\$ 7.8

are recognized as having “substantially equivalent” protections is minuscule.

Indeed, housing policies and housing patterns are largely responsible for the divisions in our society between rich and poor, minority and majority, urban and suburban. By excluding minority and low-income people from new housing and new neighborhoods for most of the last 40 years, we have excluded them from decent schools, from community facilities, and from job opportunities. These are matters which need to be addressed by Federal housing policies and programs and cannot be assumed to take care of themselves with adequate economic recovery or growth.

The strong preference for homeownership in our society is only partly a function of the substantial Federal subsidies which are provided for homeowners. It also reflects some deeper values. One indication of the kinds of housing choices people would make if income were not a factor is provided by the behavior of people who can afford to choose. Over 90 percent of all households with incomes above \$50,000 are homeowners. The only household types where this ratio is less than 90 percent are units with nonrelatives and male householders with no

spouse present—and the numbers in these categories are hardly significant. Thus, true freedom of choice would provide people at all income levels with the opportunity of owning or renting.

Affordability is the major housing problem facing most low-income renter households. Since 1974 Federal housing legislation has set the threshold for housing assistance at 80 percent of median income and has defined households with incomes below 50 percent of median as “very low income.” An estimated 61 percent of all renter households had incomes below 80 percent of median in 1980, and 40 percent had incomes below 50 percent of median. The proportions were significantly higher for larger households and for minority households. Whereas 55 percent of all black renter households and 48 percent of all Hispanic renters had incomes below 50 percent of median, only 36 percent of white renter households fell in this very low-income category.

There are, quite simply, a lot more poor renter households than there are low-rent units in the housing inventory. As of 1980, there were 4 million more renter households with incomes below \$7,000 than there were units renting for \$146 per month or less, including utilities, which is what a household

with a \$7,000 income can afford. There were almost twice as many households with incomes below \$3,000 as there were units renting for less than \$63.

This being the case, it is small wonder that the vast majority of very low-income renters pay more than half their incomes for shelter. The contrast with higher income households is striking. Almost 80 percent of all renters with incomes below \$3,000 paid more than half their incomes for shelter and close to 90 percent paid more than 35 percent. But less than 4 percent of renters with incomes above \$10,000 pay half their incomes for rent and only 4 percent of renters with incomes above \$15,000 pay as much as 35 percent. (In addition to the almost 6 million renter households paying over half their incomes for shelter, there are another 2.5 million owners who do so. As with renters, their incomes are predominantly below \$10,000.)

Because minority households have generally lower incomes, as table 2 shows, they are more seriously affected by the inadequacy of the supply of decent, low-cost housing. Roughly one-quarter of the 28.8 million renter households in 1981 were minority: 5.1 million blacks and 2.55 million Hispanics.

It is easy to forget that the decade of the 1970s saw, with the completion of almost 1 million units authorized by the Housing Act of 1968 and an additional 1.2 million units under the section 8 program, a substantial increase in the subsidized housing inventory. Even so, only a small proportion of poor households now live in subsidized housing. (See table 4.)

Moreover, low-income people have been falling further and further behind as housing costs have risen far more rapidly than incomes. In 1970 median renter income was \$6,300 and median rent was \$108. By 1980 median renter income had risen to \$10,500, a 67 percent increase, but median rent was \$241 per month, a 123 percent increase. Converted to constant dollars, we estimate the 1970-80 change in income and rents or housing costs as in table 3. Moreover, the greatest problems were at the bottom of the income scale. It is almost impossible to convey the intensity and magnitude of the housing problems of our very lowest income renters.

The increase in the affordability problem for very low income people was dramatic. In 1970 there were 5.7 million households with incomes under \$3,000 and another 2.7 million households with incomes between \$3,000 and \$5,000. At the same time, there were 8.2 million units renting for less than \$75 per

month (30 percent of \$3,000) and another 6.7 million units at rents between \$75 and \$125 per month. In other words, there were 5.6 million more units renting for less than \$125 per month than there were renter households with incomes below \$5,000. Even so, the situation was far from satisfactory: many of the units in this low-rent range were seriously substandard; or they were the wrong size; or they were in the wrong locations; or the owners discriminated against would-be tenants; or, finally, they were occupied at bargain rents by higher income households.

By 1980 the situation was infinitely worse. Moreover, although hard data is not yet available, we have every reason to believe that the past 2 years have been even grimmer. In 1980 there were still 2.7 million renter households with incomes below \$3,000, but the number of units renting for less than \$75 had dropped to 2.4 million. (There were also 0.6 million more renter households with incomes between \$3,000 and \$5,000 than units at rents between \$75-\$125.) The impact on very low-income households is clearly unbearable and is a major reason for rent delinquencies, abandonment, doubling up, and homelessness.

In 1970 a family with an income of \$3,000 (the top of the range) at the median rent of \$85 paid by the 5.8 million renter households with incomes below \$3,000 would spend 34 percent of its income for shelter, leaving \$165 for all other needs.

In 1980 the family with an income of \$3,000 at the median rent of \$179 paid by the 2.7 million households with incomes below \$3,000 would spend 72 percent of its income for shelter and have only \$71 for all other needs.

Twenty-nine percent of renter households with incomes below \$3,000 were black; 8 percent were of Hispanic origin. All had incomes below 75 percent of the poverty level. Only 19 percent of the renter households in this lowest income bracket lived in subsidized housing in 1980. More than half, 51 percent, were households of two or more people; 5 percent were households of five or more; 49 percent were single-person households. More than one quarter, 27 percent, were female-headed households; 13 percent were married couples with no other nonrelatives in the household; 6 percent were male-headed households. There were children under 18 in 27 percent of the households, with 6 percent having three or more children. Only 4 percent paid less than

TABLE 2**Income of Renter Households, By Race, 1981**

Income	Number	Households	Percent
Below \$3000			
Total	2,284,000		7.9
Whites	1,376,000		6.5
Blacks	665,000		13.0
Hispanics	243,000		9.7
\$3000-4999			
Total	3,546,000		12.3
Whites	2,289,000		10.8
Blacks	949,000		18.6
Hispanics	308,000		12.3
\$5000-6999			
Total	2,986,000		10.4
Whites	2,031,000		9.6
Blacks	641,000		12.6
Hispanics	314,000		12.5
\$7,000-9,999			
Total	3,685,000		12.8
Whites	2,574,000		12.1
Blacks	735,000		14.4
Hispanics	376,000		15.0
\$10,000-14,999			
Total	5,711,000		19.8
Whites	4,272,000		20.1
Blacks	888,000		17.4
Hispanics	551,000		21.9
\$15,000-19,999			
Total	3,911,000		13.6
Whites	3,082,000		14.5
Blacks	506,000		9.9
Hispanics	323,000		12.8
\$20,000-24,999			
Total	2,775,000		9.6
Whites	2,253,000		10.6
Blacks	342,000		6.7
Hispanics	180,000		7.2
\$25,000 or more			
Total	3,935,000		13.6
Whites	3,339,000		15.7
Blacks	375,000		7.4
Hispanics	221,000		8.8

TABLE 3**Income and Housing Costs, 1970 and 1980, in 1972 Constant Dollars**

	1970	1980	Change	
Median renter income	\$6,810	\$8,316	\$1,506	22.1%
Median rent	117	191	74	63.2%
Median owner income	\$10,486	\$15,682	\$5,196	49.6%
Median value	\$18,486	\$40,630	\$22,144	119.8%
Median monthly cost				
Unmortgaged	65	104	39	60.0%
Mortgaged	186	291	105	56.5%

25 percent of income for rent; 59 percent paid 60 percent or more. Ten percent lived in units lacking some or all plumbing facilities; 4 percent were overcrowded. Forty-six percent lived in central cities; 31 percent lived outside of metropolitan areas.

These households are the poorest of the poor, but in 1980 they were less than one-third of all households with incomes below the poverty level. There were also another 3.3 million renter households with incomes above \$3,000, but below the poverty level, and another 4.9 million owner-occupants below the poverty level. In other words, when we speak of low-income housing needs, we are, by the most conservative estimates, talking about millions of people: 29 million in all, including more than 11 million children (4 million of them under six) and 4 million elderly people.

President Reagan's Commission on Housing, in its report last year, used a less conservative estimate of housing need: households with incomes below 50 percent of median. There are 20 million such households, half of them renters. Only one-quarter of these renter households are now in subsidized housing. In other words, for each family now in low-income housing—after close to half a century of

providing housing assistance—there are three others who need it, who probably want it, and who can't get it.

Subsidized Housing Programs Have Helped, But Far More Is Needed

The achievements of our housing assistance efforts over the last half century sharply contrast with this picture of housing need. At the end of fiscal 1984, if all goes as planned, HUD will be providing housing assistance to not quite 4 million households and the Farmers Home Administration will be assisting another million.

A rough picture of the characteristics of households living in much assisted housing is provided by a recent Census Bureau report on characteristics of households receiving noncash benefits. The report covers only rental housing, omitting the owner-occupied units assisted under HUD's section 235 and FmHA's 502 programs. Thus, the total picked up by this survey is well below the actual number of units subsidized. It includes occupied units assisted through public housing, section 8, and other rental subsidy programs. About 11 percent of all renter households received Federal housing assistance in 1981. But,

significantly, almost one-third of all female-headed households with incomes below the poverty level lived in assisted housing, as did almost 37 percent of elderly households. Some 43 percent of assisted housing tenants also received food stamps, and four-fifths of these households were below the poverty level. (See table 4.)

Three-fifths of all low-income housing residents were white. Three-fifths were family households, but more than half of these were headed by women with no husband present. There were children in just under half of all households. Half of all assisted housing was in central cities; another quarter was outside metropolitan areas.

Where Next: Current Trends in Assisted Housing

By some measures—budget authority for incremental housing assistance, for example—low-income housing programs have been cut more savagely than any other programs. Last year, Senator Jake Garn, chair of the Senate Banking Committee and the HUD Appropriations Subcommittee, stated on the floor of the Senate that low-income housing programs had absorbed over half of all the cuts made in domestic programs since the Reagan administration took office. Yet, it is worth noting that Congress has given the administration only about half the housing cuts it has requested.

The increase in homelessness and other dramatic indicators of the low-income housing crisis is not, so far, because of cuts in housing programs. Rather it is the impact of the recession and cutbacks in other programs. We are still to reap the consequences of the housing cuts.

Broadly stated (and grossly oversimplified), not only has the last decade seen the largest increment in assisted housing since the Federal Government began providing it in the 1930s, but, because of the time it takes between congressional action to provide housing and getting it built and occupied, the largest number of program reservations (the first step in the process) came during the Ford administration; the largest number of construction starts during the Carter administration; the largest number of additional subsidized units actually occupied will apparently come under the Reagan administration; and we will only begin to see the effects of the devastating cuts of the past 3 years during the next administration.

The drop in the incremental number of assisted housing units has been accompanied by an even more serious loss: capacity. Even HUD, dedicated as it is to trying to provide housing assistance within the confines of the existing housing stock, has been forced to recognize that there are gaps and shortages. For example, there are 2.4 million large renter households (5 persons or more) and only 1.0 million large rental units (4 or more bedrooms). Nor are landlords in the private sector willing to rent decent housing to low-income, single-parent households. Indeed, families with children at any income level face difficulties in renting housing.

Fundamental Elements of an Adequate Low-Income Housing Program

Vigorous efforts to end discriminatory practices are only one component of an adequate housing program for low-income people: one that makes access to decent, affordable housing a reality. The National Low Income Housing Coalition is now embarked on a process of developing specific proposals for a housing program that will, in fact, provided decent, affordable housing for all. An adequate low-income housing program would, we believe, incorporate the following elements:

- An adequately funded entitlement, income-based housing assistance program to enable low-income people to obtain decent housing at costs they can afford.
- Production and preservation programs to meet those low-income housing needs which cannot be met by income-support programs alone.
- Strengthened fair housing laws and enforcement and a strong reaffirmation of the Federal Government's role in guaranteeing fair access to housing.
- A strong role for community-based, nonprofit organizations in the implementation of housing programs, along with the availability of Federal assistance to meet the broad range of housing needs at the neighborhood and community level.
- Retention of the current stock of federally assisted and insured housing now occupied by low and moderate income people for their use and provision of the necessary funds to maintain it in viable condition. (This includes all present public housing, HUD-assisted, HUD-insured, and HUD-held units, as well as units assisted by the Farmers Home Administration.)

TABLE 4**Total Households, Poor Households, and Poor Households
in Subsidized Housing, 1981**

(Households in thousands)

Characteristic	Total Households	Total Households	Poor Households Number in Subsidized Housing	Percent in Subsidized Housing
All households	83,527	11,676	1,510	12.9%
Residence				
Metro, central city	24,668	4,211	841	20.0%
Metro, other	32,232	2,911	299	10.3%
Nonmetro	26,627	4,554	371	8.1%
Black households	8,961	2,974	659	22.2%
Married couple families	49,630	3,394	195	5.7%
Female householder	9,403	3,252	706	21.7%
With children under 18	32,886	5,247	840	16.0%
With children under 6	15,172	2,997	496	16.5%
No children under 18	50,641	6,430	670	10.4%
Elderly householders	17,312	3,185	433	13.6%
Single-person households	22,508	4,826	589	12.2%

Note: Poor households are those with incomes below 100 percent of poverty level. Subsidized housing is rental housing only.

- No displacement of low-income people from their neighborhoods by either public or private action.
- Tax reform to curb massive housing subsidies through the tax system to middle and upper income people, particularly as long as budget constraints inhibit adequate housing aid to low-income people. The cost of housing-related tax subsidies has risen from \$26 billion in 1980 to an estimated \$43 billion in 1984. At the same time, new budget authority for low-income housing is set, under the administration's proposals, to drop from \$26 billion in 1980 to \$0.5 billion in 1984.
- Monetary and credit policies to provide reasonable financing costs for housing and limit

credit-related sharp fluctuations in building which increase the costs, prices, and rents of all housing.

We believe that these elements provide the framework for a viable approach to meeting this Nation's housing needs. Clearly, this framework needs to be elaborated, tested against the views and experience of people attempting to meet the housing needs of our low-income and minority families and neighborhoods, and cast into specific legislative proposals. This is no small task. But it is one that is urgently needed. Without it, our housing efforts are doomed to inadequacy at best and countless millions of people will be deprived of the decent housing which should be their right.

Creative Financing and Discrimination

Discrimination in Home Mortgage Financing

Glenda G. Sloane*

Homeownership is the American dream. Throughout our history the Federal Government has intervened in times of crisis to protect homeowners and homesteaders threatened with the loss of their property. Although Federal action has been sporadic, and there has been no express national policy in support of homeownership, over the years the Federal Government has facilitated homeownership as an intrinsic good and as a means to achieve other goals. For example, the offer of free land to settlers proved an effective impetus to expanding our frontiers. For most Americans, mortgage credit was and is the indispensable source of funds for the purchase of single homes and for the development of multifamily rental, cooperative, and condominium projects. In fact, the Federal Government's first significant entry into housing was in the mortgage credit area.

Today the terms and conditions for securing mortgage credit that have evolved since the 1930s are undergoing radical change—change that may adversely affect minorities and women and constitute a setback in the protections secured over the last two decades. There are even indications that we may be in the process of reviving the mortgage credit systems antedating the reforms of the thirties.

Before the Great Depression, the terms and conditions for securing a loan were so onerous that only a small segment of the population could qualify. In 1920 less than 40 percent of the nonfarm dwellings were owned by the families who occupied them. While some families could purchase homes outright, most needed some form of financing—financing that typically was available on the most prohibitive terms: 50 percent down and an unamor-

tized loan at a high rate of interest payable in full at the end of 5 years.

The economic crisis of the thirties and the undermining of financial institutions drastically changed the home financing system. In 1934 the Federal Government intervened to assist many families threatened by foreclosure and the loss of their homes. The establishment of the Federal Housing Administration (FHA)¹ revolutionized the mortgage industry. Low downpayments and a fully amortized 30-year loan at low interest rates replaced the restrictive terms and conditions of the market place. Even before FHA was established, Congress took steps that involved the Federal Government in home financing. In 1932 Congress created the Federal Home Loan Bank Board (FHLBB)² and soon after chartered savings and loan associations³ and provided insurance of accounts.⁴ While these actions were primarily directed to alleviate the economic crises, they operated to shore up housing credit and facilitate homeownership.

Broadening the base for homeownership was accomplished in accordance with the established practices and policies of a dual market—one for blacks and one for whites. Women, of course, were rarely, if ever, considered as qualified borrowers. Loans were made to blacks only if they could meet more stringent credit requirements and more onerous terms than were whites. Both blacks and whites were ineligible to purchase homes in neighborhoods and locations because the racial composition was incompatible with accepted social and economic standards.

It was not until after World War II that the ramifications of these policies and the role of the Federal Government became significant. The impact

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¹ The Federal Housing Administration was established under the National Housing Act, Pub. L. No. 73-479, 48 Stat. 1246 (1934) (codified as amended in scattered sections of 12 U.S.C.).

² The Federal Home Loan Bank Board was created under the Federal Home Loan Bank Act of July 22, 1932, ch. 422, 47 Stat. 725 (codified as amended at 12 U.S.C. §1421 [1976]).

³ The chartering of savings and loan institutions was set out in the Home Owner's Loan Act of June 13, 1933, ch. 64, 48 Stat. 128 (codified as amended at 12 U.S.C. §1461 [1976]).

⁴ The Federal Savings and Loan Insurance Corporation was created under the National Housing Act of June 27, 1934, ch. 847, 48 Stat. 1246 (codified as amended at 12 U.S.C. §§1701, 1725 [1976]).

of the introduction of Federal mortgage insurance into the market reached its peak after World War II. The huge demand for housing was predictable. One, the Nation's resources had been directed to the war effort and, consequently, little housing was produced. Two, new families, particularly veterans' families and those who had doubled up for lack of available housing, were in the market to purchase homes. FHA primed the pump. But for whom? The promise of homeownership was not universal. Creditworthiness and the home and property as adequate security for the loan were based on terms and conditions that varied according to the race and sex of the borrower and the location of the property. From its inception, FHA adopted and adhered to the "social" guidelines followed in the private market.

When racial minorities and women applied for mortgage loans they were either rejected outright because of their race or sex or were subjected to more stringent terms and conditions, overly restrictive payment-to-income ratios, and policies that had an adverse impact, such as refusal to count stable income from overtime or part-time work, or that required the applicant to have previously owned a home. (This is not an exhaustive list.)

Loans were also denied by private mortgage lenders to all persons regardless of race because of the location of the property. These underwriting standards, incorporated into the FHA manuals of 1935 immediately following its establishment in 1934, were based on the premise that the "infiltration of inharmonious racial or nationality groups" into a neighborhood endangered property values.⁵ To protect against such incursions, FHA advised that deed restrictions were the most effective insurance against such infiltration. The manual recommended that the restriction should apply for at least 20 years and should include "appropriate provisions for enforcement."⁶ Thus the restrictive covenant became a standard provision in deeds on property that carried Federal mortgage insurance. In addition to inharmonious racial and national groups, the manual cautioned on loans made in neighborhoods where the schools served children who represented "a far

lower level of society" albeit the neighborhood itself was "favorable."⁷

In 1944 Congress enacted the G.I. Bill of Rights,⁸ later amended to include a mortgage guarantee program to enable veterans to purchase homes with no downpayments and low interest rates.⁹ The Veterans Administration (VA) endorsed the premises and covenants consistent with FHA practices. Thus, the housing boom following World War II was shaped by, and subject to, discriminatory private and Federal and State governmental dictates on who is creditworthy and which property and neighborhood is adequate collateral.

The essential role of the mortgage lender cannot be overstated. Were a real estate broker or individual home seller to negotiate a sale to an "inharmonious racial or nationality" family, it was likely that the purchaser could not secure a loan, or if a lender agreed, it was likely that FHA or VA would refuse to place insurance or guarantee commitments on the property, thereby obstructing a valid transaction between a willing seller and buyer. Discrimination based on race has implications not only for prospective owners, but for renters as well. Mortgage financing for developers of multifamily rental housing has been subject to the same proscriptions as sales housing. Neighborhood location and racial occupancy of tenants were determinative factors.

The consequences of decades of the implementation of these discriminatory housing practices and policies are evident: predominantly white suburbs with occasional minority pockets and concentrated and segregated minority populations in central cities.

The eradication of formal published restrictions has been slow to develop. The very nature of the transactions involved in securing credit has made the task difficult, more difficult than in eliminating discrimination in other aspects of housing accessibility. Throughout the decades of effort to prohibit housing discrimination, the elimination of discriminatory practices in mortgage lending has been and continues to be a complex and long-term effort. Securing protection against discrimination in mortgage lending has been complicated by the difficulty in documenting the case. Establishing creditworth-

⁵ The 1935 FHA Manual as cited in *The Richmond School Decision: Complete Text of Bradley v. School Board of Richmond* at 172 (Chicago: Integrated Education Associates, 1972).

⁶ *Id.* at 173.

⁷ U.S., Federal Housing Administration, *Underwriting Manual: Underwriting and Valuation Procedure under Title II of the National Housing Act*, para. 266 (April 1936 rev'd ed., November 1936).

⁸ The Serviceman's Readjustment Act of 1944 (38 U.S.C. §1801 *et seq.*, June 22, 1944).

⁹ Mortgages for veterans were guaranteed by the Serviceman's Readjustment Act (G.I. Bill), (Pub. L. No. 78-346, 58 Stat. 284 [1944] as amended.)

ness, and the value of the particular piece of property and the terms and conditions of the loan have been the province of the lender who was under no obligation to explain the bases for his decisions. An applicant who was rejected on grounds that he/she did not meet the institution's credit standards, or that the appraised value of the house was well below the agreed price had no information with which to assess whether the lender's standards were applied to all applicants without regard to race or neighborhood. Further, there was no way, at least readily available, to determine if others in similar situations had received the same or different treatment. In addition, other policies that did not expressly exclude persons by reason of race or sex had a discriminatory effect. For example, refusing to make home loans on houses 30 or 40 years old resulted in redlining older neighborhoods in central cities where minorities lived.

The first major inroad was made by the Supreme Court when it refused in 1948 to enforce a racially restrictive covenant.¹⁰ Although the Court did not declare the covenant invalid, it concluded that enforcement by the Court constituted State action in violation of the equal protection clause of the 14th amendment of the Constitution. VA and FHA, however, did not forbear from insuring mortgages on properties with restrictive covenants until 1950, and then applied it to covenants filed after 1950 only. The fact that these covenants could no longer be enforced did not impair their usefulness for, as "gentleman's agreements," they continued as insurance against the "risk" as perceived by mortgage lenders.

The Supreme Court decision had no effect on the operation of other Federal agencies with functions relating to home finance. The FHLBB, Office of the Comptroller of the Currency (OCC),¹¹ the Federal Deposit Insurance Corporation (FDIC),¹² and the Federal Reserve Board (FRB)¹³ supervised savings and loan associations and banks throughout the

country through their various functions, such as chartering of institutions, insuring deposits, and advancing funds. They continued to ignore any responsibility although there was a growing awareness that minorities, otherwise qualified to borrow, were arbitrarily denied mortgage loans because of their race or national origin. One example of Federal concern that qualified minorities and others were able to secure mortgage loans is the Voluntary Home Mortgage Credit Program (VHMCP)¹⁴ that was established in 1954 to provide assistance to minorities and other applicants who had been rejected by two institutions. No obligation was placed on private institutions to participate and the program had limited impact. It was significant because it acknowledged the problem.

In 1961 the Commission on Civil Rights issued a comprehensive report on discrimination in mortgage lending and recommended that the President issue an executive order directing the Federal agencies that supervise institutions that make mortgage loans "to conduct such business on a nondiscriminatory basis." In 1961 the FHLBB did adopt a resolution against discriminatory mortgage lending by their member institutions.

In November 1962 Executive Order 11063 on Equal Opportunity in Housing was issued. It did not include coverage as recommended by the Commission. Title VI of the Civil Rights Act of 1964 continued the exclusion of the financial regulatory agencies from any obligation to develop and implement Federal standards and rules prohibiting discrimination by their member institutions.¹⁵

Other than the 1961 FHLBB resolution, no attention was paid by the financial regulatory agencies to the problem of mortgage lending discrimination. The resistance by these agencies and lenders persisted up to and after the enactment of title VIII, the National Fair Housing Law in 1968.¹⁶

Title VIII specifically prohibits "discrimination in the financing of housing."¹⁷ The act also directs that

¹⁰ *Shelley v. Kraemer*, 334 U.S. 1 (1948).

¹¹ The Office of the Comptroller of the Currency was established to supervise the national banks under the National Banking Act of June 3, 1864, ch. 106 §1, 12 Stat. 99.

¹² The Federal Deposit Insurance Corporation was created during the famous "one hundred days" of the New Deal under the Federal Reserve Act of June 16, 1933, ch. 89, §8, 48 Stat. 168 which added section 12B to the Federal Reserve Act of 1931 (codified as amended at 12 U.S.C. §1811 [1976]).

¹³ The Board of Governors of the Federal Reserve System was created under the Federal Reserve Act of 1913, 38 Stat. 251 (codified as amended at 12 U.S.C. §221 [1976]).

¹⁴ The Voluntary Home Mortgage Credit Program (VHMCP) was established under the National Housing Act of 1954, 68 Stat. 637 (1954), 12 U.S.C. §1750cc [1958].

¹⁵ See *Laufman v. Oakley*, 408 F. Supp. 489 (S.D. Ohio 1976) for holding that Title VI applies.

¹⁶ Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 81 (codified as amended at 42 U.S.C. §§3601-3619 [1976 and Supp. V 1981]).

¹⁷ Title VIII, §805 (42 U.S.C. §3605). See above, note 15 and accompanying text in this section.

“all executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this title.”¹⁸ None of the financial regulatory agencies acted to implement these provisions.

In 1971, 10 public interest organizations filed rulemaking petitions with the 4 regulatory agencies calling for regulatory action to prohibit discriminatory practices by their member institutions consistent with the provisions of title VIII. No action or response was forthcoming.¹⁹

In 1974 the FHLBB issued regulations on nondiscrimination including prohibitions against redlining and other policies that have a discriminatory effect.²⁰ Other than receiving complaints, no enforcement mechanism or civil rights office was created to oversee adherence to the regulations. Lacking implementation provisions, these regulations amounted to little more than policy statements—albeit important policy statements. There was silence from the board’s sister agencies.

The years following the enactment of title VIII did not show a diminution of lending discrimination. Few cases were brought pursuant to title VIII demonstrating the difficulties in documenting and proving discrimination in a court of law or before a Federal agency. Although a Federal district court²¹ in 1976 ruled that redlining was a violation of titles VI and VIII and the 1866 law, redlining and other discriminatory lending practices and policies continued. Nonetheless, the agencies only acted if a complaint was filed against a member institution. No steps were taken to ascertain whether their member’s policies or practices were discriminatory or were efforts made to assure compliance with the law. Systematic examination of lenders, collection of race and sex data on accepted and rejected applications, and the development of a civil rights presence and expertise were not undertaken. One justification for inaction was that there was insufficient informa-

tion to support the need for monitoring and enforcement measures.

In 1976 the same 10 public interest organizations plus 1 that filed the rulemaking petition in 1971 filed a lawsuit against the same 4 agencies.²² The complaint cited the agencies for failing to fulfill their obligations under the various civil rights laws and asked the court for appropriate relief. In 1977, after a few extensions of time, the agencies filed an answer that mainly relied on a “lack of knowledge or information sufficient to form a belief as to the truth of the allegation.” Before trial was set, first the FHLBB, followed by the FDIC and the OCC, entered into settlement agreements with plaintiffs.²³ The FRB did not settle, and the case was not pursued.

The major provisions of the settlement agreements recognized the affirmative duty of the agencies to use their regulatory authority to identify discriminatory practices of their member institutions, and to develop and take corrective action where necessary. The agencies acknowledged the need for civil rights specialists and a training program for bank examiners that would incorporate into their regular bank examinations investigations for civil rights compliance.

After a year, each of the three agencies had developed computerized individual data collection systems. All required the recording of race, sex, national origin, and marital status on applications.

In July of 1982 a report on these systems was submitted to the Federal Financial Institutions Examination Council (FFIEC) pursuant to a congressional directive.²⁴ Overall, and given the short term that the systems have been in use and the low level of lending activity during this period, the contractor concluded that the automated analyses, as one of many tools serving examiners, “improve the examiner’s ability to detect possibly discriminatory policies

¹⁸ Title VIII, §808 (42 U.S.C. §3608).

¹⁹ Organizations that filed the 1971 rulemaking petition were: National Urban League, National Committee Against Discrimination in Housing, National Association for the Advancement of Colored People, American Friends Service Committee, League of Women Voters, National Neighbors, Housing Association of Delaware Valley, Leadership Council for Metropolitan Open Communities, Metropolitan Washington Planning and Housing Association, Rural Housing Alliance, and the National Association of Real Estate Brokers.

²⁰ Federal Home Loan Bank Board Regulations Against Discrimination, 12 C.F.R. §528 (as established on Dec. 17, 1974).

²¹ See *Laufman v. Oakley*, 408 F. Supp. 489 (S.D. Ohio 1976).

²² *National Urban League v. Comptroller of the Currency*, Civil Action No. 76-718 (United States District Court for the District of Columbia) (1976).

²³ Settlement Agreement with the Federal Home Loan Bank Board, Mar. 22, 1977; Settlement Agreement with the Federal Deposit Insurance Corporation, May 13, 1977; Settlement with the Office of the Comptroller of the Currency, Nov. 30, 1977.

²⁴ The Housing and Community Development Act of 1980, §340(e).

and practices in the most efficient and effective way possible."²⁵

In its comments on the three agencies' civil rights enforcement programs, the contractor notes the role of the examiners. Regardless of what the automated systems pump out indicating potential areas of mortgage credit discrimination, it is the task of the examiner, whether in routine examinations or in investigation of specific allegations or evidence of discrimination, to make complex determinations on the institution's compliance with the law. The examiner has multiple compliance standards:

- 1) Is an institution serving the credit needs of the community?
- 2) Is it extending credit without regard to the applicant's race, sex, marital status, and ages or the age and location of the property?
- 3) In following up on apparent discriminatory rejections of applicants, is the explanation valid?

These tasks require expertise and time as well as having to compete with the traditional duties for the examiner's attention. The training of examiners and the availability of support and assistance from civil rights specialists in the central and regional offices require a substantial commitment from the agencies. That commitment is a signal as well to the examiners and the institutions they examine that the agencies intend to enforce the law.

The pressures on agencies to cut costs and paperwork threaten the continuation of the data collection system. Civil rights enforcement is dependent on information on the participation of minorities and women in the mortgage credit market and the geographic locations of properties that secure the mortgage loans. Constraints on data collection and analysis would be a serious setback at this time. First, the systems are essential to the examination process and with experience will become more useful and effective. Second, the condition of the housing market during these years of inflation has given rise to a number of new mortgage instruments—a development that creates a need for an *expansion* of the collection of data. There is no doubt that these new forms of mortgage credit have adverse implications for minorities, women, and inner-city and integrated neighborhoods.

²⁵ Section 340(e) Fair Housing Lending Study, Federal Financial Institutions Examination Council, July 30, 1982 (McLean, Va.: JRB Associates) pp. 7-11.

²⁶ House Committee on Banking, Finance and Urban Affairs,

While the conventional, fixed-term mortgage continues to be the prevailing method for financing the purchase of a home and multifamily rental projects, an array of alternatives have come into use. For the borrowers, the reduction in risk to the lenders creates degrees of uncertainty on their ability to secure a loan initially and in having the continuing capacity to meet potential escalating payments.

Mortgages that carry changing interest rates indexed to some given interest rates beyond the control of the borrower or lender introduce new factors in determining an applicant's creditworthiness. It is no longer sufficient to evaluate present income alone. If the mortgage payments may increase in the future, the lender will examine the borrower's ability to meet this potential additional burden in the future, i.e., is the applicant upwardly mobile? What assurances are there that his/her income will increase in step with the interest increases as dictated by the index selected by the lender?

Variable rate mortgages (VRMs) are not uniform. (VRM is the general term used to cover arrangements where interest rates may change.) Particularly those that have no cap on the number or amounts of interest rate changes that may be applied over the life of the mortgage will require higher limits on present and future income of the borrower than under a conventional fixed-rate mortgage. Even where there is a cap, the lender will seek future assurance of increased earnings.

The FHLBB has approved adjustable mortgage loans (AML initially called VRM) with no caps, requiring only that the index used is identifiable by the borrower and beyond the control of the lender.²⁶

Other loans based on increasing income are structured to assist borrowers who cannot carry payments in the early years but have the potential for assuming high payments in later years. Called graduated payment mortgages (GPM), the borrower's monthly payments rise over a period of 10 years or less. The FHLBB applies no limits on the amount or frequency of increases under the GPMs.²⁷

Yet another "creative" instrument based on increased monthly payments is the growing equity mortgage (GEM). In contrast to the AMLs the

98th Cong., 1st sess., Housing—A Reader, 66 (Comm. Print 98-5: July 1983).

²⁷ *Id.* at 68.

increased payments are not allotted to interest, but to the principal. It is possible for the borrower to then repay the loan in 12 to 15 years. FHA and the FHLBB have approved the use of these instruments. The former permits annual increases by 2.5, 5, or 7.5 percent over a 5-year period or 2 or 3 percent in 10 years. The FHLBB sets no limits.²⁸

A distinctively different loan arrangement also available entails a balloon payment at the end of a short term. Called a rollover mortgage or a renegotiable rate mortgage (RRM), at the end of a 3- or 5-year term, the loan may be renegotiated at new interest rates or rolled over. There is usually no obligation on the lender to renegotiate or rollover, and, in that event, the full payment is due.

Clearly, all these new instruments have implications for members of minority groups and women whose creditworthiness has been subject to the most stringent and biased scrutiny. The potential for increasing one's income is necessarily speculative and will hinge on subjective or even "intuitive" judgments of lenders. Their perception of the likelihood of minority persons and women being promoted to positions of responsibility and accompanied by an increase in income will undoubtedly be affected by personal and stereotypical attitudes. (Because these groups are recent entrants to the housing market—due to a large extent to past discrimination—they will have difficulty qualifying under any circumstances, e.g., they have never owned a home before.)

Even assuming discriminatory intent is not present, the belief that these classes of applicants pose greater risks will have the same effect as rejections based on intentional discrimination.

Presently, none of the agencies or other entity is collecting information on the experience of minorities and women in securing mortgage loans as described above. If, in fact, they are being denied mortgage credit arbitrarily, new standards and judgments must be formulated to correct this inequity. The first step is to determine what is happening in this new world of home finance. Certainly, the need for this information exists for purposes beyond that of civil rights concerns in the interest of understanding the impact on all consumers and markets.

The new instruments have potential adverse effects for neighborhoods as well. Analogous to

conditioning a loan on future earning power, the graduated payment adjustable mortgage loan (GPAML), the shared appreciation (SAM) or shared equity mortgage, and the price level adjusted mortgage (PLAM) assume the property secured by the loan will appreciate.²⁹ In one situation, the monthly payments are insufficient to cover the interest due and the interest owed is that added to the outstanding loan balance. Larger downpayments or higher interest rates are usually applied to instruments providing negative amortization. Should the borrower sell or the lender foreclose to recapture the increase in the loan amount, the property would have to have increased in value.

In the shared equity mortgage, a borrower, in return for a benefit, agrees to share with the lender the future appreciation in the value of the property. The lender may offer some break in the downpayment or interest rate in exchange for this prospective profit.

In yet another version, the PLAM, the interest rate does not change but the loan balance is recalculated each year in accordance with inflation rates.

What effect do these devices have on lenders' decisions to make loans in certain neighborhoods? Because the terms are based on assumptions that the property values will increase, conclusions will be drawn about the future of the area. While the old saws about property values declining in integrated and older neighborhoods have been discredited, they die hard. Whereas the conventional mortgage was based on values remaining stable and keyed to demonstrable evidence of that fact, the new mortgages call for predictions as to future value and it is likely, if not probable, that the risk will occasion the most conservative assessment, including the old myths that guided lenders in the past.

The availability of mortgage credit without discrimination is not and should not be dependent on economic conditions. Regardless of the mechanisms devised to facilitate homeownership or the provision of multifamily rental units, protection against exclusion because of race or sex from these benefits must be included. No action has been taken to date to monitor experience with these new mortgages. Where subjective considerations are introduced into the decision process, opportunities for discrimination, intentional or not, result.

²⁸ *Id.*

²⁹ *Id.*

Another current situation presents potential hardship for minority and female mortgagors. Lenders are coping with defaulting borrowers who are unemployed and unable to meet their mortgage obligations. The banking agencies are encouraging forbearance on foreclosure by these lenders but no guidance has been given to assure that factors of race or sex are not considered in determining whether or not to forebear in a particular case. Because these decisions are left to the discretion of the lender such guidelines are necessary.

A final aspect of the mortgage credit process that impinges on access to credit for minorities and women and availability of credit for homes in integrated and older neighborhoods is the secondary mortgage market. A major player is the quasi-public Federal National Mortgage Association (FNMA).³⁰ Its scope of activity is important in that it buys mortgages from mortgage bankers who are not under the supervision of any of the Federal financial regulatory agencies and therefore not subject to the rules and monitoring procedures as are most savings and loans and banks. FNMA is also authorized to purchase the new forms of mortgage loans. In 1978 HUD proposed regulations that would obligate FNMA to purchase loans made to families of low and moderate incomes and in central cities and to apply underwriting guidelines that would prohibit FNMA from refusing to purchase loans because of the race, color, sex, etc., of the borrower or the racial composition of the neighborhood.³¹ FNMA resisted these efforts on grounds that the Secretary was exceeding her authority. (A weaker version of these regulations was adopted on August 15, 1978.) Regardless of the genesis of these rules or guidelines, they are consistent with Federal law and policy. FNMA itself points out its pivotal role in encouraging the availability of mortgage credit, improving the geographical distribution of mortgage funds, and generating as much as two-thirds of its funds from nontraditional mortgage investors. Every actor in the process of facilitating homeownership must be subject to the same proscriptions against discrimination. The operation of the secondary market is not neutral and it should be examined and monitored to

assure it is not an obstruction to freedom of housing choice.

Conclusion

Mortgage financing institutions and mortgage instruments are in flux. As new structures and mechanisms evolve it is essential that the civil rights of minorities and women and the right of all persons to live in neighborhoods of their choice are protected at the outset. In the past, these rights were either ignored or rejected, and the task of undoing the consequences has been overwhelming.

Today, the Federal financial regulatory agencies are obligated to monitor the providers of credit under their supervision, to correct violations, and to act affirmatively to promote choice. None of these functions can be carried out unless there is sufficient information about the applicants for credit and the locations in which lenders are making mortgage loans. The information that is collected must be analyzed to determine whether an institution's policies and practices are nondiscriminatory. The bank examiner is dependent on this data whether the examination is part of the regular examination or conducted in response to a specific complaint. The examiners must be educated about discriminatory patterns and policies and allowed the time necessary to perform his/her duties. Where violations are found, corrective action must be timely and appropriate. Further, this entire process must be adapted to include the new mortgage instruments used by the lending institutions. Monitoring and enforcement of the civil rights laws is best overseen by specialists who apply their civil rights expertise to the specific activity of the agency. In the last year, the gains made as a result of the settlement agreements have been ending. The forms used for the collection of race, sex, etc., and location information are expiring. The terms of the settlement agreements have ended. There should be no question as to the need to continue and improve on the present systems and to maintain an office of civil rights.

Owning a home must no longer be a dream deferred for those who, because of their race, national origin, or sex are denied mortgage credit—the key to homeownership.

³⁰ The Federal National Mortgage Association (FNMA) was created under the National Housing Act of June 27, 1934, ch. 847, Title III §302, 48 Stat. 1254 (codified as amended at 12 U.S.C. §1717 [1976]).

³¹ Regulations Implementing the Authority of the Secretary of

the Department of Housing and Urban Development Over the Conduct of the Secondary Market Operations of the Federal National Mortgage Association (FNMA), 24 C.F.R. §81.18(b) (1982).

Address

Thomas L. Clark, Jr.*

Good Morning:

It's a pleasure to have been invited to speak about some of the problems minorities and women have experienced in attempting to obtain mortgage financing. I also plan to speak about some of the things the consumer services division of the New York State Banking Department is doing to deal with the problem.

As you are aware, changes in our economy, high interest rates, and deteriorating profit and loss statements have made long-term, fixed-rate financing almost extinct and lenders have devised more sophisticated forms of financing to protect themselves from low-yielding mortgage portfolios. Unfortunately, some of their creative forms of financing have effectively eliminated vast segments of our population from the housing market.

Either credit criteria place the loan beyond the prospective borrower's economic capabilities, or the type of credit offered does not fit within the confines of the geographical location of the property. I shall focus on some of the kinds of financing that I believe state the case.

First, The Graduated Payment Mortgage, also referred to as "GMP," is designed for buyers whose present income is not sufficient to meet current mortgage rates, but who expect their income to increase significantly in the years ahead. The borrower's monthly payments are initially insufficient to repay the monthly principal and interest costs scheduled for the loan, resulting in negative amortization. In other words, the principal balance of the loan is actually increased in the initial years of repayment and payments ultimately rise to a level higher than on comparable fixed-payment mortgages.

Second, The "Growing Equity Mortgage," or GEM, is currently being offered to buyers that are looking for mortgages of \$150,000 or more. Under this plan, the mortgagor agrees to increase the monthly payment by a certain percentage each year and the extra payment is used to reduce the principal balance. This enables the borrower to pay off the loan in 12-15 years instead of 30 years. A \$150,000

mortgage at 14 percent would cost the borrower about \$18-\$20,000 per year. No comment required.

Third, the Pledged Account Mortgage (PAM) is a special type of GPM. On most GPM plans, the low initial payments are insufficient to pay all the interest owed. On a PAM, that portion of the interest due that is not covered by the monthly payment is deducted from a savings account pledged by the borrower from monies which otherwise would have been applied to a downpayment and to provide for a smaller loan amount. Some, but not all, graduated payment mortgages have the pledge account feature. Since such a loan provides for a larger loan amount in order to initially allow the scheduled monthly payment, the loan results in larger overall interest to the borrower.

Fourth, with "Share Appreciation Mortgage," or SAM, the borrower offers to share a portion of the increased value of his home with the lender after a specified number of years, or sooner if the property is sold before maturity of the loan.

Fifth, A "Negative Amortization Mortgage," or NAM, is a variable-rate mortgage in which the monthly payment remains constant even though the interest rate might change. Thus a borrower might end up owing more on a house after a period of time than the amount originally borrowed.

Sixth, "Zero-Rate Mortgages," or ZRMS, are usually made by real estate developers to attract buyers who cannot qualify for conventional loans. The purchaser pays only the principal and no interest. As compensation for the interest, the developer raises the price of the house. A \$50,000 house might sell for \$90,000.

Most of the aforementioned mortgages are offered to purchases of property in the more economically advantaged areas and are not readily accessible to families of modest incomes.

By way of illustration, mortgage amortization (principal plus interest) on a \$60,000 fixed-rate mortgage loan payable over a 30-year period would require the monthly payment as indicated in table 1.

I might add that the monthly payment does not include real estate taxes, homeowner's insurance and

* New York State Deputy Superintendent of Banks.

TABLE 1**Monthly Payments for \$60,000 Fixed-Rate Mortgage Loan Payable Over 30 Years**

	Annualized
At— 8% — \$440.26	\$ 5,283.12
9% — 482.78	5,793.36
10% — 526.55	6,318.60
11% — 571.40	6,856.80
12% — 617.17	7,406.04
13% — 663.72	7,964.64
14% — 710.93	8,531.16
15% — 758.67	9,104.04
16% — 806.86	9,682.32
17% — 855.41	10,264.92

other "add-ons" which, by contract, are usually required additions to the mortgage payment. If we were to include those costs plus the expense of heating, lighting, and insuring a home in the northeast region, we could easily add an average of \$352 per month to the figures in table 1 to defray those costs. Using a ratio of one week's salary to cover the combined described costs, a family would need a minimum household income of \$55,000 per annum to support the basic fixed household expenditures on a home with a mortgage loan at 14 percent.

My calculations were developed as in table 2.

High interest rates themselves have the effect of eliminating minorities and women from the housing market. I fully recognize that there are countless other Americans of all ethnic groups faced with the same problem but somehow, through mortgage "buy-downs" and other forms of innovative financing, banks and real estate developers are able to find ways of selling homes to nonminority purchasers in ways that are *not* equally available, in certain areas, to minority groups and women.

During the past few minutes, I have talked about the various lending vehicles and the effect high interest rates have on the potential borrowers. The

picture I have painted is gloomy, since the days of the 6, 7, or 8 percent mortgages are gone forever.

Another area of grave concern is the effect that a branch closing has on the community. At a recent New York State Assembly hearing, Vincent Tese, the superintendent of the New York State Banking Department, testified on the impact and consequences branch closings can have on low- and moderate-income communities.

As excerpted from his testimony, "Branch closings obviously do not help a neighborhood and can in fact have a negative impact on the community. While we fully recognize that profitability and the marketplace are fundamental to successfully providing banking services to communities, we also realize that successfully revitalizing main commercial avenues requires the availability of essential banking services." Superintendent Tese makes a valid point and I would like to expand upon it as follows:

To the legitimate real estate developer, a branch closing contributes to the belief that the community is not salvageable; to other types of lenders such as insurance companies, private mortgage bankers, and investors, properties are no longer marketable; and to "fastback speculators," a boarded-up building is

TABLE 2
Calculations

Oil or gas heating	— \$1,500.00	or	\$125.00	per mo.
Lighting	— 840.00	or	70.00	per mo.
Real estate taxes	— 1,500.00	or	125.00	per mo.
Homeowner's insur.	— 384.00	or	32.00	per mo.
	<u>\$4,224.00</u>		<u>\$352.00</u>	per mo.

an ideal location for a sleazy operation that would pay “big bucks” for a more dignified location. This scenario has been repeated in inner cities and towns throughout the Nation. The end result has been catastrophic as once vibrant commercial areas have been destroyed and surrounding housing stock has been abandoned, turned over to families receiving public assistance, or set afire by arsonists, hired in some cases by unscrupulous owners. While there are many factors contributing to this situation, lenders and government, working together, must accept their responsibility to aid in the revitalization of these areas.

David Rockefeller, in an address before the Harlem Chamber of Commerce, stressed the importance of the public-private partnerships. In his opinion, “The private sector throughout the ‘City’ has a major stake and a major role to play. It is also clear, however, that the private sector cannot solve all of the problems by itself. Extensive public involvement and resources are needed as well. If we don’t move swiftly from the *vague* to the *concrete* in this area, the future will be increasingly cloudy for our city and our society as a whole.” Mr. Rockefeller’s observations extend far beyond the city of New

York. Mortgage financing should be available on an equal basis, and new vehicles are needed to fill the gaps in mortgage lending that continue to exist.

As a member of the banking department and head of the consumer services division, I have a personal commitment to “seek out” and expose unjust lending practices wherever they exist and along those lines, our division has established the following action plan:

(1) The director of our community reinvestment monitoring unit (CRMU) has intensified our monitoring activities by establishing community profiles in areas serviced by our member banks;

(2) Urban analysts have been hired to conduct field surveys with community organizations, merchants, and local residents to ascertain whether the local banking institutions are meeting the financial needs of its service community;

(3) The information gathered will be supplied to our CRMU examiners and will be used during their examination of a bank’s CRA practices and if these practices are found not in compliance, corrective modifications will have to be made in order to obtain our approval of future expansion plans;

(4) Our CRM unit will closely monitor each bank's minority and women-owned business lending programs and encourage those without a program to implement an acceptable plan within a given time frame.

(5) CRMU will also conduct seminars designed to assist minority enterprises with the structuring of loan proposals that will aid them in obtaining credit from the conventional lending sources.

(6) Our consumer services division will continue to hold community outreach seminars throughout the State of New York to acquaint the public with

the functions of the banking department and try to help them resolve legitimate banking problems they may have incurred with their local institution;

(7) A quarterly "Newsletter" outlining the activities of our division and informative articles concerning banking, legislation, and issues of public concern will be ready for distribution by the end of October.

We have a number of plans on the drawing board and we believe we're on the "right-track" toward the accomplishment of our stated goals.

I appreciate the opportunity to be part of this panel discussion and thank you for your attention.

Creative Forms of Finance Discrimination

Theresa L. Watson*

I appreciate the opportunity, on behalf of the American Savings and Loan League, to address the very important question whether minority groups and women have equal access to the mortgage market, looking at the impact of interest rates and government-supported secondary market mechanisms on the creation of affordable homeownership opportunities for them.

The American Savings and Loan League is a nonprofit membership organization composed of savings and loan associations in the United States which are owned and/or operated by blacks, Hispanics, Asian Americans, members of other ethnic minority groups, and women. Formed 35 years ago, the current membership includes 70 savings and loan associations operating in 24 States and the District of Columbia. More than half of the members are federally chartered associations. The average size of the members of the American League is only \$25 million in assets which is considerably smaller than the average asset size of all of the nonminority savings and loan associations. The smallest association has \$3 million in assets; the largest somewhere near \$300 million. Only one-half of our membership have been in existence for more than 10 years. The oldest association, however, was started in 1888 in Philadelphia, Pennsylvania.

Despite their small size, these financial institutions have become an integral part of the minority neighborhoods throughout the country and generally were organized to fill an unmet need for credit in minority communities. Frequently they were the only financial institution in their community. Today, the total assets of the 75 minority S&Ls are approaching \$3 billion, with over 80 percent of the assets that amount in residential single-family mortgages.

Savings and loan associations, as private businesses, on their own initiative may attempt to provide low-cost mortgage money to low- and moderate-income persons, a significant number of whom are ethnic minorities and women. They are constrained, however, as for-profit private entities, to do business in a profitable manner. This means

that they cannot pay 10 percent for deposits that are then loaned to a low-income person at a 9 percent mortgage rate. The 1 percent difference amounts to a subsidy from a company that has no governmental means of funding, but which must dig into its own pocket to pay. An S&L engaged in such socially-related practices would soon find itself bankrupt. The rules of the game, in large measure, have been established by the secondary market purchasers of the mortgages originated by S&Ls. These sources must in turn issue securities backed by their mortgages and must guarantee purchasers of their obligation in the capital markets that the mortgage instrument underlying the securities they have bought is acceptable under normal standards and has no special wrinkles. Therefore, a prospective homebuyer must "qualify" for the loan under normal underwriting criteria.

Equal access to mortgage credit by minorities and women presumes that these individuals have the requisite creditworthiness to qualify for a loan under normal underwriting standards. That is, the income level, credit history, and stability of the borrower must be satisfactory to the lender. In addition, the borrower must be able to meet the monthly housing expense and other obligations within certain ratios established by the secondary market purchasers of mortgages.

Unfortunately, there are no special programs for higher risk buyers, and in their absence, S&Ls that deviate from sound lending practices are courting problems with their regulatory agencies.

Affordability

Affordability is the major housing problem and the reason that the American dream of homeownership is fast fading. In "The Challenges to Homeownership in the 1980's," the U.S. League of Savings Institutions' Homeownership Task Force found that the decline in the ratio of homeownership has wiped out many of the gains registered during the previous 10 years. They concluded:

By 1984, even if median home prices remain constant—a highly unlikely event—and mortgage rates drop to 11%,

* President, American Savings and Loan League, Inc., Washington, D.C.

the gap between what the typical first-time buyer can afford to pay and the price of the median-cost new home will still be \$14,000.

Looking at the National Association of Realtors "housing affordability index," in July 1983, "a family earning the U.S. median income of \$24,617 had 83 percent of the income necessary to qualify for the purchase of a median-priced existing home, which was \$71,600 last month." What does this gap in affordability mean for those segments of the population that have had little homeownership opportunity—the poor, economically disadvantaged and minorities? Is the outlook as "dreadful" as the Homeownership Task Force predicts?

Of the black families in the U.S., 63.8 percent have incomes below the median income of \$24,617; and 58.5 percent Hispanic families are either at or below median income; 37.8 percent of Asian American families fall in this category; and 39.5 percent of the white population. Thus, minorities who comprise almost 20 percent of the population, have approximately 60 percent of the median and below median population. 1

Of the 40 million owner-occupied homeownership units, 7.2 percent are black; 3.3 percent are Hispanic, and 1.0 percent are Asian. The white population accounts for 88.4 percent of the owner-occupied units in the country.

Thus, it is clear, that even with moderated interest rates and low inflation, a large percentage of the 10 million households estimated to be renters by the end of the 1980s will be minority households.

In their second discussion paper, "Homeownership Affordability in the 1980s," the Homeownership Task Force noted an alarming decline in the affordability of homeownership by the poor and near poor—young renters, minority and immigrant households, and large families that can't fit into rental housing. They concluded: "If the 1980s and future decades are going to mean a progressive closing of that door (homeownership), we may end up losing more than homeownership. We may rend the fabric of our social and economic system itself—leaving long-term damage not readily repaired."

Aside from task force suggestion of some sensible approaches to reorienting current expenditures to better help groups that need help most, the balance of this discussion will explore actions that have been taken publicly and privately to bridge the affordabil-

ity gap and possible solutions to what seems to be an insurmountable obstacle.

Producing affordable homeownership opportunities for low- and moderate-income people has always been a challenge to the Federal Government, local communities, and developers.

With the demise of federally subsidized programs, and under a volatile interest rate environment, this task becomes all the more difficult. Recent experience over the past 3 years has taught us that when rates rise, fewer people's incomes can support the resulting exorbitant housing cost. This situation gave rise to a number of creative financing programs, to devising ways of cutting construction costs, to tax-exempt mortgage financing programs, to alternative instruments that are interest rate sensitive, and to public-private partnership efforts.

Because of the virtual shutdown of the housing market when interest rates soared to 16½ percent, several innovative techniques were undertaken by builders and developers to sell newly built, unoccupied houses. I needn't go into too much detail on these vehicles, however, they did impact on the availability of housing for low- to moderate-income persons.

First, there were voluntary efforts undertaken to keep the mortgage market alive and to provide some means to financing homeownership. For instance, "sleepy seconds" and builder buydowns of the interest rates were provided sometimes by the builders themselves, sometimes by cities or through community development block grant funds.

The graduated payment mortgage which allows lower monthly payments at first with a gradual increase over 5 to 10 years was offered. These GPMs permitted lower payments in the earlier years with any payment differences being deferred and added to the loan balance.

Lenders also offered a *shared appreciation mortgage* at below-market interest rates and smaller payments in exchange for a share of profits when the property is sold. The *growing equity mortgage* with below-market, fixed-rate interest rate and lower initial monthly payments followed by scheduled increases of 3 to 4 percent a year is another.

The *adjustable or variable rate mortgage* began with a rate well below the standard fixed rate, with changes indexed to fluctuations in such instruments as Treasury bills. Caps were put on monthly payments to minimize wide fluctuations, and deficiencies added to principal as "negative amortization."

Balloon mortgages with monthly payments based on a fixed interest rate were offered for a 3–5 year term. Payments covered interest only, or interest and some amortization. Principal is due in full at end of the term.

The shared equity mortgage was finally created by law to give tax benefits to an investor who provides downpayment assistance to a borrower.

Some of these creative alternatives have been effective; others, such as balloons and variable mortgages which might pose a serious problem of affordability by the homeowner, have been more risky. Some of them are coming back to haunt the parties involved. Overall, however, they allowed those qualified borrowers to attain homeownership who otherwise would have been priced out of the housing market. This applies equally to both low- and moderate- and upper-income borrowers.

Government Supported Secondary Market Innovations

The Federal National Mortgage Association's basic function is to provide a secondary market in residential loans. It buys, services, and sells mortgages, and issues debt under its name to raise funds.

The Federal Home Loan Mortgage Corporation was created in 1970 to promote the flow of capital into the housing market by establishing an active secondary market in mortgages. FHLMC gets its funds to finance its purchase through sale of mortgage certificates which it guarantees.

In its literature on "Affordability Plus" FNMA sets out an affordability program which includes the following mortgage plans. They are all designed to stimulate the mortgage market in this period of high interest rates and make them acceptable to lenders and borrowers.

1. Buydown mortgage options. The buydown is a loan on which a lump sum is paid at the time of settlement to reduce initial monthly payments. Anyone can provide the funds—sellers, builders, buyers.

2. Graduated plans for three types of FNMA adjustable rate mortgages:

- Payments increase by 7½ percent each year during period of adjustment.
- During the first adjustment period, a portion of the monthly payment is deferred for later years, resulting in negative amortization—an increase rather than decrease in loan balance.

- After the graduated payment period, the loan becomes a standard ARM, and payments change according to the index selected by the borrower.

3. Land leases—under which the land is rented with an option to buy from the builder or investor within the first 5 years. The advantage to this method of financing is that the required downpayment is lowered because only the house is mortgaged. Land leases can be combined with ARMs to make purchases more affordable.

4. Mortgages for manufactured housing—Manufactured homes are often more affordable than other types of housing. FNMA provides 30-year loans using the same underwriting and credit guidelines.

On balance, the FNMA plans to tackle the problem of affordability, and carry out their role as a secondary source of mortgage financing. Their underwriting and credit guidelines determine whether a person can afford a mortgage. Thus, without sufficient income to meet monthly payments, even these plans will not help since FNMA cannot provide any subsidy.

Another FNMA program that has been created to provide a source of affordable mortgage credit, while at the same time providing a market rate of return to lenders and secondary market purchasers, is the Municipal Tri-Party Participation Program. The Municipal Tri-Party Participation plan is an innovative mortgage financing arrangement that provides to lenders access to a new customer base, helps borrowers, helps builders and developers finance their developments by providing below-market rates.

For cities and municipalities, the Municipal Tri-Party Participation plan gives affordable housing to those who would otherwise be pressed out of the market. The municipalities are also given a way to leverage their money with other investors to gain greater purchasing power. These cities use community development block grant and urban development action grant funds as their participation in the undertaking, and forego interest or receive a low rate of interest on the principal to make lower mortgage rates possible. Cities also receive property tax revenues from new housing, and this provides an alternative to tax-exempt financing. This is a very innovative program which, once it's worked out, could be an invaluable means for addressing the housing needs of the minority community and low-income persons. Even with the Municipal Tri-Party Participation, however, the interest rates still play a

significant role, and there are limitations on the amount of block grant funds available.

The Federal Home Loan Mortgage Corporation, or Freddie Mac, likewise receives its funds through the capital markets, albeit their obligations (as well as Fannie Mae's) enjoy a special agency status. The government connection of these two agencies gives them a significant advantage in raising funds at lower rates. Freddie Mac, likewise, has been innovative in providing liquidity to the housing markets. The limitation on their programs is the same as FNMA's—there is no mortgage instrument for low- and moderate-income people. There will be times when those persons with insufficient incomes to meet the required debt service will be forced out of the market.

Consumer Issues

Under the 30-year, fixed-rate mortgage created 50 years ago, lender and borrower had no problems so long as there were legal limits on the interest to be paid to savers and the rate of interest charged for mortgage loans. Because of the imbalanced deregulation of the savings side of the balance sheet within recent years, however, thrifts found themselves locked in with low-yielding mortgage portfolios and declining earnings and net worth.

One solution to the imbalance problem has been the development of the adjustable or variable-rate mortgage instrument. These instruments were useful when this was the only game in town. However, there has been considerable reluctance and questions whether there were sufficient consumer protections involved. With the decline in interest rates business returned to the usual, fixed-rate, 30-year mortgage.

Investors like the fixed-rate instrument, and will have to be assured that any adjustable product is equally as sound an investment. Homebuyers who have seen the widespread unemployment throughout the U.S. have been unwilling to take a chance, and would prefer to settle for a monthly payment they know they can afford at the time of loan closing. Moreover, most Americans are betting that interest rates will go up in the coming years, and are putting their bets on the fixed-rate mortgage.

The convention wisdom, however, is that the adjustable rate product is the instrument of the future—that the thrift industry will fail if it relies on the fixed-rate mortgage. FNMA and Freddie Mac, therefore, have initiated marketing campaigns and

other incentives to attract both homebuyers and lenders to the adjustable mortgage.

The primary detractor to the two ARM programs now offered is that they are designed for the benefit of the investor and the lender. The investor must be assured that the security backed by ARMs is just as secure an investment as the fixed-rate product. Much energy has been devoted to this sector in the program information materials. The lender must be assured there is a secondary market purchaser for the ARM it originates, and that using the ARM reduces their interest rate exposure over time. There are no assurances that can be given the purchaser other than that at the time the loan is made, they were qualified to make the payments. Hence the reluctance on the part of those who don't see in their future a significant and steadily rising increase in their incomes. Lower income people are particularly interested in the fixed-rate mortgage, and might not be as willing to buy a house if only the ARM is available.

Mortgage Revenue Bonds (MRBs)

Federal tax provisions have been a major source of housing subsidies. The Federal Government annually provides indirect subsidies through tax deductions for mortgage interest and real estate taxes. These subsidies, which primarily assist middle and upper income homeowners, have been steadily increasing, while there is no such comparable assistance for lower income households. In 1983, for example, housing payments for lower income households amounted to less than \$8 billion, compared to the almost \$40 billion in revenue that will be lost to the Treasury under the indirect subsidy. Moreover, these subsidized housing payments do not help lower income households to purchase—this is merely for rental housing assistance.

Presently, the Federal tax exemption on mortgage revenue bonds (MRBs) is the only direct homeownership assistance program for low- and moderate-income persons. Designed to assist families that otherwise might not be able to afford homeownership, MRB proceeds are used to provide below-market interest rate single-family mortgages. The legislation providing for MRBs will expire December 31, 1983. While there seem to be sufficient congressional votes to extend the law, other measures have been offered as alternatives to MRBs.

A GAO study concluded that MRBs are costly compared to the benefits to assisted homebuyers and

to the costs of other alternatives. GAO also found that the public purpose objective of subsidizing low- and moderate-income households in need of assistance is not generally achieved under conventional financing. GAO suggested a tax credit or direct grant to lenders as a way of substantially reducing Federal costs.

I am chairperson of the District of Columbia Housing Finance Agency. DCHFA is authorized to issue tax-exempt bonds to finance both multifamily rental housing and single-family homeownership programs. We are at the point of going to market with our first single-family issue, and will request reservations from lenders for the dollar amounts of mortgages they expect to originate and deliver to the DCHFA under the program. Our program is structured to allow for the maximum amount of \$200 million to be issued, so as to assure that the maximum demand can be achieved in the event the law is not extended.

The DCHFA single-family program has special features to assure that priority goes to the lower income, first-time homebuyers in targeted areas that have been inadequately served, and to the purchase of houses that do not exceed \$80,000. Thus, with our income limits, households in southeast, northwest, and other inner-city areas of the District where there has not been a lot of lending activity will get first crack at the tax-exempt proceeds from the bond issue. Other State agencies have similar program requirements, and seek to serve the intended beneficiaries of the program.

In enacting the MRB legislation, Congress intended to target subsidies to low- and moderate-income households. As the program is structured, however, the fixed-interest rate reduction to all buyers is inequitable. The GAO concluded that the higher the income of the buyer and the less likely the buyer needs help, the more they receive in subsidy and the greater the cost to the government. The study found that the majority of homebuyers in 1982 probably could have purchased homes without assistance. However, they were probably the only ones who qualified for loans, given the high interest rates even for the tax-exempt bonds. While this was not intentional and it was necessary to keep things operational, traditional low- and moderate-income beneficiaries were disadvantaged and were forced either to wait until rates declined or to remain renters.

Recently there has been much healthy discussion in Congress seeking to arrive at a MRB program structure that will be more equitable to lower income persons, provide a deeper subsidy, and be cost effective. We applaud these efforts and would urge that the MRB program be continued until an alternative has been tried and proven effective.

The Future

The foregoing discussion leads to the conclusion that there is indeed a public policy to make affordable housing available for low- and moderate-income people. With the great demand for housing projected over the next few years, that policy should lead to the creation of some means of making homeownership equally available to them, even in times of high interest rates.

Newly developed, government-supported secondary market programs have gone far toward making mortgage financing available even under the most difficult economic circumstances; however, they have had no real impact on low- and moderate-income persons. As presently structured, the ARM programs would expose the low- and moderate-income, first-time homeowner to interest rate fluctuation risk. Unfairness to these purchases would result if this were the only product available and there were no insurance or backstop in the event the worst case interest rate scenario arrives. The ARMs should be left as-is and should not be modified to reach the low- and moderate-income home buyer.

Some proposals which have appeal are the direct, deep subsidy to the home buyer or lender; 100 percent insurance of long-term public deposits that are dedicated to originating mortgages for low- and moderate-income persons that could then be packaged and sold in the secondary market; or tax exemption of interest earned on long-term jumbo certificates of deposit if the funds go toward such homeownership opportunities. Chairman Gray is to be congratulated on his action authorizing Federal Home Loan Banks to offer 20-year advances, maturities which more closely track those of mortgages.

For minority S&Ls to be able to offer low-cost mortgages to low- and moderate-income home buyers, there needs to be something similar to the FHLBB program that provided incentives to lenders to invest in inner-city and revitalizing neighborhoods—the Community Investment Fund. The Community Investment Fund was established in June 1978 as a 5-year, \$10 billion program to make

available incentives for S&Ls to invest in revitalizing our Nation's urban and rural communities. This program gave lenders the flexibility to use low-cost advances received from the Federal Home Loan Banks to provide lower interest mortgages in certain communities. The program was successful; and after the percentage of CIF Funds for smaller institutions

was increased, it went a long way toward benefiting minority savings and loans in particular. The program has expired, however, and the American Savings and Loan League has written to the Federal Home Loan Bank Board suggesting it be extended because of the successful achievements obtained.

Hispanics and Fair Housing: The Neighborhood Development Issue

Jorge N. Hernandez*

Housing and physical development initiatives in Hispanic neighborhoods throughout the country have been launched by individuals, private developers, the public sector, and community-based organizations. I would like to direct my talk today to the housing and neighborhood development efforts of a Hispanic community-based organization in New England and the local civil rights context.

Hispanic migration to New England is a phenomenon of the last 30 to 40 years. Initiated by Puerto Ricans, Dominicans, Cubans, Colombians, and other Latin Americans have followed suit. Today Hispanics number maybe as many as 500,000 out of 12,500,000 New Englanders; roughly 4 percent Puerto Ricans comprise 50 percent to 60 percent of the total Hispanic population in the region. This young, fast growing, and highly urbanized population group is found in rundown neighborhood concentrations of anywhere from 2,000 to 25,000 inhabitants. Hartford and Boston boast the bigger concentrations. Hispanics exceed 25 percent of the total population in places like Hartford, Lawrence, and Chelsea.

Hispanic neighborhood activism has been a relevant and significant part of the energy that has led to the revival of many inner-city neighborhoods in New England. Witness Brightwood Development Corporation in Springfield's North End, Casa de Puerto Rico, San Juan Center, and Taino Development Corporation in Hartford, Nueva Esperanza CDC in Holyoke, and Nuestra Comunidad CDC in Boston's Dudley Street/Blue Hill Avenue neighborhood. In many instances Hispanic activism has been stimulated by an insensitive public sector as in the case of Nueva Esperanza CDC in Holyoke or the urban renewal fight waged by Inquilinos Boricuas en Accion (IBA) in Boston's South End.

Boston's South End was developed on a speculative basis by 19th century entrepreneurs who wanted to offer an alternative to the elegance of the Back Bay. The failure of the venture and economic decline of the neighborhood were fueled by incidents like the Panic of 1873 and the opening of the

streetcar suburbs in the latter part of the century. The South End slowly became a neighborhood of rooming houses and a port of entry for the migrants of the last century which in the 1950s and 1960s included increasing proportions of Puerto Ricans and other Hispanics. Their arrival coincided with the last stages of physical and demographic decline in the neighborhood: its one square mile housed 57,000 people in 1950 and only 22,000 in 1970. An urban renewal program was planned and launched in the 1960s for this historic neighborhood, possibly the largest depository of Victorian architecture in the country. This plan envisioned the relocation of the Puerto Rican community from the so-called urban renewal Parcel 19 in the geographic center of the neighborhood to make way for new housing and community facilities.

To the cry of "We shall not be moved from Parcel 19, or no nos mudaremos de la Parcela 19," a group of residents, with the backing of St. Stephen's Episcopal Church, launched a drive to oppose the plans of the Boston Redevelopment Authority (BRA) for Parcel 19. With financial help from the Episcopalians, a group of suburban Protestant churches called the Cooperative Metropolitan Ministries, the Boston community foundation (the Committee for the Permanent Charities Trust), and the VISTA program, the residents launched a protest followed by a research and design effort that led the city of Boston to change its plans. IBA, then known as the Emergency Tenants Council, was incorporated in 1968 and a young new mayor by the name of Kevin White was instrumental in getting the BRA to appoint the group as tentative developers for *all* Parcel 19 in 1968. With the subsequent constant inspiration of activists and officials like then State representative Melvin H. King, this development designation decision resulted in a locally and nationally acclaimed community called Villa Victoria.

Controlled legally by its residents through a complex web of corporations and partnerships, Villa Victoria is a small town within the city, a 15-acre development of 2,500 people occupying 815 apart-

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ment units in renovated historic rowhouses, garden-type apartments and 2 high rises of 7 and 19 stories, respectively. A central plaza flanked by small businesses anchors the north end of the site at Plaza Betances with the O'Day Playground/Villa Victoria Community Center (All Saints Church) complex on the opposite end. IBA, the resident corporation, operates out of an office building it developed and owns on the site. With 400 dues-paying adult members, the corporation operates social services, arts and culture, and development assistance programs. Its affiliate and neighbor organizations operate real estate development, housing and commercial real estate management, child day care, credit union, and festival/performance programs that attract thousands every year and employ almost 100 full time. A political history full of productive activity helps explain why Villa Victoria is perhaps the most successful case of consolidation of power over turf to implement a comprehensive development strategy performed by any Hispanic community-based organization in New England. It is the most integrated and inclusive minority-sponsored development in Boston, a model community to many Hispanics and other people in general, a valid development institution model for communities of 2,000-25,000.

So what is the problem? In spite of significant displacement, the South End remains the most diverse, integrated, and tolerant neighborhood in the city. However, urban renewal has strengthened a pattern of subneighborhoods dominated by a single racial or ethnic groups: Chinese, black, Syrian, Lebanese, Greek, Puerto Rican, white young professionals, and others. High demand for desirable subsidized housing in 1982 created a controversy that ended with the questioning of the population makeup of Villa Victoria and the efforts of the organization. The controversy that ensued highlighted one of the most sensitive and undefined civil rights policy areas. I bring it up because lack of definition breeds potential for abuse and neighborhood developers should be given clear guidance to avoid problems.

Simply said, the bulk of the 15-20 percent of the residents of the South End who are Hispanic live in Villa Victoria and its immediacy much as the bulk of the Chinese live around Castle Square (another development), blacks around TDC, Methunion and Roxse, and whites on one side of Tremont Street. The reality of concentration around Villa Victoria results from two forces: the success of the organic,

community-based development initiative and the displacement by market forces fueled with public funds of Hispanics and other poor from other parts of the neighborhood (Villa Victoria being the manner of mitigating the displacement).

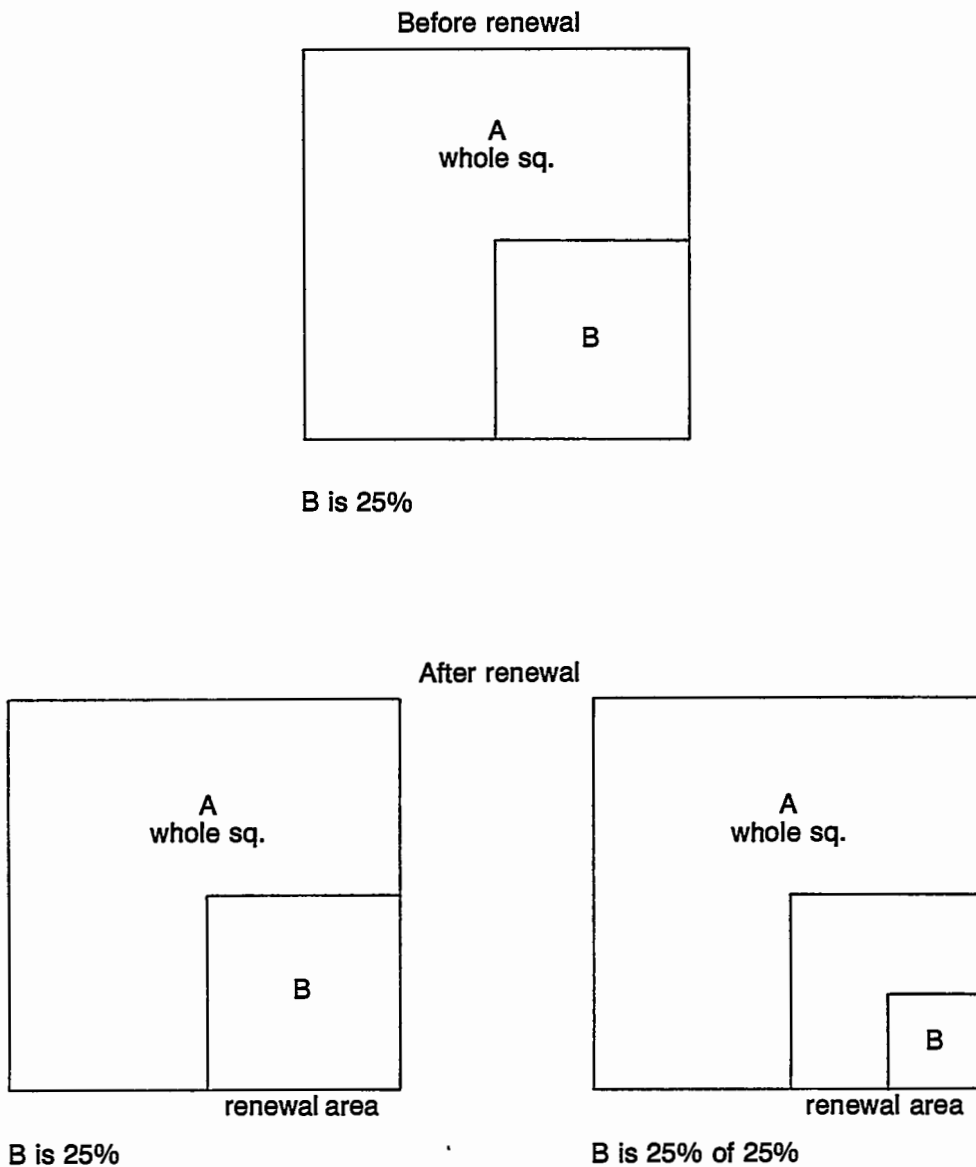
Since Hispanics make up 75 percent of the community-controlled developments in Villa Victoria while only 15-20 percent of the entire population of the neighborhood, some officials argued that Hispanic housing occupancy goals for Villa Victoria should be lowered to the 15-40 percent range to reflect the neighborhood context. These same officials refused to link the proposed change with equivalent and complementary changes in other developments where the problem was similar but reversed with other predominant groups in a way where at least the *total* neighborhood context remained the same as far as public action was concerned; an integrated and open-access neighborhood. Because of this refusal, acquiescence and acceptance of the proposed lowering of occupancy goals would have resulted in an absolute and relative decrease in the number of Hispanics in Villa Victoria and the entire neighborhood (even theoretically triggering a geometric progression downward) and an overall lowering of housing opportunities for Hispanics in the neighborhood. Even worse, the proposed action seemed to negate the issues that gave rise to the movement that ended up in the development of Villa Victoria: the threat of wholesale displacement and exclusion of Hispanics and elderly from housing opportunities in the South End as the urban renewal plan was being implemented. To the average community activist it seemed like the utmost irony: you give Hispanics a little corner while they are being displaced from the neighborhood by renewal and then, after they disappear from the rest of the neighborhood you declare their little corner illegal and move to displace the bulk of the remaining ones from the neighborhood.

Somehow it seemed that laws created to protect people whose civil rights were being violated were also being used or manipulated to violate those civil rights. In this instance, enlightened public officials at the Federal, State, and local levels were ultimately successful in drafting a solution that maintained the integrity of the community and the uniqueness of the agency as a force of social welfare, development, and change while guaranteeing and promoting access for all.

FIGURE 1

Sample Development

3
8



Assume *A* is redeveloped everywhere except at *B*. There is fear of displacement at *B* and a development corporation is formed to combat displacement at *B* and to provide *B* with housing opportunities denied elsewhere at *A*. The *community B* renewal program starts. Absent new housing opportunities in non-*community B* areas of

neighborhood A, mission, context and history variables of the *community B* renewal effort would lead one to expect a very high goal (theoretically 100% if non-*B* opportunities in *A* are 0) in order not to destroy *community B* by shrinkage as shown in the figure at the right.

The lesson of Villa Victoria is significant to the small and poor ethnic communities of New England where development programs may be planned or under development. Take a sample *community B* (2,500 population) within *neighborhood A* (10,000 population) in *city X*. Assume great reinvestment triggered displacement has taken place throughout *neighborhood A* and now threatens *community B*. The *community B* development corporation starts a housing rehabilitation program aimed at preventing displacement at *community B*. Should one argue that only 25 percent of new *community B* housing go to the residents of *community B* because it is only 25 percent of all of *neighborhood A*? If one did then, absent new opportunities in other parts of *neighborhood A*, one would also be arguing for the shrinkage of *community B* to 25 percent of its original size as a goal with the consequent displacement of 75 percent of former *community B* residents by the antidisplacement program of *community B's* development corporation. Doesn't this sound pyrrhic?

This lesson is relevant to community development groups involved in ethnic neighborhoods and particularly important to neighborhood renewal activists in Hispanic neighborhoods in those rundown sections of our cities in New England. It is relevant to the definition of community control and to the operation of many program activities. Achievement of fair housing and community development goals requires clear policies, and close coordination. Clarification of conflicting policies, particularly by looking at the mission, history, and context variables of community development efforts, may result in enhancement of community-based development activities in general. There are many potential community development opportunities in those Hispanic and other inner-city neighborhoods of the cities of New England that may be affected by such clarifications. I am sure many organizations would appreciate some guidance as they implement programs.

Thank you for the opportunity to address you today.

Discrimination Against Women

Discrimination Against Women in Housing Finance

Dorothy S. Ridings*

Thank you for inviting me to be with you to discuss discrimination against women in the housing market. More particularly, I want to focus on a part of this broader topic, discrimination against women in housing finance, particularly mortgage finance. At the Commission's request, I also would like to comment on housing discrimination against families with children, which often translates into discrimination that has a devastating effect on women.

First, a bit of background about the League of Women Voters. The League is a volunteer citizen education and political action organization made up of more than 1,300 State and local leagues in all 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. The League was founded in 1920 as a result of the successful drive for women's suffrage, and since that time we have had a multi-issue agenda of public policy issues, including equal opportunities in housing.

I will divide my remarks today into two sections to address the two topics requested by the Commission and will be glad to answer questions following my presentation.

The League of Women Voters began its work on housing issues in 1968 when delegates to our national convention made clear our support for equality of opportunity for housing. That was spurred by the passage in the spring of 1968 of Title

VIII of the Civil Rights Act. As a result of this act, leagues throughout the country began working on implementation of fair housing requirements and a commitment to an adequate supply of housing for all Americans. We have continued that dual commitment for the last 15 years, and we are now gearing up for full support of the Fair Housing Amendments Act of 1983 that has been introduced in both Houses during the 98th Congress. Building on our initial support for fair housing as enumerated in the 1968 Fair Housing Act, we will push for the necessary enforcement measures included in both H.R. 3482 and S. 1220 on which hearings are expected this fall.

Over the years, the League also has worked on a number of related housing issues. We supported Federal housing assistance programs set up under categorical grants; in 1974 our support for housing was channeled into aspects of the Housing and Community Development Act, which consolidated Federal assistance under the block grant approach. We support reauthorization of the Home Mortgage Disclosure Act, but efforts to make it permanent failed. And we fought hard against congressional action on the budget that weakened the community development block grant (CDBG) program by making drastic cuts in the full range of authorized low- and moderate-income subsidies for both rehabilitation and new housing.

* President, League of Women Voters of the U.S.

In the hundreds of localities where local leagues are headquartered, league members have been extremely active in housing issues—possibly the area that attracts more local leagues than any other except equal access to education. Many local leagues monitored CDBG programs, particularly to assess whether they are principally benefitting low- and moderate-income persons. They have worked to increase the supply of low- and moderate-income housing and to enforce fair housing laws in their own communities. Leagues have gone to court to challenge racial steering and other forms of housing discrimination; in one notable lawsuit, the League of Women Voters of Louisiana was amicus in *Corpus Christi Parish Credit Union v. Martin* (Supreme Court of Louisiana, May 1978), which effectively challenged the State's "head and master" statute on the issue of the validity of the mortgage which the husband obtained over the objections of his wife. And, many leagues have worked to remove other obstacles to equal access to housing, such as discriminatory mortgage practices or restrictive covenants.

Accordingly, there was strong interest among our members nationwide when in the spring of 1979 the League of Women Voters Education Fund began an 18-month project on Women and Mortgage Credit. The project was grant-funded by the U.S. Department of Housing and Urban Development (HUD) as part of its Project on Women and Credit. As the League's then housing chair, I served as chair of the League's Women and Mortgage Credit project.

As part of the League's grant, pilot projects were carried out by local leagues in 10 communities: Arapahoe County, CO; Detroit, MI; Indianapolis, IN; Jonesboro, AR; Los Angeles, CA; Lynchburg, VA; New Rochelle, NY; Seattle, WA; Springfield, MO, and Wilmington, DE. Full reports on these pilot projects, plus information on the workshops, educational materials, radio and TV shows, newspaper and magazine commentaries, telephone information services, and other facets of the grant, are available from the League. We believe the project was successful in helping meet the three stated goals of the overall HUD project:

- To make sure women were aware of their rights under the Equal Credit Opportunity and Fair Housing Acts,
- To improve women's ability to be well-informed housing consumers by providing them with basic information about the process of buying or selling a home, and

- To increase the awareness on the part of lenders and women themselves of the full implications and potential of women's credit rights and growing economic independence.

The project demonstrated that discrimination in mortgage lending did indeed exist, and perhaps more importantly, that many women were unaware of their rights in the credit market. The project also served an informational purpose for lenders, some of whom were also in need of a better education on credit rights.

But I would be less than candid if I did not admit that there were more than one raised eyebrow and expression of surprise from the public as we worked on this project. I need not remind this group what was happening in the mortgage market in 1979 and 1980: mortgage rates skyrocketed and then dropped temporarily; the housing industry entered a severe slump; real estate activities ground to a halt in many communities; and steeply increased mortgage rates priced many marginal homebuyers out of the market.

Our response to the queries about why we were worried about discrimination in such a volatile—and at times, nonexistent—mortgage market was fairly simple: That an examination of the discrimination in lending was needed regardless of other circumstances; that a tight mortgage market would only exacerbate discriminatory practices that did exist, and that our findings would become increasingly useful when the market turned around and more lendable money was available.

What we could not predict was that by the end of the project, there would be a proliferation of new financing instruments created in response to tight market conditions. These new instruments made it impossible for us to provide women with adequate information on what kind of financing options they would face in even the next 6 months. I do not believe that adequate such information exists today even while financing options have burgeoned. And these funding options could have an adverse effect against women in the mortgage market, a matter that should be of concern to us. The League has not engaged in a study of this hypothesis, but I would like to raise those questions for your consideration.

Those instruments include such features as variable rates, renegotiable rates, graduated payments, and shared equity, among others. Under such instruments, discrimination against women may be an effect resulting from what we know about women's

earning capacities, rather than straightforward discrimination based solely on the sex of a mortgage applicant, but it is nonetheless worthy of our concern in light of two real facts: the condition of the mortgage market today and women's earning histories.

Let me illustrate. The mortgage instrument calling for graduated payments is based on the assumption that the earning capacity of the mortgage-holder will increase through the years, until retirement when the mortgage might likely be paid off. But statistics from the Women's Bureau of the U.S. Department of Labor show that statistically, a woman's income peaks between the ages of 30-34 years. ("The Earnings Gap Between Women and Men," Women's Bureau, U.S. Department of Labor, 1979.) The widest wage gap is between the ages of 45 and 49, where men's income peaks. We are all aware of the interruptible pattern of a large number of working women, who may leave the work force at various periods for child-rearing or other family responsibilities, or who may reenter the job market after divorce or death of a spouse (reentry into typically low-paying jobs.)

This widening gap in wages is as much a reflection of women's dead-end careers, stagnant earnings pattern, and lack of mobility in a labor force still riddled with discrimination. I think I need not recite the scandalous statistics that document that there indeed is *not* comparable pay for work of comparable worth, a fact of special severity to working women, or the statistics we hear so often about the low earnings of most women—now at 61 cents for every \$1.00 earned by men. My point is that the assumptions on which the graduated mortgage is based simply won't work for most women attempting to buy homes. There are indications that similar danger signs may exist in the other "new" mortgage instruments that were created to meet economic conditions—but that were *not* created with the needs and realities of women in mind.

I mention this subject without documentation because I believe it is a worthy area for further exploration. It is my understanding that the Women's Legal Defense Fund plans to look at the effect of new mortgage instruments on women, as part of its revision of the Women's Mortgage Credit Handbook, and their research should be instructive to us all as we grapple with issues of new forms of discrimination in a changing world.

But we have not adequately addressed those instances of discrimination by design, either. Passage of the Equal Credit Opportunity Act (ECOA) in 1976 was a landmark, but during the League's Women and Mortgage Credit project we found evidence that some banks and creditors were continuing to violate its provisions, more than 3 years after the act and the implementation of regulation B. Suits brought by the Federal Trade Commission and the Department of Justice, for example, were based on instances of failure to take the most rudimentary steps to assure equal opportunity—failure to give the reasons for denial of credit and failure to properly consider additional sources of income such as alimony and child support when determining an applicant's creditworthiness. Still, not many lawsuits were brought under the ECOA during those years, and in the intervening years the courts have not issued many rulings flushing out the statute's meaning. Hence the law is not settled in this area.

Now, regulation B is up for review—and those of us who are interested in credit discrimination are interested in strengthening reporting requirements on race and sex in order to better monitor possible discriminatory denial of credit on those grounds.

Since the passage of ECOA and regulation B in 1976 it has contributed greatly to making credit available with fairness and impartiality. However, there are still areas in which the regulation could be strengthened for greater effectiveness. Here are some examples.

Presently, the regulation does not require the collection of race and sex data on credit applications other than mortgage or home improvement loans. As a result it is difficult to determine if other forms of credit are being denied on the basis of race or sex since the data is not available.

Bank Scoring or Ranking System

In most instances, banks, for the purpose of granting credit, have a number of points that must be acquired. These points are associated with different categories such as type of job, number of years at current address, ownership of an automobile, and other similar criteria. Because the scoring system is not public, minorities and women can be discriminated against for irrational reasons. For example, a woman who is a secretary is awarded only 4 points when a man who is a T.V. repairman is awarded 7. There is no apparent reason for such a ranking disparity. Also, in an effort to deter banks from

scoring women and minorities lower in certain categories than they do men and nonminorities, the banks' scoring or ranking system should be made public to individual applicants.

Adverse Action Notice Under Regulation B

The League is most concerned with the vagueness of the language that states reasons for adverse actions (i.e., the checklist that requires an institution to check only the appropriate category. Sample categories include: Credit application incomplete, insufficient credit references, temporary or irregular employment, insufficient income, inadequate collateral, too short a period of residence, no credit file, and delinquent credit obligations). One possible improvement is to replace the checklist with a requirement of specific, individual explanations of loan denial; a second alternative is to add new reasons to the checklist. We would be in favor, for example, of adding a reason that would specify—especially in the area of mortgage lending—that the adverse action resulted from the fact that the appraised value of the property was too low for the loan value, or that an applicant's debt-to-income ratio failed to meet the institution's written underwriting standards.

Exceptions to Adverse Notices

The League opposes any circumstances under which a lending institution need not send an adverse action notice. In our view, there is a danger that in expanding the circumstances in which an adverse notice need not be sent to an applicant, additional opportunities will be presented for creditors to undermine the intention of the statute and regulations, and to avoid giving rejected applicants the specific reasons why they were denied credit.

Aside from the problems women and minorities face in obtaining credit, they are still faced with overt discrimination in the renting and purchasing of homes. Fifteen years after the passage of title VIII, the evidence of unlawful housing discrimination is abundant. This is due to a lack of enforcement powers by the Department of Housing and Urban Development (HUD). HUD has estimated that 2 million instances of housing discrimination occur each year. But due to the cost and time-consuming nature of litigation, very few complaints will be settled. In fact, complaints of discrimination against women and Asian Americans and Hispanics are

increasing. In addition, handicapped people—of whom there are approximately 36 million—continue to be excluded from large segments of the housing market.

But the discriminated class that has gone virtually unnoticed until recent years is families with children. In these times of concern about outside influences that are eroding the family structure and unity, we must come to grips with all the forces that are contributing to their deterioration. We are all familiar with the impact on families of unemployment, discrimination, and drug abuse, to name just a few. But in addition to these factors, there is another less well-known but equally as important issue that is the subject of my presentation here today. As homeownership becomes less financially possible for young families and as the number of divorced, widowed, elderly, and childless couples increases—all of which have altered the demand for housing—the availability of rental housing for families with children has turned into a salient issue. Most local and State governments fail to acknowledge that such a problem exists, and that this problem can have a detrimental impact upon the entire family structure.

Landlords and apartment owners are quick to give the following reasons for excluding children from their complexes:

- 1) children are destructive in general;
- 2) children are noisy and unruly;
- 3) parents leave the children to roam without supervision at all times of the day or night; and
- 4) management's cost would increase because more doors are opened and toilets flushed, thus causing greater wear and tear on property.

Good management on the part of owners and cooperation between tenant and management can alleviate many of these problems.

Unlike discrimination based on race and sex, there is no national legislation that prohibits discrimination against families with children. Most cities have no local ordinances that address this issue; thus this form of discrimination remains perfectly legal in most places. Some argue that the lack of such laws opens the door to race and sex discrimination, since a greater proportion of minority and female-headed households are in the rental market. Study after study has concluded that these policies can and do exclude more members of these groups from particular buildings, apartment complexes, and neighborhoods.

Just how critical is this problem? A 1980 survey undertaken by the Department of Housing and Urban Development revealed that:

- 1) Seventy percent of all rental households have no children.
- 2) Nearly one-fourth of all units are closed to families with one child.
- 3) One-fourth of all units are closed to families with children because of cost.
- 4) One-third of all units nationwide are closed to families with two children.
- 5) The extent of discrimination varies according to the racial composition of the neighborhood, with white neighborhoods having a higher percentage of restrictive policies (20 percent) than do black neighborhoods.
- 6) Families with children pay higher rents than those without children, and often must live in substandard housing in inferior neighborhoods.
- 7) The newer the rental complex, the more likely it is that restrictive policies exist. (Three out of every five units built since 1970 have restrictive policies against children.)

In addition to policies that prohibit outright the renting of units to families with children, there often are other, less comprehensive limitations, such as restrictions on the ages of children allowed in units or the number of family members, prohibitions against the sharing of a bedroom by children of the opposite sex, and rules restricting children to certain floors in buildings. Among each of these restrictions variations can be found. For example, age restrictions can limit children over or under specified ages, such as no children under 2, or none under 12. In most instances, age restrictions are not clearly defined and are left to the discretion of the building managers or rental agents.

Discrimination against families with children was recognized as a problem by State governments as early as 1889. In that year the first antidiscrimination law against children was passed by the State of New Jersey. The State of Illinois followed with a similar law in 1908.

Presently, six States and the District of Columbia prohibit discrimination against children in housing. These States are New Jersey, Illinois, New York, Arizona, Delaware, and Massachusetts. Three States—Montana, Connecticut, and New Hampshire—prohibit discrimination in housing on the basis of age.

One would think that these State laws would effectively prevent discrimination against families with children. Not so. Here are some of the problems with the current statutes: The Illinois statute is not widely known either by the general public or by those who are called upon to enforce it, even though the statute has been in existence since 1908!

The New York, Illinois, and New Jersey statutes do not have effective enforcement mechanisms and only minimal fines can be levied if there is a violation of the law.

The Massachusetts, Connecticut, and New Hampshire laws lack strong enforcement mechanisms, and the newest of them all, the District of Columbia law adopted in 1980, is not widely known by the general public. Enforcement is difficult because of a lack of manpower at the Human Rights Commission and of people willing to file complaints.

Of all these laws, the Arizona and Delaware statutes are the most progressive. The Arizona statute provides for both fines and imprisonment, and for sentences that increase with each subsequent offense. Discriminatory advertising also is prohibited in Arizona. The Delaware law is the only statute that offers prospective tenants the right to sue and obtain damages and thus such a provision does not have the deterrent effect of statutory punitive damages.

It must be emphasized that not one of the existing State statutes contains what many housing advocates consider to be essential elements for an effective law. These four ingredients are:

- 1) A prohibition against discrimination in housing because of family status, including prohibitions against discriminatory advertising and against higher rent charges for families with children.
- 2) A permissible exclusion for buildings that contain three or less units.
- 3) Criminal sanctions, including fines and prison sentences for violators.
- 4) Mechanisms for effective enforcement.

The fact that State laws banning discrimination against families with children in rental housing have been in existence since before the turn of the century indicates that this problem is not a new one. What has happened is that the problem has become more serious as attitudes toward child rearing have changed and as condominium and cooperative conversion has exacerbated the shortage of available rental housing.

The high cost of new housing and cutbacks in Federal support for moderate- to low-income housing has created a national housing crisis, which makes the problem of discrimination against families with children even more acute.

Current discriminatory policies are forcing many families into overcrowded and segregated housing. Studies show that children living in these conditions feel unwanted and become prone to delinquent behavior. It is clear that this problem needs national attention.

In summary, I want to thank the Commission again for this opportunity to discuss with you the very real issues of discrimination against women in housing finance and discrimination in housing against families with children. These issues have been somewhat in limbo with the public in recent years, as our attention has been diverted to other pressing public policy questions. I commend you for putting these questions back into public attention, and I will be glad to respond to your questions.

Women with Children in Today's Housing Market

Sue A. Marshall*

This paper looks at the problems faced by female-headed households in today's housing market. There was a dramatic increase in the number of families headed by females during the 1970s, representing a major social phenomena with far-reaching implications. Approximately 12.5 million children (or 1 in every 5) live with their mothers only.¹ This steady and continuing growth in the number of female-headed households is due for the most part to a rise in divorces and out-of-wedlock births.

Families with children in general have special housing and financial needs not felt by other household types in the population. They also face special circumstances in the housing market. Female-headed households have even more special needs and therefore represent a special set of families with children, as the following quote from a hearing on sex discrimination illustrates:

. . . the woman alone with a child or children really has the worst time of all because of the entanglement of all kinds of discrimination, the layers of discrimination. And if the woman is of a minority group, it adds another layer and if she is "on welfare," it adds another layer, if she's got a large family, it adds another; it becomes impossible.²

In addition to highlighting such special problems of women as heads of households in the housing market as discrimination, income and the availability of suitable units, the quote also offers a useful notion for examining this issue. That is the notion of layering. Just as female-headed households represent a special subset of families with children, minority females who head households are an even more special set, likely to face double discrimination. And the layering continues as other special household characteristics such as family size, income level and sources, and employment status are considered.

We shall begin by looking at changes in household composition which have contributed to the dramatic

rise in the number of female-headed households (see table 1).

Due primarily to an increase in the divorce and separation rate, recent years have seen a dramatic increase in one-parent households. In 1970 one-parent households represented 5 percent of all family households. By 1982 the figure was more than double that at 10.7 percent. Nearly 90 percent of all single-parent households are headed by females.³ There are currently 5.87 families headed by women.

The figures for blacks are far more dramatic. Almost half of all black families are headed by a woman due to higher divorce and separation rates and a significantly higher proportion of babies born outside of marriage. Blacks, as well as other non-Anglo household types, also experience lower rates of remarriage.

As table 2 shows, female-headed households represent an increasing share of the population. According to data from the Annual Housing Survey, female-headed households face a special set of problems in the housing market. Generally, female-headed households, minority households, and large households all face higher probabilities of being poorly housed and are much less likely to own their own homes.⁴ These households are also far more likely to live in central cities where the housing is older.

One important result of the increase in the number of children living with mothers with no fathers present is economic difficulty. Female-headed households are more likely to be poor than other households. A recent study of poverty and housing deprivation found that nearly 60 percent of the poor households in their sample were headed by women and, further, the female-headed households tend to

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¹ U.S. *Children and Their Families: Current Trends* (Washington, D.C.: Child Trends, Inc., 1983).

² *Women and Housing: A Report on Sex Discrimination in Five American Cities*, prepared by the National Council of Negro Women (Washington, D.C.: Government Printing Office, 1975).

³ U.S., Dept. of Housing and Urban Development, Office of Policy Development and Research, "The Housing Needs of Non-

Traditional Households," by John Gonder and Steve Gordon (Washington, D.C.: Government Printing Office, 1979).

⁴ U.S., Dept. of Housing and Urban Development, Office of Policy Development and Research, "Families and Housing Markets: Obstacles to Locating Suitable Housing," by Margaret C. Simms (Washington, D.C.: Government Printing Office, 1980).

TABLE 1
Household Composition 1970 to 1982

Household Type	1970	1978	1982
All households (thousands)	63,401	76,030	83,527
percent	100.00%	100.00%	100.00%
Non-family Households	18.8%	25.1%	26.9%
Persons living alone	17.1	22.0	85.9
Other non-family households	1.7	3.1	14.0
Family Households	81.2	74.9	73.0
Married couples—no children	30.3	29.9	41.2
Married couples—with children	40.3	32.4	40.0
One parent with children	5.0	7.3	10.7
Other family households	5.6	5.3	7.9

Source: U.S. Bureau of the Census

be “persistently” poor whereas households headed by men are “transient” poor.⁵ Sixty percent of the women in the sample were permanently poor compared to 39 percent of the men.

The implication of this for the children involved is dramatic. Nearly one in five children now live in poverty. Among blacks, one of every two children live in poverty as do one of every three Hispanic children. About 70 percent of all households headed by women live in poverty. Female-headed households represent the fastest growing poverty group in the Nation.⁶ This is particularly significant because affordability has replaced physical inadequacy as the Nation’s major housing problem. Far fewer female-headed households can afford to buy adequate housing for 25 percent of their income, the general rule-of-thumb. In 1978 only 53 percent (just over half) of all female-headed households could afford unflawed housing for 25 percent of their income, compared to 80 percent of all households.

⁵ Sandra J. Newman and Raymond J. Struyk, “Poverty, Housing Deprivation and Housing Assistance” (Washington, D.C.: Urban Institute), Working Paper No. 3089-01, 1982.

Demographic changes such as the increase in the number of female-headed households, and an increase in the overall rate of household formation combined with economic forces have created difficult circumstances for female-headed households. These circumstances are aggravated by the persistence of discrimination in the housing market.

Female-headed households tend to reside in urban areas and they also tend to be renters as opposed to owners. Therefore, we shall first examine the extent of discrimination against single women with children in the rental market. Several studies have attempted to document the existence and extent of exclusionary and/or discriminatory practices. There is general agreement that although the nature and extent may vary, significant discrimination against female households persists in the rental market.

⁶ “Inequality of Sacrifice: The Impact of the Reagan Budget on Women” (Washington, D.C.: Coalition on Women and the Budget, March 1983).

TABLE 2
Proportion of Households Headed by Women

	1970	1980	1982
All households	10.7%	14.6%	15.4%
White	8.9%	11.6%	12.4%
Black	28.0%	40.3%	40.6%
Spanish	15.3%	20.1%	22.7%

Source: U.S. Bureau of the Census.

In a national study of exclusionary policies, Robert Morans found an increase in the incidence of no-children policies during recent years.⁷ In 1980 nearly one in four rental units had some sort of restriction on the presence of children compared to one in six units in 1975. No-children policies are more likely to be found in units built during the 1970s.

Restrictive policies towards children can take several forms.⁸ In addition to the outright exclusion of children, some apartment complexes limit the number of children permitted, while others have minimum age requirements, other restrictive practices include specifying particular floors or areas where children are permitted or restricting the sharing of bedrooms by children of the opposite sex. Such policies and practices are not always explicit and are often left to the discretion of the managers of units. The Morans survey found that half of all complexes in the survey which allowed children had

a limitation on the number or age(s) of children permitted.

Restrictive practices vary by the age of the apartment complexes. One-third of the managers interviewed, whose units were built between 1970 and 1974, said their restrictive policies also began during that period.

In 1981 there were a total of 28.8 million rental units in the U.S. Forty percent of them had two bedrooms, yet this was the most restricted size unit in the national survey. Twenty-five percent of the two-bedroom units were not available to families with one child; 33 percent of the two-bedroom units were not available to families with two children and 60 percent were not available to those with three children. High rents are associated with restrictive practices. The proportion of two-bedroom units with age restrictions increases as rents increase. Units with higher rents are more likely to accept children with some restrictions on where they live.

⁷ Robert W. Morans and Mary Ellen Colten, "Measuring Restrictive Practices Affecting Families with Children: A National Survey" (Ann Arbor: Survey Research Center, July 1980).

⁸ Doris Ashford and Pearl Esta, *The Extent and Effects of*

Discrimination Against Children in Rental Housing: A Study of 5 California Cities (Santa Monica Fair Housing For Children Coalition, 1979).

These practices are as widespread as they are partially because of the perceptions of managers and owners about children. Children were characterized as the cause of higher maintenance costs and nuisances. Four-fifths of all managers interviewed felt children caused increased maintenance and three-fourths of them said unsupervised children or teen parties caused problems for them as well as other tenants.

This litany of restrictions applies to *all* families with children. When we consider the single female with a child or children, we have but to consider the opening quote to visualize the difficulty women with children encounter in the rental market if two-parent families face exclusion from at least 25 percent of all rental units.

Far fewer female-headed households are homeowners, and the major barrier to their entry to this part of the market is economic. Given the variety of Federal, State, and local laws that make it illegal for lenders to discriminate on the basis of sex, race, marital status, or location, there is limited evidence of discrimination on the basis of sex or the presence of children in the determination of creditworthiness.⁹

However, in the housing search process, there is evidence of significant discrimination. The Housing Market Practices Survey, which was a national study of discrimination against blacks in the sale and rental of housing found that blacks were discriminated against 15 percent of the time they visited real

estate sales agents.¹⁰ The discrimination took the form of receiving less courteous treatment, receiving less information, or being shown fewer units. And the effect is cumulative; that is, if a black visits four sales agents, he or she could expect discrimination 48 percent of the time. Although the study's focus was blacks, the estimates of discrimination can be considered the lower bounds for female-headed black households and other sets of nontraditional households.

Conclusion

Discrimination against women with children has grown more subtle, but its effects are no less severe. With discrimination intertwined with the dramatic demographic and economic changes of recent years, female-headed households have been disproportionately and adversely affected. Whether it is as consumer of the final product or as a participant in the search process, women with children need an explicit set of protective laws and regulations which are vigorously monitored and enforced. This is of paramount importance as the administration continues to press for market-based solutions to our housing problems. A national housing voucher program where women with children would be given certificates to be used like a rent subsidy in the open market, would be of little use so long as discrimination impedes these women as they search for housing. The market does not work for many female-headed households.

⁹ Robert Schafer and Helen F. Lada, "Equal Credit Opportunity: Accessibility to Mortgage Funds by Women and Minorities" (Cambridge, Mass.: Joint Center for Studies, May 1980).

¹⁰ *Measuring Racial Discrimination in American Housing Markets:*

The Housing Market Practices Survey, prepared by Ronald E. Wienk, et al. (Washington, D.C.: Government Printing Office, 1979).

Discrimination Against Hispanic Women in Housing

Irene Packer*

Introduction

Survival itself is a struggle for all low-income groups, but for Hispanic and other minority women—particularly those who are heads of multiperson households—the problems involved in securing adequate, affordable shelter are almost overwhelming. Large numbers of low-income minority women are trapped in an impossible situation. Rapidly rising energy costs, property taxes, and maintenance expenses make it extremely difficult for low-income minority women to live in their own homes. Yet, they are unable to compensate for diminished home purchasing, home maintenance power by finding suitable and affordable alternative living arrangements. Women are additionally burdened by the obstacles of double discrimination, difficulties in obtaining financing and the restrictions imposed on female-headed families with children in rental units. Plagued by housing costs which are affordable only at great economic sacrifice, minority female-headed households face hardships resulting from these factors as well as from combined forces of displacement, deteriorating building, physically deficient housing units, overcrowding, and declining rental stock availability.

The principle that households with limited incomes should have safe, decent, and affordable housing has been recognized in Federal legislation since initial enactment of the U.S. Housing Act in the 1930s. Federal housing assistance programs currently prescribe that low-income households should be able to obtain adequate housing without spending more than 25–30 percent of their incomes.

Nevertheless, this is not the case for the vast majority of female-headed households. For them, the financial burden of housing is becoming an increasingly severe problem.

How Well Are We Housed? Female-Headed Households, published by the U.S. Department of Housing and Urban Development (HUD) in 1978, provides an overview of the situation. According to this study (see chart A), Hispanics represent 4 percent and blacks 17 percent of all U.S. households headed by women. Of all Hispanic households, 25 percent are

headed by women; of all black households, 40 percent are female-headed. The majority of these households in 1976 were widows; the next highest grouping consisted of divorced females, followed by lesser numbers of single women and married individuals with absent husbands.

U.S. census information separates female heads into two distinct groupings: those who head single-person households and those who assume social and economic responsibilities for numerous family members. The 1980 census provides up-dated information, revealing that nationally there are:

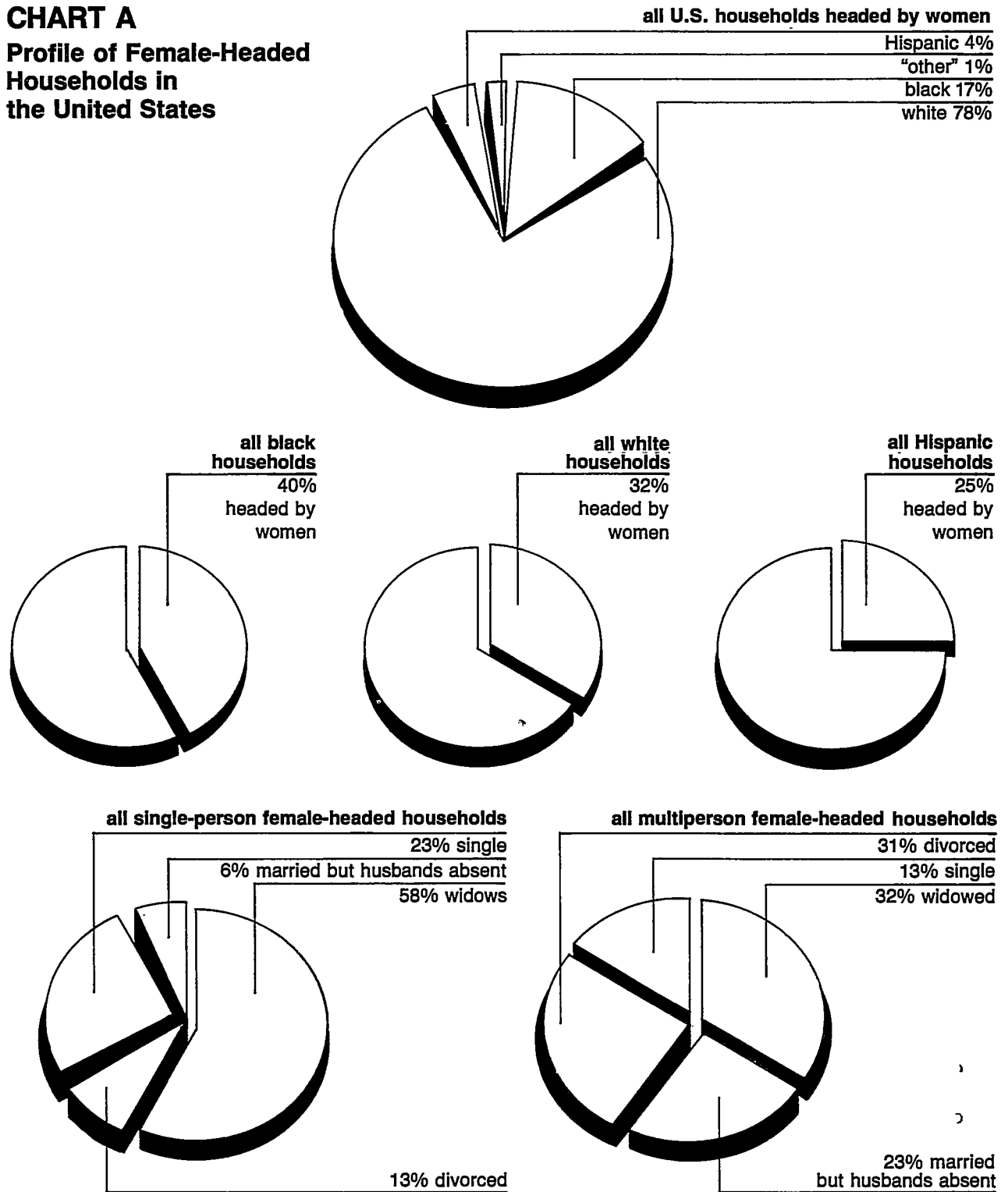
- 646,169 Hispanic and 2,283,777 black female heads of single-person households.
- 457,823 Hispanic and 1,568,417 black female heads of multiperson households.

The 1978 HUD study provides further insights into the female head-of-household profile:

- Poor female-headed households have one chance in five of being inadequately housed.
- Hispanic and black women have still higher probabilities of inadequate housing.
- The effect of size on female-headed households increases the probability of being ill-housed from one in five to better than one in three when the number of persons in the household is six or more.
- While low-income, female-headed households suffer inadequate housing with about the same frequency as the general low-income population they must pay a substantially greater proportion of their incomes to maintain this status.
- For all single-person households headed by women, almost 40 percent of those under 65 and almost 75 percent of those over 65 spend 25 percent or more of their income on housing.
- For all multiperson households headed by women over 25 percent of women under 65 and 31 percent of those over 65 spend 25 percent or more of their income for shelter needs. Charts B, C, and D, reproduced from the HUD study, further illustrate the scope of the problem.

* President, Companera, Inc., and East Coast Coordinator, National Hispanic Housing Network.

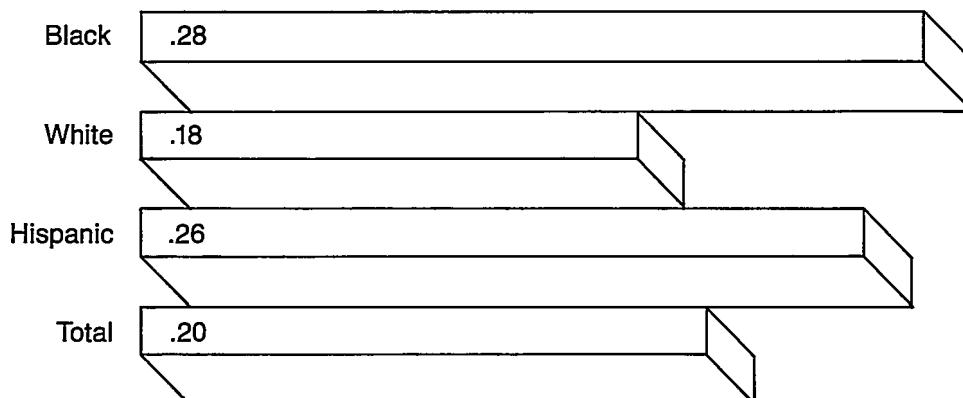
CHART A
Profile of Female-Headed
Households in
the United States



Reproduced from *How Well Are We Housed? Female-Headed Households*
 U.S. Department of HUD, Washington, D.C., 1978, p.5.

CHART B

The Probability of Being Ill-housed if You Are a Poor Woman Heading a Household*



*Probabilities refer to a household with an adjusted income of less than \$2,500 living in a North Central SMSA of under 250,000 in 1976. In general, the confidence interval for these figures is .03 at the 90 percent confidence level. Thus there is no real difference between the probabilities of being ill-housed for black and Hispanic female heads in this table.

Reproduced from *How Well Are We Housed? Female-Headed Households*, U.S. Department of HUD, Washington, D.C., 1978, p. 13.

The impact of these statistics takes on greater meaning when elaborating further on the minority perspective. 1981 Current Population Statistics indicate the median income of Hispanic female-headed single-person households to be \$7,586, with \$7,221 for female-headed multiperson households. For blacks, the median income of female-headed single-person households is \$7,506, with \$7,305 for female-headed multiperson households.

The fact that the affordability crisis is even more salient among minority female-headed households become clearer when this data is studied along with statistics which show housing expenses as percent of income. Chart E, reprinted from a 1980 HUD study, demonstrates, for example, that 84.1 percent of Hispanic renter households with annual incomes of less than \$3,000 (male- and female-headed) pay more than 25 percent of income for housing expenses; 76.5 percent pay more than 35 percent.

The hard facts are reinforced by general Hispanic housing data. A 1982 HUD research paper entitled *Housing the Hispanic Population: Are Special Programs and Policies Needed?* states that Hispanics as a group experience housing deprivation in part as a result of low income and large family size. It notes

that although the housing conditions of Hispanics are improving, the rate of improvement is lagging behind that of blacks. When common factors impacting on housing deprivation are considered, actual differences in housing conditions among whites, blacks, and Hispanics may be perceived. Blacks and Hispanics are twice as likely as whites to be inadequately housed or overcrowded even when they have similar financial resources. Differences between blacks and Hispanics are most noticeable among households with very low incomes. Among households with incomes below 50 percent of the local median, Hispanics are more likely than blacks to suffer overcrowding but less likely to suffer from physically inadequate housing. The 1982 HUD study examines the notion that Hispanics and blacks face common problems not shared by whites, such as housing discrimination as well as the adverse effects of segregation and social isolation. Clearly, both minority groups suffer housing deprivation as a result of paying an excessive share of their income for housing.

These findings present a dim view of housing as it relates to Hispanic and other minority female-headed households. This paper is presented upon the

CHART C

Age and Household Size Also Affect a Poor Household's Chances of Living in Inadequate Housing*

Demographic Characteristics			Sex of Head of Household		
Race/Ethnicity	Age of Head	Household Size	Female	Male	
Black	65+	1 person	.27	.43	
		2-5 persons	.33	.27	
	30-64	1 person	.31	.38	
		2-5 persons	.26	.25	
		6+ persons	.37	.36	
	under 30	1 person	.25	.34	
		2-5 persons	.28	.27	
	White	65+	1 person	.13	.27
			2-5 persons	.16	.13
30-64		1 person	.15	.29	
		2-5 persons	.17	.17	
		6+ persons	.31	.21	
under 30		1 person	.19	.25	
		2-5 persons	.18	.20	
Hispanic		65+	1 person	.18	.56 ₁
			2-5 persons	.24	.21
	30-64	1 person	.30	.37	
		2-5 persons	.24	.25	
		6+ persons	.35	.31	
	under 30	1 person	.27	.40	
		2-5 persons	.29	.23	

*Probabilities refer to a household with an adjusted income of less than \$2,500 living in a North Central SMSA of under 250,000 in 1976. In general, the confidence interval for these figures is .03 at the 90 percent confidence level.

Reproduced from *How Well Are We Housed? Female-Headed Households*, U.S. Department of HUD, Washington, D.C., 1978, p. 16.

Chart D

Women Who Head Households Must Spend an Inordinately Large Proportion of Their Incomes to Live in Adequate Housing

Ratio of adequate housing cost to income	% total U.S.	% all female-headed households	% Single-person households headed by women		% Multiperson households headed by women	
			under 65	over 65	under 65	over 65
Under 10%	44.0%	16.9%	19.8%	4.7%	22.0%	25.1%
Under 20%	74.3	44.0	51.6	16.8	55.6	58.3
Under 25%	80.3	53.0	60.5	25.3	64.7	69.0
Under 30%	84.4	60.5	66.8	34.0	71.9	77.2
Under 35%	87.5	67.7	72.8	45.0	77.5	82.8
Under 40%	89.9	73.5	77.3	53.4	82.3	88.5
Under 50%	92.9	81.2	83.3	65.4	88.7	93.0
Under 60%	94.7	86.1	87.0	74.7	91.9	94.9
Under 70%	96.0	89.7	89.7	82.2	93.8	96.4

Reproduced from *How Well Are We Housed? Female-Headed Households*, U.S. Department of HUD, Washington, D.C., 1978, p. 14.

premise that housing is not a commodity but rather a social right. The following synopsis, therefore, serves two concurrent purposes. As a review of housing needs of Hispanic and other minority female-headed households, it is an endeavor (a) to relate these needs to the housing problems of low-income persons in general, especially with regard to the affordability crisis and (b) to identify the special problems which women as individuals, contributors to the family income and heads of households confront when seeking access to the housing markets. As a component of a broad-based national housing consultation, this paper simultaneously represents a call to advocate for change in housing policies and programs which impact women throughout the U.S.

The Economics of Housing

Housing problems are economic problems. The major barrier to quality housing is cost. There remains a significant gap between the cost of standard and appropriately sized housing for low-income, minority female-headed households and their ability to pay for such housing. The supply-demand gap is made worse by:

1. A decreasing amount of standard rental housing for low-income residents. This is a result of:
 - substantial deterioration, abandonment, and demolition;
 - a diminishing number of newly constructed or substantially rehabilitated units that low-income individuals can afford;
 - increased competition for existing units.
2. The fact that many recent housing rehabilitation efforts have focused on smaller ownership and rental structures and not on larger rental properties.
3. A lack of focus on cost reduction strategies in new construction, substantial and moderate rehabilitation which help to maintain sales and rental costs at affordable levels.
4. The continuing lack of suitable employment opportunities, resulting in a lack of sufficient household income to meet the rising costs of housing.
5. The fact that many traditional incentive strategies offered in the past to induce private sector involvement in housing for low-income persons have not been effective (e.g., mortgage interest subsidies, federally tax-exempt bonding options, secondary market financing operations, property tax abatements, etc.). Economic strategies of a more

Chart E

Households Reporting Housing Expenses as Percent of Income, 1976

Income	More than 25% of Income			More than 35% of Income		
	All	Black	Hispanic	All	Black	Hispanic
Renter Households						
Less than \$3,000	78.0%	74.6%	84.1%	68.3%	64.0%	76.5%
3,000-6,999	57.5	65.5	76.3	47.8	42.1	53.8
7,000-9,999	46.2	42.4	42.6	12.9	9.2	10.1
10,000-14,999	16.9	12.1	15.9	3.1	1.2	2.5
15,000-24,999	4.9	2.7	3.6	0.6	0.5	0.5
Over 25,000	1.1	—	—	—	—	—
All households	43.9	49.0	49.8	27.0	31.3	32.1
Homeowner with Mortgage						
Less than \$3,000	64.6	76.5	*	63.3	74.8	67.6
3,000-6,999	77.0	77.7	76.6	54.8	57.3	44.7
7,000-9,999	53.6	45.6	56.4	23.6	17.8	26.3
10,000-14,999	31.7	26.7	31.7	7.9	7.6	6.6
15,000-24,999	13.2	10.1	14.9	1.5	1.2	3.1
Over 25,000	2.9	2.0	2.3	0.3	—	—
All households	23.0	34.5	33.2	9.4	19.9	14.3
Homeowners without Mortgage						
Less than \$3,000	54.1	53.4	37.9	36.7	33.8	13.8
3,000-6,999	23.3	15.5	6.3	9.0	3.7	—
7,000-9,999	4.8	6.1	—	0.7	—	—
10,000-14,999	0.6	—	2.8	0.1	—	—
15,000-24,999	0.1	—	—	—	—	—
Over 25,000	—	—	—	—	—	—
All households	12.4	19.1	5.9	6.3	9.5	1.4

*All households reporting housing as a percent of income, reported spending over 35 percent of income.

Source: Annual Housing Survey, 1976. Part C: Financial Characteristics.

Reproduced from *Families and Housing Markets, Obstacles To Locating Suitable Housing*, U.S. Department of HUD, Washington, D.C., 1980, p. 13.

institutional nature are needed to respond to the housing dilemma facing minority-female households.

Decreasing Housing Supply for Low-Income Persons

As previously indicated in this report, there is a decreasing amount of suitable and affordable housing for low-income individuals. As the cycle of deterioration, abandonment, and demolition has proceeded in our Nation's neighborhoods, lost units have not been replaced by newly constructed or substantially rehabilitated housing.

The increasing phenomenon of gentrification intensifies competition for scarce housing between middle/upper-income and low/moderate-income households. This increased competition for vacant housing units results in the subtraction of units from the supply which might otherwise have been available for lower income minority female-headed households.

Because these patterns persist, the rehabilitation of vacant and inhabited structures remains an important option if appropriate renewal programs are to be developed, implemented, and financed. This type of effort calls for:

1. The development of practical, feasible strategies which will allow current residents to remain in their properties.
2. The establishment of financial institutions which permit the county, ward, neighborhood, and block to profit collectively from appreciated values generated through property transactions.
3. Resident participation in planning, implementation, and management of revitalization efforts.

Rental Housing Cost Reduction

Construction, rehabilitation, and carrying costs continue to increase at rates greater than increases in household incomes. With current land costs for new construction approaching \$30 or more/square foot and those for substantial rehabilitation often more than \$20/square foot—resulting sales prices generally range from \$40 to \$60/square foot, beyond the reach of most low-income households. Such costs affect rental properties as well.

Elimination of cost-inflating factors in housing construction and design must commence. Current "safe and sanitary condition" code requirements must be reexamined for validity.

Recent neighborhood-based housing projects have demonstrated that, without some form of

subsidy, it requires at least \$175-\$250 per unit per month rental for a multifamily property owner simply to support carrying costs (property taxes, utilities, property insurance, and modest maintenance). At least another \$100-\$200 per unit per month is required to support debt service costs for acquisition and rehabilitation. Most low-income renters cannot meet these "minimal" economic costs with 30 percent or even 35 percent of their monthly household income.

The effects of this dilemma are felt simultaneously by renters and rental property owners. An insufficient stream of rental payments to the property owner hinders his ability to maintain the property and the individual units in standard condition.

As the property owner's costs increase, they are at first passed along to tenants. At some point, the property owner realizes that rent delinquencies increase with stepped-up rental expenses. The owner is then willing to receive less than what would be an economic rent in order to maintain occupancy.

Subsequently, the property begins to suffer as a result of less-than-economic rental payments. Maintenance may be diminished and there may be lags in mortgage, utility, and property insurance payments. This, in turn, paves the way for property deterioration and possible abandonment. It also leads to mortgage and insurance redlining as a result of perceptions on the part of lenders that the property cannot manage economically.

A full understanding of this phenomenon does not exist in county or city government or in the private financial community where broader, neighborhood-based services take priority over needed housing services.

The result is that—in recently constructed, and substantially rehabilitated housing units—rental costs per unit are so high that low-income persons are not able to enter the "system" at any level. They are confined to choosing among units which are often substandard and of insufficient size to accommodate housing needs.

Only limited public subsidies are available to respond to this problem. Other solutions must be found to reduce the gap between per unit per month expenses and the inability of lower income individuals to pay for such housing.

Ownership Benefits

Recent reports of the Board of Governors of the Federal Reserve System refer to the significant

economic benefits which all households derived from homeownership. Not only does ownership allow for mortgage interest deductions on annual income tax returns, but it provides the means for generating cash through refinancing or resale as a result of property value appreciation. If low-income persons are to have a full stake in the maintenance of their housing and their neighborhoods, then they must retain control of their housing. Property ownership remains critical to the well-being of minority female-headed households, economically as well as sociologically.

Summary of Low-Income Housing Needs Relating to Female-Headed Households and Recommendations

Housing Need No. 1: Maintenance and Upgrading of Existing Housing Stock

Reinvestment follows disinvestment. For the most part, low-income persons are living on unstable incomes and paying unusually high percentages of their incomes for rent or mortgage and utilities. Although innumerable renter- and owner-occupied housing units require maintenance and repair, the majority of households are unable to initiate even small-scale rehabilitation. Inadequacies of income, financing, and public services exacerbate the problem. If present trends continue, neglected properties will be lost to fire, vandalism, the wrecker's ball, and—most alarmingly—to widescale outside intervention.

Recommendations

- Cities should expand the mandate and funding levels of weatherization assistance programs for low-income persons. Low-interest or no-interest revolving loan funds for more extensive home repair and rehabilitation should be created.
- Most public housing authorities (PHAs) have waiting lists numbering in the thousands with the majority of applicants waiting more than 3 years for occupancy. PHAs should: (a) identify priorities for modernization of existing vacant or boarded-up structures; (b) improve the program for systematic maintenance of occupied units; and (c) reassess the system for providing related social services. Continued professional management training should be made available to all onsite managers, district managers, and central office staff.

- Condominium and cooperative conversion must be controlled. Statutory tenancies for the elderly in any new conversion should be encouraged and homeowner opportunities for tenants of all income levels should be encouraged. Educational and technical assistance must be provided to tenants relative to the conversion process. Tenant/developer bargaining must be encouraged to increase homeownership opportunities, and as a strategy to prevent displacement. The conversion process must be closely regulated in order to minimize disruption in the lives of residents.

Housing Need No. 2: Increased Housing Supply

Many of the housing problems which have been described in this report result from a shortage in housing of decent condition, adequate size, and affordable cost for low-income households. The large percentage of minority female-headed households living in housing with code violations, structural deficiencies, and paying more than 30 percent of their income for rent and utilities is a result of this housing shortage. The housing crisis is not merely a result of low incomes. Many households which have been certified for the section 8 subsidy program have not been able to find housing of suitable size and condition at the prescribed fair market rent because of the insufficient number of such units, their high cost, or long occupancy waiting lists. The number of housing units for low-income households in recent years has not kept pace with the disappearance of low-cost housing as a result of abandonment, demolition, arson, and conversion.

Present stock of housing for low-income households often is limited to a few neighborhoods. Therefore, the poor are concentrated in these neighborhoods. This situation restricts the access of low-income persons to jobs, schools, shopping centers, and other services. It also promotes disinvestment in those neighborhoods, a growing occurrence from which low-income minority residents suffer most.

Recommendations

- Additional housing for low-income households must be created. In light of the recent reduction of resources available for this purpose at the U.S. Department of Housing and Urban Development, innovative financing strategies must be worked out with housing finance agencies, departments of housing and community development, and private investment. Housing should be located in various

neighborhoods, especially in those which presently have little or no low-cost housing. These neighborhoods should have adequate shopping centers, schools, and access to public transportation. Neighborhoods which are experiencing displacement or a decrease in low-cost housing, as a result of abandonment and reinvestment, should also be considered as sites for new or rehabilitated low-cost housing.

- The present supply-demand imbalance can be improved by expanded land and building banking. A cooperative venture between neighborhood organizations and city or county governments should be initiated for the express purpose of stimulating new construction or substantial rehabilitation.

- Vacant public housing sites should be identified throughout cities and counties and ranked according to potential for new construction or substantial rehabilitation.

- Cities should undertake the following steps to nurture private sector involvement:

- Create special mortgage risk pools with public funds to leverage private financing for low- and moderate-income housing construction and rehabilitation.

- Sponsor new legislation to require set-asides of units for low-income families in large condominium/cooperative and new apartment developments.

- Provide financing incentives (e.g., partial grants for land acquisition and guaranteed loans to investors) to develop privately owned vacant land, rehabilitate existing housing, and convert buildings, as appropriate. p3• There should be more HUD section 202/8 independent living facilities in minority neighborhoods. HUD must increase its funding of Hispanic and other minority sponsors to enable them to build adequate housing for their older constituencies. HUD must support continued management training of minority sponsors to insure ongoing minority control of section 202 housing projects.

- The increased development and implementation of innovative housing alternatives for the elderly should be encouraged.

Minority elderly should be provided a choice of housing in their own communities. Efforts such as the installation of accessory apartments should be programmatically and financially supported by

local departments of housing and community development. In this approach, small, complete units are installed in surplus space in oversized single-family homes. Rent reductions are exchanged for needed services and social reinforcement. Additional benefits include:

- permitting older homeowners to stay in their homes in light of rising expenses for heat, taxes, and maintenance

- stimulating new moderate cost rental housing

- providing housing for a mix of income groups

- preserving large older homes in inner-city districts

- Shared housing programs for persons of all ages should be expanded. In this program, existing housing in good repair can be utilized without renovation.

- Neighborhood conservation should be considered as an important element in the spectrum of housing alternatives for low-income persons.

- Shelter and nonshelter services for the homeless must be increased. Growing economic pressures on lower income people will increase homelessness.

Housing Need No. 3: Reduced Housing Cost

The cost of newly created housing, including utilities, should be 30 percent or less of the income of low-income households. This low cost should be attained not only through subsidies but also by any means possible that reduced construction, maintenance, and management costs but does not jeopardize the quality of the living conditions. In rehabilitated structures, there is both a need to develop strategies to reduce the cost of conventionally financed properties and a need to subsidize the cost of some properties below their replacement cost value. In both instances, cost reduction strategies should be developed in ways which limit the long-term financial impact on localities and on prospective occupants.

Recommendations

- Design innovations should be accomplished through annual local-sponsored design competitions.

- Extensive reviews of local construction, fire, and housing codes as well as zoning and subdivision requirement should be coordinated. Excessive, unnecessary, and cost-inflating requirements can be eliminated in this way.

- Displacement/replacement housing funds to be used for construction, fire, and housing codes as well as zoning and subdivision requirements should be coordinated. Excessive, unnecessary, and cost-inflating requirements can be eliminated in this way.
- The use of interest write-downs to make privately offered Title I FHA home improvement loans affordable to moderate-income households is encouraged.
- Budgetary support for city-sponsored tax and rent abatement programs should be increased. These programs represent an integral component of comprehensive cost-reduction efforts.

Housing Need No. 4: Expanded Research, Data Collection, and Documentation of Low-Income and Female-Headed Household Housing Needs

There is a need for expanded research, data collection, and documentation of the housing needs of low-income persons and of minorities and female-headed households in particular. Complete, up-to-date data are not available. Records and surveys are maintained either by age, race, sex, or income; rarely are all four factors interrelated. Local service agencies should rewrite instructions on reporting to include all variables. Departments of housing and community development are advised to assist public housing managers in the ongoing maintenance of comprehensive, building-by-building resident profiles. HUD is encouraged to fund indepth studies of the most recent characteristics and problems of minority female-headed households.

Special Problems Which Female-Head of Households Confront When Seeking Access to the Housing Market

The section on the economics of housing and the summary of low-income housing needs relating to female-headed households have been included to emphasize the fact that the housing affordability crisis that women face is part of the low-income housing crisis, in general. Solutions to the housing problems of female-headed households will be part and parcel of comprehensive housing innovations. However, economic constraints are not totally responsible for limitations on female-headed household housing accessibility. Analysis of literature on the subject reveals three other factors which func-

tion as major obstacles to women attempting to secure appropriate housing. These additional factors, all forms of discrimination, are: (1) sex bias, which for Hispanic and other minority women represents double discrimination; (2) difficulties in obtaining financing; (3) restrictions imposed on female-headed families with children in rental units. Understanding the nature of these problems as well as those relating to income-related situations provides a total spectrum of the housing obstacles female-headed households are facing.

Sex Bias

It (sex bias in housing) is alive and well. The chronicle of instances of discrimination showed that from all points of view, women are having problems. It is clear that local agencies have been active on race discrimination, but have not recognized sex-discrimination.¹

Panel Member
Atlanta Hearing

One excellent source of information on sex bias in housing is the *Women and Housing Study* implemented by the National Council of Negro Women (NCNW) under contract to HUD in 1975-76. The NCNW study contends that American women are second-class citizens, both as consumers of housing products and participants in the shelter process. Replicated directly from the report are the following 10 findings:²

1. Women in the cities studied have faced, in the past, discrimination on account of their sex on a variety of fronts in their search for shelter. Much of this discrimination continues to the present and includes sex bias in marketing, lending, and shelter-related services. Lack of equal rental opportunity represents an especially pressing problem.
2. Discrimination against women, historically, has been overt; today it is increasingly subtle, disguised by ruses or hidden behind superficially neutral criteria, such as marital status, which in practice have a discriminatory impact.
3. Women, generally, are not aware of the nature or extent of sex discrimination. Nor have they been informed of existing legal remedies applicable to such conduct.
4. Myths and stereotypes about women are the underpinning of prejudicial attitudes shared by many persons in the housing system. These myths and stereotypes have deep roots in the nation's history and have played key roles in the socialization or conditioning of women and men in this

¹ U.S., Department of Housing and Urban Development, *Women and Housing: A Report On Sex Discrimination in the American Cities*, 1976, p. ii.

² Ibid.

country. Many are not now, nor have been, factually accurate.

5. Neither public agencies nor private organizations maintain and compile statistics pertinent to women's access to shelter or housing-related services and facilities. This absence of "hard data" represents an impediment to fashioning sure-footed solutions as well as raising the level of public awareness to the problem.

6. Women outside a male-headed household represent a sharply growing demographic trend in the cities studied. They are disproportionately adversely affected by a shortage of decent housing, moderately priced, in the cities studied, and by the marketing practices of those who control this shelter.

7. Discrimination on account of sex frequently is "layered" with discrimination on account of some other characteristics of a woman, e.g., her race, source of income, or marital status.

8. Lending institutions have "discounted," partially or totally, a woman's income in making decisions on applications for mortgage credit. Some lending institutions will condition a mortgage loan on sundry devices which discourage childbearing by the mortgagors. We found conflicting evidence on the extent to which these practices of lenders continue.

9. Sex-based discrimination in the law, especially in laws relating to property, to family and to domicile, further reinforce sex discrimination in housing. Similarly, sex discrimination in other areas of American life, e.g., in employment, are interwoven with and reinforce such sex discrimination.

10. Women are virtually excluded from key policymaking jobs in the Nation's shelter system. This appears to be equally true in the public and private sectors.

NCNW finds the basis for sex bias in changing family patterns; in the change of women's work force participation over the years; and in society's antiquated attitudes toward female equality which have resulted in a persistence of stereotyped thinking toward female financial ability and responsibility. NCNW's emphasis on changing family patterns is well-founded. An extremely large increase in one-person and single-parent households has occurred within the past 10 years. In 1978 these types of households represented over 29 percent of all American households. In 1978, 7 percent of all households and 18 percent of all families with children were headed by one parent. Important to note, too, is the fact that the rising divorce rate (approximately half the marriage rate) will cause at least 45 percent of all children born in 1978 to be members of one-parent households—mostly female-

headed—for some period of their lives before they reach the age of 18. Lower fertility rates, later marriages, and larger numbers of never-married people are other factors which have produced more female-headed households.

Difficulties in Obtaining Financing

Dr. Margaret C. Simms of the Urban Institute, in a 1980 HUD-funded study entitled *Families and Housing Markets: Obstacles to Locating Suitable Housing*, cites three key groups in the area of financing discrimination: real estate agents, mortgage lenders, and landlords. Real estate agents can steer potential buyers toward certain types of neighborhoods or dwelling units by controlling the flow of information disseminated to consumers. They can also discriminate by providing different information on mortgage availability and requirements to different groups. Landlords control the rent-up of available apartment units in a similar manner. By adjusting rental rates, security deposit requirements, and requirements on minimum numbers of bedrooms for different size families, landlords can impact on a desired tenant profile. A 1979 HUD study documented continued evidence of race and sex discrimination in housing markets. Mortgage lenders also have profound opportunities to influence minority and female housing participation since few persons can pay cash to purchase a home. Redlining of neighborhoods that have higher concentrations of certain ethnic groups continues as does systematic underassessment of certain kinds of properties. Discrimination against women in the mortgage market was supported by government policy until 1973. The income of married women was discounted according to their age, occupation, and length of time in the labor force. Discounting formulas were based on a woman's age and her reproductive capacity. This kind of activity was practiced within two key Federal insurance programs: the Federal Housing Administration and the Veterans Administration. Females applying for a VA mortgage with a husband, until 1973, were informed that the wife's income would only be counted if she would sign an affidavit stating that she would practice birth control. Single and divorced women were treated inequitably when applying for mortgages because it was widely thought that single women would not repay the debt upon possible marriage; divorced women had no credit since all credit had to be in the husband's name; alimony and child support could not be counted as

income; insurance companies would not issue homeowner's policies in a woman's name. Even though the 1974 Fair Housing Status and the 1975 Equal Credit Opportunity Act deemed these practices illegal, evidence exists which supports the fact that inequitable practices continue in many instances in this country. A 1980 HUD study investigated equal credit opportunity and accessibility to mortgage funding by women and minorities in New York and California discovering and documenting substantial discrimination.

Restrictions Imposed on Female-Headed Families With Children

This category of discrimination has received much attention in recent years. Two excellent HUD-funded sources of information are *Measuring Restrictive Rental Practices Affecting Families With Children: A National Survey* and *Housing Our Families*, both published in 1980.

Minorities and women are more likely to be renters, more likely to reside in central cities, and more likely to live in public housing. Evidence supports the notion that single-parent, minority-female households prefer to live in housing which is close to child care and relatives, near social and school settings for children, and within a reasonable commute to work if employed.

HUD documentation of discrimination against families with children reached its zenith in 1980 when HUD contracted the University of Michigan Survey Research Center to conduct a national telephone survey on the subject. 1,007 renters and 629 managers were interviewed, revealing location, size, and type of rental units with discriminatory practices toward families with children. The number one finding of this study was that "numerous management policies and restrictions limit the ability of families with children to find suitable rental housing." In addition to "no-children" policies, other restrictions include limitations on:

- the ages and maximum number of children allowed in units,
- the sharing of bedrooms by children of opposite sex,
- designation of certain floors and buildings were not permitted, and
- inconsistencies in rent levels between households with children and those without.

These restrictions are more prevalent in apartment buildings and complexes than in single-family rental

units. Exclusions were found to apply more in one-bedroom units and less in units with three or more bedrooms. Large units were least likely to have restrictions on the ages of children in residence. The study revealed that vacancy rates, neighborhood location, and age of buildings had little to do with restrictions. Policies were associated by race in urban areas.

When asked, managers offered the following justification for restrictions: tenants without children of their own preferred to live in dwellings which exclude children due to noise, destructiveness, property damage, and lack of parental supervision. However, most of the renters interviewed indicated that they would not object if children were admitted to their developments. The legal status of Federal and local housing policies which restrict access of families with children is now in question and as of yet remains unclear. The 1968 Fair Housing Act, Title VIII of the Civil Rights Act, prohibits discrimination in the sale or rental of housing on the basis of race, color, religion, or national origin, but does not address age or child discrimination. State constitutions and State statutes vary in their personal and property coverage and exclusions as well as in enforcement mechanisms, remedies, and sanctions. The latter are crucial to the effectiveness of these statutes. The small number of fair housing complaints filed by Hispanics is disturbing. Without enforcement, discrimination will persist.

Conclusion

The attainment of safe, decent, sanitary, and affordable housing is a serious problem for Hispanic and other minority female-headed households. The cause of the crisis revolves around three major problems: availability, affordability, and accessibility. Accessibility as used here means that people are still confronted with discriminatory practices which prevent them from entering the housing market either as renters or homeowners. Because of the pervasive double nature of housing and sex discrimination and its impact on minority female-headed households' ability to acquire housing, any discussion on the resolution of the current housing crisis cannot exclude the issue of discrimination. Discrimination is a reality which must be recognized as persevering and must be a topic which is included in any planned effort to resolve the inane problems of housing availability and affordability. Although the recommendations included in this synopsis rep-

resent possibilities and alternatives for action, the fact remains that the problems of availability, affordability, and accessibility as they relate to both low-income and minority female-headed housing are much greater than the resources currently available to resolve them. This must become, in essence, the most immediate and top priority issue for discussion by the U.S. Commission on Civil Rights Housing Task Force. Simultaneously, better methods must be developed to educate Hispanics and other minorities

about their rights under Federal and State fair housing laws and administrative and judicial procedures for protecting these rights under these laws. The important role of local fair housing organizations in combating discrimination in accessibility must not be negated. Education, outreach, investigation, documentation, and enforcement activities must continue full force to ascertain that change will finally occur.

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Housing Discrimination Against Families with Children: A Growing Problem of Exclusionary Practices

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Another form of discrimination is taking its toll on families seeking housing: housing discrimination against families with children. Although it is not a new form of discrimination, it is a growing national problem. Unlike race, national origin, and sex discrimination, it is not a basis of discrimination against which there has formed a clear national consensus. However, the hardest hit victims of discrimination against families with children are the very groups that the fair housing laws are designed to protect: minority and female-headed households. This paper briefly discusses recent research that has been done on the problem of housing discrimination against families with children and analyzes the need for national action to alleviate the problem.

The Problem and What It Means to Families

Housing discrimination against families with children¹ is a serious and rapidly growing national problem. A study of the prevalence of discrimination against families nationwide was commissioned by the United States Department of Housing and Urban Development. It showed that in 1980, 76 percent of the rental apartment units in the country had exclusionary policies to keep out families with children. Twenty-six percent of all rental units totally excluded children and another 50 percent restricted the number of children or the age or sex of children in a unit or imposed similar sorts of restrictions which limited occupancy by families with children.²

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¹ Throughout this paper housing discrimination against families with children is sometimes simply referred to as discrimination against families.

² R. Marans, M. Colten, et al., *Measuring Restrictive Rental Practices Affecting Families with Children: A National Survey* (1980), p. 24 (prepared for U.S. Department of Housing and Urban Development, Office of Policy Development and Research) (hereafter cited as *Measuring Restrictive Rental Practices*).

³ D. Ashford and P. Easton, *The Extent and Effects of Discrimination Against Children in Rental Housing: A Study of Five California Cities* (December 1979), p. 6 (Fair Housing Project, Santa Monica, California) (hereafter cited as *Study of Five California Cities*).

⁴ J. Greene, "An Evaluation of the Exclusion of Children from Apartments in Dallas, Texas" (1978), p. 9 (unpublished paper).

Other studies in selected areas of the country show that discrimination is even more prevalent in some cities and counties. These locations have been predominantly areas of extremely tight rental markets. For example, a study conducted in California of five major cities found exclusion rates ranging from 50 percent to 71 percent except in the one city, San Francisco, which had enacted an ordinance prohibiting discrimination.³ An earlier study in Dallas showed that 60 percent of the apartments were closed to children.⁴

What is more, discrimination against families is increasing at a rapid rate. The 1980 HUD study showed that the exclusion rate nationally jumped from an estimated 17 percent in 1974 to 26 percent in 1980.⁵ Local studies confirm these findings: in Dallas newly constructed units excluded children at a rate of 85 percent, while older apartments had an exclusion rate of 51 percent.⁶ Similarly, even in the cities in California where exclusion rates were extremely high, the rates were rising.⁷

Commentators have suggested that there is a strong correlation between tight housing rental markets and child-exclusionary practices.⁸ If the trends of low levels of construction of rental housing and the growing numbers of renter households⁹ continue, as is likely, the rate of exclusion will rise throughout the country. The future looks increasingly grim, particularly for low-income renter families with children.

⁵ R. Marans, M. Colten, *Measuring Restrictive Rental Practices*, p. 46-47.

⁶ J. Greene, "An Evaluation," p. 9.

⁷ D. Ashford and P. Easton, *Study of Five California Cities*, p. 6.

⁸ Note, *Why Johnny Can't Rent—An Examination of Laws Prohibiting Discrimination Against Families in Rental Housing*, 94 *Harvard Law Review* 1829, 1835 n.37 (June 1981) (hereafter cited as *Why Johnny Can't Rent*); Children's Defense Fund, *A Brief Overview of Housing Discrimination Against Families with Children* (Washington, D.C.: Children's Defense Fund, 1981).

⁹ Note, *Why Johnny Can't Rent*, 94 *Harvard Law Review* at 1830-1831.

Exclusionary practices join with other factors to create the shocking reality that 8,119,000 children in the United States live in inadequate housing.¹⁰

The other effects of exclusionary policies on families with children are more difficult to quantify, but equally or more pernicious. Such housing discrimination helps perpetuate employment and school discrimination and relegates the family—purportedly the bedrock of our society—to second-class citizenship in numerous respects. Summarizing the conclusions drawn from several studies that it commissioned on discrimination against families, HUD described the wide range of difficulties caused by families' limited access to housing:

Associated problems reported by families include limited access to quality schools and day-care centers because they could not rent in a preferred area. Other families mentioned having to live where public transportation was inconvenient or non-existent, thus forcing them to walk or drive long distances for shopping or work. Not being able to live within reasonable distance of a job also put strains on a family because the family earner(s) had less time to be with the children than was considered desirable.

Some of the most poignant emotions were expressed by parents who felt dehumanized and insulted by the assumptions underlying exclusionary rental policies: that children are destructive, that parents are unable or unwilling to discipline their children, that families are simply undesirable tenants. For many of these parents, the latest rhetoric preserving the family must seem rather hollow as they struggle to find the kind of housing that allows them to keep their families together.¹¹

In addition, exclusionary policies force families to look longer and pay more for housing, to accept housing that is less attractive and often located in racially concentrated areas, or to endure the frustration of being unable to find decent housing and thus having to move in with friends or relatives.¹²

¹⁰ U.S., Department of Housing and Urban Development, *Housing Our Families*, p. 2-4 (1980).

¹¹ *Id.*, p. 5-4.

¹² J. Green and G. Blake, *How Restrictive Rental Practices Affect Families With Children*, pp. 1-4, (1980) (prepared for the U.S. Department of Housing and Urban Development, Office of Policy Development and Research); D. Ashford and P. Easton, *Study of Five California Cities*, pp. 11-12.

¹³ The term "male-headed" household is used by the Census Bureau to include households where both a husband and wife are present.

The Particularly Harsh Impacts of Exclusionary Policies on Minority and Female-Headed Families

Minority and female-headed families are particularly hard hit by exclusionary policies for many reasons. Perhaps the most obvious is that they are more likely to be renters and to have children in their care than are nonminority and male-headed households.¹³ In 1977 while only 26.1 percent of the housing occupied by nonblack families with children consisted of rental units, 56.2 percent of the units occupied by black families with children were rented.¹⁴ Thus, black families with children were more than twice as likely as other families to be renting. For Hispanic families, the disparity is less startling, 34.1 percent of Hispanic families with children rent as opposed to 30 percent of the total population.¹⁵ However, these percentages mask the enormous differences among different national origin groups within the designation Hispanic. For example, Cubans on the whole do much better in the housing market than Puerto Ricans.¹⁶

For female-headed households the numbers show the same phenomenon as for black households: while only approximately 25.7 percent of male-headed families with children rent, approximately 58.3 percent of female-headed families with children rent their housing.¹⁷ And female-headed households are a rapidly growing percentage of all families with children under 18 years of age: in 1981 females headed 18.8 percent of all families living with children, nearly double the 1970 figure. For black families the percentage of females heading families with children is even higher, nearly half of all families living with children.¹⁸

Denial of access to housing because of the presence of children is also particularly detrimental to minority and female-headed families' search for adequate housing because they overwhelmingly tend to be low income. Clearly low-income families have a significantly higher probability of being

¹⁴ U.S., Department of Commerce, Bureau of the Census, *Annual Housing Survey: 1977 General Housing Characteristics*, part A, series H-150-77 (September 1979).

¹⁵ *Id.*

¹⁶ U.S., Department of Housing and Urban Development, *How Well Are We Housed? 1. Hispanics*, (1978).

¹⁷ Bureau of the Census, *1977 General Housing Characteristics*, p. 4.

¹⁸ U.S., Commission on Civil Rights, *A Growing Crisis: Disadvantaged Women and Their Children*, p. 5 (1983) (Clearinghouse Publication 78).

inadequately housed than their more affluent counterparts.¹⁹ And more minority and female-headed families are living at the poverty level.²⁰ HUD found that 21.4 percent of black families and 18.5 percent of Hispanic families were living in housing units with physical deficiencies in 1976, rates almost twice those of white families.²¹ Similarly minority and female-headed families are less able to find adequate housing that they can afford, and they pay significantly larger percentages of their incomes for housing than does the population as a whole.²² In times of tight rental markets this means that the already small supply of affordable rental housing is often made negligible by no-children policies.²³

Finally, exclusion because of the presence of children is being used by landlords who wish to limit or deny access to housing to minority and female-headed families but are constrained by law from engaging in the latter forms of discrimination. Using interviews of renters with children from 19 metropolitan areas, one study found:

Among the respondents. . . , minorities were the most heavily burdened by serious problems caused by restrictive rental policies. The severity of their burden may be the result of insufficient income. However, even among those with incomes of \$15,000 and above, a statistically significant difference was found between the frequency of serious problems experienced by minority complainants and those experienced by white complainants. This raises the question as to whether at times no-children policies are a smoke screen for racial discrimination.²⁴

A study conducted for HUD by the Rand Corporation found that, in selected cities, children were cited most frequently by blacks as a cause for discrimina-

tion. Race was a close second, except for those without children.²⁵

Additionally, several studies have shown that adults only housing is concentrated in predominantly white areas of the cities studied.²⁶ The authors of these studies have suggested that new policies of excluding children from rental housing are designed to perpetuate, among other things, segregated school systems. Such evidence suggests that no-children policies are being used to exclude totally or limit the numbers of black or female-headed households, although, as discussed in the next section of this paper, it is often difficult to prove that no-children policies are racially or sexually discriminatory.

It is difficult to ascertain any valid, nondiscriminatory social or economic forces behind the growing incidence of no-children policies. HUD found that landlords often cite higher maintenance costs as the reason for no-children policies, but that there are no empirical studies or other evidence to support such higher costs.²⁷ Furthermore, managers who rent to children are much less likely to cite problems of higher maintenance costs or of noisy and unsupervised children than are managers who do not rent to children. HUD concluded that there is a great deal of "misperception" about problems in renting to children.²⁸

While there is some evidence that landlords are able to charge a higher rent in buildings that restrict children,²⁹ there is no way to determine exactly what motivates renters who choose an apartment that restricts children, and whether or not factors other than the presence of children (such as whether the family is on welfare, headed by only one parent,

¹⁹ U.S., Department of Housing and Urban Development, *How Well Are We Housed? 1. Hispanics*; U.S., Department of Housing and Urban Development, *How Well Are We Housed? 2. Female-Headed Households* (1978).

²⁰ In 1977 a shocking 41.8 percent of female-headed households with children under 18 years of age were living at the poverty level over six times the rate for comparable male-headed households. Three-fifths of all black families headed by women were in poverty in 1977. *Housing Our Families*, p. 3-3.

²¹ *Id.*, p. 2-4.

²² While 80.3 percent of all families spent under 25 percent of their income on housing in 1976, only 63 percent of black households were in this range, 70.7 percent of Hispanics, and 53 percent of female-headed households. *Id.*, p. 2-2.

²³ For example, in Los Angeles, where the overall vacancy rate was 2.6 percent in 1979, the effective vacancy rate for families with children was less than eight-tenths of 1 percent. D. Ashford and P. Easton, *Study of Five California Cities*; Note, 94 *Harvard Law Review* at 1832-1833.

²⁴ J. Green and G. Blake, *Restrictive Rental Practices*, pp. 3-4.

²⁵ *Housing Our Families*, p. 4-3.

²⁶ See, e.g., C. Reid, A. Keating, and L. Long. *Patterns of Discrimination Against Children in Rental Housing in the Metro-Atlanta Area* (1979) (43.7 percent of adults-only rental units located in predominantly white sections of Atlanta, while only 6.4 percent located in minority areas); J.G. & Associates, *Child Discrimination in Rental Housing: A Comparative Analysis of Apartment Policies in Dallas, Texas Regarding the Acceptance of School-Aged Children* (1979) (68 percent of all adults-only units located in predominantly white areas, while 11 percent located in minority areas); R. Marans, M. Colten, et. al., *Measuring Restrictive Rental Practices*, pp. 34-37 (rental units in predominantly white neighborhoods twice as likely to restrict families with children than rental units in predominately black areas).

²⁷ *Housing Our Families*, p. 5-5.

²⁸ *Id.*

²⁹ The 1980 HUD study found that rents tended to be higher in buildings with restrictions on children. R. Marans and M. Colten, *Measuring Restrictive Rental Practices*, pp. 40, 43-44.

or of a particular race or national origin) might also influence the decision. One study asked renters who lived in buildings with restrictions on children whether they chose to live in the building because children were not allowed to live there; only one-fifth answered yes. When asked if they would move out if families with children were allowed to move into their building, 81 percent of renters living in multiple unit dwellings with no children in the building indicated that they would not. Two percent said that it depended on the situation or the family moving in and 17 percent said that they would move.³⁰

Inadequate Protection for Families with Children

There is inadequate protection for families with children who are discriminated against in the housing market. On the Federal level there is narrow and inadequate statutory protection. A small number of State and local jurisdictions ban such discrimination, but frequently their laws are written in a way that makes them ineffectual.

The only Federal law which specifically prohibits discrimination against families with children is one that has extremely limited coverage. Discrimination against families is prohibited by Federal statute in two Federal mortgage insurance programs, the rental housing insurance program and the insurance in critical areas program.³¹ These programs comprise a small share of the rental housing market.

The Federal Fair Housing Act³² prohibits discrimination in housing on the basis of race, color, religion, sex, or national origin but presently does not directly address discrimination against families with children. However, the act has been interpreted by courts to prohibit facially neutral housing policies or practices which have a discriminatory

impact, even if the policy or practice was not undertaken with a discriminatory purpose or intent.³³ Thus, if a policy of excluding children has, for example, a racially discriminatory impact, it may constitute a violation of the Fair Housing Act.

The difficulties of proving such a case of racial discrimination are many. They are well illustrated by the difficulties met by the plaintiff families with children in the case of *Charles and Diane Betsey, et al., v. Turtle Creek Associates*,³⁴ which is now on appeal to the United States Court of Appeals for the Fourth Circuit. In that case, families claimed that their evictions as the result of a newly instituted no-children policy were racial discrimination in violation of the Fair Housing Act. The District Court judge refused to hold that there was a violation of the act despite his finding that the institution of a no-children policy in the apartment complex where the families lived would result in the eviction of 75 percent of all black occupants and only 26.7 percent of all white occupants. Although recognizing that the families were not required to show that their evictions were racially motivated in order to prove a violation of the Fair Housing Act, the court still was unsatisfied with the overwhelming evidence of the racially discriminatory impact and held that the landlord had a nonracial justification for the evictions. This was so despite the fact that the landlord was unable to introduce any proof for his claims of higher maintenance costs or greater market demand for no-children housing, except for his own opinions.

Some States, cities, and counties have passed their own laws prohibiting discrimination against families with children. These include nine States, the District of Columbia, and several cities and counties including a few in California, and New Haven, Philadelphia, and Seattle.³⁵ A common exemption from the

³⁰ R. Marans and M. Colton, *Measuring Restrictive Rental Practices*, pp. 59-62.

³¹ 12 U.S.C. § 1713(b), 1750b(a).

³² 42 U.S.C. §§ 3601-3631.

³³ *Smith v. Town of Clarkton*, 682 F.2d 1055 (4th Cir. 1982); *Robinson v. 12 Lofts Realty*, 610 F.2d 1032 (2d Cir. 1979); *Resident Advisory Board v. Rizzo*, 564 F.2d 126 (3rd Cir. 1977), *cert. denied*, 435 U.S. 908 (1978); *Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 558 F.2d 1283 (7th Cir. 1977), *cert. denied*, 434 U.S. 1025 (1978); *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974), *cert. denied*, 422 U.S. 1042 (1975).

³⁴ United States Court of Appeals for the Fourth Circuit, No. 82-1051 on appeal from the United States District Court for the District of Maryland.

³⁵ *Ariz. Rev. Stat. Ann. § 33-1317* (Supp. 1980-1981); *Conn. Gen. Stat. § 47a-2a* (1981); *Del. Code Ann. tit. 25, § 6503*; *D.C. Code Ann. § 6-2231* (1980); *Illinois Human Rights Act § 3-104*, *Ill. Ann. Stat. ch. 68, § 3-104* (Smith-Hurd Supp. 1980-1981); *Mass. Gen. Laws Ann. ch. 151B, § 4(II)* (West Supp. 1981); *Mich. Comp. Laws Ann. §§ 37.2101-2806* (Supp. 1980-1981); *Minn. Stat. Ann. § 363.03, subd. 2(I)* (West Supp. 1981); *N.J. Stat. Ann. § 2A:170-92* (West 1971); *N.Y. Real Prop. LAW §§ 236-237* (McKinney Supp. 1980-1981); *Berkeley, Cal., Municipal Code §§ 13.24.010-.070* (1976), *as amended by Berkeley, Cal., Ordinance 5302-N.S.* (Dec. 2, 1980); *Davis, Cal., Ordinance 1036* (Sept. 5, 1979) (amending Code of the City of Davis, Cal. §§ 12A-17 to -22 (1971)); *Fresno, Cal., Ordinance 80-91* (June 3, 1980) (adding Fresno, Cal., Municipal Code §§ 12-245 to -245.2 (1981)); *Los Angeles, Cal., Ordinance 153,406* (Feb. 1, 1980)

prohibition against discrimination contained in these laws applies to housing for the elderly.³⁶ Other exemptions such as housing that already contains its "fair share" of children are allowed in some jurisdictions.³⁷ There appears to have been little problem addressing the substantive scope of the prohibition. Rather the problems have been in enforcement. Commentators agree that where the penalty for discrimination is criminal, prosecutors usually do not have the time to enforce the prohibition and rank it low on their list of priorities.³⁸ In one State, a survey showed that 49 percent of those charged with enforcing the law did not even know it existed.³⁹ States which provide administrative mechanisms also pose problems because the administrative agency often is overworked or does not have effective enforcement power when it finds a violation.⁴⁰

Despite the impact on the family unit, Federal and State constitutional provisions are unlikely to protect families with children adequately against housing discrimination. The first big obstacle is the difficulty of proving State action, a necessary prerequisite for Federal and (usually) State constitutional protection in this area. Commentators have suggested other difficulties.⁴¹

(adding Los Angeles, Cal., Municipal Code §§ 45.50-.55 (1981)), as amended by Los Angeles, Cal., Ordinance 153,942 (June 10, 1980); Oakland, Cal., Ordinance 9946-C.M.S. (July 15, 1980) (adding Oakland, Cal., Municipal Code §§ 7-7.01, -9.02 to .10 (1981)); San Francisco, Cal., Municipal (Police) Code art. 1.2, §§ 100-108 (1981); Santa Clara County, Cal., Ordinance N.S.-628 (Feb. 20, 1979), as amended by Santa Clara County, Cal., Ordinance N.S.-631 (Aug. 14, 1979) (adding Santa Clara County, Cal., Ordinance Code tit. B, §§ 13-85 to -91 (1972)); Santa Monica, Cal., Ordinance 1139 (Oct. 9, 1979) (adding Santa Monica, Cal., Municipal Code §§ 4700-4705 (1981); New Haven Conn. "Ordinance to Stop Discrimination Against Families/Single Parents with Children" (May 5, 1980); Philadelphia, Pa., Ordinance 130 (July 7, 1980) (amending Philadelphia, Pa., Code §§ 9-1102 to -1104 (1956); King County, Wash., Ordinance 5280 (Jan. 21, 1981); Mountlake Terrace, Wash., Ordinance 1225 (Sept. 21, 1978); Seattle, Wash., Ordinance 108,205 (May 18, 1979) (amending Seattle, Wash., Ordinance 104,839 (Aug. 15, 1975)), as amended by Seattle, Wash., Ordinance 109,050 (May 27, 1980), as cited in Note, 94 Harvard Law Review 1829-1830, n.4.

³⁶ Note, 94 Harvard Law Review 1842.

³⁷ See, e.g., Santa Monica Cal., Ordinance 1139, § 4703(b) (Oct. 9, 1979) (adding Santa Monica, Cal., Municipal Code § 4703(b) (1981); Mass. Gen. Laws Ann. ch. 151B, § 4(11) (West Supp.

Generally State civil rights protection does not protect families with children from discrimination. A unique but promising decision was that of the California Supreme Court which interpreted a general California civil rights statute which made no mention of either housing or families with children to prohibit eviction of a family on account of the birth of a child.⁴²

There is, thus, a clear need for improved protection for families with children, as neither the Federal nor State law now provides adequate relief to them. As the problem is a growing one nationally, many have suggested that a national solution is appropriate. The most common proposal is to amend the Fair Housing Act to protect families with children.⁴³ This is particularly important because the women and members of minority groups presently intended to be protected from discrimination in housing opportunities by the Fair Housing Act are the very groups hardest hit by discrimination against families. Such an amendment could exempt certain kinds of housing from the prohibition; there seems to be a national consensus that housing for the elderly, for example, should be encouraged and allowed. However, the pressing need of families all over the country from relief from discrimination deserves national attention.

1981) (exemption for housing developments of over 100 units if the number of child residents equals one-half the number of units).

³⁸ Note, 94 Harvard Law Review 1843; Children's Defense Fund, *A Brief Overview of Housing Discrimination Against Families With Children*.

³⁹ O'Brien and Fitzgerald, "Apartment for Rent—Children Not Allowed: The Illinois Children in Housing Statute—Its Viability and a Proposal for Its Comprehensive Amendment," 25 De Paul Law Review 64, 82-85 (1975).

⁴⁰ Note, 94 Harvard Law Review 1844-1846; D. Ashford, J. Lowery, I. Voit, *Monitoring Local Ordinances on Anti-Children Rental Practices*, pp. 18-24 (Santa Monica, Calif.: Fair Housing for Children Coalition, 1982).

⁴¹ Note, 94 Harvard Law Review 1839, n.60; Dunaway and Blied, "Discrimination Against Children in Rental Housing: A California Perspective," 19 Santa Clara Law Review 21, 40 (1979).

⁴² *Marina Point Ltd. v. Wolfson*, 30 Cal. 3d 721, 180 Cal. Rptr. 496, 640 P.2d 115 (1982).

⁴³ Amendments to the Fair Housing Act have been introduced into Congress and include a new prohibition on discrimination against families with children. See, S. 1220, 98th Cong., 1st sess., 129 Cong. Rec. S6152-6165 (daily ed. May 5, 1983). S. 1220 had 39 cosponsors when introduced.

Overview of Federal Housing Policy: Past and Present

Federal Housing Policy and Equal Opportunity

Martin E. Sloane*

Introduction

The Federal Government has been heavily involved in housing and urban development for half a century. During that time, its involvement has broadened and deepened, and the financial benefits it offers, including loans and grants, housing subsidies, and insurance and guarantees, have been relied upon increasingly by local governments, the housing and home finance industry, and the homeseeking public.

These financial benefits have taken a variety of forms: Federal charters and insurance for mortgage lending institutions to generate private credit for housing; Federal insurance and guarantees of home mortgages to further stimulate the free flow of housing credit; loans and grants for water and sewer systems and other municipal facilities; loans and grants to help revitalize the Nation's cities and older suburbs; annual contributions and other forms of financial subsidy to stimulate construction of housing for the poor; and most recently, block grants to local governments for community development.

Typically, the Federal Government offers these substantial financial benefits subject to certain conditions—conditions which are designed to benefit the American people, to further national policy, and to achieve national goals. Measured by most standards,

these Federal benefits, and the conditions attached to them, have served the American people well, through large-scale production of good housing within the economic reach of most families. Measured by the standard of equal housing opportunity, however, they have not. Indeed, the net effect of Federal involvement in housing and urban development has been largely to perpetuate housing discrimination and patterns of housing segregation. In many cases, the Federal Government has been a major force in exacerbating those problems.

A number of departments and agencies have been involved in administering Federal programs relating to housing and urban development in the 50 years since the Government first became an active participant in the national effort to enable families to obtain decent housing in suitable living environments. Although the equal housing opportunity policies and practices of these agencies have varied over the years, they have generally fallen into several distinct chronological phases.

1. From the early 1930s until 1950, the Federal Government was an active exponent of residential segregation and discrimination.
2. From 1950 until 1962, Federal policy on equal housing opportunity was one of neutrality, leaving

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to private brokers, builders, and lenders with whom the Government dealt, the decision whether Federal housing programs would be carried out in a discriminatory or nondiscriminatory manner.

3. From 1962, when President Kennedy issued the Executive Order on Equal Opportunity in Housing, until 1980, the Federal Government, under increasingly strong legal mandates to prevent discrimination, both in the operation of its programs of housing and urban development and in the private housing market as well, took some actions to carry out those legal obligations.

4. From 1981 until the present, the Federal Government has been in a period of retrenchment, severely lessening its activities in affirmatively enforcing or furthering fair housing.

In 1971 I testified, as a member of the Commission's staff, at a Commission hearing held in Washington, D.C. concerning the history of Federal involvement in housing and urban development. My conclusion then was:

The zeal with which Federal officials carried out policies of discrimination in the early days of the Government's housing effort has not been matched by a similar enthusiasm in carrying out their current legal mandate of equal housing opportunity.¹

That conclusion must now be somewhat revised. The Federal Government currently exhibits no enthusiasm in carrying out its statutory and constitutional mandates of nondiscrimination in housing. Indeed, the Government, measured by its actions during the present administration, appears to be engaged in an effort to dismantle the very legal and programmatic structure by which the fragile foundation of fair housing has been painfully built over the past three decades.

The Early Years

Federal Policy From the Early 1930s Until 1950

The Federal Government did not merely enter the housing scene in the 1930s; it burst upon it. Over a 6-year period, beginning in 1932, a series of congressional enactments created the basic agencies and machinery that would determine the scope and nature of Federal involvement in housing over the next 50 years.

¹ Hearings before the United States Commission on Civil Rights, Washington, D.C., at 731 (1971).

In 1932 Congress created the Federal Home Loan Bank System to provide assistance to the Nation's major home financing institutions: savings and loans associations. In 1933 Congress authorized Federal charters for savings and loan associations as a means of further facilitating the availability of mortgage credit. Congress also established the Homeowners Loan Corporation (HOLC) to refinance homes threatened with foreclosure. In 1934 Congress provided insurance of accounts in savings and loan associations. As part of the same legislation Congress established the Federal Housing Administration (FHA) with authority to insure housing loans made by private lending institutions. The act was entitled, significantly, "The National Housing Act," suggesting, for the first time, that housing was a national concern deserving of national attention and action. In 1938 the Federal National Mortgage Association (FNMA) was created to provide a ready secondary market for FHA-insured loans as a means of strengthening the existing programs of mortgage insurance.

Each of these measures provided for indirect involvement of the Federal Government in housing. That is, the Federal agencies were not involved in the construction of housing, nor even in the provision of housing loans. Rather their function was to facilitate housing credit through the ordinary channels of the housing market. Thus, the Federal Home Loan Bank Board was concerned with strengthening and assisting private mortgage lending institutions. The Federal Housing Administration was concerned with underwriting housing loans as an incentive for lending institutions to make them. An FNMA was available to purchase these loans from lending institutions that otherwise might be reluctant to make them. In short, these measures, enacted during the economic depression of the 1930s, sought to accomplish housing goals by revitalizing the Nation's credit machinery.

In 1937 the Federal Government turned to a more direct approach in the effort to provide decent housing. The United States Housing Act of 1937 established the low-rent, public housing program, providing for the construction, ownership, and operation of housing by State agencies (local public housing authorities) for families too poor to afford decent housing at market prices and rents. The Federal assistance was in the form of loans and

annual contributions sufficient to pay off the cost of the projects.

Thus, the Federal approach to assisting housing was an oblique one, concerned as much with bringing about economic recovery as with putting good roofs over people's heads. The principal aims of the 1932, 1933, and 1934 legislation, creating the Federal Home Loan Bank system and establishing FHA, were aimed primarily at revitalizing credit machinery and, only coincidentally, at enabling American families to securing good housing. Even the public housing program, established in 1937, was as much concerned with relieving unemployment in the construction industry as with meeting the housing needs of America's poor.

The emphasis of this early legislation established the focus of limitation of Federal concern with housing for years to come. Facilitation of private housing credit through traditional credit channels, not housing construction, would be the Federal Government's principal role.

The short- and long-term results of these early New Deal efforts, for the most part, were very beneficial. The Federal Home Loan Bank system helped to stabilize a depressed savings and loan industry and restore confidence in these institutions. The HOLC helped save the homes of more than a million American families that otherwise would have lost them through foreclosure.

The most far reaching beneficial impact was through FHA and its mortgage insurance programs. FHA established the traditional home financing vehicle that has prevailed for nearly half a century: fully amortized, long-term, low interest rate, high loan-to-value ratio loans. The practical effect can be demonstrated by the fact that in 1920 barely 40 percent of the nonfarm housing units in the country were owned by the occupants. By 1980 nearly 70 percent of nonfarm housing units were owned by the occupants. The enormous increase in homeownership is attributable, in large part, to the pioneering efforts of FHA, soon followed by the private housing and home financing industry.

But the benefits to the homeseeking public under these new programs were offered under the prevailing rules of the housing market place. To be sure, FHA revolutionized the housing and home finance industry by making available loans that carried low

interest rates, full amortization, long terms, and low down payments. But only those American families who could afford housing at market prices could possibly take advantage of these more liberal home loan terms. By the same token, HOLC, while it indeed saved the homes of more than a million Americans, made its benefits available only to those who could pay market rate. Public housing was unique in seeking to provide decent housing for families too poor to afford market prices and rents.

By far the most severe limitation on the overall beneficial effects of Federal involvement in housing had to do with racial discrimination. By the early 1930s, when the Federal Government first undertook long range involvement in housing, discriminatory practices by the private housing and home finance industry already were established. Previously, however, discrimination had been carried on without Federal participation. Thus, the entrance of the Federal Government onto the housing scene provided an opportunity to alter, even eradicate, these practices. It was an opportunity that was entirely lost. The Federal Government became a willing and active participant in housing discrimination.

FHA, which was the major Federal agency involved in housing, also was the leader in promoting housing discrimination and segregation. Its Underwriting Manual during the 1930s and early 1940s spoke of the adverse effects on neighborhoods of the "infiltration . . . of inharmonious racial groups"² and warned that "a change in social or racial occupancy generally contributes to instability and a decline in values."³ FHA was also concerned with the effect of the racial composition of schools on neighborhoods. Its manual contended:

[If] the children living in such an area (otherwise favorable) are compelled to attend schools where the majority or a considerable number of the pupils represent a far lower level of society or an incompatible racial element, the neighborhood under consideration will prove far less stable and desirable than if this condition did not exist.⁴

As a means of ensuring against residential integration, the manual insisted on the filing of restrictive covenants providing for the "prohibition of the

² Federal Housing Administration, *Underwriting Manual*, sec. 937 (1938).

³ *Ibid.*

⁴ *Id.*, sec. 951 (emphasis added).

occupancy of properties except by the race for which they are intended.”⁵ FHA was a principal proselytizer and popularizer of racially restrictive covenants, making them commonplace on deeds on many thousands of subdivision homes—those conventionally financed as well as those underwritten by FHA. FHA has been accurately described as “a sort of ‘typhoid Mary’ of racial covenants.”

In 1948 the United States Supreme Court, in the famous case of *Shelley v. Kraemer*, 334 U.S. 1 (1948), ruled that these racially exclusionary covenants were unenforceable by the courts. It took FHA (and its sister agency VA) an additional 2 years to change their policy on racially restrictive covenants.

The only agency that deviated significantly from the policy of racial exclusion and discrimination was the United States Housing Authority which administered the low-rent public housing program. From the outset, this agency (and its successors) operated under a policy of assuring equitable participation by minorities, not only as tenants, but also in construction and management. The agency established a race relations service with responsibility for reviewing public housing programs for the purpose of promoting racial equity. This policy, however, did not extend to insisting on racially integrated public housing projects. This was a matter left entirely to the discretion of local public housing authorities. Nonetheless, public housing policy, unlike the policies of other federally assisted housing programs, did succeed in assuring that minorities’ families were afforded opportunities for decent housing, even if under segregated conditions.

The Middle Years

1950–1962

If the early years of Federal involvement in housing and urban development were characterized by virulent racial discrimination, in the middle years—roughly 1950–1962—the Federal Government assumed an official policy of neutrality. That is, while Federal agencies, particularly FHA, had insisted on racial discrimination in the operation of their programs during the first decade and a half, in the middle years they largely maintained an official hands-off policy. The impetus for this change in Federal policy came from the courts, specifically the landmark 1948 decision of the Supreme Court of the

United States in *Shelley v. Kraemer*, holding that judicial enforcement of racially restrictive covenants violated the 14th Amendment of the United States Constitution.

FHA and its younger sister agency, VA, which previously had encouraged and even insisted upon the filing of these covenants on property financed through their programs, reacted—slowly, to be sure, but dramatically—to this decision. The two agencies announced that they would refuse to insure or guarantee mortgage loans on property carrying racially restrictive covenants filed of record after February 15, 1950. Thus, it took these agencies nearly 2 years to respond to the announced law of the land. Moreover, the new policy had no application to housing which carried restrictive covenants filed before February 1950.

FHA also announced that the racial composition of a neighborhood would no longer be a consideration in determining eligibility for FHA mortgage insurance. In 1951 FHA announced a policy that all housing repossessed by the agency through foreclosure would be administered and resold on a non-segregated basis. Two years later, FHA announced the intention of taking active steps to encourage the development of demonstration open occupancy projects. Still later FHA and VA both adopted policies of refusing to insure or guarantee loans for discriminatory builders in States that maintained fair housing laws.

Thus in a period of less than a decade, FHA and VA, the key Federal housing agencies, made nearly a complete turnabout in official policy, from one of actively encouraging and insisting upon housing discrimination and segregation to one of encouraging open occupancy. The change, however, was more one of form than of substance.

The decisions concerning housing discrimination were still left to individual builders and lenders, and neither FHA nor VA would interfere if these private builders and lenders chose to continue policies of racial discrimination. The new policy on repossessed housing also proved little more than a facade. Repossessed housing in white areas was assigned to white brokers for disposition to their white clientele, while the relatively few FHA- or VA-underwritten houses in minority areas were assigned to minority brokers for disposition to their minority clientele. Even in those States which maintained fair housing

⁵ *Id.*, sec. 980(3)(g).

laws, where FHA and VA policy both theoretically called for debarment of discriminatory builders, neither agency ever actually disqualified a builder for discriminatory practice.

The practical ineffectiveness of the changes in official FHA and VA policy is demonstrated by the fact that as of 1959 it was estimated that less than 2 percent of the new homes provided through FHA mortgage insurance since the end of the Second World War had been available to minorities.

In 1961 the U.S. Commission on Civil Rights examined the policies of the four Federal agencies (Federal Home Loan Bank Board, Comptroller of the Currency, Federal Reserve Board, and Federal Deposit Insurance Corporation) that supervise and benefit lending institutions responsible for most of the conventional (non-FHA or VA) financing for housing. The institutions are savings and loan associations, commercial banks, and mutual savings banks. Of the four agencies, only one—the Federal Home Loan Bank Board (which supervises savings and loan associations)—had taken any action to prevent discrimination among its member institutions. In June 1961 the Board adopted a resolution against racial discrimination in mortgage lending by its member institutions. The other three agencies not only had taken similar action but were uniformly opposed to taking it.

During the same period, the Public Housing Administration (successor to the United States Housing Authority) continued its policy of permitting the establishment of segregated, low rent, public housing projects by local housing authorities. Since the 1954 decision in the *School Desegregation Cases*, it has been clear that legally compelled or sanctioned segregation by State agencies, including local public housing authorities, was in violation of the Constitution. In fact, two United States Courts of Appeals expressly ruled that segregation in public housing violated the Constitution.⁶ Nonetheless, the Public Housing Administration continued to permit this obviously unconstitutional practice.

During this entire period of some 30 years, during which the Federal Government became a dominant factor in housing, its housing agencies and programs operated without reference to any specific goals or objectives. In 1949 Congress established the national housing goal of “a decent home and a suitable living environment for every American family.” This

⁶ *Detroit Housing Commission v. Lewis*, 226 F.2d 180 (6th Cir. 1955); *Hayward v. Public Housing Authority*, 238 F.2d 689 (5th Cir. 1956).

noble pronouncement, however, was of too general and hortatory a nature to provide the specific guidance necessary. Moreover, nothing “turned” on it. That is, Federal housing programs, with the one exception of low-rent public housing, were still concerned primarily with easing the way for families who could afford market prices and rents. And housing discrimination and segregation remained the rule in the housing market with no realistic effort to intervene by Federal housing agencies.

The Later Years

1962–1980

Executive Order on Equal Opportunity in Housing

On November 20, 1962, President Kennedy issued the Executive Order on Equal Opportunity in Housing, directing all Federal departments and agencies having programs and activities related to the provision of housing to eliminate discrimination in federally assisted housing. The order was limited in at least two important respects.

First, although its command of nondiscrimination was directed to all departments and agencies having housing functions, it did not include within its terms housing that was conventionally financed (non-FHA or VA) by federally supervised mortgage lenders. These institutions—savings and loan associations, commercial banks, and mutual savings banks—were responsible for the great majority of the Nation’s home financing. As noted earlier, almost all are benefited and subject to close supervision by Federal agencies. The order, however, converted the practices of these institutions and the housing provided through their funds only insofar as FHA and VA financing was involved. The bulk of the housing financed by these institutions is non-FHA or VA and was excluded for the order’s requirement of nondiscrimination. Similarly, the lending practices of the institutions, themselves, were outside the scope of the order.

Second, it drew a distinction between housing provided under Federal aid agreements executed after the date of the order and housing provided under agreements executed before the date of the order. With respect to the former, agencies were directed to “take all action necessary and appropriate to prevent discrimination.” Regarding the latter,

agencies were directed "to use their good offices and take other appropriate action permitted by law, including the institutions of appropriate litigation, if required, to promote the abandonment of discriminatory practices. . . ."

Experience under the "good offices" provision of the order demonstrated that no action more stringent than persuasion was ever taken to eliminate discrimination on the existing housing market. Even with respect to the direct command of the Executive order—"to prevent discrimination"—the agencies responded timidly and ineffectively. FHA and VA limited their enforcement activity to requiring assurances of nondiscrimination by assisted builders and processing the handful of complaints that came their way. The two agencies took no action of an affirmative nature to carry out the President's directive. The order had comparatively little impact in opening up new housing opportunities for minority occupancy in subdivisions built after the date of the Executive order and subject to its provisions, found that of the more than 400,000 units surveyed, only 3.3 percent had been sold to black families.⁷

The Public Housing Administration (PHA) responded to the Executive order by prohibiting deliberate segregation by local housing authorities, a practice already clearly in violation of the Constitution. Instead, PHA recommended use of a "freedom of choice" plan of the kind that already had been demonstrated as ineffective in the area of education.

The four agencies that supervised mortgage lending institutions—Federal Home Loan Bank Board, Comptroller of the Currency, Federal Reserve Board, and Federal Deposit Insurance Corporation—maintained their pre-executive order positions of neutrality. The Federal Home Loan Bank Board failed to implement its 1961 policy against discrimination by its member institutions and the other three agencies remained entirely silent on this issue.

Title VI of the Civil Rights Act of 1964

Title VI prohibits discrimination in programs or activities receiving Federal financial assistance by way of loan or grant, but expressly excludes from coverage financial assistance provided solely through insurance or guarantee. The principal effect of Title VI was to broaden coverage of such programs as public housing and urban renewal to include projects for which Federal agreements were

executed prior to the effective date of the law. Title VI also had the value of providing clear congressional support to the principle of nondiscrimination in federally assisted programs.

Under Title VI, the Public Housing Administration reversed its policy of encouraging "freedom of choice" tenant assignment plans and insisted instead on a form of first come, first served policy by local housing authorities. PHA also instituted site selection policies seeking to avoid exclusive location of public housing in areas of existing racial concentrations. The Urban Renewal Administration carried out its mandate under Title VI by insisting on the filing of restrictive covenants against discrimination with respect to urban renewal land, to assure against such discrimination by private builders. FHA and VA, whose mortgage insurance and guarantee programs were excluded from the mandate of Title VI, did nothing to strengthen their enforcement of the Executive order on Equal Opportunity in Housing.

1968—The Great Fair Housing Year

In 1968 the Federal Government, in a period of less than 4 months, took three major actions which, in combination, made 1968 the greatest year in fair housing history.

- In April Congress passed the Federal Fair Housing Law, 42 U.S.C. 3601 *et seq.*, establishing "the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."
- In June the Supreme Court of the United States issued its decision in *Jones v. Alfred H. Mayer, Co.*, 392 U.S. 409 (1968), holding that an 1866 Civil Rights Law (42 U.S.C. 1982) bars "all racial discrimination, private or public, in the sale or rental of property."
- On August 1 Congress enacted the landmark Housing and Urban Development Act of 1968 establishing two new programs of subsidized housing for lower income families.⁸ These new programs were capable of and, indeed, did produce massive numbers of lower income housing units—some 600,000 in 4 years.

Moreover, as part of the Housing and Urban Development Act, Congress sought, for the first time, to "quantify" the 1949 national housing objectives of "a decent home and a suitable living environment for every American family" by estab-

⁷ See Washington hearings at 741.

⁸ These were the section 235 program of home ownership and

the section 236 program of rental housing for lower income families.

lishing a 10-year housing production goal of 26 million new units, of which 6 million were to be for lower income families.

This combination of actions by the legislative and judicial branches offered great potential both for eliminating housing discrimination and providing an adequate supply of lower income housing with choice of location.⁹ This potential, however, was largely unfulfilled.

Title VIII of the Civil Rights Act of 1968

Title VIII, which went into full effect on January 1, 1970, prohibits discrimination in most of the Nation's housing, public as well as private. The law also prohibits discrimination in mortgage lending and the advertising of housing. Further, it directs "all executive departments and agencies [to] administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this title." It specifically directs the Secretary of Housing and Urban Development to "administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title."

Little has been accomplished under these various "affirmative" Title VIII mandates. For example, the Federal financial agencies took no actions to monitor compliance with fair lending requirements for nearly 10 years following enactment of Title VIII. Finally, a lawsuit filed by NCDH and the Center for National Policy Review, representing virtually every national fair housing and civil rights organization in the country,¹⁰ resulted in settlement agreements under which the agencies agreed to require maintenance of race and sex data by member institutions and to establish examination procedures necessary to detect and prevent mortgage lending discrimination by their member institutions.¹¹

HUD, itself, took little in the way of affirmative fair housing actions to implement its own Title VIII

obligations. Fully 4 years elapsed before HUD issued any fair housing regulations at all. These were affirmative fair housing marketing regulations, designed to attract the segment of the population least likely to apply for HUD-assisted housing in the area, and project selection criteria, designed to encourage location of HUD-subsidized housing in a way that fostered desegregation. The results of these belated HUD actions were not encouraging.¹² Further, HUD's efforts to eliminate segregation in public housing tenant assignment, through a form of "first-come, first-served" requirement, resulted almost invariably in adoption of "freedom of choice" plans by local public housing authorities.¹³ And this [Civil Rights] Commission has documented the failure of HUD, through HUD's FHA subordinate, to adhere to fair housing requirements in the operation of the section 235 program.¹⁴ This failure contributed significantly to the scandals associated with the program and its termination in 1973.

Perhaps HUD's greatest failure was in not issuing any interpretative regulations on Title VIII. For more than 12 years following enactment of the Federal Fair Housing Law, HUD, the acknowledged expert agency on fair housing, issued no such regulations, nor any other form of guidance, for the courts or other Federal agencies to determine compliance with Title VIII. Indeed, on several occasions, the courts, including the United States Supreme Court, forced to decide particular cases, grasped at any utterance of HUD for authoritative guidance, absent official regulations by the Department.¹⁵ At last, in December 1980, detailed interpretative regulations were issued in proposed form. The Reagan administration, which took office 1 month later, immediately withdrew them.

The Department of Justice, the one Federal agency with true enforcement authority—the authority to litigate—was active during the period. During the 10-year period of 1969 through 1978,

⁹ Previous housing subsidy programs, such as public housing, permitted local governments to veto operation of the programs. This local veto power was excluded from the 235 and 236 programs. See Sloane, "Changing Shape of Land Use Litigation: Federal Court Challenges to Exclusionary Land Use Practices," 51 *Notre Dame Lawyer*, at 52 (1975).

¹⁰ *National Urban League, et al. v. Comptroller of the Currency, et al.*, C.A. No. 76-718 (Settlement agreement, Mar. 22, 1977).

¹¹ Later Congressional legislation, such as the Home Mortgage Disclosure Act (1975) and the Community Reinvestment Act (1977), served to impose additional fair lending requirements on mortgage lenders and their supervisory agencies with particular respect to redlining.

¹² For an account of the results of these HUD regulations, see Citizens' Commission on Civil Rights, *A Decent Home*, at 31-33 (1983).

¹³ Recently, a Federal court ruled such plans unconstitutional on that basis. *Jaimes v. LMHA*, C 74-68 (May 12, 1983, N.D. Ohio) appeal pending.

¹⁴ U.S., Commission on Civil Rights, *Home Ownership for Lower Income Families* (1971).

¹⁵ *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972); *Laufman v. Oakley Bldg. & Loan Association*, 408 F. Supp. 489 (1974). *Blackshear Residents Org. v. Housing Authority of the City of Austin*, 347 F. Supp. 1138 (W.D. Texas 1971).

Justice filed more than 300 cases, attacking such patterns and practices of discrimination as block-busting, steering, and rental policies. Justice filed only three cases, however, involving discriminatory exercises of municipal land use authority. The Department's strategy was to bring as many cases in as many geographical areas as possible for purposes of both demonstrating the Federal presence as an active fair housing enforcer and convincing those in the business of providing housing that the law was going to be vigorously enforced.

Although these cases were almost uniformly successful on the merits, they accomplished little in changing housing and real estate practices or in bringing about dramatic changes in racial residential patterns.

In 1978 Justice decided to give greater priority to cases which offered greater potential for bringing about reforms in the housing industry and in attacking municipal land use practices that had the purpose or effect of excluding housing in which minorities could live. These cases reflected a dramatic shift from previous Justice Department policy in several respects: First, the cases were much more complex than those in which Justice had previously been involved; second, they did, indeed, offer greater prospect of bringing about institutional reform in the housing industry; third, Justice, for almost the first time in its history of civil rights litigation, determined to bring cases even though there was a prospect that they might not prevail; and fourth, the new strategy necessarily meant that Justice would bring fewer cases than it had brought before.

This new policy was the cause of some disagreement within the Civil Rights Division. Some attorneys believed that the previous policy of filing as many cases as possible in as many geographical sections of the country as possible—in effect to “show the flag”—was the best use of Justice resources. Others, however, were convinced that under the new policy Justice could “leverage” its small resources to achieve maximum impact in bringing about fair housing reforms nationwide. With the new administration in 1981, the issue became moot. Thereafter, Justice neither filed many cases, nor did they file cases of any special importance.

Fair Housing in the Reagan Administration

The Reagan administration's policy and performance on fair housing have been, at best, those of retrenchment. This is reflected both through the administration's actions on fair housing enforcement and its policies on subsidized housing.

Fair Housing Enforcement

First, one of the initial steps taken by the administration after assuming office in January 1981 was to withdraw HUD's interpretative regulations on Title VIII, which the Department had finally proposed 12 years after enactment of the Federal Fair Housing law. The regulations have not been reissued.

Second, HUD is now openly emphasizing voluntary compliance as the principal mechanism for enforcing Title VIII. A prime example is the amended Voluntary Affirmative Marketing Agreement (VAMA) entered into between HUD and the National Association of Realtors (NAR) in September 1981. This agreement governs the operation of community housing resource boards (CHRBs), local organizations funded by HUD and aimed at bringing about progress in fair housing at the local level through the cooperative efforts of Realtors and persons and organizations with knowledge and experience in housing and fair housing.

Under the amended agreement, publication of the names of Realtor signatories is barred—the information is not even made available routinely to HUD. Also, any member of the CHRB who is a party to litigation or complaints alleging violations of the fair housing law or the Realtors code of ethics may be required to withdraw from the CHRB. Thus, local fair housing groups, which have been accorded standing to bring fair housing suits by the Supreme Court of the United States,¹⁶ must, in effect, give up their right to initiate fair housing complaints or litigation as a condition to membership in the local CHRB. And finally, the CHRB itself is prohibited from sponsoring, conducting, or funding programs of real estate testing. This, despite the fact that HUD Secretary Pierce has frequently expressed his own vigorous support for the value and even the necessity of fair housing testing. In short, the entire agreement is one that displays distrust on the part of Realtors for the fair housing community, a doubtful premise on which progress in fair housing can be

¹⁶ *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982).

based. At the same time, HUD has abandoned its "systemic" unit, previously established to attack institutional problems of discrimination rather than individual instances of housing discrimination, as a functioning arm of its enforcement effort.

Third, the Department of Justice, the one Government agency that has true enforcement powers—the power to institute litigation—has so curtailed its activities that it is no longer a major factor in fair housing enforcement. Indeed, for more than 1 year after the Reagan administration took office, the Department of Justice did not file a single fair housing law suit. In the nearly 3 years since the Reagan administration assumed office, Justice has filed a total of six fair housing law suits, only one of which can be said to be any potential importance measured by the standard of either establishing a significant legal precedent or bringing about some kind of institutional reform.

Fourth, there is a Governmentwide effort to reduce, or even to eliminate, much of the data necessary to determine whether violations of the Fair Housing Act are occurring. These efforts are being undertaken in the name of, and under the authority of, the Paperwork Reduction Act and general regulatory reform initiatives. The most recent example is the challenge to race and sex data collection in the systems adopted by the Federal financial regulatory agencies. These are the agencies that, pursuant to a successful lawsuit against them, agreed, among other things, to institute monitoring and enforcement mechanisms featuring race and sex data collection and maintenance to assure compliance with fair lending requirements. So far, efforts by two of those agencies, the Federal Home Loan Bank Board and the Federal Deposit Insurance Corporation, to eliminate items of information important to Title VIII enforcement have been held in abeyance in response to a sizeable negative reaction by the civil rights community. The pressure within the administration to cut back on paper and to deregulate continues, and may well ultimately result in the cutback or elimination of existing systems of data collection and maintenance.

Subsidized Housing

The second principal way in which the administration has sought to retrench on essential elements

of fair housing is its efforts to cut back on subsidized housing.¹⁷

Administration proposals would virtually eliminate all new construction of subsidized housing to be replaced by a "housing voucher" system which would make exclusive use of existing housing for purposes of providing decent shelter for lower income families. The proposals are based on the extremely doubtful assumption that there is a significant supply of decent housing, nationwide, to provide adequate shelter for the poor, given a modest subsidy. This assumption has been challenged vigorously by housing and fair housing experts, including representatives of the National Committee Against Discrimination in Housing, Inc.¹⁸ The basic position of fair housing advocates is that without a sufficient supply of housing available to lower income families, a disproportionately large number of whom are racial and ethnic minorities, fair housing becomes an illusory objective. That is, without the basic bricks and mortar, an essential element to achieving fair housing is irretrievably lost.

Conclusion

The history of Federal involvement in housing is not one that gives fair housing advocates cause for optimism. After years of openly advocating housing discrimination and segregation, the Federal Government, under increasingly strong legal and constitutional mandates to prevent such discrimination, began to take some actions to honor its statutory and constitutional obligations. Over the years, beginning in 1962, the Federal Government gradually built up a legal and programmatic structure by which housing and fair housing goals could be achieved. This development, to be sure, was slow and hesitant, but progress could be seen and, indeed, the structure was taking form.

The experience under the Reagan administration, however, has been one of retrenchment and even of efforts to dismantle the legal and programmatic structure upon which fair housing rests. For nearly 3 years, the principal burden of securing fair housing rights has fallen on the victims of housing discrimination and the relative handful of private housing advocates. Most of these have limited resources and

¹⁷ See Citizens' Commission on Civil Rights Report, at 56-61.

¹⁸ See, e.g., Robert C. Weaver, "Fair Housing Policies," *Trends in Housing*, vol. 24, no. 4, p. 8 (1983).

cannot be expected, for the indefinite future, to shoulder the burden alone.

For the time being, the Federal Government, with much to atone for because of its past history, has virtually abandoned the field of fair housing enforce-

ment. As a result, the goal of equal housing opportunity still remains far from achievement. Indeed, the principal battle now is being fought over whether the basic legal and programmatic structure of fair housing will remain in place.

Persistent Mechanisms of Racial and National Origin Discrimination

A Sheltered Crisis: The State of Fair Housing Opportunity in the Eighties

Diana Pearce*

Introduction: Race and Housing in America Today

The "bottom line" in assessing progress in race relations is, in many ways, to be found in America's residential neighborhoods. After we have opened up educational opportunities through elimination of school segregation, opened up occupational opportunities with educational, vocational, and affirmative action programs and policies, and opened up political opportunities through widening the franchise, we would expect that the barriers to free choice as to where one lives would have fallen in turn. They have not.

Economic progress in particular has been marked. By 1980 earnings of black men had risen from 61 percent in 1956 to 71 percent of average white male

earnings (although the last couple of years of recession has undercut that gain somewhat).¹ Black women's earnings have increased even more although starting from a base of 33 percent (of average white, male earned income), they are still behind at 54 percent in 1980.² This progress is particularly strong for black married couples who both worked; their earnings by 1979 averaged about 83 percent of similar white couples.³ And the ratio is even higher for younger and/or more highly educated persons.

In addition, racial attitudes in the last two decades have experienced a steady increase in the proportions who support the right of all, regardless of race, creed, or color, to free choice in housing, constrained only by their economic resources.⁴ In recent years, laws and litigation have further bol-

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¹ F. Blau, "The Economic Status of Women in the Labor Market," Testimony before the Sub-Committee on Civil and Constitutional Rights of the House Judiciary Committee, Sept. 14, 1983, table 1.

² Ibid. It should be noted that income inequality has never accounted for the levels of racial segregation found in American cities. This is, on the basis of income alone, our cities would be much more integrated than they are. See A. Hermalin and R. Farley, "The Potential for Residential Integration in Cities and Suburbs," *American Sociological Review*, vol. 38, p. 596-610 (1973).

³ P. Glick, "A Demographic Picture of Black Families," in H. McAdoo, ed., *Black Families* (Beverly Hills, Calif.: Sage Publishers, 1981), as cited in D. Pearce and H. McAdoo, *Women and Children: Alone and in Poverty* (Washington, D.C.: National Advisory Council on Economic Opportunity, September 1981).

⁴ A. Greeley and P.B. Sheatsley, "The Acceptance of Desegregation Continues to Advance," *Scientific American* (December 1981), p. 13-19; "A Study of Attitudes Toward Racial and Religious Minorities and Toward Women," prepared for The National Conference of Christians and Jews by Louis Harris and Associates, Inc. (November 1978); and D.G. Taylor, P.B. Sheatsley, and A. Greeley, "Attitudes Towards Racial Integration," *Scientific American* (June 1978), p. 42-49.

stered these rights beginning with the Fair Housing Act and *Jones v. Mayer* in 1968.

In spite of these positive, barrier-reducing trends, segregation in housing remains the rule rather than the exception in American communities. The first analysis of 1980 census data yields disappointing news. Using a 100-point scale on which zero is no segregation and 100 is total segregation or separation of 2 groups, Dr. Karl Taeuber examined the 28 American cities with a population of at least 100,000 blacks. Looking at the racial patterns on a block by block basis, he found that the average for these cities dropped 6 points over the decade of the seventies, from 87 to 81 points.⁵ At such a rate, it will take another half century to half desegregate these cities. Some cities, such as Chicago, St. Louis, and Washington, will take centuries to be fully desegregated. Since these calculations were done on the central cities only, many of which have experienced substantial reductions in segregation in other areas (such as schools, municipal and private employment, and public services) as well as housing, these statistics are likely to be an understatement of the 1980 levels of segregation found at the metropolitan level. Or, put another way, since more of the integrated housing areas in most metropolitan areas are found within the central city rather than the suburban ring, the addition of suburban residential areas to the calculations most probably will raise our estimates of the level of housing segregation in urban America.

With declining income disparities between majority and minority, we cannot account for the high levels of housing segregation that have persisted into the eighties. Despite apparent public support, as evidenced in attitudinal surveys as well as legislation, for equal housing opportunities, they have not been achieved. This anomaly suggests that discriminatory barriers still exist. But we need not rely on such indirect inferences alone, for we have evidence of various kinds that documents directly the persistence of housing discrimination. In the remainder of this paper, I would like to concentrate on that evidence, first describing in detail the character of discriminatory housing market practices, and then

putting that behavior in the context of the way in which American housing markets operate.

The Nature of Housing Discrimination

Two themes will run through the discussion of various housing market practices that follow. The first is that the discrimination practiced post-fair housing laws is subtle but effective. The second is that housing discrimination is persistent but not consistent. That is, while the methods used change, the overall fact of discrimination remains.

In addition, I will describe housing market practices as falling into two broad categories. Keeping in mind that these divisions are somewhat arbitrary and thus some behaviors will fall into both groups, I have labeled these two groups "interpersonal" and "areal." The first category refers to behaviors towards the homeseekers themselves which, either quantitatively or qualitatively, favor the white homeseeker over the minority homeseeker. "Areal" discrimination, on the other hand, is the differential treatment of areas as a function of the racial makeup of the area as well as the homeseeker's race, such that customers are guided toward choices along lines that reinforce racial segregation.

For this discussion I will be drawing in the main on data gathered by the United States Department of Housing and Urban Development's Housing Market Practices Survey (HMPS). In brief, this study "sampled" the behavior of housing agents in both the sales and rental markets in 40 metropolitan areas in the Spring of 1977.⁶ The method used is known as the audit and consists of sending out two homeseekers, one white and one black, who have similar financial resources, housing needs and desires, family size, and so forth. In short, they are matched as closely as possible in every way except race so that differences in treatment on the part of the housing agents is thus due to race.

I will also refer to other audits including those conducted more recently by various municipal and fair housing groups as well as those carried out by myself in the course of the research for my dissertation (the latter were done in Detroit during 1974 and 1975).⁷ As both my dissertation and my analysis of

Racial Discrimination in American Housing Markets: The Housing Market Practices Survey (1979).

⁷ D. Pearce, *Black, White and Many Shades of Gray: Real Estate Brokers and Their Racial Practices*, unpublished PhD dissertation, University of Michigan, 1976 (hereafter cited as *Black, White and Gray*).

⁵ K. Taeuber, "Racial Residential Segregation: 1980," Appendix to Citizens' Commission on Civil Rights, *A Decent Home. . . A Report on the Continuing Failure of the Federal Government to Provide Equal Housing Opportunity* (April 1983).

⁶ For a more complete description of the study, see U.S., Department of Housing and Urban Development, *Measuring*

the HMPS data to date have focused on the sales market, most of the findings reported below refer to real estate agents and the sales market.

Interpersonal Behavior Towards Black and White Homeseekers

The most comprehensive measure of the differential treatment of black and white homeseekers is the length of interview. Black homeseekers are given less of an agent's time than are white homeseekers, an average of 85 minutes compared to that of 97 minutes for the average white homeseekers's audit. (That difference is statistically significant at the .001 level, i.e., that difference in treatment by race would occur by chance less than one in a thousand times). It should also be noted that this difference is based on a comparison of only those interviews that were completed in a single day; again, significantly more of the black homeseekers than white homeseekers had to return a second time to finish the audit, 16 percent compared to 10 percent ($p < 0.001$). In my own study of Detroit real estate agents, the homeseekers were instructed to complete the interview in one visit; with this variation in method, the result was an even larger discrepancy in the amount of time spent with the homeseekers by race, of an average of 74 minutes for blacks and 199 minutes for whites (or approximately an hour and a quarter for blacks and 2 hours for whites).

One factor that accounts for this difference in time spent with the homeseekers is that part of the interview spent actually seeing homes for sale. Almost twice as many black as white homeseekers were not shown any homes at all: 28 and 15 percent respectively. (Perhaps because of the restraints of single-day completion described above, the Detroit study differences were much greater, with approximately three-fourths of the black homeseekers, compared to one-fourth of the white homeseekers, not seeing any houses at all.) If shown one or more homes, given the maximum of three, there is less discrepancy between black and white in the number of homes shown. The total number of houses seen (up to 3 per homeseeker) by blacks in the 40 cities is 3,458 which is 82 percent of the white total of 4,210.

Obviously, if one is unable to see any homes for sale, one is virtually unable to purchase a home. But the process by which homes are not made available on an equal basis to black and white homeseekers is a subtle one. As can be seen in table 1, at each stage of the process of informing homeseekers about avail-

able homes, whites are favored over blacks. That is, significantly more whites than blacks are shown the multiple listings book, or are told of and invited to see homes for sale, or are told that one or more suitable homes are available, or are invited to actually see homes (items 1 through 4 in table 1).

In table 2, results are reported for the "back pages" of the instrument used to record this data. Information on the back pages is quite informative about the process underlying the differences above, for it is on the back pages that unanticipated behaviors or additional information about particular events, was recorded. Because provision of such information was optional, the numbers involved are small but the differences by race are quite large; nevertheless, this data is presented primarily to indicate the variety of means, but similarity of results, that limit minority access to homes for sale. As can be seen, agents tend to deny that the desired housing is on the market or limit access to it on apparently reasonable grounds (e.g., no key), or by not facilitating the buyer's inspection of homes. Thus, by either putting off to another day (see table 2) or indefinitely the inspection of homes, the agent decreases his/her chance of selling a home to that prospective customer. Note that no statements or behaviors mention race; although not every coding category is reported here, of the 30 or so developed in this area, none mentioned race. That is, no one was told that they were or were not being shown, or told about, homes on the basis of race. Rather, the limited access experienced by blacks to house listings and inspections is done via rationales that are neutral on their faces. It is only by comparison with the white experience that differences in treatment that are discriminatory in their impact, become apparent.

The quantitative difference in amount of time spent with black as opposed to white homeseekers is probably accounted for, in large part, by the differential access to homes for sale. But there are important qualitative racial differences as well. Not only were black interviews shorter, they were different in content. To anticipate the discussion below, housing agents spent more time with blacks determining if they were financially able to buy a home and more time with whites selling themselves, selling homes, and helping with financing. These differences occurred within the context of nearly equal amounts of courtesy and respect for black and white homeseekers.

TABLE 1
Access to Homes for Sale

	Black	White	Significance Level ^a
Saw listing book.	62.6%	67.9%	**
Did not see listing book, but told about listings with offer to show.	23.5	26.8	***
Sub Total	86.1%	94.7%	
Agent told homeseeker that one or more suitable houses was available.	68.4	82.2	***
One or more houses suggested by agent to homeseeker.	87.0	95.6	***
Agent invited homeseeker to inspect one or more houses.	80.4	89.8	***
Homeseeker actually saw one or more homes.	71.9	84.6	***

^a Significance levels are indicated as follows:

- * $p < .05$ That is, the likelihood (or probability, thus "p") that the observed racial difference in treatment could occur by chance is less than 5 out of 100 where there is one asterisk,
- ** $p < .01$ 1 out of a 100 where there are two asterisks, and 1 out of 1000 where there are three asterisks.
- *** $p < .001$

Source: All data are from HUD's 1977 Housing Market Practices Survey; analysis and calculations are by the author. See footnote 6 for source of further detail about the study.

TABLE 2**Access to Listings and Homes for Sale (Back page reports)**

	Number Reporting Behavior	
	Blacks	Whites
Additional listings given (beyond three recorded on the form).	20	26
Agents stated nothing, or very little, available in area or price range requested.	84	52
Agent told homeseeker that she/he could not see homes because agent needed to obtain key, contact the owner, agent wanted homeseeker's spouse present, etc.	57	23
Agent told homeseeker to first drive around and look, or gave homeseeker a list of homes, and told homeseeker to look at them first.	42	11
Agent did not make appointment for inspection of houses.	23	7

^a Significance levels are indicated as follows:

- * $p < .05$ That is, the likelihood (or probability, thus "p") that the observed racial difference in treatment could occur by chance is less than 5 out of 100 where there is one asterisk,
- ** $p < .01$ 1 out of a 100 where there are two asterisks, and 1 out of 1000 where there are three asterisks.
- *** $p < .001$

Source: All data are from HUD's 1977 Housing Market Practices Survey; analysis and calculations are by the author. See footnote 6 for source of further detail about the study.

In the initial interview between a sales agent and a prospective homebuyer, the agent must ascertain that the homeseeker is financially qualified to buy a house and must simultaneously convince the customer that this agent/agency is able to obtain for them the housing desired. To determine how agents divided their time between these two activities, I grouped items into two tables, and created scales for those items for which there were significant differences by race.

Behaviors that indicate that the agent wishes to do business with the customer are totalled together as the "do-business" scale. Even though these include such minimum standard practices as introducing oneself, giving the customer a business card, and obtaining the customer's name and phone number, there are consistent differences by race. As can be seen from the individual items in table 3 and the summary do-business scale,⁸ agents' behavior indicates more serious interest in white than black potential homebuyers.

In contrast, black homeseekers receive more inquiries about their financial resources, income stability, and so forth. Put another way, less is taken for granted, or at face value, for black than for white homeseekers. Thus agents sought each kind of information used for qualifying significantly more often from black than white homeseekers. (See table 4 items and qualifying scale). In addition, additional information was asked of 55 of the black and 24 of the white homeseekers (as recorded on the back page). Of course, it is not known how this information was elicited, whether agents conveyed the message that they sought to disqualify, or alternatively, to help homeseekers obtain housing they could afford. Even assuming the best interpretation, the greater emphasis on qualifying for blacks reduced the amount of time available for discussion of other topics, such as financing, neighborhoods, and so forth.

It should not be surprising, therefore, to find that blacks do receive less information about financing (see table 5). Perhaps more interesting is the kind of help received. Blacks are more often told about FHA financing while whites are given information about conventional financing more often. Although most homeseekers know little about financing, housing agents are more likely to offer to help obtain

⁸ The two items referring to later contact—"agent requested homeseeker to call again," and "agent contacted homeseeker again"—have not been included in the scale at this point, as they

financing to whites, while black customers are requested to tell the agents how they will finance a home purchase. Additional advice on financing and home buying was noted on the back pages by 144 of the white and 101 of the black homeseekers.

The interpersonal context of the above behaviors shows much less differentiation by race and there is even a reversal in the area of use of a courtesy title (more blacks than whites are addressed as Mr., Miss, etc.). In several areas as well (not shown in table 6) there were no difference, including such things as giving the homeseeker literature on homebuying, chatting informally, and so forth. On the back pages, equal numbers of blacks and whites (126 and 128, respectively), reported the agent being generally nice and helpful and/or a specific act of courtesy or kindness. There was even equality in the encountering of incompetence: nearly equal numbers of blacks and whites report arriving at a house to inspect it only to find it locked, sold, etc., and nearly the same numbers report encountering agents unable, as opposed to unwilling, to help them. Overall, there is nonetheless a racial difference favoring the white homeseekers and, though small, it is statistically significant. What these findings suggest is that there is the least racial discrimination in the area least important to buying a house.

What these findings do not tell us is also important. In ways not picked up by counting cups of coffee or polite conversation, black homeseekers are informed that they are not desired customers. As can be seen in table 7, in which back page comments are tabulated, this message was effectively sent in a variety of ways.

Areal Discrimination

Much of this discrimination, but not all of it, can be captured under the term "steering." Steering, or racial steering, refers to the practice of referring white homeseekers to housing in all-white neighborhoods and minority homeseekers to housing in mixed or all-minority areas. It is a qualitative, as opposed to a quantitative difference; that is, the agent may spend an equal amount of time and show the same number of houses to both the black and white homeseekers but still be practicing discrimination. Because it is qualitative rather than quantitative and because it is often hard to detect (e.g., it may not

may refer to completing the interview (i.e., home inspections), rather than genuine ongoing contact.

TABLE 3**Measures Concerning Seriousness of Agent's Interest in Doing Business with Homeseeker**

	Black	White	Significance Level ^a
x Agent introduced him/herself.	75.1%	83.4%	***
x Agent offered his/her business card.	74.2	78.7	*
x Agent asked for homeseeker's name.	88.1	91.0	—
Agent shook hand of homeseeker.	30.7	30.9	—
x Agent asked for homeseeker's phone number.	82.4	85.7	*
Agent requested homeseeker to call back.	86.7	92.4	***
Agent contacted homeseeker again.	32.7	38.0	**
Agent requested, regarding housing sought, information about:			
The price desired;	91.7	91.4	—
The size desired;	87.0	89.1	—
x The location or neighborhood desired;	81.4	86.6	***
The style or other features desired;	53.7	53.5	—
Special features desired (house);	34.1	3.9	—
x Special features desired (neighborhood).	10.1	12.3	**
Do-Business Scale ^b	4.1	4.4	***

^a Significance levels are indicated as follows:

- * $p < .05$ That is, the likelihood (or probability, thus "p") that the observed racial difference in treatment could occur by chance is less than 5 out of 100 where there is one asterisk,
- ** $p < .01$ 1 out of a 100 where there are two asterisks, and 1 out of 1000 where there are three asterisks.
- *** $p < .001$

^b Items included are indicated with an x in the left hand column.

Source: All data are from HUD's 1977 Housing Market Practices Survey; analysis and calculations are by the author. See footnote 6 for source of further detail about the study.

TABLE 4**Information Sought by Agent Used to "Qualify" Homeseekers as Potential Homebuyers**

	Black	White	Significance Level ^a
Agent inquired of homeseeker:			
How much down-payment able to make;	54.6%	49.8%	***
For references (credit or personal);	4.0	1.3	***
Information about his/her income;	30.9	17.7	***
Information about his/her spouse's income;	32.5	20.5	***
Information about debts or obligations;	13.2	10.9	***
Information about his/her occupation;	49.2	40.3	***
Information about his/her place of employment;	33.8	25.6	***
Information about his/her length of employment;	12.9	8.4	***
Information about spouse's employment;	55.7	49.4	***
Homeseeker's address.	43.7	37.3	***
Qualifying Scale	3.2	2.7	***

^a Significance levels are indicated as follows:

- * p < .05 That is, the likelihood (or probability, thus "p") that the observed racial difference in treatment could occur by chance is less than 5 out of 100 where there is one asterisk,
- ** p < .01 1 out of a 100 where there are two asterisks, and 1 out of 1000 where there are three asterisks.
- *** p < .001

Source: All data are from HUD's 1977 Housing Market Practices Survey; analysis and calculations are by the author. See footnote 6 for source of further detail about the study.

TABLE 5
Information and Help With Financing

	Black	White	Significance Level ^a
Agent would obtain, or would help obtain, financing.	43.9%	51.8%	**
Agent told homeseeker about ^b :			
FHA financing only;	3.8	1.8	
Conventional financing only;	19.5	27.5	***
Both FHA and conventional financing;	29.9	24.4	
Neither FHA nor conventional.	16.9	15.6	
Information on the current interest rate.	85.7	93.6	***
Agent asked homeseeker what financing desired.	45.6	36.4	***

^a Significance levels are indicated as follows:

- * $p < .05$ That is, the likelihood (or probability, thus "p") that the observed racial difference in treatment could occur by chance is less than 5 out of 100 where there is one asterisk,
- ** $p < .01$ 1 out of a 100 where there are two asterisks, and 1 out of 1000 where there are three asterisks.
- *** $p < .001$

^b This item refers to discussions about financing of particular houses being shown, rather than financing in general.

Source: All data are from HUD's 1977 Housing Market Practices Survey; analysis and calculations are by the author. See footnote 6 for source of further detail about the study.

TABLE 6
Courtesy Measures

	Black	White	Significance Level ^a
Homeseeker:			
Waited less than 5 minutes.	81.0%	85.4%	*
Was offered something to drink, cigarette, etc. (Yes).	21.5	26.8	**
Was asked to be seated (by someone).	77.6	82.1	**
Was shown other courtesy.	5.1	6.9	—
Was asked to be seated (by agent).	79.6	85.1	***
Address by a courtesy title (Mr./Miss/Ms.).	46.5	42.9	**
Courtesy Scale	3.2%	3.4%	***

^a Significance levels are indicated as follows:

- * p < .05 That is, the likelihood (or probability, thus "p") that the observed racial difference in treatment could occur by chance is less than 5 out of 100 where there is one asterisk,
- ** p < .01 1 out of a 100 where there are two asterisks, and 1 out of 1000 where there are three asterisks.
- *** p < .001

Source: All data are from HUD's 1977 Housing Market Practices Survey; analysis and calculations are by the author. See footnote 6 for source of further detail about the study.

be apparent that the neighborhood is mixed), racial steering is subtle. But it is also effective: if one channels all black housing demand into racially mixed areas at the edge of areas of minority concentration and all-white demand into all-white areas, the racially mixed areas will become all minority, while the all-white ones will remain racially homogeneous.

In the HUD study, most of the houses shown both black and white homeseekers in 1977 were located in census tracts that were all white in 1970. There was, however, a small but statistically significant difference in racial composition, with more of the black than the white homeseekers being shown homes in census tracts that were not all white. But complete analysis of that issue must await the addition of 1980 data, a task which I was unfortunately unable to complete in time for this presentation.

That most of the census tracts were all white in 1970 for homes shown black as well as white homeseekers did not surprise me, for the Detroit study had similar findings.⁹ Closer examination of the Detroit data, however, revealed several patterns.

⁹ These results are more fully reported in D. Pearce, "Gatekeepers and Homeseekers: Institutional Patterns in Racial Steering," *Social Problems*, vol. 26, p. 325-42 (February 1979).

Briefly, it was found that homes shown black homeseekers averaged a mile closer to the center of Detroit's ghetto than those shown whites. Moreover, in certain large geographic areas no homes at all were shown blacks, although whites were shown homes in virtually every suburb (as well as central city, white neighborhoods). Homes shown blacks were thus concentrated nearer racially-mixed and all-black areas and in the path of previous expansion of those areas.

Data from the back page reports reveal the ways in which racial steering is done, as well as ways in which auditor attempts to deviate from this pattern are dealt with by housing agents. Agents refuse to show homes in some areas and promote integrated areas much more among blacks while discouraging them to white homeseekers. Although not always couched in explicitly racial terms, such differential treatment of areas is racial in its effects on housing choices. As can be seen from table 8, this aspect of steering is areal rather than personal in nature. It is areas with particular racial compositions that are differentially treated, sometimes in connection with

TABLE 7**General Behavior Toward Prospective Customers (Back page reports)**

	Black	White
Homeseeker was ignored or kept waiting.	29	12
Agent not available to homeseeker.	18	4
Homeseeker was told to call back, or return at a later time.	27	11
Homeseeker reported that the agent was generally uninterested in doing business with him/her.	67	22
Agent discouraged homeseeker, e.g., saying buying a house was very difficult, etc.	26	9
Agent did not return homeseeker's calls.	18	2
Agent did not make appointments to see houses.	23	7
Office locked/agent would not come to door.	10	2

the race of the homeseeker. Regardless of the sources of this behavior, its impact is to make the creation and maintenance of stably integrated communities very difficult. In the Detroit study, later interviews with the real estate agents revealed their awareness of this fact, as less than half believed that most of racially mixed Detroit's areas would stay racially integrated.¹⁰

Finally, schools are used to reinforce housing choices along racial lines. Though speaking directly about race and racial composition can lead to charges of racial discrimination, the same is not true of schools. Of course, when schools have been desegregated throughout an urban housing market, a school's racial composition is not likely to reflect that of the neighborhood; thus use of schools as a steering method is much more prevalent where the schools are segregated than where there is little variation in school segregation.¹¹ This use of schools for steering even appears in advertising, where the naming of public schools in real estate ads

is disproportionately found in housing markets with racially identifiable schools.¹² Steering via schools is also more common with white than black homeseekers; schools and such topics as busing and (school) integration are mentioned more often with black than whites.

New Kinds of Discrimination

Reports about two new kinds of discrimination are increasing. The first of these is discrimination against families with children and is predominately a problem in the rental market. Sometimes it is straightforward, as when families with children are barred outright; sometimes it is more subtle excluding families with more than two children from even quite spacious three-bedroom units. Because of its disproportionate impact on minority families, especially Hispanics, it is racial in its effect but not illegal. It is easy to see than an apartment complex wishing to exclude minority households can do so almost as effectively with a legal bar on families

final report submitted to the National Institute of Education under grant No. NIEG-78-0125, November 1980.

¹² Ibid.

¹⁰ *Black, White and Gray*, chap. VI, table 6.4.

¹¹ D. Pearce, *Breaking Down Barriers: New Evidence on the Impact of Metropolitan School Desegregation on Housing Patterns*,

TABLE 8
Areal Discrimination, Including Steering

	Black	White
Agent refused to show houses in area requested.	20	13
Agent only showed homes in white areas.	3	6
Agent told auditor wouldn't want his/her children in that area.	0	05
Agent discouraged auditor from looking in integrated areas.	0	38
Auditor was steered to integrated and/or racially transitional areas.	14	6
Agent reluctant to show homes in expensive areas and/or steered auditor to less expensive areas.	23	12
Other steering.	48	53
Agent promoted a specific suburb or city neighborhood.	123	151

with children as with illegal discrimination on the basis of race.

A second kind of discrimination is a byproduct of the difficult housing market we have experienced the last few years. As owners have become more anxious to sell their homes but buyers have been unable to meet the mortgage payments dictated by high interest rates, various means of seller-financed deals have come into being. The involvement of the seller, usually an "amateur," in the financing of a home purchase creates many opportunities for discrimination. In such situations, the seller, alone or along with a bank, must make an assessment of the buyer's financial wherewithal, yet the seller does not have the experience or expertise to make such a judgment in a professional way.

Little is known about the extent or nature of either of these new types of discrimination or others not detailed (such as discrimination against Hispanics or against single parents). But enough is known to state that they are serious problems. Moreover, like the "traditional" discrimination against blacks detailed above, it is subtle but effective, persistent but nonconsistent in form.

Conclusion

In one sense, the descriptions of encounters with housing agents detailed above should be heartening for it is clear that certain kinds of discriminatory behavior are rarely encountered. Blatant and degrading actions such as doors slammed or racial exhibits were rarely encountered; marketing techniques that play upon racial fears and prejudices such as block busting and panic selling were not in evidence in the late seventies or early eighties. Most homeseekers, black as well as white, are treated politely and given at least a minimum of advice and help.

But in another sense these data point a picture that is not at all encouraging. In spite of an improved atmosphere and apparently more equal treatment, there has not been a significant breakdown in the levels of housing segregation or discrimination. Indeed, the observed of the more obvious forms of discrimination makes clear that much of housing discrimination today is embedded in the ordinary

marketing tactics of ordinary housing agencies and agents.¹³ In addition, it is widespread; no geographical region or particular type of agent or agency has a "corner" on discrimination. In the Detroit study, moreover, it was found that the larger agencies and the more successful agents tended to be more discriminatory on the average.

Housing discrimination does not occur in a vacuum. But whether individual agents are aware of or intend to treat prospective customers differently on the basis of race is not relevant. What is important is that we know, as a society, that it happens and, as I have said before, in ways that are subtle but effective, persistent but not consistent. And we

¹³ Though not detailed here, an important limitation on minority housing opportunities stems from the organization of the metropolitan housing market into discrete real estate boards. This

know its effects: the perpetuation of segregation, the maintenance of a society divided along racial lines. These conclusions suggest that we must refocus our energies. Important as it is to prosecute the block busters and bigots who continue to operate, it is even more important to pinpoint and correct the institutional practices that continue to limit the housing opportunities of minorities. A first step towards that action is to better understand the nature of housing discrimination, a task which I sincerely hope I have helped today. I sincerely hope that it is, indeed, not the last step taken to end the continuing patterns of housing discrimination.

makes it difficult for the central city buyer who is represented by a central city broker to obtain access to suburban homes listed for sale through suburban multilist services.

Housing Discrimination: A New Technology

William R. Tisdale*

The Metropolitan Milwaukee Fair Housing Council (MMFHC) was organized in October 1977 to combat illegal forms of housing discrimination throughout the four-county Metropolitan Milwaukee Area. The Housing Market Practices Survey (HMPS) was conducted in 1977 by the Department of Housing and Urban Development (HUD) to measure the extent of housing discrimination occurring throughout the United States, 9 years after the passage of Title VIII (the Federal Fair Housing Law) of the Civil Rights Act of 1968.

The HMPS investigated housing practices in 40 metropolitan areas; Milwaukee was one of those areas. This survey utilized "testing" as an investigative technique to determine the nature and extent of illegal forms of housing discrimination employed by housing providers in these selected metropolitan areas.

Testing is a controlled investigatory technique that matches a team (of two) individuals on every socioeconomic characteristic except for that (characteristic) being tested for. For example, in the case of a test for race discrimination, a black woman who is 30 years old, single with no children, working as a welder, earning \$30,000 annually, at the same place of employment for 12 years, \$2,500 in debt, would be matched with a white woman who is approximately 30 years old, single with no children, working as a lathe machine operator (blue collar factory position), earning \$30,000 annually at the same place of employment for 12 years, and \$2,500 in debt. In essence, this process presents a housing provider with two identical homeseekers; the only difference between the two individuals is race.

The HMPS only tested for race discrimination in the metropolitan areas surveyed and only to ascertain the differences in treatment between black and white homeseekers. This survey did not attempt to measure discriminatory differences found in the other protected classes under Title VIII (i.e., religion, sex, color, national origin).

Nine years after the passage of Title VIII, the general perception was that an individual's desirability as a potential homeowner or tenant was based on

his/her qualifications and not his/her inalterable characteristics. The HMPS indicated that this assumption was far from accurate.

In Milwaukee, tester teams visited 120 rental units and 80 real estate offices throughout Metropolitan Milwaukee. Of the rental units and real estate visited by matched teams of black and white testers, 63 percent (50 of the 80) involved some form of discriminatory treatment against the black tester. The differences involved information regarding the availability of housing, location of available housing, housing costs, buyer qualification criteria, and financing availability.

In the case of the 120 visits to rental units, 43 percent (52 of the 120) indicated discriminatory differences in treatment between the black tester and his/her white partner. As in the cases of the real estate (sales) visits, these differences were significant discriminatory actions by the housing providers tested (i.e., differences in rent prices quoted, availability of the unit, application fee differences, differences in the information offered relating to the existence of waiting lists, different terms and conditions of tenancy, etc.).

The HMPS resulted in two significant developments in the Milwaukee area. First, it led to the filing of a major lawsuit against four of the largest real estate firms in the Metropolitan Milwaukee area for discriminatory housing practices in violation of Title VIII of the Civil Rights Act of 1968. Secondly, it led to the organization of the Metropolitan Milwaukee Fair Housing Council (MMFHC).

The Metropolitan Milwaukee Fair Housing Council was organized in October 1977 by concerned individuals and participants in the HMPS to combat the continuing discriminatory housing practices detected by that survey. The purpose of the Council is to ensure that all residents are afforded equal access to housing opportunities and locational choice. To accomplish these objectives, the MMFHC developed and implemented an aggressive enforcement and education program, operating throughout the four-county Metropolitan Milwaukee area. The MMFHC utilizes testing to investigate

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complaints of alleged violations of Federal, State, and local fair housing laws.

There are two types of testing employed by the MMFHC (and most other private fair housing groups). "Patterns testing" is the technique of testing selected housing units in nontraditional housing areas or rental units with little or no minority residents. Patterns testing supports the philosophy that it should not be necessary to wait until an individual's rights have been violated before a violator can be forced to comply with fair housing laws.

"Complaint response testing" is employed in response to a complaint by individuals who feel they have been the direct victims of illegal housing discrimination.

The Fair Housing Council has trained almost 300 citizens to become testers as part of the MMFHC fair housing testing program. This pool of trained volunteers allows the MMFHC to investigate complaints lodged under each category of protected class (i.e., race, religion, color, sex, etc.). Testers are utilized in both the investigation of complaints and in research studies into the patterns and practices of housing providers.

Throughout the investigation of over 1,200 complaints received and investigated by the MMFHC, testing has proven to be the most viable means to effectively uncover even the most insidious forms of illegal housing discrimination.

One of the major obstacles facing advocates of fair housing is that, in many instances, victims of housing discrimination are not even aware that they have been discriminated against. Although blatant forms of discrimination still occur, subtle forms of discrimination in housing has, in some cases, been fine tuned to a science. Most of use are familiar with the blatant forms of discriminatory activities of block busting, panic selling, redlining (insurance and mortgage), refusal to negotiate, or discriminatory advertising. But present day violators employ illegal forms of discrimination against those persons they have labeled as "undersirable" with highly sophisticated techniques designed to discourage or wear down homeseekers.

We have entered into an era of the "new technology of discrimination." The "slammed door" discriminatory activities have, in some cases, been replaced with the "revolving door." Discrimination has moved from the, "We don't want your kind living here," to "We have nothing available in your price

range" type. Both forms are effective; both forms are illegal; but only one form is obvious.

People (victims) are not going to complain about being discriminated against if they don't know that they've been discriminated against. Anemic numbers of complaints received by government agencies, established with enforcement powers at the Federal, State, and local levels are not indicators that conditions are improving and the rights of every individual are being observed by housing providers. On the contrary, discrimination has gone underground.

Officials of the Wisconsin State Department of Industry, Labor, and Human Relations (the Equal Rights Division) and the area office of the Department of Housing and Urban Development (Milwaukee) offered "compliance" with existing State and Federal laws as an explanation for the reason so few individuals had filed complaints with their respective agencies. In 1978 the Wisconsin Equal Rights Division received 24 complaints and the (Milwaukee) area office of HUD received 4 complaints, for a total of 28 complaints alleging violations of Federal or State fair housing laws for the State of Wisconsin, a State with a population of approximately 4.7 million. It was obvious, at least to these officials, that there was no problem with housing discrimination, using the number of reported incidents as an indicator of compliance with fair housing laws.

However, June of 1978 was the first year that the Metropolitan Milwaukee Fair Housing Council received funding to implement its fair housing enforcement and education programs and, during that year, the Council received and investigated 192 complaints alleging violations of fair housing laws from only 4 counties in Wisconsin. And that's just the tip of the iceberg.

The pervasiveness of housing discrimination is analogous to rape incidents (only those reported are recorded; these figures never represent an accurate assessment of the problem). One hundred and ninety-two cases, out of the countless scores of complaints that are never reported, is a sad commentary. Yet people will not complain of a violation of law if they are not aware that they have been illegally discriminated against.

In the early summer of 1978, a white male coworker, (approximately 28 years old), and I (a black male, approximately 28 years old) visited a rental complex that had advertised the availability of a two-bedroom apartment for immediate occupancy.

MMFHC testers never communicate with each other and are seldom aware where their partner is for a particular test until the investigation they've been assigned has been completed. But in this particular instance, the white coworker and I rode to the rental complex in the same vehicle (since this was only a practice test). This investigation was not in response to a complaint but designed specifically to determine possible snags in the MMFHC's testing techniques before employing those techniques as part of the regular investigation strategy utilized.

When we arrived at the rental complex, the "open for inspection" sign and a large sign in the shape of a finger, directing the way to the manager's office/apartment were posted in front of the main building. I was to obtain information about the availability of a two-bedroom unit first. I rang the doorbell and was greeted by a white male who indicated he was the manager of the complex. I advised the manager that I was interested in inspecting the two-bedroom apartments he had advertised in the newspaper. The manager paused for a moment and then invited me into his apartment. He told me that he wasn't sure if he still had any two-bedroom units available and that his wife had possibly rented the last available two-bedroom unit 2 days before. The manager asked to have a seat in the living room and offered me a cup of coffee while he checked in the kitchen (within my view) for possible available units. The manager checked through index card files and lease files and other documents for almost 15 minutes while making small talk with me about my interests, his interests, what a pleasant rental complex he managed, and how I (as a tenant) would enjoy living there. The manager walked slowly from the kitchen and, with disappointment in his voice, advised me that all of the two-bedroom units had been rented. The manager further stated that he could not understand why the classified ad (advertising the two-bedroom unit) was continuing to run in the newspaper. He apologized ("sincerely") for the inconvenience I had experienced through this "advertising error." The manager further stated that a check of his records indicated that there would not be a two-bedroom unit available for at least 2 or 3 months.

I advised the manager that, although my first choice was a two-bedroom unit, I could possibly squeeze my belongings into a one-bedroom unit until a two-bedroom unit became available; and since the last two-bedroom unit had only recently been

rented, I should be first in line for the next availability. I further advised the manager that I had a large number of books and that I had planned to use the second bedroom as a study, so it would not be inconvenient to leave my books boxed for a couple of months until I could move into a two-bedroom unit.

The manager advised me that he would check on the availability of one-bedroom units, but suspected that his wife had probably rented the last one-bedroom unit during the previous weekend. The manager returned to the kitchen, took out a different set of files, and diligently pondered over lease agreements forms and index card files. He returned a short time later and advised me that, as he had suspected, the last one-bedroom unit had been rented during the previous weekend.

I explained to the manager that I was really interested in renting a unit in that complex. I asked if I could inspect a model apartment to get some idea of the floor plan and space arrangements. The manager advised me that most of the units had similar floor plans and didn't differ greatly from his unit (the one we were in). He offered to show me around and I accepted. I was shown, not only every room in his apartment, but the complex grounds, parking facilities, storage areas, and laundry facilities.

At the end of the tour, the manager, again, apologized for my inconvenience and expressed his disappointment in not having an availability for me at that time. He told me that he thought I would really enjoy living there and that he would really enjoy having me as a tenant.

As I was leaving, the manager asked me to leave my name and telephone number with him, and that he would contact me as soon as he could determine which tenants would not be seeking lease renewals. He stopped me just as I was walking away and said, better yet, I should contact him in a couple of months (if I was still interested) and he gave me his business card with his home number, handwritten on the back. I thanked the manager and returned to my coworker who was waiting around the corner in the car.

I relayed the entire story to my partner (also a practice not exercised in actual testing situations) and advised him that there was, in my opinion, no problem at this complex; the manager was courteous, encouraging, professional, and wanted to adopt me!

My partner stated that we might as well go through with the second part of the test, even though I had received wonderful treatment from the manager.

My partner left the car, walked up to the manager's apartment/office and was greeted by the same man I had talked with only 10 minutes earlier.

About 20 minutes later my partner returned to the car where I was waiting and advised me that he had been shown three vacant two-bedroom apartments and had been offered a lease to commence tenancy within 2 weeks (the beginning of the month). I told my partner that either three households had completely vacated their units in the space of 10 minutes time, or I had been discriminated against. Both my partner and I opted for the latter explanation.

This is an example of the "new technology" of discrimination. This discrimination is subtle, it's sophisticated, it's humiliating, it's demeaning, and it's illegal.

In many ways the "slammed door" style of discrimination is preferable to the "revolving door" to me as a minority person. The revolving door gives hope and confidence while disguising the same slammed door that has always existed.

In the example I cited, had I been a legitimate homeseeker at that time, with all the pressures involved in attempting to locate an apartment (in a metropolitan area, where, at that time, the vacancy rate was quite low) within a specific time period, I would have never reported this incident. Why should I have? I had no notion that I had been discriminated against. It is not surprising that the Wisconsin Equal Rights Division and the (Milwaukee) area office of HUD had a combined total of only 28 complaints for 1978 and even fewer complaints in previous years. People are not going to complain if they don't know it's happening!

In sales discrimination, many minorities are too humiliated or embarrassed by the notion that they were discriminated against to report the violation. This attitude is particularly prevalent among those minority group members who are in the socioeconomic position to purchase a home. Some minorities who have attained this level of success feel that they have assimilated into the American social system. They have deliberately accomplished every requirement necessary to be (in their estimation) a good, respectable, up-right citizen of the community. After receiving an advanced education, respectable employment, and an active position in the community,

many minorities cannot accept the harsh reality that they too have been discriminated against and that their social status, income, education, etc., is no vindication for having been born a member of a minority group.

The experience I've cited is also one of the more elaborate designs which serves to effectively deny equal opportunity and equal access to the housing market. The following provides a few select examples of subtle forms of discrimination designed to discourage homeseekers and/or deny them equal opportunity in housing:

1) A waiting list that is presented to prospective minority applicants but not shown to white applicants. In some cases, the waiting list(s) presented to minority applicants only contains the names of previous minority applicants. Many times waiting lists presented to minority homeseekers are not a condition for application for white homeseekers.

2) Minority applicants required to place exorbitant application fees while white applicants are charged minimal fees or none at all. For example, minority applicants are required to pay the first month's rent and the security deposit before placing an application; white applicants are subject to less expensive requirements.

3) Minority applicants are required to place an application to be considered for tenancy; white applicants are not required to place an application.

4) More stringent application requirements for minority applicants (i.e., higher income requirements, time on the job, 10 or more references, etc.).

5) Excuses by housing providers, placing their reasons for denial on another housing industry factor (i.e., "I'd like to sell that home to you, but you can't qualify for a mortgage/insurance in this neighborhood.").

6) A prospective tenant must be recommended by a person who is presently a tenant in that building or a resident of a particular mobile home park (very effective in an all-white building or mobile home park).

7) Advertising available units in publication of limited circulation (e.g., religious newspapers, suburban newspapers, or other publications with predominantly nonminority readership/circulation).

8) Advertising rental units or homes for sale by word-of-mouth.

9) Advertising availabilities on index cards placed on bulletin boards where a very selective group of persons and nonminorities have access to (e.g., clubs, organizations, etc., with nonwhite memberships).

10) Advertising available housing units (rental or sales) on the bulletin boards or in bulletins of all-white congregations/churches.

11) The on-site manager allowing minorities to go through the entire application process (the same process required of white applicants). Except when submitted to the main office for review and evaluation, the applications of the minority applicants are marked/checked on the backs with pencil while the applications of white applicants are marked/checked with pen; thus, coding the applications for the landlord. Only those applications marked in pen are considered for tenancy.

12) The use of the telephone answering machine. When an applicant is detected as being a member of a minority group or other "undesirable," the housing provider simply does not return their call. If the address and/or telephone exchange left on the machine by a minority/undesirable homeseeker is identified as being in a nonwhite area of the community, the inquiry regarding housing availability is not responded to.

13) Minorities sometimes are told that there is no application fee; the housing provider can then disregard the application with no further contact with the minority applicant. Whites are required to put money down and, thus, are taken more seriously than the minority applicants.

14) In sales, homes in white areas are given more intensive advertising by sales agents than are homes located in integrated or predominantly minority areas.

15) In rental units, minorities are segregated by building (e.g., the minorities and other "trouble makers" are relegated to one building of a complex) or minorities are segregated by floors within a particular rental unit. In high-rise apartment buildings, upper floors with more desirable units and/or views are reserved for white tenants.

16) Quota systems are employed which allow only a certain percentage of minority applicants the opportunity to rent available units.

17) Exclusionary zoning practices are employed which have a disproportionate effect on minorities or women (e.g., minimum lot size requirements—6

acres, at \$50,000 an acre—elaborate floor plan requirements, fixture standards, etc.).

18) Racial steering perpetuating existing segregated housing patterns by limiting the information concerning available housing units offered to minorities.

19) Housing providers giving legal reasons for denial to minority homeseekers (legal forms of discrimination), but setting different standards for nonminority homeseekers (a no-children rule in effect for minority homeseekers with children; but children are permitted for white homeseekers).

These are just a few examples of the "revolving door" form of discrimination operating throughout the housing industry. The list of techniques is inexhaustive. The qualified minority, handicapped individual, or woman seeking to obtain suitable and affordable housing the location of his/her choice on his/her qualifications alone face a formidable force working against equal access and equal opportunity in the housing market.

It is often reported that "things are getting better" and "anyone can live anywhere they can afford to live." I caution those making such blanket statements, or hearing them, not to be fooled by the meager sprinkling of minorities living in nontraditional areas. Instead, consider how many qualified minorities and women have been subtly and illegally denied housing opportunities in those areas so as not to "integrate too fast," thereby creating panic on the part of long-time homeowners that their neighborhoods will be soon engulfed by a sea of (those they see as) "irresponsible, puerile" individuals bound on the destruction of everything they've (homeowners) worked for.

Homeseekers must be judged as individuals, not as stereotyped members of particular groups. Strict enforcement of fair housing laws is a key component toward the realization of equal housing opportunity for all citizens. It is apparent that individuals who comprise the protected classes under fair housing laws cannot be relegated to the long wait associated with voluntary compliance. Discriminatory housing practices have been illegal since 1866; the Housing Market Practices Survey conducted in 1977 demonstrated that voluntary compliance is an ineffective process in the struggle to eradicate practices of illegal housing discrimination. Unless the techniques of fair housing enforcement keep pace with the subtle and sophisticated techniques of discriminatory

housing practices, these "badges of slavery" will continue to weigh as heavily as shackles.

11
17

America's Blind Spot: The Devastating Impact of Residential Segregation

Christine Klepper*

Introduction

I am consistently surprised by the number of individuals, including those otherwise educated and politically aware, who have no real understanding of racial issues in our society. When we begin to talk about race and housing in particular we, as fair housing advocates, generally get one of two responses. The first is a tense silence perhaps prompted by a fear some have of exposing their own racism or ignorance as the case may be. The second is an emotional diatribe filled with stereotypical references and misinformation. We, as a society, seem to have a very difficult time in discussing rationally one of the most critical urban issues of our time: housing segregation, with all its attendant evils.

It's no wonder that discrimination, which has perpetuated housing segregation for six decades, is still so pervasive. The majority of Americans prefer to believe that discrimination has been eradicated and that separate neighborhoods for blacks and whites is natural. Until the general public and government leaders discuss and understand the economic and social ramifications of residential segregation and its cause, housing discrimination will continue unabated. Until we determine as a Nation that integrated communities are a valued and necessary component in our society, we will continue to give lip service to the fight against discrimination. Until we decide that interracial neighborhoods are something that benefit individuals, communities, business, schools, the financial community, and others, we will continue to move in the direction of apartheid. Until discrimination is no longer viewed as a minority issue alone but rather something that affects the white institutional base in this country as well, I fear the worst. I hope to make a compelling case for integration as a solution to many of our urban problems. I will detail the types of discrimination occurring in the southern suburbs of Chicago resulting in the subtle manipulation of the marketplace that fuels segregation and resegregation of entire areas. I will also discuss the activities necessary to attack these problems.

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The South Suburban Housing Center

I bring the views and experience of the South Suburban Housing Center (SSHC), a relatively small nonprofit community organization located in Park Forest, Illinois. The agency is in its eighth year of operation and services 37 communities south of the City of Chicago. The purpose of the Housing Center is to promote a unitary housing market by encouraging racial diversity. We are convinced that residential integration offers the best opportunity minorities have in guaranteeing equal participation in our society. We feel also that stable patterns of diversity are the only way to eliminate the "changing neighborhood" situation particularly familiar to residents of the southern suburbs.

To accomplish our goals, we must eliminate dual housing market forces including discrimination, illegal racial steering by the real estate industry, and the selfsteering that is the result of ingrained segregatory housing patterns developed over six decades. These forces combine to severely limit options of black and white homeseekers based on racial considerations.

The Housing Center has developed an aggressive and comprehensive program strategy to address identified problems. We continue to provide the traditional fair housing counseling guided by a clear pro-integration policy. Both blacks and whites are encouraged to consider nontraditional options. We have an education program to make housing providers aware of the law and affirmative marketing techniques necessary to mend the severely divided market we find ourselves operating in. We have a research arm at SSHC also. We recently completed a study of lending patterns and another study, using computerized results from our testing program, is nearly complete. Our testing program and the legal work we do are probably what we're most noted for. We've done over 500 tests on 70 real estate offices and 47 apartment complexes during the past 4 years. We've organized an intergovernmental organization, the Fair Housing Legal Action Committee consisting of 13-member municipalities, to provide

legal resources necessary to act on evidence collected through testing. We've retained one of the largest law firms in the Nation, Sidley and Austin, and have recently filed two major pattern and practice suits against real estate companies in our area. Finally, we have developed a formal consultation relationship with Alexander Polikoff, executive director of the public interest law firm, Business and Professional People for the Public Interest (BPI). Mr. Polikoff was lead counsel for the plaintiffs in the landmark public housing case, *Gautreaux v. CHA*. This relationship developed around the issue of "integration maintenance," an often controversial and misunderstood set of activities necessary to preserve racial diversity in the few places it exists. I will discuss this issue in more detail later in this report. Before we move further, however, we must look at demographics as they currently exist in the Chicago metro region to understand the framework within which we operate.

Residential Patterns

The Chicago area, which has one of the most segregated housing markets and school systems among the Nation's large urban areas, is more typical than atypical of continuing urban discrimination and segregation patterns.

Fifteen years after the passage of the Fair Housing Act, Title VIII, in Chicago as elsewhere, blacks remain highly concentrated in central cities and in a few suburban enclaves. In 1980, 99 percent of Chicago's (SMSA) blacks lived in 33 of the area's more than 200 municipalities. According to an October 1980 article in the *Chicago Reporter* regarding public school enrollment for the six-county metropolitan Chicago area, while minority suburban enrollment grew by 57.4 percent, the growth "has not triggered wider integration for black students in the predominantly white suburban school district. Most black students remain clustered in about a dozen school districts, while 143 suburban school districts have five or fewer black pupils each." Further, "suburban Cook County, which has the largest number of black students, has significant bastions of segregation. Nearly one-fourth of all suburban Cook County school districts have no black children on their rolls." Of Cook County's 115 elementary school districts, 70 have less than 1 percent black enrollment.

Subregionally segregation is apparent in that, compared with other suburban areas surrounding

Chicago, the south Cook County area has provided opportunities for minorities and low-income people in numbers far greater than its neighbors. Half of the area's blacks live in south Cook County, which includes six of the seven metro area's suburbs that are predominantly black. The black population in the region grew 77 percent between 1970 and 1980 from 11 percent overall to 17 percent. South Cook has nearly half of all subsidized housing in suburban Cook County. The minority population in the schools is approximately 30 percent as compared with a minority school enrollment in the rest of the metro area of approximately 2 percent.

Within the southern suburbs as well, we can see the extent to which a segregated housing market has advanced. By examining 1980 census figures and comparing this data to census figures from 1970, we find that white areas have tended to remain white while integrated areas have tended to increase sharply in minority residents. For example, one white segregated community had a black population in 1970 of 0.12 percent. In 1980 the same community had a black population of 0.3 percent, a growth in raw numbers of only 19 black residents. In 1970 an integrated community in the region posted a 30.9 percent black population which increased by 1980 to 65.6 percent. One of its school districts, reflecting housing patterns, went from an integrated 30 percent minority enrollment to an essentially resegregated minority enrollment of 96.7 percent in only 6 years.

The south region, however typical it is of segregation, has to its credit a growing number of communities that are integrated or are in the early stages of integration. They are the communities that make up the Fair Housing Legal Action Committee. These 13 municipalities have black populations ranging from only 1.4 percent to 44.3 percent as of the 1980 census. They all share a geographic position in the middle corridor of the region where all the predominantly black communities are located, surrounded historically by white enclaves. These 13 communities exist as open communities in a sea of closed communities. They recognize the undertow, the current system that threatens to rob them of the benefits of interracial living. They have come together to fight for open housing and against illegal real estate practices, especially steering that might otherwise result in a (re)segregated housing market.

Clearly, segregated housing and school district patterns are evident on a metropolitan, subregional, and local level. These patterns are repeating them-

selves in the suburbs as they did in the city of Chicago where some of our county's worst ghettos exist. Unless segregatory forces are challenged with significant resources we can look forward to "two societies, one black and one white, separate and unequal" as reported by the Kerner Commission some 15 years ago.

Factors That Perpetuate Segregation

Self-Steering

The fear of not being welcome in certain communities, plus the tendency for black people to seek out those communities where they are already represented to some degree and in which they perceive they would feel comfortable, confines blacks to compete in the relatively few housing markets that are, in reality, open to them. This situation produces an unnaturally disproportionate black demand in certain neighborhoods and communities. Whites, on the other hand, have a great many housing choices and often cross off integrated communities because of perceptions of or past experiences with rapid racial change. This pattern is termed self-steering and results in softened white demand in areas that, at the same time, are experiencing unnaturally high black demand. Resegregation is likely to occur in these areas.

The pervasiveness of the dual housing market is partially due to attitudes built upon the present effects of past discrimination. Because housing information channels have been so controlled by the real estate industry and because of the relative inexperience of the minority homeseeker in the marketplace, blacks have had to rely on friends or relatives for housing information. Blacks have historically been confined to certain geographic locations so the obvious result is a continued limitation of housing choice.

Another factor is the increasing subtlety of discrimination in the eighties and the difficulty in detecting it. Blacks are generally offered as many courtesies as whites and are often told that "we don't have what you're looking for today but check back in, we may have something in a couple of months." Unless the homeseeker is very aware of racial patterns he has no real way of knowing that his white counterpart was told something totally different. The homeseeker is dependent upon the rental or real estate agent's word. Even if the homeseeker suspects discrimination, he or she may

be reluctant to pursue it. The experience was probably not a glaring insult; no door was slammed in his/her face; he/she was greeted with a smile. Because there are some options available in the suburbs and because of Title VIII and the progress blacks have made in employment and socioeconomic levels, many tend to believe discrimination has been eradicated or at least severely reduced. Consequently, the tenacity of the dual housing market has been underestimated. The black homeseeker continues his search for housing elsewhere and generally finds it in a traditional transitional area. The housing choice may be considered a free one but in reality it is a manipulated one. Patterns that develop from these individual encounters are manipulated as well resulting in the segregatory trends just discussed.

The white experience is much different though white residents are victimized by these historical trends as well. Many white residents of the southern suburbs moved from rapidly changing neighborhoods on the south side of the city. They identify those areas as "integrated" when in fact they were in the process of resegregation. They tend to believe the in-movement of blacks begins a process, controlled only by God himself, that brings about social upheaval and economic loss. There is a lack of understanding relative to the complex set of circumstances that took their neighborhood from the area they knew it to be, to the ghetto and often slum that it had become.

Because the scenario has been set from 60 years, a more passive practice by Realtors exists now that simply encourages white self-steering. If a white buyer is aware of some blacks in a neighborhood, they may ask about stability or they may express a reluctance. If the Realtor acts out his traditional role, based on bias or a perception of people's attitudes, he may act to discourage the buyer. He may say, "You have to be careful there," or "Property values don't increase as much there." This kind of response reinforces fears and precipitates a self-fulfilling prophecy. Another response by the Realtor might be, "I can't discuss race." This again does not answer the concern. If, however, the Realtor responds in a positive way, "Yes, the neighborhood is stable, integrated, and very desirable," he may in fact prompt a different kind of self-fulfilling prophecy.

The dual housing market is well entrenched however, and changing institutional practices is not

easy. Educating the general public may be a beginning. We must build integrated neighborhoods to increase the confidence of whites so that withdrawal does not occur. Whites must be kept in the marketplace, in the neighborhood, and in the community. White self-steering will continue until some positive examples of interracial living can be sustained.

To summarize, closed information channels, a lack of awareness by black and white homeseekers to the subtle manipulation of the marketplace, and a lack of confidence in integrated living in limiting choices for individuals. These factors perpetuate segregatory housing patterns and cause the pressures of resegregation to be felt in a number of south suburban communities.

Discrimination and Steering

Historically, we are well aware that the real estate industry has played a major role in perpetuating segregation. To learn the full extent to which current practices impact our communities, SSHC developed a comprehensive testing program.

SSHC has conducted, on behalf of its municipal clients (numbering 13 currently) over 500 tests of real estate activity beginning in 1979. The program is specifically designed to determine if white and black homeseekers with carefully matched housing preferences and budgets are treated equally and shown the same housing. The program is ongoing and is not only complaint oriented but also seeks to reduce systemic violations of fair housing law. All procedures and recording forms used are similar to or variations of practices and materials developed by the National Committee Against Discrimination in Housing in conjunction with the U.S. Department of Housing and Urban Development.

Rental Testing

SSHC has conducted nearly 200 rental tests over the 4-year period, 1979-82. Many tests were conducted to assist bona fide individuals homeseekers in obtaining units, a relatively traditional activity for fair housing centers. Recently, a black client of the Housing Center was awarded \$28,000, the largest cash settlement in a rental discrimination case in the State of Illinois. Testing in 1982, however, was structured to begin systemic investigations into practices at large apartment complexes in white segregated parts of our area. Individual cases filed in Federal court have tended to be the only avenue of

redress to an entire systemic problem and this approach is simply far from adequate.

The 1982 Supreme Court ruling in *Havens v. Coleman* clarified the standing of fair housing centers as well as testers in Title VIII actions. *Havens* provides expanded opportunity to combat racial discrimination that should not be underestimated as a tool for change. Consider these circumstance: We find ourselves in a climate in 1983 where "pioneers" are no longer chic, where fighting the system is often more time consuming and difficult than its worth, where discrimination has become so subtle that it is difficult to detect, and when public awareness is probably at an all-time low. We, as fair housing advocates, must uncover these widespread violations of the law so that fewer black families suffer the devastating experience of discrimination. If adequate resources are allocated, systemic testing, followed up by *Havens* cases seeking affirmative remedies, could be a more effective means of uncovering violations of Title VIII.

Our experience with systemic rental testing has been that apartment availability information is astoundingly different for blacks and whites. During our 1981 series for example, in seven different matched tests (one black tester and one white) on seven different rental complexes, rental units were available for the white tester while the black tester who followed a few hours (or in some cases minutes) later, was told no units were available. On an additional four matched tests, white testers were told units were definitely available and blacks were told that there "may be a vacancy" or that the agent "didn't know" if there would be a vacancy. Statistically in 1981 white testers were told units were available on 23 of 26 occasions, or 88 percent of the time, while their black counterparts were told units were available on only 10 of 23 occasions, or 43 percent of the time.

In 1982, 19 black testers were matched with 19 white testers, visiting a total of 6 rental complexes throughout the region. Again the category of availability shows glaring differences. Of the 19 blacks who tested complexes only 6, or 31 percent, were told something would be available. Seventeen white testers, 89 percent of the total, were told something was available. In 1 white community where 17 tests were conducted (9 black and 8 white), all 8 whites were told something was available while blacks were never told that an apartment would definitely be available for them. Although black testers were

often shown model apartments as well as vacant units on occasion, they were then given nebulous answers regarding availability. Black testers were told: the agent would call back and let them know of vacancies; applications were being taken for a time in the future; the agent would put their name on a waiting list; nothing was available for the date the tester asked for but there might be something later; or the agent "wasn't sure" if something was available. These test results are a shocking reminder of the level of discrimination in rental housing.

Sales Market Testing

SSHC began systemic testing of real estate offices of 1979. The program represents one of the few operating in the country to investigate in-depth sales market activity. Since our service area is predominantly made up of single-family owner-occupied housing, discrimination in the sales market most critically impacts south suburban residential patterns.

Our beginning testing revealed dramatic results. We found discrimination or steering occurring 95 percent of the time. Twenty-three percent of our black testers were told there was nothing available at all, while whites were always given options. Racial comments were made to white testers an alarming 27 percent of the time. "We don't have any green people here, if you know what I mean," is an example. Several times blacks were discouraged from considering particular all white areas because of potential "troubles."

The most significant results are illustrated in an examination of the location of options offered. Whites were offered housing options in all white areas 88 percent of the time. Blacks were offered housing options in these same areas only 29 percent of the time. Of the whites actually taken to inspect housing, none were shown housing in integrated areas, while 71 percent of the black testers who were shown housing were shown only in integrated areas. SSHC documented 17 black testers offered options in 1 integrated community while not 1 white tester was offered anything in that community.

After the 1979 series was complete (a lawsuit against 15 real estate companies resulted), we began computer work with a local university to see if trends were apparent with more sophisticated analysis. We also wanted to store information so that, as we continued our program, we would have cumulative data available. The most interesting result of this

initial effort was relative to school districts. A portion of the computer work broke listings offered by race into elementary school districts. Housing in 1 district with a 30 percent minority enrollment in 1975 was offered to 18 black testers and to only 1 white. Overall, 67 percent of the blacks were shown housing in the 9 districts with the highest number of black students (total of 28 districts). Forty percent of the white testers were shown housing located in the eight districts with less than a 2 percent black population. These figures illustrate the clear relationship between segregated housing patterns and segregated schools.

As we continued our testing, we identified a number of trends. Realtors, where a major lawsuit was filed, have improved. Also, Realtors in the integrated corridor of the region where SSHC has been the most visible have improved their behavior considerably. Although blacks were still told 25 percent of the time that no housing was available (whites were never told this), blacks are being given more options in white areas. In 1980, 32 percent of our black testers were given options in white areas while the 1981 series showed blacks given listings in white areas 52 percent of the time. Less improvement is evident relative to the white experience. Whites were given options in integrated communities only 13 percent of the time in 1980, improving to 31 percent by 1982. Racial comments were still made however in 30 percent of the tests, discouraging integrated areas. The one final trend apparent going into our 1982 series was that Realtors in the all-white southeast corridor of the south suburbs were steering blacks out of that area and into the integrated middle corridor of the region while keeping whites in the white enclave.

The results from our most recent testing confirm general trends found in previous investigations: less time is spent with black testers; financing is discussed less often; blacks are offered and shown fewer housing options; and blacks are given less positive school district information. 1982 testing documented that 67 percent of options given black testers were in white segregated areas, again an improvement, although 57 percent of the total were in one community, possible signaling the beginning of a targeting process. Conversely, however, we found that whites were shown white areas 88.9 percent of the time while integrated areas (here defined as areas 3 percent black and over) were shown only 11.1 percent of the time. Racial remarks

and discouraging comments about particular communities and school districts continued to be made an alarming percentage of the time to white testers. Negative school district information was given to white testers on a significant number of tests, 23 percent. Busing was most frequently mentioned as a negative and was most often discussed with whites. One agent mentioned busing to all the white testers he served. Clearly, the predominant trend over the years is improved behavior relative to blacks because of testing but an almost total reluctance to show whites options in integrated areas.

The 1982 testing series resulted in two major pattern and practice lawsuits filed in December 1982 and March of 1983. The first suit, *SSHC et al. v. Santeafort Cowing*, involved 26 tests on 4 offices of the firm, the largest in our region. The other involved 17 tests on 2 offices located in the southeast white enclave. SSHC and several resident plaintiffs allege that these firms engaged in differential treatment by race, discouraging comments to promote segregation, and illegal racial steering.

Finally, SSHC with the University of Illinois, has computerized results of 3 years of testing 1979-81. The results of this extensive analysis are that discrimination and racial steering are happening at a statistically significant level and it can be said that there is only a 5 percent chance that it is occurring as a matter of chance. Sixty-five offices, over 200 agents, and 318 individual tests were analyzed. Overall, of 129 variables analyzed, 37 showed severe disparate treatment and almost all (31 of 37, or 84 percent) came down on the side of discriminatory treatment against blacks.

In a complimentary study of testing narratives completed by SSHC, further evidence of steering was uncovered. Nineteen types of behavior or comments made by Realtors were identified that blatantly steered or discouraged testers from selecting housing in particular areas. The frequency of these comments was astounding. Two hundred and sixty-one instances or comments were documented by testers. The types of comments and/or behavior cited by black testers most often includes:

1. Realtors made specific encouraging references to black testers about black areas.
2. The testers was unable to inspect houses on the day of the visit to the office.
3. The tester had the feeling that the Realtor did not want to service them. p34. The tester was told to "drive around and look at houses."

5. Testers phone calls were not returned.
6. Tester was not allowed to examine MLS book or print out.
7. No listings were available in price range or to fit preference of the tester.

White testers most often cited the following:

1. Realtor referred white tester to white community with subtle commentary or away from specific areas of black residency.
2. Integrated school districts referred to in a negative manner or the existence of busing mentioned by agent (20 times with whites; once with a black).

Clearly, as study after study has documented, discrimination and steering are occurring in the southern suburbs at an astounding level even with ongoing monitoring. As our testing and analysis become more sophisticated we see that these patterns are statistically significant and cannot be occurring by chance.

Discrimination in Lending

The Housing Center completed a study of lending patterns in the region using the Community Reinvestment Act (CRA) statements and Home Mortgage Disclosure Act (HMDA) information from 36 financial institutions. The number of loans made during 1980 in each of 69 census tracts in the area was noted along with a variety of other variables. To summarize the results of this extensive study in one sentence, we can say that census tracts with 20 percent or more black residency received a dramatically lower number of loans. Given that census tracts in suburban areas tend to be very large with segregated areas within themselves, it is surprising that such a dramatic pattern is discernable.

Twenty-four is the average number of mortgage loans made per census tract. Twenty-six census tracts received more than the average. The average black residency of these tracts was 5.7 percent. Forty-three tracts received fewer than 24 loans and their average black residency was 29 percent. Thirty percent of all census tracts in the south suburbs are 20-100 percent black and yet they received only 7 percent of the total mortgage loans made. Table 1 gives a good picture of the overall results.

Trends are apparent relative to race and lending in our region. Red-lining and discrimination are likely reasons for the trends. We hope to further document our initial findings to prompt affirmative action to

Percent black residency	Percent of total census tracts	Percent of loans made
0-5%	55%	69%
6-20%	14%	22%
21-50%	13%	5%
51-100%	17%	2%

remedy the devastating effects of this activity (or lack thereof).

Resulting Consequences

The obvious first reaction to the level of segregation and discrimination just discussed is to the violation of individual civil rights. The emotional harm caused even one individual is painful to see and can be a life-changing event for the victim. We are just beginning to document, in discrimination cases, the psychological impact on individuals and families. Psychologists are now being used as expert witnesses in trials so that, to whatever extent it's possible, victims can be adequately compensated. Awards in fair housing cases have been far too small either to compensate victims or to deter others from engaging in discriminatory behavior. While I do not want to minimize the harm caused to people, I do want to focus attention on what these collective actions do to society.

I speak from a position of concern about the choice of pluralism in our neighborhoods and communities. I speak also from a position as an observer of racial change, watching as one area became integrated and then completely resegregated.

I listen to a large number of white residents who truly believe all black people know each other and conspire to take over and ruin one neighborhood after another. There is an unbelievable lack of knowledge about institutional racism and white withdrawal from the marketplace and community.

What happens when blacks move into an area? Some residents panic and move, but most do not. They are relatively accepting, usually not hostile, but maybe not overly sociable either. The neighborhood is "integrated." A few more black families move in and soon the neighbors don't see any whites looking at homes that are for sale. The traffic is all black. Testing tells us what is happening. Whites with more options choose other areas and Realtors both subtly and blatantly fuel white withdrawal from the market. As 80 percent of the demand for the housing is withdrawn (the percentage of whites in the Chicagoland region), property values begin to decline and homes do not sell as rapidly. More whites now decide its time to move. As property values decline (or do not rise as quickly as other comparative areas), the community's tax base is affected. The schools don't get the money they need to remain quality schools. City services may be

withdrawn by a white controlled governmental base or services may decline because of a revenue loss. Whatever the cause, the result is the same—a neighborhood in transition and possible economic decline. Black middle-class residents, with other choices, move on now too.

Lets take the scenario a little further. We begin to see redlining and home improvements and repairs aren't possible. Housing begins to look a little shabby. Businesses have lost demand too as 80 percent of their market (the white market) is no longer in the neighborhood. They move. New businesses don't move in. Jobs go. We have created another ghetto and probably another slum.

And what is the common denominator? Not in-movement of blacks but white individual and institutional withdrawal, assisted at a critical point in time by the Realtor. The only group to benefit financially in this whole scenario is the real estate industry and, even then, only in the short run. Essentially, the real estate market in the racially changed neighborhood is reduced as well. Realtors as individuals are not necessarily evil and plotting to bring about racial change. Most are simply caught in a monstrous system that simply follows the path of least resistance and the shortest point between two dollar signs. Whatever the circumstance, the result is segregation where racial fears and tensions can continue and where blacks can be erased off the map by a white controlled institutional base. Opportunities for education and jobs are not shared and the status quo is maintained.

Integration as a Valued Principle

If we look at the early stages of the road we've just traveled, we can see a fork—where whites begin moving in the direction of all those other options available to them. If we can keep whites competing in the marketplace with blacks, we get 100 percent of the demand for the housing. We get optimum property value increases, a solid tax base, good city services, and good schools. Businesses and jobs remain; and in such a healthy atmosphere, what financial institution would deny itself the benefit of a good investment? Schools are naturally integrated and understanding between the races is more likely, reducing fears and tensions. The courts, as well as sociologists, have long recognized the benefits to be derived from interracial association. It seems to be a simple concept but we all know the reality—integration is difficult. We can be arm-chair liberals only so

long then we must face up to the fight. Taking on the battle is exactly what is happening in the southern suburbs of Chicago.

Recommendations for Action

Communities in our region and the people in them have educated themselves to the point of understanding the complex set of actors who prey upon the integrated community. They understand their self-interest in supporting open housing everywhere. It may not be popular to say, but as long as there are white "havens" for refuge, they will be utilized. Without white enclaves there would be no place to run. Conversely, if black demand were not so manipulated into a few isolated areas but was, in fact, diversified, the problems again could be reduced. This premise is the first ingredient thrown in the pot of "integration maintenance" activities.

Promoting and maintaining residential integration where it exists is a logical next step in our movement toward a unified society. Given all the factors working against successful integration, we must have competing forces that nurture integration as a valued principle of government. Integration doesn't just happen because of the enormous detrimental effects of past and present discrimination. We need affirmative action to mend the wounds and make the market whole again before it can operate in a truly free manner.

In the south suburbs, we've put together a regional approach to deal with an entrenched dual housing system. Vigorous enforcement of fair housing law is combined with a variety of other mechanisms to ensure that people of all races compete for housing throughout the region. The basic ingredient is affirmative marketing.

Affirmative marketing as defined by HUD is an attempt to outreach to that racial group which is underrepresented in traffic and demand. For example, in an area of majority concentration outreach would be to whites. This concept, however, often gets translated into somehow denying blacks housing opportunities in integrated communities where outreach is needed to retain whites in the marketplace. Affirmative marketing is often described as a type of quota. Nothing could be further from the truth. The real estate industry has had much to do with spreading this interpretation. The real issue is that communities in the south suburbs are telling Realtors they can not practice business as usual. Controls are being developed on an industry that has

had virtually no control and a major part of the offensive is being fought in Chicago. The National Association of Realtors would have you believe that we are the ones opposing open housing and that they are the ones cheering for "equal access."

Other ingredients that are included in the recipe for integration maintenance are: 1) public relations to overcome perceptions about the quality of life in integrated areas; 2) counseling of homeseekers, black and white, regarding all the options available to them; 3) racial data collection because a positive race-conscious approach to marketing cannot be done without knowing the racial makeup of areas and/or the demand for housing in a given location; 4) anti-solicitation provisions in ordinances to control panic-peddling; 5) for sale sign bans to control any potential panic; 6) preferred Realtors programs to reward those Realtors who obey the law and practice affirmative marketing; 7) economic incentive programs that encourage pro-integration moves (mortgage and rental assistance to blacks and whites making nontraditional choices); and 8) education programs for residents, Realtors, and other major institutional actors in the region. These activities, combined with aggressive enforcement of fair housing law, we think, can provide the option to those who choose interracial living and will ultimately move us closer to a whole society. After all, as a fair

housing poster contest winner wrote, "We share the same world, why can't we share the same street?"

Conclusions

It is clear that housing segregation exists. It exists because of the past and present effects of discrimination. The housing market continues to exhibit astounding levels of subtle discrimination and racial steering. Segregation damages individuals, communities, and institutions such as schools and businesses. Residential integration has the potential to alleviate many of our urban problems and discussion of these issues is critical to the advancement of civil rights in the eighties.

A real governmental commitment to ending discrimination is one step toward a better society. Passing the Fair Housing Amendments Act sponsored by Kennedy and Mathias this year is imperative to a more effective enforcement mechanism. Also, adequate funding of systemic investigations is critical to the future of truly free housing choice. It is not enough, however.

The new "issue of the eighties" is integration or (re)segregation as a way of life. The National Association of Realtors must be monitored in their efforts to undermine the racial balance of communities and a positive race-conscious approach must be taken to mend a severely divided system of housing delivery so that all people can participate equally.

Presentation

W. Scott Davis*

I am pleased to provide the U.S. Commission on Civil Rights with information on HUD efforts to enforce the prohibitions against discrimination in housing contained in Title VIII of the Civil Rights Act of 1968. We believe that progress has been made in providing equal housing opportunity, but we also recognize reality.

In the administration enforcement of the provisions of the Federal Fair Housing Law, the Office of the Assistant Secretary for Fair Housing and Equal Opportunity has experienced a substantial increase in complaint activity.

The numbers of fair housing complaints received increased from 3,039 in FY '80 to 5,112 in FY '82, an increase of 68 percent. During that same period, HUD increased its referral of Title VIII complaints to State and local agencies for processing. In FY '80, HUD referred 13 percent, or 410 of its complaints. In FY '81 the percentage of complaints referred increased by 305 percent to 1,661, or 39 percent, of the HUD Title VIII complaints. In FY '82 we experienced still another increase—2,679, or 52 percent of the complaints received, were referred to State and local agencies. This represents a 61 percent increase over FY '81.

Overall, the percentage increase of complaint referrals to State and local agencies from FY '80 to FY '82 was 553 percent.

In FY '80 a total of 2,860 Title VIII complaints were closed by HUD and recognized State and local agencies. In FY '81, 3,756 complaints were closed. In FY '82 a total 4,360 complaints were closed. Closures by HUD and State and local agencies have increased by 52 percent over the period.

In cases where HUD has conducted an investigation, determinations to resolve matters through conciliation are made in approximately one-third of the cases and conciliation is successful in about 60–70 percent of these cases. The success rate for State and local agencies is comparable.

Successful conciliations conducted in FY '80 resulted in 250 housing units being obtained. Between FY '80 and FY '82 the number of units obtained through conciliation efforts increased to

340. Additionally, HUD negotiated resolutions in a number of cases have resulted in the provisions of housing through rapid response processing. In 1982 HUD obtained housing for complainants in 71 cases through this process. In FY '80, HUD secured \$442,434 in monetary relief for complainants through conciliation. In FY '82, notwithstanding the dramatic increase in cases referred to State and local agencies, HUD secured \$601,163 in monetary relief for complainants.

Not only has there been an increase in complaint activity, there has also been a significant change in the nature of the conduct involved in complaints. The substantive character of discrimination has become more complicated and reflects pervasiveness and subtlety. While steering, blockbusting, and red-lining continue to exist, these forms of discriminatory housing practices have developed to a level of sophistication that makes detection and recognition difficult because of the myriad of activities that are carried out in association with these practices.

Historically, blockbusting was most commonly used to describe a phenomenon that occurred in a neighborhood experiencing racial transition—from white to black. These areas were primarily older urban areas and areas on the fringes of suburbia. Blockbusting was most frequently associated with rumors of racial change and solicitation for panic selling. Today, rapid transition in neighborhoods is encouraged through more subtle means and the lack of overtly discriminatory conduct in connection with commencement of blockbusting not only makes it difficult for persons to detect, but it also makes it difficult to halt the blockbusting trend. In addition, blockbusting practices are no longer confined to older or decaying neighborhoods. The practice now knows no boundary either in geography or social strata.

We encounter similar problems with steering. Steering involves efforts actively undertaken to influence the choice of a prospective home seeker because of race. This practice can occur in furthering another form of discrimination such as blockbusting in a neighborhood or stand alone. In either

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form, it represents a major obstacle to the exercise of choice in housing. The sophistication associated with steering has developed to almost unparalleled levels. The likelihood that a person will be told that they should not live in an area because of their race, color, religion, sex, or national origin or the race, color, religion, sex, or national origin of persons living there is remote today. However, we know that it is very likely that the range of housing choices made available to a person may vary significantly based on such considerations as race or national origin.

Soon after the passage of Title VIII, HUD recognized the need to address problems involving housing choice in programs administered by the Department. In response to this need, the Department issued its Affirmative Fair Housing Marketing Regulation in 1972. This regulation sets forth the policy of the Department to administer its FHA housing programs affirmatively in order to achieve a condition in which individuals of similar income levels in the same housing market area (usually the SMSA) have a like range of housing choices available to them regardless of race, color, religion, sex, or national origin.

The basic objective of our Affirmative Marketing Program is to assure that all persons are given an equal opportunity to be informed about the availability of housing. In order to achieve this, the marketing programs approved by HUD are designed to attract buyers and tenants from among all minority and nonminority groups. However, special marketing activities are undertaken to attract the persons least likely to apply for the housing.

Some may criticize the effectiveness of this program, but it has opened the door for all persons to obtain information about available housing throughout a housing market area regardless of their race, color, religion, sex, or national origin.

In July of 1977, the Assistant Secretary for FHEO conducted a fair housing administrative meeting on redlining and disinvestment. When the report of the meeting was published, its cover depicted a picture of a neighborhood that was partially encircled by a red line. At that time, the scene accurately portrayed the way that lending institutions had historically reflected the areas that were to be redlined. As years passed, the red line disappeared, but its devastating consequences have not diminished.

Secretary Pierce often has expressed his support of fair housing enforcement. He has also expressed

his support of the use of testing data when it is received in connection with a complaint and has reaffirmed his belief that testing data is one of the more important tools in battling discrimination in housing.

We are strengthening our enforcement efforts by actively cooperating with States and localities that also administer fair housing laws. Thirty States and 52 localities administer laws that have been deemed to be substantially equivalent to Title VIII. Just this past July, 12 of these localities were granted equivalency. We are now referring Title VIII complaints to 29 States and 38 localities for processing pursuant to their laws. Currently, we are financially reimbursing these States and localities for processing those complaints.

Secretary Pierce, as well as previous secretaries of HUD, has recognized that the major obstacle to the Department ineffectively administering the Federal Fair Housing Law is the lack of a strong enforcement mechanism.

President Reagan, in his 1983 State of the Union Message, pledged "to strengthen enforcement of the Fair Housing Law for all Americans." In July the President submitted to Congress an administration bill designed to enhance the Secretary of HUD's ability to deal with discriminatory housing practices through conciliation. As now provided in the Fair Housing Law, the Secretary of HUD receives and investigates complaints and proceeds to conciliation where it appears that the allegations in the complaint are substantiated. However, where conciliation fails, under the administration bill, unlike the process under the present law, the Secretary would be authorized to refer individual cases as well as pattern or practice cases directly to the Attorney General for judicial enforcement. The bill also provides stiff penalties against offenders up to \$50,000 for a first offense and \$100,000 for a second—in addition to injunctive relief.

The administration bill would make bigotry in housing a very expensive proposition for those who discriminate. The new law would not only deter discrimination but would provide offenders with powerful incentives to enter into conciliation, which we have found to be the fastest and most effective procedure. On the average, HUD conciliation produces a settlement within 100 days, which is much faster than any court or administrative hearing process is likely to be. Moreover, in 50 percent of these cases complainants are provided with a dwell-

ing. From my point of view, that's the most practical measure of the success of the conciliation process.

A similar bill to strengthen the Fair Housing Law—Mathias-Kennedy, or S.1220, in the Senate—has also been proposed, and the debate between the two is currently shaping up. A key difference between these bills is that S.1220, in addition to strengthening judicial enforcement, would establish an alternative administrative hearing process.

The Administration has rejected this alternative because it sets up an additional layer of bureaucracy and thus trips over its main purpose—speedy justice. In fact, the EEOC has an administrative hearing process in place—it is used for charges of employment discrimination by the Federal Government, not by private employers—and it takes an average of 440 days to reach a resolution. Compare that with the 100-day average we have achieved through conciliation.

Clearly the conciliation process provides the speediest relief. That's why the main thrust of the administration's bill is to bring the parties to the negotiating table as soon as possible, not to set up cumbersome, extra-judicial bureaucratic machinery.

The administration bill also expands the coverage of the existing Fair Housing Law to make it unlawful to discriminate in housing on the basis of handicap. The bill would extend the period of time available to individuals to bring civil suits, remove restrictions in the existing law relating to the award of attorney fees, and lift the ceiling on punitive damages that can be awarded in civil actions.

In enacting Title VIII of the Civil Rights Act of 1968, Congress embodied in our Federal Laws the concept of fair housing. Today more than 15 years after the passage of the Federal Fair Housing Law, to many, equal housing opportunity remains more of a dream than a reality. The enhancement of the informal conciliation process through an effective judicial enforcement mechanism will not only establish a deterrent to discrimination, but also an awareness of the governmental interest in the achievement of fair housing. The coupling of these principles, in my opinion, will reduce not only overtly discriminatory actions, but the incidence of subtle discriminatory conduct which are the backbones of practices such as blockbusting, steering, and redlining.

Hispanic America: Limited Housing Options

Jose S. Garza*

Theoretically, housing takes into account the needs of people. Design, location, facilities, and maintenance are all key factors in meeting the housing needs of millions of people across the Nation, and it is assumed that the best way to determine these needs is to ascertain what people want. In making this determination, a myriad of factors have to be considered and their influence on one another must be examined.

Foremost among these factors is the environment created by those housing efforts. This environment will reflect the life that individuals communicate to others and transmit to succeeding generations, thereby charging housing efforts with much more importance than "just" the erection of buildings. Housing is a part of the total environment which affects humans in the way they feel and behave, and the characteristics of this environment are important because they condition the development of young people and, thereby, of society.

It is precisely because housing has such profound effects on individuals that it is important that everyone have decent housing. Present housing trends in America are not representative of what people want; rather, they represent the limited choices people have. Thus, instead of being able to create an environment through wants that reflect their civilization, people across the country are finding themselves surrounded by an unsupporting and stifling environment.

Hispanics are especially affected by the present housing situation because of their particular characteristics. Although problems in housing have unique aspects that may vary among diverse Hispanic subgroups (Mexican Americans or Chicanos,¹ Puerto Ricans, Cubans, and persons of Central or South American origin) in different geographic regions of the country, the Hispanic population, overall, is especially vulnerable in the present housing situation because of several characteristics—generally lower levels of income, education, employment, and homeownership; overwhelming concentration in metropolitan areas and inner-city areas with greatly

limited housing choices; a substantial number of families larger than the national average, with many of these families at low-income or poverty levels; and a rapid increase in the number of Hispanic children and youth requiring adequate housing in safe and healthy environments. As a result, among Hispanics there is a significantly large, and growing, subpopulation that is underhoused, ill-housed, overcrowded, and heavily influenced by a constrictive, often adverse living environment.

The relocation of industries to suburbia has left central cities with fewer jobs and with an insufficient tax base to provide necessary municipal services. Housing left behind by "white flight" is older, in worse condition, and in less desirable neighborhoods than its counterpart in suburbia. As a result, financial institutions and even residents have disinvested in the urban housing stock. Many of our barrios (i.e., neighborhoods where the predominant population is Hispanic) have become wastelands where crime, pollution, poverty, and psychological deterioration are common occurrences.

Housing, community development, and civil rights laws have had only minimal impact on Hispanic and other minority communities because there has been no real commitment to integrated housing or to the development of adequate housing in these communities. The early administration of mortgage insurance and loan programs established a pattern detrimental to these communities. The Federal Housing Administration's Underwriting Manual from 1935 to 1950 warned of ". . .the infiltration of inharmonious racial and national groups. . .a lower class of inhabitants. . .(or the) presence of incompatible racial elements in new neighborhoods." Zoning and racial covenants were used as devices for exclusion. Thus was established a discriminatory system with a bias against Hispanics and other minorities. Despite some recent efforts to address this well-rooted problem, the patterns and practices of this system have not yet been eliminated—in fact, many would argue they are still quite common.

ences among Americans of Mexican descent or origin for designation by one or the other term.

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¹ The terms "Mexican Americans" or "Chicano" are used interchangeably in this report. This is to accommodate prefer-

Segregation into barrios affects the cost and quality of Hispanic housing. The roots of segregation are multiple. To some degree Hispanic preference of living in ethnic enclaves promotes segregation as it has for other ethnic groups. But mere preference alone is an unsatisfactory explanation. Indeed Hispanic preference itself is conditioned by the anticipation of discrimination and animosity in non-Hispanic neighborhoods. Traditionally there has been an historical pattern of exclusion by whites. In the Southwest, for example, it was common for city ordinances to establish areas of the city in which Chicanos could live, and restrictive covenants excluding Chicanos were often employed. Overt discrimination of this type is now illegal; however, Realtor "steering" of Hispanic homeseekers to Hispanic neighborhood remains a formidable problem.

The available evidence suggests that Hispanics tend to reside in segregated communities. In the New York and New Jersey areas in 1960, Puerto Ricans were so segregated that 75 to over 80 percent would have had to move in order to create an integrated environment. And in the Southwest in 1960, roughly 50 to 60 percent of Mexican-Americans would similarly have had to relocate to produce desegregation. Analyses indicate that the degree of residential segregation had abated somewhat by 1970, with Chicano segregation, for example, reduced by an average of over 7 percent. Nonetheless, segregation was still predominant and several communities had actually increased their levels of Hispanic segregation.

There are several ways in which segregation impacts on Hispanic housing. Indirectly, segregation reduces employment and educational opportunities, which in turn limit income and restrict housing choices. This reduction of housing alternatives renders Hispanics less able to take advantage of "trickle-down" housing in other neighborhoods. In addition, Hispanic housing options are severely constrained due to both financial institution choices which lead to investment in higher social-class areas and to "redlining" which limits investment in barrios. Finally, the laws of supply and demand play a role. If there is a large and growing demand by Hispanics seeking housing and a sharply limited supply of housing in residentially circumscribed barrios, then the cost of housing to Hispanic consumers tends to be higher. This pattern helps to explain why Hispanics pay about as much for

housing as do whites but obtain units which are considerably less satisfactory.

Federal housing programs have done an excellent job of providing single family housing for middle income families. Hispanics who disproportionately come from lower income households are not expected to now live in these new homes, although they share the American dream of homeownership. They are expected to improve their housing conditions primarily through the trickle-down process. Therefore, the provision of hand-me-down housing is totally dependent upon the demand for housing by the affluent. Housing for the lower income groups, then, is only an indirect result of housing policy directed at the middle class and the construction industry. Housing normally does not filter down since residential discrimination prevents much of the used housing from becoming available to Hispanics and other minorities. Additionally, it appears that the preoccupation with single family residential units prevents the adequate provision of satisfactory rental units which may be within the financial capabilities of most Hispanics.

The national economy is experiencing serious inflation and recession. While these conditions negatively affect all American families, their impact on Hispanics is especially severe. First, as unemployment grows, large numbers of Hispanics in the secondary labor market, which is characterized by low skill jobs of minimal security, find themselves without steady income. The "last-hired, first-fired" truism accurately describes the marginal position of Hispanics in our economic system. Whereas the inverse relationship between income and housing problems is obvious, less recognized are the inflation created problems. Inflation, with its high mortgage rates, prevents the nonhomeowning Hispanic population from entering into the housing market because of the limited amount of available mortgage money. As interest rates increase, so do the qualifying criteria as well as the cash required to purchase a home. The end result is what can best be termed as "rational redlining." This completely understandable attempt on the part of financial institutions to avoid high risk in economically unstable times means that the poor, many of them Hispanics, must bear a large and unfair proportion of the total economic burden.

Two issues related to the present tax structure deserve comment. One deals with the collective implications of the tax code and the other pertains to

the impact on individual families. At the collective level, local tax policy can play a significant role in impeding the rehabilitation of distressed neighborhoods. Unlike construction costs which can be amortized over a long period of time, rehabilitation expenditures include, in many cases, a substantial and immediate property tax increase which must be supported by higher rents. Additionally, the tax treatment of repairs as capital improvements and not as operating expenses often acts as a deterrent to rehabilitation.

On the individual level, the present tax structure prevents the deduction of property taxes and mortgage interest by most Hispanics because most Hispanics are renters. Moreover, the poor normally do not file itemized tax returns required to secure such tax advantages.

The section 8 program does not allow Hispanic renters who do not wish to move the opportunity to upgrade the quality of their housing. Even for more mobile families, it imposes significant consumption costs since they have to seek and find appropriate housing which will qualify for this particular subsidy. It, therefore, presumes the possession of considerable psychic, informational, and economic resources not normally associated with low-income populations. This is at least partially responsible for the low participation rates of Hispanics in the program.

Exclusionary zoning has impacted negatively on housing opportunities for minorities generally and the Hispanic community in particular. Many types of exclusionary land use controls have been used, including such devices as large-lot zoning, prohibition of multiple family dwellings, minimum floor space, subdivision regulations, frontage and setback requirements, adult-only complexes, and the prohibition of mobile homes.

The result has been exclusion and the perpetuation of racially, culturally, socially, and economically homogeneous communities. Such policies have also exacerbated the already high cost of housing for Hispanics. As a consequence, new subsidized housing has seldom been built where it is most needed in suburban areas experiencing the greatest expansion in employment opportunities for Hispanic workers.

Hispanics are more susceptible to housing displacement than most segments of the population because a disproportionate number of them are located in low rent and declining central city

neighborhoods. These barrios have been targets for redevelopment because residents, many of whom are poor, lacked the political or economic clout to resist the destruction of their neighborhoods.

The Hispanic displacement experience mirrors that of blacks. A study conducted by the National Hispanic Housing Coalition revealed cases of Hispanics' displacement in such cities as Phoenix, Arizona; Albuquerque, New Mexico; and Newark, New Jersey. This displacement is a result not only of private market action but the Community Development Block Grant Program and Urban Development Action Grant Program are prime contributors to the problem. In Phoenix 70 percent of displaced persons were Hispanics resulting from Community Development Block Grant Programs.

Many Hispanics have and are experiencing discrimination in the housing market. A Department of Housing and Urban Development study showed that Mexican-Americans are discriminated against in the housing rental market in the Dallas area. The study finds that dark-skinned Chicanos encountered blatant forms of housing discrimination much more often than light-skinned Chicanos. The study also finds that, at least in the Dallas rental market, light-skinned Chicanos appear to encounter discriminatory treatment about as often as blacks, while dark-skinned Chicanos appear to encounter discriminatory treatment more often than blacks. That dark-skinned Chicanos in Dallas are discriminated against significantly more often than either blacks or light-skinned Chicanos is clearly the most important finding of the study. There are several possible explanations why dark-skinned Chicanos encounter more discrimination.

One explanation could be that different rental agents discriminate for different reasons and that dark-skinned Chicanos, as a groups, are discriminated against not only by agents who discriminate against Chicanos, per se, but also by agents who discriminate because of skin color. Another explanation could be that rental agents are more averse to renting to Chicanos with dark skins because they consider them to be less assimilated or of lower socioeconomic status than those with light skins. It is also possible that dark-skinned Chicanos are more likely to be thought of as illegal immigrants.

It is the writer's opinion that the Dallas experience is not an exception to the general treatment of Hispanics in the housing market.

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Urban Revitalization or Gentrification and Dislocation

The Extent, Causes, and Consequences of Urban Gentrification

Daphne Spain*

Urban gentrification refers to the renovation of deteriorated inner-city housing by young middle-class residents. It is a highly visible process and thus has attracted more media attention than its actual numbers may warrant. A newly painted row of houses in the midst of a former slum makes good press after decades of urban decline. "Urban pioneers" were coming back to the city in the 1970s to create an urban renaissance (Newsweek, 1978; Peirce, 1978; Sutton, 1978; Williams, 1977). Implicit in the tone of these stories was that whites would come back to "save" cities from becoming more black. This has not happened, as later statistics will demonstrate. Even calling the phenomenon "back to the city" is a demographic misnomer because it suggests renovators have moved back to central cities from suburbs. In fact, most renovators were central city residents before they moved to their new neighborhoods (see Laska and Spain, 1980).

The typical renovator is a highly educated white homeowner, middle-to-upper income, and has a professional or managerial occupation. He or she is probably part of a dual-earner household (whether married or unmarried) and is usually childless. The household the renovator replaces is harder to classi-

fy. It may be white, black, Hispanic, or white ethnic, but it is undoubtedly poorer than its successor. Sometimes the elderly are hardest hit by changing housing values; sometimes renters are the first to feel the brunt (see Cicin-Sain, 1980; Myers, 1982; National Urban Coalition, 1978; U.S. Department of Housing and Urban Development, 1979). This side effect of gentrification, known as displacement, has implications for urban housing policy. This paper attempts to summarize current knowledge about gentrification and displacement by describing the extent, some causes, and some consequences of the phenomenon.

How Prevalent Is Gentrification?

The Statistics

The earliest and most often cited reference to a national trend in gentrification is the 1975 Urban Land Institute survey of public officials and real estate experts in 143 cities (Black, 1975). The survey found some form of private-market renovation in older deteriorated areas taking place in almost one-half of sample cities with populations of 50,000 or more; the proportion rose to 73 percent among cities

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of 500,000 or over. A followup survey conducted in 1979 indicated renovation had accelerated and was occurring in 86 percent of cities with over 150,000 residents, compared with 65 percent in 1975 (Black, 1980).

An Urban Institute study of housing and population trends in major metropolitan areas from 1970 to 1975 used the Annual Housing Survey and the Survey of Residential Repairs and Alterations to measure the extent of gentrification. Analysis showed that for the first time in 1973-75, median housing values and median gross rents rose faster in central cities than in suburbs. There were also small but significant increases in homeownership in central cities between 1970 and 1975. During the same period, median home improvement expenditures by central city homeowners rose abruptly and actually exceeded suburban expenditures rates (James, 1977). Since housing values, homeownership, and improvement expenditures traditionally are higher in suburbs than central cities (U.S. Bureau of the Census, 1981a), these shifts were taken as indicators of increased renovation activity in the early 1970s.

Starting around 1977, a series of books and articles documenting the extent of gentrification began to appear on an almost yearly basis. The Urban Land Institute conducted another survey of renovation which focused on five cities (Black, et al., 1977). Census data of a sample of the 20 largest metropolitan areas in 1970 provided weak support for an increase in the number of central city, middle-class neighborhoods between 1960 and 1970 (Lipton, 1977). A study using Polk City directory data for nine middle-sized cities found renovation in such places as Cincinnati, Rochester, and Milwaukee (Henig, 1980). A survey of public officials and citizen groups in the country's 30 largest cities found home improvements in 53 core neighborhoods (Clay, 1979).

National Annual Housing Survey data for all central cities indicates support for "uplifting" of housing for the first time in the mid-1970s. Whereas traditional urban theory predicts that housing "filter down" to households of lower socioeconomic status (Lansing, et al., 1969; Lowry, 1960), white central city households were more likely to have higher education and income than the black households they replaced in 1975 than in 1967 (Spain, 1980).

A series of case studies added details for individual cities like Philadelphia (Levy, 1978), Washington, D.C. (Gale, 1979; Goldfield, 1980; Henig, 1981a),

New Orleans (Laska and Spain, 1979; Laska et al., 1982; O'Laughlin and Munski, 1979), Boston (Auger, 1979; Goetze, 1979; Pattison, 1977), Atlanta (Bradley, 1978; Chernoff, 1980); Seattle (Hodge, 1980), Columbus, Ohio (Fusch, 1980), and Charleston, S.C. (Tournier, 1980). Recently completed research indicates that gentrification continues to be highly visible in such cities as Boston (McDonald, 1983), Nashville (Lee and Mergenhagen, forthcoming 1984), New Orleans (Laska and Spain, 1983) and Washington, D.C. (Lee et al., 1983).

The Statistics in Perspective

There is little doubt now that gentrification is occurring in some form in almost all large cities. But are the numbers of renovators large enough to offset years of population decline? Census statistics show that they are not; central cities are still losing population. More people continue to move out of cities than move in. The 1980 census recorded a net loss of over 700,000 persons (1 percent of the total) from all central cities in the past decade (Spain, 1981). Table 1 shows the population loss of central cities at the beginning and end of the 1970s.

One interpretation of the table is that population loss has at least slowed, particularly among whites. Although true, the changes are not statistically significant (U.S. Bureau of the Census, 1981b), and do not lend support to the image of a back-to-the-city movement. Part of the publicity surrounding gentrification was that whites were coming back to central cities, yet the data do not support the media myth. There is little evidence of an increase in the proportion of whites in gentrifying neighborhoods of major U.S. cities (Spain, 1981). The proportion of whites replacing central city black households was a growing but still minor portion (4 percent) of all central city housing successions in the mid-1970s, and there was a net gain in the proportion of black-occupied housing units in central cities in the 1970s. There were still numerically and proportionately more blacks replacing whites than whites replacing blacks (Spain, 1980). From a purely demographic perspective, "the urban crisis has not left town." (See Allman, 1978).

There appear to be continuing problems from a financial standpoint as well. One of the hypotheses regarding gentrification is that rich renovators will bring high incomes back into cities. On the local level, renovators have been shown to have incomes higher than the average for their cities (Gale, 180;

TABLE 1**Mobility of the Population Into and Out of Central Cities, by Race, 1970–75 and 1975–80**
(Numbers in millions)

	Total	1970–1975		Total	1975–1980	
		White	Black		White	Black
Movers out of central cities	13.0	11.8	1.0	13.2	11.8	1.2
Movers into central cities	<u>6.0</u>	<u>5.2</u>	<u>0.7</u>	<u>6.9</u>	<u>6.0</u>	<u>0.7</u>
Net change	-7.0	-6.6	-0.3	-6.3	-5.8	-0.5

Source: U.S. Bureau of the Census, 1975: Table 1; 1981a, Table 1

Laska and Spain, 1979; Leach, 1978). However, national data do not show a narrowing of the traditional income difference between cities and suburbs. To the contrary, Long and Dahmann (1980) found that the median income gap between central city and suburban families actually widened between 1959 and 1977. Realizing that many renovating households may not fit the Census Bureau's definition of a family, the authors also measured changes in per capita income. They found limited support for a smaller per capita gap between cities and their suburbs but concluded that, "In none of the 20 largest SMSA's was there evidence of narrowing the city-suburb income gap on both a per person and a per family basis." (Long and Dahmann, 1980:20). Their conclusion was that there may exist "pockets of plenty" (see Nathan, 1979) in some large cities, but they are not yet numerous enough to raise overall city income in relation to suburban income.

This review of the existing literature has documented the extent of gentrification and attempted to place it in demographic perspective. But what of its causes and consequences? The next two sections address those issues.

What Causes Gentrification?

The Baby Boom

The large increase in the number of household formations which accompanied the aging of the baby boom is one strictly demographic explanation for renewed interest in city living. Young and single adults traditionally have chosen cities over suburbs for school, job, or recreational reasons (Frey and Kobrin, 1982; Long and Glick, 1976). Young persons who formed their own households in the 1970s were thus not acting differently from previous generations; there were just proportionately more of them than in the past (Newitt, 1983). The baby boom cohort of 1950–55, for example, was aged 20 to 25 in the mid-1970s. Not only were baby boomers reaching prime household formation years at the time when gentrification began, but age at marriage was being postponed so that more single person households were being formed (U.S. Bureau of the Census, 1981c).

One theory is that the pace of gentrification will slow as the baby boom ages (Newitt, 1983). Another theory is that renovators will leave the city for the suburbs when they begin to have children. Yet

studies in at least two cities report a sizeable proportion of renovating households with school-age children (Laska and Spain, 1979; McDonald, 1983).

Historic Preservation

The Bicentennial celebration in 1976 gave the historic preservation movement a big boost. Americans were reminded of the value of their heritage, and old houses were one tangible artifact that could be salvaged. The first spotty efforts at renovations preceded the Bicentennial by almost 10 years, yet the mood of the country was more receptive to gentrification in the 1970s. Whereas the 1960s were characterized by urban renewal that demolished many old neighborhoods, the 1970s were marked by a preservation effort.

Designation of a building as an historic landmark often serves as a catalyst from which private renovation proceeds. Cities like Alexandria, Virginia; Savannah, Georgia; and Charleston, South Carolina have experienced extensive residential rehabilitation after developing historic districts (Tournier, 1980; Williams, 1980). The Urban Land Institute survey mentioned earlier found that 65 percent of its sample cities experienced renovation in historic areas (Black, 1975).

Many renovators cite the architectural quality of old houses as among the reasons they choose city living. Real plaster walls, hardwood floors, high ceilings, fireplaces, and original ornate mouldings are features that cannot be purchased in newer suburban homes. The fact that extensive (and expensive—sometimes exceeding the original cost of the house) repairs have to take place before these qualities are restored are part of the charm of the renovation experience. The Realtor's term "handyman's dream" took on new meaning in the heyday of gentrification.

Employment

The neighborhoods in which most gentrification occurs are within 2 to 3 miles of the central business district (CBD) (Lipton, 1977; Spain, 1981), or near mass transit that makes the CBD easily accessible. Some renovators prefer to walk to work (McDonald, 1983).

Many large cities have lost employment to their suburbs (Black, 1978), but there is evidence that downtown office space increased between 1970 and 1975 and that service and government employment

expanded (Black, 1978; Myers, 1982). Capital cities such as Washington, D.C., Atlanta, Georgia, and Boston, Massachusetts often provide the stable white-collar employment characteristic of renovators.

A central location and high proportion of white-collar jobs make it easier for two-earner households to work and live in the same area. The proportion of women in the labor force grew rapidly in the 1970s and was accompanied by a decline in fertility (Spain and Bianchi, 1983). Households without children have a greater proportion of disposable income to spend on housing. Although one income might have been sufficient to buy an empty shell at the beginning of the decade, by the end of the 1970s two substantial incomes were usually needed to finance the elegantly renovated townhouse off Dupont Circle.

Urban Amenities

"Amenities" encompass a wide variety of factors that go into the decision about where to live. Urban amenities include such things as good theater, museums, and libraries. The advantages of a wide variety of cultural activities are usually mentioned first, but urban amenities can also include good restaurants, shopping, parks, playgrounds, and hospitals. Many renovators have listed easy access to such goods and services as reasons for their choice of city over suburb (Laska and Spain, 1979; McDonald, 1983). Some of the "disamenities" include fear of crime (Gale, 1980; Laska and Spain, forthcoming 1983; McDonald, 1983), but renovators seem willing to cope with such problems.

Gentrification has had both positive and negative consequences. The benefits are often most visible from a city's appearance, while the costs tend to accrue to displaced individuals.

Consequences of Gentrification

Consequences For Cities

Most tourists would agree that cities are prettier to look at now than 10 or 20 years ago. Blocks of slum or abandoned housing have been converted to stylish townhouses. Rundown waterfronts and old produce stalls have been developed: Harborplace (Baltimore) and Faneuil Hall (Boston). Referred to by one ascerbic observer as "the butcher-block and ferning of America," gentrified neighborhoods tend to share a certain common appearance.

Local officials were initially optimistic that higher income households might strengthen the city's financial base. By replacing "dependent" citizens with "productive" ones, the tax coffers would be enlarged. Existing evidence suggests this has not occurred, however. In Washington, D.C., for example, property assessments rose by 150 percent between 1977 and 1981, yet taxes increased by only 49 percent (Myers, 1982).

A further complication is that renovators often demand more than their predecessors in the way of city services. Once the property is improved, new homeowners want regular trash pickup, well maintained roads, and good police and fire protection (Laska and Spain, 1979). Low-income residents undoubtedly want the same services but have less political clout with which to achieve their preferences.

One question associated with gentrification is how it will affect racial residential segregation. It might lower segregation if whites move into black neighborhoods or it might raise segregation if whites displace blacks completely. Little empirical work has been done on this issue. Ten cities with high visible gentrification experienced black population losses inconsistent with black gains in other cities. In 1970, 52 percent of blacks living in these 10 central cities lived within 3 miles of the central business district; by 1980 that figure had declined to 43 percent. In contrast, about one-third of central city whites lives near the CBD at both dates. The rates of black deconcentration was, therefore, greater than the rate of white deconcentration (Spain, 1981).

Since the 10 sample cities had large proportions of blacks, a decrease in the proportion black and stability in the proportion white should result in decreased levels of segregation (Taeuber and Taeuber, 1965). Recently completed research on Washington, D.C., supports this hypothesis. An examination of census block and tract data indicated that between 1970 and 1980, "the revitalizing core of the city became substantially whiter and less segregated, consistent with the displacement and, temporarily, the integration hypothesis." (Lee et al., 1983:24). The temporary nature of the decline in segregation is stressed because these neighborhoods may still have been in transition in 1980; there is no way to know whether they will eventually become more white and more segregated.

The consequences of population change, whether racial or ethnic, have resulted in conflict in some

transition neighborhoods. Newcomers want to restore old houses to their original appearance, while oldtimers have worked hard to modernize their houses with aluminum siding (Levy, 1978). Parking suddenly becomes a problem when two-car households move in and youngsters don't have access to the same turf they once did (Levy and Cybriwsky, 1980). Even businesses change in character, from mom and pop stores and corner bars to boutiques and quiche restaurants (Chernoff, 1980). This "clash of cultures" reflects differing definitions of what a neighborhood should be.

The economic benefits generated by places such as Detroit's Renaissance Center (RenCen), Atlanta's Plaza, and Baltimore's Harborplace are hard to assess. They have attracted private investment and a large number of visitors. But they have received varying degrees of positive press. Harborplace, as one of the newest efforts, is popular now, but so was RenCen in its day. Rumors of high vacancy rates, deserted shops, and dangerous corridors raise the suspicion that the Renaissance Center may be the Pruitt-Igoe of the 1980s.

The economic benefits of gentrification for cities may not be immediately evident. What is more clear is that gentrification can have very abrupt effects on individuals who are displaced.

Consequences For People.

Although not much easier to measure than economic development, displacement seems to occur almost immediately in the wake of gentrification. Published reports of the problems associated with displacement began to appear simultaneously with those applauding the urban revival. *Preservation News* (March 1978) was one of the first to ask, "Is Preservation Bad for the Poor?". A brief review of the literature on displacement uncovered at least 16 other publications in 1978 and 1979 (Cybriwsky and Levy; Dolbeare; Eckert; Gale; Grier and Grier; Hartman; Kollias; National Urban Coalition; *Savings and Loan News*; Schnare; *Seller/Service*; Sternlieb and Ford; Sumka; Washington Urban League; Weiler; Zeitz). Such widespread public concern was instrumental in generating the U.S. Department of Housing and Urban Development's interim *Displacement Report* by February 1979.

The HUD report summarized the difficulties associated with research on displacement but failed to reach a conclusion about the number of people affected. Estimates from their own Annual Housing

Survey were that more than 500,000 households nationally were displaced by private and public action each year between 1974 and 1976, the largest proportion of whom were central city residents (U.S. Department of Housing and Urban Development, 1979). Fourteen percent were displacement by government action and the remaining 86 percent by private action (Meek, 1978). This means that approximately 430,000 households were displaced annually by private action between 1974 and 1976. The HUD Report estimated that all displaced households accounted for only 4 percent of the 14 million recent movers between 1974 and 1976.

An updated report to Congress placed the number of displaced persons between 1.7 and 2.4 million in 1979 (U.S. Department of Housing and Urban Development, 1981). If we divide the number of persons by average household size (2.8 in 1979), the number of households displaced in 1979 was 607,000 to 857,000, or almost double what it was at the middle of the decade.

The HUD report included estimates from the Griens' "reconnaissance" of displacement in 22 major cities. Their definition of displacement included involuntary moves beyond the household's ability to control despite the household's compliance with requirements of tenancy, and/or those moves caused by hazardous or unaffordable conditions (U.S. Department of Housing and Urban Development, 1979:5). This definition resulted in estimates of 100 to 200 households displaced annually in each city studied.

In-depth case studies place the numbers of displaced much higher than the figures cited by HUD. LeGates and Hartman (1982) report that 2,000 to 7,000 persons per year have been displaced in Denver, New Orleans, Portland, and Seattle since the mid-1970s. Their own national estimate is that "total annual displacement in the United States is approximately, and conservatively, 2.5 million persons." (LeGates and Hartman, 1982:53).

There are several reasons for the lack of agreement in the numbers of people displaced by renovation. The first is purely definitional. Is an older person who has watched his neighborhood decline over 30 years "displaced" when a renovator offers to buy his house at a good price? Not as clearly as when a low-income renting household has to leave a multifamily dwelling because it has been sold to a real estate speculator. In some cases displacement may precede renovation, particularly if maintenance

of housing and neighborhoods has suffered years of neglect and resulted in high vacancy rates.

However, probably the most compelling reason for the lack of good data is the difficulty of tracing displaced households. A few researchers have managed it in places like New Orleans (Rosenberg, 1977) and Boston (Pattison, 1977), and the Panel Study of Income Dynamics of 5,000 households has been used to attempt national estimates (Newman and Owen, 1981), but no survey or census adequately follows displacees at the national level.

Given the difficulties associated with measuring displacement, there can be no definitive answer to the question of how many people are affected. It should not be surprising, therefore, to find that it is equally difficult to describe the type of household displaced.

The only consensus seems to be that elderly households experience a high risk of being displaced (Eckert, 1979; Henig, 1981; LeGates and Hartman, 1982; Myers, 1982; Rosenberg, 1977; U.S. Department of Housing and Urban Development, 1979). There is less agreement on almost every other demographic characteristic.

For example, there is a common assumption that whites displace minorities, yet there is mixed evidence on the issue. Blacks have not been affected in neighborhoods that were predominantly white ethnic before gentrification occurred. These include the Irish Channel and Lower Garden District in New Orleans (Rosenberg, 1977), Queen Village and Fairmont in Philadelphia (Levy and Cybriwsky, 1980), and Inman Park in Atlanta (Bradley, 1978; also see Henig, 1980). At least two studies have found increases in black occupancy rates in gentrifying neighborhoods (Lee and Mergenhagen, forthcoming 1984; O'Laughlin and Munski, 1979). Still others have found definite evidence of a decline in the black population in renovating areas (Clay, 1979; Tournier, 1980; Washington Urban League, 1979; Zeitz, 1979).

Renters, those with low incomes, female-headed households, and blue-collar households are also at risk of being displaced (Clay, 1979; LeGates and Hartman, 1982; U.S. Department of Housing and Urban Development, 1979; Washington Urban League, 1979). There might be exceptions to these categories in any one city, but the common denominator among those at risk of displacement is powerlessness in the face of market forces. Some households displaced by renovation in the 1970s appear to

have been displaced by urban renewal a decade earlier (Nager, 1980; U.S. Department of Housing and Urban Development, 1979). Whether subject to public or private action, poor, elderly, and minority households have fewer resources with which to exercise their housing choices.

Various studies have shown that displaced households move only short distances and thus may be subjected to repeated displacement (Cicin-Sain, 1980; Rosenberg, 1977; U.S. Department of Housing and Urban Development, 1979). Involuntary moves, even from a neighborhood defined as a slum, take a psychological toll. Urban renewal in the West End of Boston forced the displacement of several hundred households, disrupting the social network of family and friends. Fried (1963) found that these people were "grieving for a lost home" that outsiders could not understand. The social and psychological consequences are even more difficult to measure than the numbers or types of households displaced, but they are often the only consequences that matter to those involved.

Summary and Conclusions

Gentrification is taking place in some neighborhoods of almost every city in the country. National surveys, census data, and case studies all verify that the socioeconomic status of renovating neighborhoods has increased in the last 10 years. These are encouraging signs after decades of urban decline. However, optimism for the future must be tempered with the reality of numbers. Central cities are still losing population, and there is no hard evidence that

whites are coming back to the city in significant numbers.

Displacement of households has been one of the costs of gentrification. Just as the number of renovators appears to be an overestimated, the number of displaced households is only a small proportion of all movers. However, displacement affects a 400,000 to 800,000 households annually, and appears to be a growing problem. This many households include 1.4 to 2.4 million persons. Their housing and social well-being should not be ignored since they are characteristically households with the fewest resources.

What of the future of gentrification? Inflated housing prices and the difficulty of getting mortgages had slowed the rush of renovation by 1980. Some analysts think it is an urban issue of the 1970s, not of the 1980s. But the long-lasting effect of gentrification, and the sense in which it is symbolically a movement back to the city, is that a decade of positive press had made people reconsider cities as good places to live.

People of all ages are probably more likely now to at least consider living in cities rather than immediately rejecting them for the suburbs. Gentrification may prove to have been the product of baby-boom housing preferences combined with suitable housing and income sufficient to fulfill those preferences. But if it reintroduced the advantages cities have to offer, it will have served a useful purpose. Some people's tastes will have been permanently changed. After all, they're not building any more 19th century townhouses, and people who want them will continue to look to the city.

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Urban Revitalization or Gentrification and Dislocation?

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I am pleased to have been selected by the U.S. Commission on Civil Rights to prepare this paper as my 30-year professional career in housing and community development has been intrinsically linked to urban revitalization and dislocation. My paper is written after experiencing "hands on" relocation activities and policy-related responsibility at the local level in addition to policy and program development and review at the national level.

I have relocated displacees from New York City public housing sites in Harlem. I have supervised the relocation activities of urban renewal redevelopers from the New York City Committee on Slum Clearance. I was on the Relocation and Racial Relations staff of the Urban Renewal Administration in the Housing and Home Finance Agency (HHFA, now HUD), New York Regional Office. As executive director of the East Orange, N.J. Redevelopment and Housing Authority for 10 years, I oversaw the relocation of families and businesses from 3 urban redevelopment sites and 3 public housing sites. The Authority contracted with the New Jersey State Highway Department to perform the relocation of families and businesses in the path of a Federal highway that passes through the center of the community.

I thoroughly understand the problems of dislocated families and businesses and am proud of my track record for effectively dealing with their needs. I also understand the problems of those persons responsible to see that they are adequately provided for within the limitations of available resources.

In 1970 I moved to Washington as I accepted a professional staff position with the National Association of Housing and Redevelopment Officials (NAHRO). I had the responsibility for working on these and other related issues at the national level. Since 1978 I have been on the staff of the National Association of Home Builders, where I have had staff responsibility for urban revitalization issues. I understand the national policy issues that pertain to urban revitalization and dislocation and am prepared to share with you the benefit of my experience.

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Dislocation has been a problem of significant concern for the past 50 years. It has impacted primarily upon the poor, minorities, the elderly, and female-headed families, who have been primarily renters. Before we can look at the problem in the 1980s, we should first track the critical path that local and national government has taken to deal with displacement. What have we learned from the past that should be applied to the future? What resources exist to assist with the dislocation problems of today?

Public Housing Dislocation

In the 1930s the Slum Clearance and Public Housing Act was passed by the Congress. It is designed to bring about the demolition of substandard buildings and replace this inadequate housing with low-rent public housing units. The replacement housing is designed and built by local housing authorities using tax-exempt bonds for its financing.

During the first two decades of the public housing program, little direct attention was given to the dislocation problem. Those families who qualified for admission to a public housing project were given a top priority for vacancies in existing developments or to return to the new units when they were completed. Many persons did not qualify for admission because they were single, had not achieved citizenship, made too much income, were living out of wedlock, had a prison record, or had undesirable social habits, etc. These dislocatees were requested to relocate themselves.

Past studies have indicated that many of the ineligible displacees moved to other substandard housing nearby. Often they were forced to accept overcrowded conditions and higher rents. Those who could not find new housing were often relocated by the housing authority to other buildings on the site with a later schedule for demolition. When they needed to be demolished, the dislocatees were often relocated to other slum clearance sites in the community.

In large cities there emerged a group of nomads who kept moving, from site to site. This group

included a high percentage of minorities and elderly who quickly developed a sense of no hope. The low-income housing for the elderly program was not adopted until many years later. Discrimination in housing limited the availability of housing vacancies for minorities and the poor who were ineligible for public housing.

Many displacees could not afford the cost of moving or available new rents. Some stopped paying rent, abandoned their housing unit and furnishings, and either moved in with friends or relatives or became "street people." Only those who could afford available private rental units or relocated into public housing were able to escape the effects of dislocation as slum clearance families.

Urban Renewal Dislocation

After World War II an acute national housing shortage and the public policy to redevelop our major cities brought about an expansion of family and business dislocation. The Housing Act of 1949 ushered in the urban redevelopment program. It was designed to clear slum areas and redevelop them with higher and better land uses. This program grew quickly, as illustrated by the city of New York undertaking 10 initial projects which required the displacement of several thousand families. This statute contained a unique provision that required the relocation of displacees and the payment of their moving expenses. This gave birth to the formal process of relocating families and business as we know it today.

Under the urban renewal planning process the local government was required to identify in its application to Housing and Home Agency (HHFA) the characteristics of families who would require relocation. This included size, financial capacity, housing type, location, etc. It was also necessary to deal with the special problem facing minorities. It was then necessary to establish that there would be adequate housing resources in the existing supply to meet all of the relocatees need. If this could not be done then the locality had to show that additional housing would be built to meet this need.

In addition to establishing relocation feasibility, it was also necessary for the locality to develop a formal relocation plan that dealt with the administration of the relocation program. A typical plan provided for a relocation office in the clearance area that was staffed by a director and sufficient assistants to handle the anticipated volume. The staff was also

responsible for the satisfactory management of the acquired properties until they became vacant and demolished.

The relocation staff was responsible for actually working as social case workers who identified each family's needs and worked closely with them until they were safely relocated into a satisfactory housing unit. In cases of emergency, families were located to other housing units on the clearance site. In all cases their relocation expenses were paid. Although this process did not always work perfectly, it was a vast improvement over the hands-off approach that had been used on public housing sites. The press liked to blow up any horror stories it could find and spent little time reporting on the many sound responsible relocation programs that took place across the country.

Relocation was not always performed by the staffs of local government. In New York City, for example, it was the responsibility of the redeveloper. Under that program redevelopment sites were acquired by the city under a blanket condemnation procedure and immediately sold to the redeveloper. As a part of the sales contract, the buyer assumed the responsibility for meeting all of the relocation requirements of the approved relocation plan. Several relocation real estate firms were formed which specialized in urban renewal relocation. They contracted with the developers and carried out the relocation plan. The city provided on-site inspection staff to see that this work was done satisfactorily.

In the late 1950s when the urban redevelopment process was expanded to include rehabilitation and conservation areas, it was renamed urban renewal. The rehabilitation of older buildings in the surrounding neighborhood provided a ready relocation resource for some displaced families. Lower income families often could not afford the new rents in these refurbished buildings. This was later overcome to a degree with the advent of the HUD rental assistance programs, section 23 and later, section 8.

As a requirement for urban renewal program funding, each community was required to develop a "workable program." This required the community to make a complete study of all its relocation needs. Dislocation by code enforcement, highway construction, private development, and nonrenewal public improvements had to be evaluated. A plan for the development of needed new housing was required, as well as careful consideration to the special relocation problems of minorities, very low income,

and the elderly. The workable program concept required local communities to deal with the relocation problem in its totality. When these programs were conscientiously carried out, the process of effectively dealing with the total dislocation problem was vastly improved.

Several large communities established a central relocation service to approach the dislocation problem in total. These agencies provided assistance on a communitywide basis and served as a catalyst for the development of new housing resources to meet the anticipated relocation needs. Although the need for relocation is down somewhat from the highs of the 1960s and early 1970s, a number of these central relocation agencies are still functioning today. Some continue to function in order to meet the requirements of State and local legislation.

Problems of Minorities

The problems related to dislocation and gentrification during this early period were more serious for minority families. Prior to the enactment of Federal and State fair housing laws and even thereafter, many minorities were denied the right to rent or buy housing in certain neighborhoods. Although the process of relocation served to eventually open up many of these areas, the process of locating a new home was a difficult one. Landlords often charged higher rents to minorities because they had to find housing in a much tighter housing market. They were victims of supply and demand. It, therefore, became the responsibility of the relocation agency to work for the increase of housing for the minority community. This was slowly achieved in many areas, and the result was often the gradual abandonment of these neighborhoods for the suburbs by their former occupants.

The problem of the minority family in relocation was twofold, both racial and economic discrimination. It was doubly hard to find a decent, safe, and sanitary unit at a rent they could afford that was reasonably accessible to their place of employment. Some wound up in overcrowded conditions and paying higher rents. Adequate housing was found for many others. In the initial stages of relocation in the 1950s and 1960s, the chief problem was racial discrimination. As racial acceptance grew through the 1970s and inflation grew rapidly, the chief problem had now become affordability. Many minorities simply cannot afford the cost of adequate housing, even though they would not be prohibited

from renting or buying. On the other hand, the emergence of a large minority middle class in the 1970s has broken many of the racial barriers that existed in our housing markets, as they have overcome economic discrimination barriers.

The common thread that has existed throughout the 50-year relocation process is that poor people cannot afford to pay the price for decent standard private housing. The supply of subsidized and assisted standard housing is still not adequate to fully provide for our lower income population.

Uniform Relocation Act

The Congress adopted the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to mandate uniform relocation requirements for all Federal and federally assisted programs. It requires and directs the heads of Federal agencies to consult together to establish uniform procedures for the administration of relocation activities across all the Federal programs. Each of the Federal agencies have published similar regulations in the *Federal Register* which have improved the consistency of treatment of affected property owners and displaced persons. Although the programs of the Department of Housing and Urban Development (HUD) and Department of Transportation (DOT) have traditionally been the chief source of dislocation it is essential that all persons being displaced by Federal programs be given equal treatment under the law.

These uniform regulations are very comprehensive and some of their provisions require that. . .

1. owners be offered just compensation for their property.
2. owners and renters be charged fair rent until they are relocated.
3. there be fair appraisal practices used to establish property value.
4. a comparable replacement dwelling be provided.
5. replacement dwellings be within a person's financial means.
6. property negotiations be conducted in a formal manner.
7. the dislocation agency must establish relocation feasibility and develop a satisfactory relocation program.
8. a notice of relocation eligibility be served on every occupant.

9. there be an availability of comparable replacement dwellings before displacement.
10. there be provided a relocation assistance advisory service.
11. there be a 90-day notice to vacate after suitable replacement housing has been made available.
12. moving expenses be paid for actual moving cost.
13. replacement housing payments be made for 180-day homeowners.
14. rental assistance payments be made for a 4-year period.

I believe the present regulations to be fair and reasonable when properly administered. Certainly, we have come a long way from the days where people were just asked to moved for the public good.

Recognizing that everything can be improved upon, the Congress has been considering proposed amendments offered by HUD to the Uniform Relocation Act that would make the program more acceptable. The proposed 1983 amendments would:

1. Reduce administrative burdens on State and local governments by establishing one lead Federal agency, which would write a single uniform regulation; delegate substantial administrative powers to the State for more flexibility to meet local needs and to allow States to develop their own implementing regulations.
2. Broaden coverage to promote greater fairness and equity.

would include persons displaced from federally funded rehabilitation programs.

would include persons displaced by private entities that have been granted the power of eminent domain.

create an entitlement for businesses and non-profits, up to \$10,000, to help them reestablish at the new site.

3. Raise payment ceilings to compensate for inflation

remove dislocation allowance ceilings for individuals.

raise maximum homeowners payment from \$15,000 to \$22,500.

raise maximum tenant payment from \$4,000 to \$4,500.

raise business payment ceiling, in lieu of moving expense, from \$10,000 to \$20,000.

4. Provide language clarification to improve administration in areas of:
 - mortgage interest rate differential.
 - allow property to be donated to Federal Government.
 - allow for public utility compensation.
 - direct HUD Secretary to give high priority under federally assisted housing programs to displaced families.
 - improve definition of "acceptable replacement dwelling."
 - protect against persons moving into an eligible area in order to obtain benefits.

Certainly, any or all of these recommended changes will strengthen and improve the relocation process. I personally hope the Congress sees fit to adopt them in this session.

Community Development Block Grant Program

In the mid-1970s the HUD urban renewal program was phased out in favor of the community development block grant (CDBG) program. The level of Federal involvement in the planning and implementation of urban revitalization at the local level has been greatly reduced. Although the Uniform Relocation Act is in full force and effect, the workable program concept no longer exists.

Local governments are still being required to meet their relocation responsibilities, however, there are very limited resources at the national level to monitor this activity. It has, therefore, become a matter of local responsibility. HUD and the other Federal agencies are in a position of responding to complaints against poor program administration. Very often the poor do not know how and to whom to complain. It is, therefore, not easy to get up-to-date readings on the state of the art.

Congress Directs a Displacement Report

In response to concerns expressed about gentrification and dislocation problems in some of our major cities, the Congress in the Housing and Community Development Act of 1978 directed HUD to:

1. Report on the nature and extent of displacement.
2. Submit recommendations for the formulation of a national policy both to minimize involuntary displacement under HUD programs and to alleviate the problems caused by displacement due to

publicly and privately financed development and rehabilitation.

In February of 1979 HUD submitted an interim displacement report to the Congress in response to that mandate. It highlighted the problems of defining and measuring the extent of displacement, presented some limited available data on the number of displacement related moves, discussed causes for displacement (especially private revitalization, disinvestment and government programs), and discussed relocation assistance under Federal programs.

The HUD report focused on the issue of displacement as a by-product of the development and rehabilitation of urban neighborhoods. It summarized the limited information available on the characteristics of "in-movers" and "out-movers" in case studies of revitalizing neighborhoods. In-movers tended to be white young professionals, who are single, or have small families. Out-movers generally were elderly households, minority households, and renters. The out-movers generally had fewer resources to compete within a costly and increasingly competitive housing market.

HUD recognized that displacement is a serious problem in some areas of major cities and is having substantial impact on the neighborhoods and individuals involved. They stated that public policy must seek to eliminate the adverse effects of revitalization and reinvestment on those with the least resources to cope with increasingly competitive housing markets. They called upon local governments to develop overall community development strategies which achieve a constructive balance between revitalization and the housing needs of existing residents. In effect, they are calling for the reestablishment of a "workable program."

Displacement can be a traumatic experience for any family, but it is especially difficult for lower income families whose housing choices are constrained by their income and by an inadequate supply of decent housing in a tight housing market. If the family must move far away to find decent, affordable housing, loss of neighborhood ties and familiar surroundings can create a sense of deterioration, which may have long-term effects.

While the data available to HUD suggests that highly-publicized, intensive displacement occurring in many specific neighborhoods may not be a national phenomenon, trends suggest that the general position of low- and moderate-income households in the housing market is likely to worsen in the

future. The continued reduction in the supply of available low and moderate cost housing due to abandonment and disinvestment has further reduced the housing alternatives of those who are displaced as a result of reinvestment. The consequence of these trends will be most unfortunate if a more concerted effort is not made to preserve and expand the supply of decent housing available to low- and moderate-income households.

Reinvestment represents a dilemma for those concerned about cities and their residents. Does revitalization have to impact adversely on the poor, the elderly, and minorities? Should it be slowed or stopped when it does? How can the hardships to disadvantaged displacees be minimized?

Several factors play a role in stimulating reinvestment in older residential areas occupied by lower income households. Some conditions are specific to a given city, such as the existence of attractive, reclaimable housing stock and the location of employment centers as has been evidenced in Washington, D.C., over the past decade. Others are the local manifestations of national, social, and economic trends such as the rising number of households and smaller families, concern about energy and transportation, etc.

The effect of revitalization on lower income families is directly related to local conditions. Income levels, whether they own or rent, the availability of affordable, decent replacement housing for those persons forced to move are especially important. The displaced family is usually the one with the least resources to compete in a competitive housing market. Again the key groups affected are minorities, lower income families, the elderly, and female-headed households. The degree of hardship is, therefore, directly related to the housing market and the adequacy or inadequacy of the supply of decent, safe, and sanitary rental housing for low- and moderate-income families.

The new attraction of center city housing has generated secondary forces that are further increasing its appeal. For example, reports of windfall appreciation contribute to the attractiveness of urban homeownership. Media coverage of the "re-birth of neighborhoods" softens anti-urban attitudes and contributes to the erosion of traditional fears about inner-city neighborhoods. Many cities which have had little reinvestment activity recently may well be ripe for a return to the central city movement. This would certainly have a significant

impact on the present residents and exacerbate the problems of dislocation.

Condominium Conversions

The increased rate of condominium conversions is a visible outgrowth of the present market trends. Significant displacement from these conversions has taken place in major cities, such as Philadelphia, Chicago, San Francisco, and Washington, D.C. A recent HUD study of these trends indicates that the pressure for converting rental units to condominium or cooperative housing occurs or will occur in urban areas with the following characteristics:

1. Available land for new development is scarce.
2. High single family home prices.
3. High cost residentially zoned land.
4. Development obstacles, such as sewer moratoriums.
5. Militant tenant group in a rental apartment.
6. Good quality rental projects exist in housing supply.
7. Rent control is in effect or in process.
8. Conversion regulations don't exist or aren't workable.

Resident displacement was found by the study to be the most serious problem of a conversion. Its degree of seriousness is related to the availability of housing alternatives, the needs of the displacees, and the time given to relocate.

The study concluded that the tenants most affected by displacement are those who would find relocating difficult under any conditions. Again, this group would include low- or fixed-income tenants—the elderly and minorities—and also, long-term renters who are tied to that neighborhood. The tenant displacement problem is likely to occur in any community where the conditions exist to motivate conversion and is an unfortunate byproduct of the conversion process.

HUD Residential Displacement Update

The Housing and Community Development Act of 1980 required HUD to “continue to study involuntary displacement and its effect.” HUD advertised for recent studies in the *Federal Register* and received 50 responses to its notice. After an analysis of these studies in conjunction with existing HUD research, the following conclusions were made on the incidence of displacement:

1. The incidence of displacement is not large at the national level. In 1979 between 0.8 and 1.1

percent of the U.S. households, 1.71–2.4 million persons, were displaced by private activity that year.

2. The incidence of displacement was in larger cities and neighborhoods experiencing revitalization.

3. Of households that move, the percentage that are displaced is substantially greater in revitalizing cities and neighborhoods than nationally.

In the HUD study they have addressed two separate but related issues with regard to the characteristics of displaced households, the types of households disproportionately affected by displacement, and the household characteristics most strongly associated with being displaced. They have concluded that:

1. Displacement disproportionately affects minorities, low-income households, female-headed families, and renters. These households are often overrepresented among displacees in comparison with nondisplaced movers. (Note: The finding did not include the elderly, which I believe must be added.)

2. Household with high housing cost burdens, short-term occupants, living in or close to the central city of an SMSA receiving welfare, having low levels of education, and with young heads of household are most susceptible to displacement. Minorities are especially vulnerable to the degree that they have these characteristics.

Of particular interest in HUD's findings are their determinations on the “effects of displacement.” They bear directly on the purpose of this consultation. They have concluded that:

1. Displacees tend to move short distances.
2. There was strong evidence of repeated displacement by some of the families.
3. Displaced households experience significant increases in crowding and housing cost burden.
4. Older displacees and the lower income experience greater increases in crowding than similar households who are not displaced.
5. The effect of displacement on specific households is not always predictable. (Note: I would attribute this conclusion to the variations that exist in the local relocation housing markets.)

Annual Housing Survey (AHS)

The U.S. Department of Commerce, Bureau of the Census, is another source to consider in evaluating dislocation and its impact. It has modified its

Annual Housing Survey to improve its estimates of the extent of private market-induced displacement. Rather than lump moves into a single category, they are now broken down as found in table 1.

Through these modifications the AHS has identified an increase in the incidence of displacement. Preliminary results from the 1979 AHS indicate that displacement resulting from private activity (including greatly increased housing costs) affected between 0.8 and 1.1 percent of all households and from 4.5 to 5.7 percent of all movers. This is equal to between 600,000 and 850,000 households or from 1.7 to 2.4 million individuals. The single most important reason is the cost of housing or affordability.

What Has Been Learned from 50 Years of Dislocation?

The most prominent factor that stands out in our critical path of displacement activity during the past 50 years is that nothing changes. The types of problems related to relocation are neither new nor have they changed significantly. What has changed is the people and the factors that cause the dislocation. It is safe to conclude that there has been a subtle shift from the public sector to the private sector. Although government programs were the predominant cause for family displacement, nongovernmental actions or the economics of private real estate demand is having a steadily increasing impact. The deemphasis by the Federal Government on Federal domestic spending has made the private sector involvement even more prominent.

The undeserving displacees have remained the same. They include the poor, the elderly, female-headed households, those with limited education, the unemployed, the handicapped, and a high percentage of minorities in each of these categories. Although considerable effort has been made to provide housing for this segment of the community, we still have a long way to go.

The overall national housing stock has been vastly improved since 1930; however, the cost of standard housing units are high and going higher. They are out of the reach of those families whom we identify as tomorrow's dislocatees. The number of available and affordable subsidized and assisted units is still far behind the need. The effects of inflation and the present high unemployment level has increased the percentage of Americans who cannot afford standard housing at today's prices.

What Can Be Done?

The Uniform Relocation Act provides adequately for the dislocatees from Federal and federally assisted programs. When the 1983 provisions are adopted, a full set of tools will exist to conduct a sound program of relocation. Careful monitoring needs to take place to see that program benefits are fully and adequately utilized.

In HUD's October 1981 Residential Displacement Update Report they correctly made the point that the total solution to the relocation problem cannot be found at the national level. There are many forces at work in the community that cause dislocation that are not involved with Federal programs. These families do not qualify for the benefits provided under the Uniform Relocation Act. For example, the Federal Government has no authority to institute regulations on condominium conversions that are privately financed. HUD can only regulate FHA-insured mortgages. The most effective role the Federal Government can play in minimizing the adverse effects of displacement is to assist States, local governments, neighborhood organizations, and the private sector to develop their own displacement strategies. State and local governments have the authority to establish requirements for relocation.

State Level Programs

The State of New Jersey passed a statewide relocation law several years ago. Pennsylvania, Wisconsin, and California have also adopted relocation requirements for their States. The remaining States with urban displacement problems need to be encouraged to adopt similar legislation that will meet local relocation needs.

The District of Columbia adopted the D.C. Rental Housing Act in 1977. Funds have been made available to assist tenants in buildings proposed for condominium conversion to exercise their first right to purchase their housing unit. This program is designed to facilitate direct ownership by lower income tenants facing displacement in an attempt to preserve lower income housing resources in revitalizing neighborhoods.

The new Iowa State housing code requires cities with a population of 15,000 or more to adopt either a national housing code or their own local code if it is more stringent than the model code. One of the provisions of this State law is "the enforcement procedures shall be designed to improve housing

TABLE 1**Households Displaced by Private Activity: Distribution by Reasons for Move
Preliminary 1970 Annual Housing Survey Estimates
(Unweighted data)**

Main Reason for Move	Percent		
Housing costs greatly increased* ,	41.8		
Owner sold building	22.9		
Owner converted to condominium	3.9		
Building closed for rehabilitation	2.2		
Rents were raised	2.0		
Building converted to nonresidential use	.9		
Building closed; no reason	.3		
Other**	20.4		
Specific reason not given**	5.6		
TOTAL	100.0		
		All	Non-specific
Incidence of Displacement		Reasons	Reasons Omitted
Percent of households affected by private displacement:		1.1	.8
Percentage of movers affected by private displacement:		5.7	4.5

*This reason was not included in the question on displacement by private activity. It is a subcategory of moves to obtain lower rent or less expensive housing.

**The last two categories (other, specific reason not given) contain an unknown number of households who moved as a result of evictions or mortgage defaults, and who should not be included in the displacement estimate. These categories are, nevertheless, included because they may also contain households who moved for legitimate displacement reasons other than those specified. The table shows the estimated incidence of displacement both with and without these non-specific categories.

conditions rather than displace persons from their homes.”

Local Level Programs

In late 1979 HUD awarded Innovative Grants under the community development block grant program to 12 local governments to demonstrate creative antidisplacement activities. They were designed to develop models of ways to assist low- and moderate-income residents of revitalizing neighborhoods to remain in their communities. A summary of these demonstration projects are as follows:

Baltimore, Maryland is providing low- and moderate-income residents with homeownership and cooperative housing opportunities through a non-profit real estate corporation as a vehicle for “intervention buying.”

Brookline, Massachusetts has established an equity transfer assistance program to assist low- and moderate-income households to purchase their apartment units that are undergoing condominium conversion. A household counseling component provides additional assistance.

Charlottesville, Virginia has developed a program of deferred and short-term revolving loans for home purchase and rehabilitation, in addition to housing counseling and temporary relocation assistance, to enable low-income families to remain in the 10th and Page neighborhood.

Columbia, South Carolina is assisting low-income residents to remain in neighborhoods through the conversion of 18 houses into at least 42 smaller, more affordable units. No-interest, deferred payment loans will be used for the rehabilitation. The units will be kept affordable through the use of the HUD section 8, Moderate Rehabilitation Program.

Denver, Colorado is combatting displacement in the city and county through such measures as interim financing, mortgage payment assistance, referral services, and public education.

Fairfax County, Virginia has undertaken the improvement of the Woodley-Nightingale mobile home park which is slated for reconstruction and expansion under a city redevelopment plan. Despite numerous deficiencies, the park is, for many of its residents, the only feasible and affordable housing alternative within Fairfax County. The plan will improve housing conditions in the park, reduce overcrowding, and provide residents with the opportunity to purchase their mobile homes

and share in the ownership of the mobile home park on a cooperative basis.

King County, Washington is purchasing condominium units for rental to low-income elderly households facing displacement as a result of the conversion of their apartments to condominiums. *Los Angeles, California* is converting an industrial building to 150 units of transitional housing for displaced persons and homeless indigents in the downtown, central business district, redevelopment project area.

Minneapolis, Minnesota is using funds to acquire and rehabilitate 104 vacant and/or absentee-owned single, duplex, or multifamily units for rental and/or resale to low- and moderate-income families in order to minimize displacement in the Phillips neighborhood strategy area.

Santa Barbara, California is taking steps to acquire and rehabilitate a 13-unit complex which will be converted to a model limited equity housing cooperative. The project includes a down-payment loan fund to assist individual low- and moderate-income households to join the cooperative.

Seattle, Washington is rehabilitating a vacant three-story hotel for use as permanent single room occupancy for low-income persons (on the second and third floor) and for commercial purposes (on the first floor).

Three other cities have worked with the private sector and neighborhood groups to develop revitalization strategies that minimize displacement. A summary of these strategies is as follows:

Boston, Massachusetts—The proposed strategy reflects that the city needs to change its order of priorities. The lack of recognition of the negative side of revitalization was identified as a problem. The general attitude existed that displacement was only occurring when the government was involved. The following actions were, therefore, recommended:

1. Assisting households to remain in place—
passage of the right of first refusal legislation;
and
development of an inner-city industrial park to create jobs.
2. Development of additional housing—
rehabilitation of existing public housing; and
support of community development corporations from the city.

3. Steps to reduce hardships to families facing displacement—

- establishment of a displacement mediation service; and
- development of a mechanism to intervene in the disposition of defaulted property before the owner loses title.

Jersey City, New Jersey—Due to the revitalization occurring in downtown neighborhoods, other areas in the city have received an influx of displacees causing overcrowding and under maintenance of multifamily dwellings. The housing market is tight in this city and most potential displacees desire to remain in Jersey City. Several initiatives were developed to achieve these goals, which will be financed through the local community development program:

1. Neighborhood planning to involve neighborhood residents as a comprehensive and continuing process.
2. A housing clinic and resource center to conduct an active outreach effort to inform residents who are likely to face displacement regulations and their rights.
3. An antidisplacement ombudsman in the housing clinic to establish the displacement strategy tracking system and review the potential displacement with all housing programs.

San Francisco, California—This community has experienced extensive private sector revitalization and, as a result, low-income residents throughout the city are susceptible to displacement. The multifamily stock continues to be threatened by condominium conversions. White-collar workers are moving into the city and taking over the limited amount of available low- and moderate-income housing units.

Their strategy focused on the retention of the existing affordable housing supply and creating new permanently affordable housing for low- and moderate-income households. The strategy recommendations include the following:

1. Reallocating community development (CDBG) funds to provide subsidies for the retention of a supply of affordable housing for low- and moderate-income residents.
2. Reevaluating public efforts to stimulate further neighborhood revitalization that does not increase the supply of needed housing resources.
4. Establishing a nonprofit land trust to hold sites until a developer and financing are identified.

5. Development of limited equity co-ops and condos.

6. Establishment of a CDBG funded revolving loan fund for housing development corporations for predevelopment costs.

Other positive steps that have been taken by cities to deal with private dislocation include:

1. The city of Cincinnati passed an ordinance in June 1980 which provides for relocation assistance to any person displaced as the result of any city program involving a UDAG or housing revitalization program. The maximum payment is \$2,500. (These families are not now eligible for the provisions of the Uniform Relocation Act.)

2. The city of St. Louis requires redevelopers to submit a comprehensive relocation plan for potentially displaced persons. A relocation clearing house, funded by the city, has been established in conjunction with local social agencies to assist relocatees. Its program is geared toward assisting families needing relocations as a result of code enforcement and private sector revitalization.

In cities experiencing spot revitalization and displacement, affirmative marketing techniques can be used to spread the demand among a larger number of neighborhoods and ease the pressure on a few desirable areas.

Conclusions

The problem of assisting families who are forced to move because of public and private action is still with us 50 years later. When Federal programs are involved, the public sector has recognized its responsibility and developed a systematic approach to assist families to relocate and to reimburse them for their expenses. In some communities the limited supply of available low- and moderate-income housing makes relocation difficult. Effective use of rental assistance programs, such as section 8, "Finders Keepers," can help to overcome this problem. HUD has proposed to the Congress a new program for housing vouchers and matching grant rehabilitation that could also be used in conjunction with a relocation program. Local governments need to be more creative in order to find good relocation solutions.

When dislocation results from private revitalization activities, a different type of problem exists as these families are not provided for under the Uniform Relocation Act. HUD must continue to share the responsibility for dealing with private

displacement. Because each city and each neighborhood face different circumstances, such as market factors, condition of housing stock, household tenure mix, etc., there can be no uniform strategy for local action.

In this paper, I have described just a few of the actions that have been taken by local governments to lessen private sector dislocation. There is a lot

more that can be done and should be done. An effective relocation program cannot be achieved unless there is a conviction on the part of those involved to make it work. Therefore, it is essential that we bring about a better national understanding of the problem and stimulate a desire for its full resolution.

Displacement and Dislocation of Low-Income Asians From Low-Cost Housing Units Due To Urban Redevelopment—San Francisco and Oakland Experience

Edwin M. Lee* ,

The Housing Situation and Demographics

The Chinatowns of San Francisco and Oakland are unique communities. They serve as one of the State's—perhaps one of the country's—major tourist attractions as well as home and workplace for thousands of Chinese Americans in the region.

A basic feature of these Chinatowns is overcrowding. As a result of liberalized immigration laws and policies in the mid-1960s, Asian families that had been separated for years have been able to reunite in the United States. Due to the language handicap, new and old Chinese immigrants have come and remained in Chinatown for adequate services and job opportunities.

The population in Chinatown has remained extremely dense over the past several decades. In 1970 the ratio was 228 persons per acre, or 7 times greater than that of the city's average. The density per residential acre was 12 times the city's average (912.4 persons per residential acre) which ranks San Francisco's Chinatown as the second most dense neighborhood in the United States (next to Manhattan).

Such high concentration of monolingual immigrants has produced a labor-intensive work force filling the restaurant and garment industries' ranks of Chinatown. Additionally, neighborhood shops abound with food products and items catering to ethnic tastes. These shops and restaurants and the commercializing of foreign products has historically pushed the Chinatown community into a major tourist attraction.

Yet, behind the facade of the exotic trinket shops, extravagant restaurants, and jewelry stores, there exists the only sources of low-cost housing available to the elderly and immigrant population who must reside in this neighborhood. In San Francisco's Chinatown, such housing consists primarily of residential hotels where living units average 60–100 square feet and rents range from \$80–\$120 per month. Generally, between 15–20 such units will share one community kitchen and one community washroom facility. Where for many years the

tenancy of these buildings was primarily single elderly, the trend has in recent years resulted in four- to six-member families occupying one or two such units together.

During the past 5 years there has been a tremendous influx into Chinatown of immigrants and refugees. As a result, a growing number of residential hotels have whole families with children who are crowded into 100-square-foot units having no heat. Yet their incomes prevent them from moving to more spacious apartment quarters, if they are fortunate enough to find any available. If they are displaced, it is not uncommon that they might find a more spacious unit, but crowd in another or several other families to share the rent as well as facilities.

The residential hotels have become the primary source of low-cost housing due to a number of different factors including the nonavailability of space in Chinatown, the constant expansion of bordering financial districts (downtowns), and past discriminatory laws and practices which literally forced Asians to live in crowded conditions within the boundaries of Chinatown.

Study estimates indicate that in Chinatown, San Francisco, there is approximately 150 such residential hotels, housing perhaps over 10,000 persons. Tenants in these hotels have traditionally been the monolingual elderly who are on social security payments. There are also a number of mid-year 45–65-year-old single immigrants who work as kitchen workers, waiters, and seamstresses. Due to their language handicap, they are as dependent as the elderly, on bilingual services provided in Chinatown. These hotels provide long-term housing for its tenants. Average tenancies will range from 10–20 years. In some cases, tenants have lived in the same hotel for over 40 years.

Many of these hotel buildings remain in poor condition. Rebuilt after the earthquake of 1906, some of them continue to operate without heat or hot water facilities. Due to lack of space, tenants will cook and eat in their 7' x 9' rooms causing tremen-

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dous vermin and sanitation problems. Owners have rarely considered rehabilitation for their buildings because the income from ground level commercial storefronts prove lucrative enough for them.

Despite the conditions of the residential units, the demand for them is very high and even increasing since they provide the only affordable housing for most residents of Chinatown. Yet, in the last 10 years, 5 major residential hotels in S.F.'s Chinatown alone became casualties of other forms of gentrification—commercial gentrification and “touristification”—the destruction of housing for office and tourist hotel development. In each of these cases the displacement and dislocation of low-income Asian tenants has been without replacement of lost units. Furthermore, all indications point toward a continued trend of displacement.

In Oakland, the indications are similar except that the majority of low-income Asians reside in low-cost apartment buildings in and around Chinatown. These apartments also suffer from overcrowding and substandard conditions and yet remain the sole source of affordable housing.

Sources of Displacement and Dislocation

As with all Chinatown communities throughout the country, land-use battles between high-rise developers and housing activists have become critical. One common geographic factor is that most major Chinatown communities border along the downtown financial district of a core urban area. As the need for office space increases, land values and speculation rise in surrounding neighborhoods and residential properties are bought and exchanged for millions of dollars. In the cases of San Francisco's and Oakland's Chinatowns during the last 10 years to the present, residential hotels have been purchased from long-time family owners for millions of dollars.

The majority of private purchasers have included downtown office developers, financial institutions, real estate speculators, and faceless overseas investors and developers. In each instance such high-priced purchases were the first indicators of the displacement of low-income Asian tenants and the eventual demolition of what has become rare, affordable housing stock.

The most glaring example in the Bay area of the brutal displacement and dislocation of tenants and irresponsible destruction of vital housing was the mass eviction and demolition of San Francisco

Chinatown's International Hotel in 1976. This site, which bordered the downtown district, housed 295 units of low-cost housing for Chinese, Filipino, and Caucasian tenants, most of whom were elderly.

The International Hotel's 10-year legal battle, which culminated in the 1976 eviction, revealed the severe limitations of the legal system and Federal, State, and local housing programs to prevent displacement. Private purchase, eminent domain, State and Federal rehabilitation programs, community block grant fundings, and rezoning were all tried and failed. The political machinery fared no better.

The midnight mass eviction in August 1976 was finally carried out, only by using 400 police and sheriff's deputies to break through a crowd of 2,000 protecting the tenants. The eviction dispersed these low-income tenants throughout the city's slum hotels to live out their meager lives.

From 1976 to this day, the International Hotel site has sat as an embarrassing and empty 1½ blocks along the border of Chinatown and the financial district. No housing; no development; no plans; no people. The overseas corporations who own the blocks seem content to wait out the time needed to forget their moral obligation to the displaced tenants. Meanwhile the site's excavated holes beneath the streets serve only as temporary shelter for a few of San Francisco's “street dwellers.”

There have since been 17 other such residential hotels and apartments which have been destroyed and low-income Asian tenants displaced without replacement or adequate assistance. As of this year alone, there are 7 additional major residential hotels and low-cost apartment buildings in San Francisco's Chinatown, whose new owners have applied to demolish some 350 additional low-cost housing units. This displacement is taking place in spite of local ordinances designed to prevent their destruction.

A case in point is the San Francisco residential hotel conversion and demolition ordinance passed by the board of supervisors in 1979. The original version passed the board as a permanent ordinance essentially freezing the number of residential units and placing a moratorium on conversions unless one-for-one replacement was provided by a converting developer. However, in 1981, bowing to real estate industry pressure, the board modified this ordinance and weakened its protection. The ordinance's present major loophole is its “buy-out” provision whereby the developer may pay a certain

amount of money (40 percent of construction costs) to an unregulated city fund and be allowed to convert the whole building. Furthermore, each displaced tenant will only be given a maximum of \$300 for moving expenses. The tenant is given no choice nor realistic options. Since the construction costs are only partial, displaced tenants will perhaps never see the day when the buy-out monies will result in the construction or rehabilitation of housing units. They would certainly be unable to afford such units if they are ever built.

A recent case highlighting this problem is the plight of 16 elderly Asians on fixed incomes residing at the 647 Clay Street residential hotel in Chinatown, San Francisco. They are fighting their displacement by a new owner who desires corporate office space and who is willing to do nothing for these tenants. These elderly tenants have no recourse but to defend against their displacement. Their case is viewed as the "trend setter" in predicting how other property owners will attempt to convert their low-cost hotels to more lucrative operations.

Oakland's Chinatown housing stock has faced gentrification resulting from urban redevelopment and the city's need to bring in corporate investments. The Chinatown TransPacific Center Project, located on two blocks of redevelopment land on the border between downtown and Chinatown, has failed to meet its obligations to provide jobs and housing for the community. The effect of the commercial office project has been to stimulate the construction of market rate condominiums and drive up commercial and residential rent values in the whole Chinatown neighborhood. Low-rent apartments throughout the area have begun to squeeze the elderly and poor Asians who have little options at hand.

Oakland redevelopment officials have stated that there is no land available for constructing subsidized housing. Yet they continue to sell off parcels and acres of surrounding land to corporate entities for offices and more lucrative investments. It is common knowledge that promises of mitigation for housing or jobs, made between city officials and project sponsors, are often changed and in some cases forgotten, without review by authorized community representations. In the case of the TransPacific Center, the project sponsored gave \$1 million to the city of Oakland. Since that transaction, housing mitigation, job training for Asians, and affirmative

action requirements and guidelines have all been but apparently forgotten.

Resulting higher rents in Oakland's Chinatown have caused a number of displacements among low-income Asians. There has not been adequate response to this problem.

Summary

The housing situation in San Francisco and Oakland Chinatown is, at best, grim. For low-income Asians who are elderly, who are restricted by language and therefore job opportunities, and who must reside in these communities in order to survive, their displacement will, without better control, be disastrous.

A cursory scan of city permit application records show that hundreds of elderly and poor Asian tenants are targets for displacement projects this year alone. These projects will gentrify the delicately balanced Chinatown community with a massive tourist hotel, financial institution headquarters, corporate offices, and luxury condominiums. It can be safely said, from my view as a tenant-defense lawyer in the Asian community, that the poor, displaced Asian tenants who are without their affordable homes in Chinatown, will have no place to go. Furthermore, dislocation for the elderly, away from their close-knit, cultural community can result in severe mental and health problems. It has been further said by more than several social workers in Chinatown that if there is no place to go, these tenants will simply die—and they have.

The sources of displacement and dislocation, although varied, are definite. Displacement in Chinatown has come in the form of overcrowding, deterioration of habitable conditions, exorbitant rent increases, intimidation, and demolition. Due to the economic strains in Hong Kong and other Far East countries, Chinatown properties have proven to be fertile recipients for overseas investment and speculation. These investors and speculators will, often times, purposely allow buildings to deteriorate so that tenants will eventually vacate allowing them to freely demolish or convert. Threats of eviction coupled with small cash sums have also worked to trick tenants into leaving.

An interesting example of this heavy-handed type of displacement in the face of local controls involved yet another Chinatown residential hotel. There, the tenants were informed by an attorney of pending eviction. They were offered a sum of

money to move, a small portion which they received when they agreed to move and the rest upon the total vacation of the building. This resulted in those who were more mobile "persuading" the others to move upon fear that the rest of the money would not be dispersed. The building was empty within 3 months. It is now the site of banking headquarters.

What is lacking in response to all of this is adequate planning for housing needs, better controls

at all levels of government, and flexible funding to rehabilitate and preserve affordable housing. Without such a varied package of response to our housing crisis, displacement and dislocation will continue against low-income Asians and they will continue to be denied the human right to decent, safe, and affordable housing.

Fair Housing Advocacy in the Crucible of Urban Revitalization

John O. Calmore* ,

Introduction

In 1971 the NAACP saw black survival in terms of an ability to move from the inner city to the suburbs.¹ In 1974 this Commission stated that suburban "economic-racial exclusion may well be called the racism of the seventies."² Now, in the 1980s, blacks are fighting to remain in inner cities and to resist a "reverse exclusionary zoning"—the effort, through urban revitalization, to prevent the low income and nonwhite from remaining in their own neighborhoods.³ Reverse exclusionary zoning is tied to the processes euphemistically labeled "gentrification" and "spatial deconcentration."⁴

The difficulties providing legal representation to the nonwhite poor in controversies over urban space and dislocation are many, some legal and some extra-legal. The cases brought and the claims made usually extend far beyond the traditional model of litigation in that the lawsuit is not a dispute between private parties over individual rights but, rather, a grievance about the operation of social policy.⁵ As such, cases are not well received by the courts in light of the increasingly restricted standards and practices of judicial review. Moreover, the scope of rights and remedies are being curtailed both by court interpretation and legislation.

The expertise of lawyers goes only so far in these cases because extra legal factors are often as material as the legal ones. Beyond rights and duties, the following factors also affect urban development and displacement litigation:

1. the effect of race in class formation, and in turn, the influence of class on racial dynamics;
2. the correlation between racism and general policies of social neglect;

3. the inadequacy of integration to relieve the housing problems of the nonwhite poor;
4. the excessive baggage placed on housing programs in an attempt to improve educational and employment opportunities as well as to achieve racial and economic integration;
5. the increasing inability of legal representation to redress the problems of shelter poverty, particularly in the face of massive cutbacks in low-income housing production and subsidy programs.

The following discussion will address these issues in general terms. The supplementary oral presentation before the Commission on September 27, 1983, will focus on some illustrative specific cases in which I have been involved.

The Race-Class Puzzle

The problems associated with urban development and the future of this Nation's cities are directly linked to public policy on racial issues.⁶ Professor Wilson, however, has traced changes in the structure of the American economy and has concluded that the net effect is a growing class division among blacks in which economic class is now of greater importance than race in determining individual black opportunities and life styles.⁷ While I do not adhere fully to the Wilson thesis, I recognize a substantial degree of class stratification and divergent value orientations among Afro-Americans. Indeed, in housing, the problems of racial integration and socioeconomic integration are compounded in a manner which makes the predicament of the black poor much more complex than the integration of the white poor into economically mixed settings, on one hand, or the integration of upwardly mobile, moderate to middle-income blacks into racially

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¹ See Johnson, *NAACP Parley Ties Black Survival to Ability to Move to Suburbs*, N.Y. Times, July 11, 1971, at 43, col. 4.

² U.S., Commission on Civil Rights, *Equal Opportunity in Suburbia* (1974).

³ McDougall, *Gentrification: The Class Conflict Over Urban Space Comes Into the Courts*, 10 Fordham Urb. L.J. 1977, 180 (1981-82).

⁴ See Henig, *Gentrification and Displacement Within Cities: A Comparative Analysis*, 61 Soc. Sci. Q. 638 (1980); Calmore, *Fair Housing v. Fair Housing: The Problems With Providing Increased Housing Opportunities Through Spatial Deconcentration*, 14 Clearinghouse Rev. 7 (1980).

⁵ See generally, Chayes, *The Role of the Judge in Public Law Litigation*, 89 Harv. L. Rev. 1281 (1976).

⁶ See generally, Krushner, *Apartheid in America: An Historical and Legal Analysis of Contemporary Racial Segregation in the United States*, 22 How. L.J. 547 (1979). (Demonstrating that racial segregation has been government created, assisted, and perpetuated.)

⁷ W. Wilson, *The Declining Significance of Race: Blacks and Changing American Institutions* (1978).

mixed settings, on the other hand. Too often the plight of the nonwhite poor is inappropriately analyzed in terms applicable to either nonwhites or the poor generally and, as a result, policies which would most effectively address the needs of the black poor get misdirected because they take into account tangential or irrelevant factors or ignore material factors.

It must be recognized, however, that often the best, if not the only, proof of racial discrimination is proof of the correlation between economic inequality and race. According to Professor Horwitz:

Since the official American ideology accepts inequality as both an incentive and a reward for talent and industry, we are forced to distinguish between the indistinguishable. We are expected to accept social and economic inequality at precisely the moment that it is the best evidence of the existence of racial discrimination.⁸

Thus, for nonwhites it is important to see poverty as a race-linked, secondary characteristic of discrimination.⁹ Failure to see this is to whitewash history. Even Professor Wilson sees the disproportionate number of blacks in poverty as a result of the historical consequences of racial oppression.

In various lawsuits involving a claim of relief under the Civil Rights Act of 1866, 42 U.S.C. §1982, the claims have alleged that the challenged action exploited "a situation created by socioeconomic forces tainted by racial discrimination."¹⁰ This is an apt description of the urban revitalization linked displacement.

Racism's Connection with Social Neglect

Economist Robert Heilbroner observed that racism is tied to America's politics of social neglect:

Programs to improve slums are seen by many as programs to "subsidize" Negroes; proposals to improve conditions of prisons are seen as measures to coddle black criminals. . . . In such cases, the fear and resentment of the Negro takes precedence over the social problem itself. The result, unfortunately, is that the entire society suffers

⁸ Horwitz, *The Jurisprudence of Brown and the Dilemmas of Liberalism*, 14 Harv. C.R.-C.L.L. Rev. 599, 611 (1979).

⁹ See Abrams, *Primary and Secondary Characteristics in Discrimination Cases*, 23 Vill. L. Rev. 35, 51-55 (1977).

¹⁰ Concerned Tenants Association of Indian Trails Apartments v. Indian Trail Apartments, 496 F. Supp. 522, 527 (N.D. Ill. 1980).

¹¹ Heilbroner, "The Roots of Social Neglect in the United States," in *Is Law Dead?* 288, 296 (E. Rostow, ed. 1971). See also 1980, where the court held that the city had violated the Fair Housing Act by pursuing a policy of substantially preventing blacks from becoming residents and by taking actions with the purpose and effect of perpetuating the city's virtually all-white

from the results of a failure to correct social evils whose ill effects refuse to obey the rules of segregation.¹¹ Neilbroner's observation is reinforced by the new myth that poverty in America has been abolished. It should cause particular concern that President Reagan's former chief domestic affairs advisor, Martin Anderson, would declare: "The 'War on Poverty' that began in 1964 has been won; the growth of jobs and income in the private economy, combined with an explosive increase in government spending and income transfer programs has virtually eliminated poverty in the United States."¹² This, too, appears to be the position of the present administration.

Fair Housing and Integration

Fair housing advocates must reassess whether, for the nonwhite poor, integration is an effective way to press for spatial equality. It has been stated that civil rights advocates have found themselves "unable to argue simultaneously against Jim Crow and for the improvement of the Negro community."¹³

In *Burney v. Housing Authority of City of Beaver*,¹⁴ legal services lawyers brought suit on behalf of low-income blacks barred from public housing because the local housing authority sought to avoid "tipping" the project by imposing an integration quota restricting the numbers of blacks admitted. In enjoining the housing authority, the court recognized that Title VIII, the Fair Housing Act, had come to reflect an inherent conflict between anti-segregation and antidiscrimination policies. According to the court,

The legislative history. . . shows that at the time that Title VIII was enacted, Congress believed that strict adherence to the antidiscrimination provisions of the act would promote the policy of antisegregation; abolition of racially discriminatory housing practices ultimately would result in residential integration. In other words, Congress perceived antisegregation and antidiscrimination to be complementary. Unfortunately, this is not the case where a housing project is likely to tip, absent some kind of action by a local housing authority. Imposition of a quota would promote the antisegregation (or integration) policy of Title VIII; refusal to impose a quota would promote the antidiscrimination (or freedom of choice) policy. Neither the language of, nor the legislative history behind, Title

character. Those actions included decisions not to participate in conventional public housing, federally assisted leased housing, federally subsidized housing (even though whites needed such housing), and to utilize community development funds to preserve a segregated community.

¹² National Advisory Council on Economic Opportunity, 12th Report: Critical Choices for the 80s, at 8 (1980) (quoting M. Anderson, *Welfare* 15 (1978)).

¹³ Silberman, "Beware the Day They Change Their Minds," *Fortune*, November 1965, at 152.

¹⁴ 551 F. Supp. 746 (N.D. Pa. 1982).

VIII resolves the question of which policy must yield when the two conflict.¹⁵

The court found that the housing authority failed to show that “no alternative course of action could be adopted that would enable [its legitimate] interest to be served with less discriminatory impact.”¹⁶ This case is significant because the challenge saw integration as a dysfunctional goal that had to give way to providing housing to the plaintiffs. This litigation, then, illustrates the position I think fair housing advocates must take on behalf of the nonwhite poor: Decent housing and community enrichment for them must be viewed as a primary goal and not a secondary result of integration. We simply cannot continue to allow ineffective rules intended to promote integration to interfere with meeting the overwhelming need for housing in the cities.¹⁷ In the words of the late Senator Robert F. Kennedy:

To seek a rebuilding of our urban slums is not to turn our backs on the goal of integration. It is only to say that open occupancy laws alone will not suffice and that sensitivity must be shown to the aspirations of Negroes and other non-whites who would build their own communities and occupy decent housing in neighborhoods where they now live. And, in the long run, this willingness to come to grips with blight of our center city will lead us to an open society. For it is comparability of housing and full employment that are keys to free movement and to the establishment of a society in which each man has a real opportunity to choose whom he will call neighbor.¹⁸

Integration of the nonwhite poor is further frustrated by the cross purposes of Federal housing and community development programs. Section 8, the Nation’s current primary federally assisted housing program, is also the primary vehicle for achieving the Housing and Community Development Act of 1974’s goal of “reducing the isolation of income groups within communities and promoting neighborhood diversity and vitality through the spatial deconcentration of housing opportunities for persons of lower income and the attraction of persons of higher income.”¹⁹ It is now evident that nonconcentrated areas will continue to resist providing

federally assisted low-income housing and when this is combined with the site selection pressures against building in impacted areas, there is a real possibility that new housing opportunities for the poor will remain undeveloped and those most in need will continue to be shut out. Moreover, under these circumstances, the “revitalized” communities’ attraction of higher income persons will continue to exacerbate this situation by contributing to the displacement of the urban poor and nonwhites. Saving cities for whom has become one of today’s most pressing questions. As one commentator has observed:

Those who interpret the history of the cities through a class conflict paradigm see in gentrification the culmination of an effort by white upper-income and business interests, publicly supported through urban renewal, loan subsidies and tax incentives, to regain control of the political and economic resources that, in the rush of suburbanization, were nearly ceded by default to a new urban majority consisting of the poor, Hispanic and black.²⁰

The typical reverse exclusionary zoning lawsuit is often brought by the affluent gentrifiers who espouse fair housing concepts to prevent “undue concentration” of nonwhite or low-income persons in the neighborhood which would result if low-income housing were constructed. As the new residents oppose racial and economic concentration in the name of desegregation “they may prevent the racial and economic reintegration of neighborhoods which have been converted from ethnically and economically diverse communities into upper-middle class preserves.”²¹

An illustrative case of this problem is *Haakmat v. Pierce*.²² The city of New York and HUD had supported the new construction of 140 units of section 8 housing in New York City’s borough of Richmond, but a group of homeowners and civic associations from that area sued to prevent the private developer from proceeding with the final approvals and construction. The site approved for construction was located in an area undergoing

¹⁵ *Id.* at 769.

¹⁶ *Id.* at 770, citing Resident Advisory Board v. Rizzo, 564 F.2d. 126, 149 (3d Cir. 1977).

¹⁷ See generally, Travis, *The Black Ghetto: The New White Frontier*, Real Estate Issues 1 (Summer 1979); Phillips and Agelasto, *Housing and Central Cities: The Conservation Approach*. 4 Ecology L.Q. 797 (1975); and Note, *Symbolic Gestures and False Hopes: Low Income Housing Dispersal After Gautreaux and the*

Housing and Community Development Act, 21 St. Louis U.L.J. 759 (1978).

¹⁸ Quoted in note, *Public Housing and Urban Policy: Gautreaux v. Chicago Housing Authority*, 79 Yale L.J. 712, 718 (1970).

¹⁹ 42 U.S.C. §5301(c)(6).

²⁰ Henig, *Gentrification and Displacement*, at 649.

²¹ McDougall, *The Class Conflict*, at 180.

²² No. CV-82-1614, (E.D.N.Y., July 12, 1982).

urban revitalization. The neighborhood was found to be integrated and stable, with 50 percent non-whites. It was anticipated that the 140 proposed units would house approximately 500 occupants, all or most of whom the plaintiffs seemed to fear would be nonwhite.

HUD's decision was upheld, notwithstanding plaintiffs' claims that it was an abuse of discretion. The court ruled that HUD is permitted to locate assisted housing in areas of nonwhite concentration when, *inter alia*, it is determined that there is an overriding need.²³ It is significant that the "tipping" issue was not allowed to detract from the overriding-need analysis.²⁴ Had the housing not been built on this site, the 140 units would have been lost not just to this neighborhood but also to the entire New York City area. In this case, there was no persuasive indication that a mere 140 units would create a "pocket ghetto." Judge Weinstein declared: "There is a great shortage of homes for the poorest people in the city. They too must be served. In this case they can be given decent homes without any untoward harm to their more fortunate future neighbors. The whites, blacks and Hispanics who have lived together so well in New Brighton may look forward with considerable optimism to an even more pleasant community if they do not allow unreasoning trepidation to overwhelm good sense."

Among the overriding needs HUD cited were (1) the City Housing Assistance Plan, which showed that over 7,000 households in Staten Island were eligible for and in need of section 8 housing; (2) a vacancy rate of 2.9 percent, which indicated that new construction was the best method to meet the need for housing; (3) the project would help revitalize the area; and (4) there was a need to provide an opportunity to return to the neighborhood for

households that were displaced when former structures were demolished.²⁵

Displacement Beyond Legal Redress

Displacement has various manifestations, ramifications, and causes.²⁶ In characterizing displacement, a good working definition is provided by George and Eunice Grier:

Displacement occurs when any household is forced to move from its residence by conditions which affect the dwelling or its immediate surroundings, and which:

1. move beyond the household's reasonable ability to control or prevent;
2. occur despite the household's having met all previously imposed conditions of occupancy; and
3. make continued occupancy by that household impossible, hazardous, or unaffordable.²⁷

LeGates and Hartman point out that the nature of displacement has undergone fundamental changes during the past decade as there has been a shift from the government-related displacement primarily caused by Federal urban renewal and highway programs to displacement caused primarily by rent increases, purely private action (condominium conversion and unassisted gentrification), hybrid public/private displacement, and displacement which occurs indirectly due to governmental actions.

This means that many statutory benefit programs and other protective legislation will no longer be as neatly counterweighted against displacement as if it were the direct result of federally assisted projects. For example, in the St. Louis case of *Young v. Harris*,²⁸ Judge McMillian's concurring opinion, defeating plaintiffs' claims, pretty much summarizes the predicament:

²³ See *Shannon v. HUD*, 436 F.2d 809, 822 (3d Cir. 1970).

²⁴ See note, *Tipping the Scales of Justice: A Race Conscious Remedy for Neighborhood Transition*, 90 Yale L.J. 377 (1980); Note, *NEPA, Tipping and Low-Income Housing*, 6 Colum. J. of Env'tl. L. 31 (1979); Ackerman, *Integration of Subsidized Housing and the Question of Racial Occupancy Controls*, 26 Stan. L. Rev. 245 (1974).

²⁵ See also *Business Association of University City v. Landrieu*, 660 F.2d 817 (3d Cir. 1981).

²⁶ See C. Harman, D. Keating, and D. Legates, *Displacement: How to Fight It* (1982) (a product of the Legal Services Anti-displacement Project; available through the National Housing Law Project); LeGates and Hartman, *Displacement*, 15 Clearinghouse Rev. 207 (1981); C. Weiler, *Reinvestment Displacement: HUD's Role in a New Housing Issue* (1978); "Direct and Indirect Displacement of Lower-Income Tenants and Homeowners Due

to CDBG-Assisted Neighborhood Revitalization," in *An Advocacy Guide to the Community Development Block Grant Program*, 12 Clearinghouse Rev. 601, 636-40; St. Hilaire, *Public Housing Tenants' Anti-displacement Strategy*, 15 Clearinghouse Rev. 250 (1981); Roisman, *Preventing or Ameliorating Displacement in Connection with Section 8*, 14 Clearinghouse Rev. 303 (1980); Hanson, *Applicability of Federal Statutory Remedies in Housing Displacement Cases: How Much Federal Involvement is Necessary?* 59 Det. J. Urb. L. 341 (1982); Roisman, *Combating "Private" Displacement* XIII Hous. L. Bull. 1 (January-April 1983) (also available from the National Clearinghouse for Legal Services, no. 31,964).

²⁷ G. Grier and E. Grier, *Urban Displacement: A Reconnaissance* 8 (1978), quoted in Le Gates and Hartman, *Displacement*, at 214.

²⁸ 599 F.2d 870 (7th Cir. 1979).

While I concur with the result of the legal reasons discussed by the majority, I am saddened by the expediency and callousness exhibited by this rehabilitation scheme toward the original residents of the neighborhood. The federal, state and local governments' attempts to garnish the assistance of private developers in rebuilding the inner cities is laudable. The dislocation of lower income families as exhibited in this case reveals, however, the shortsightedness in most urban redevelopment planning which, rather than alleviating the inner city ghetto, will merely cause it to geographically shift. . . Congress did not intend [the Uniform Relocation Act] to apply to relocations effectuated by private developers, even though these developers may be assisted financially by the federal government. In light of the recent trend in government

²⁹ *Id.* at 879–80.

programs of enticing private enterprise to undertake endeavors once assumed solely by the governmental entities, I question whether the original scope of the URA is still appropriate.²⁹

Conclusion

While the foregoing overview raises many of the issues that must be addressed in considering urban revitalization and dislocation, the ultimate issue is whether this Nation will continue to plaque public policy with “samaritrophia”—the hysterical indifference, if not malice, toward the plight of those less fortunate than oneself.³⁰

³⁰ See K. Vonnegut, *God Bless You Mr. Rosewater* 41 (1965).

Zoning: Affirmatively to Include or Exclude

Statement

Carl Bisgaier*

The State of New Jersey is now engaged in a bold experiment in the provision of affordable housing for lower income persons. The goal of the experiment is for every municipality to provide a realistic housing opportunity for its indigenous poor and for those municipalities in growth areas of the State to provide a realistic opportunity for their fair share of their region's present and prospective lower income housing needs. The experiment is to be implemented by local government with or without State or Federal financial assistance. No municipality is exempt, and there are little or no defenses to compliance.

This massive undertaking was launched without legislative or executive consideration or approval and is virtually the exclusive product of the New Jersey judiciary. However, while it was born in the context of litigation, it went through a birthing process far more lengthy, deliberate, and profound than most legislation.

On January 20th of this year, the Supreme Court of the State of New Jersey decided what is commonly known of as the *Mount Laurel* case. The 217-page decision was, in fact, the resolution of six separate land use cases consolidated, for the first time, for purposes of supreme court argument. The 6 cases represented, together, almost half a century of litigation involving almost 20 municipalities. The

oral argument before the supreme court lasted for 3 days. Presentations were made by approximately 30 attorneys with extensive briefing and argument by diverse interested parties such as the State's Republican legislators, the Department of Community Affairs, the Manufactured Housing Association, the American Planning Association, and the Environmental Defense Fund. The court's deliberations lasted over 2 years and its ultimate decision in all six cases was unanimous.

The *Mount Laurel* case itself was begun in 1971 and had reached the New Jersey Supreme Court for a decision once before in 1975. This was then the court's first major land use statement in almost 15 years. However, since *Mount Laurel I*, the court had spoken several times on related land use issues searching for a definitive, constitutional statement while urging legislative action.

Finally, in the absence of legislation and in the face of extensive litigation throughout the State, the court was forced with what was, in reality, a constitutional crisis: its 1975 mandate was being ignored as no arm of government had acted to enforce it. Thus, the court faced the option of abandoning the mandate or establishing an enforcement mechanism.

The significance of *Mount Laurel II* lies both in the newly articulated mandate and in the mechanism

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adopted by the judiciary to insure its implementation. The key to understanding the mandate is to understand that *Mount Laurel II* is neither a zoning case nor a land use case, and it is only secondarily a housing case. Primarily, it is a case which defines the proper role of government in the context of the fundamental needs of the citizenry. In short, the case is a profound social statement of the obligations of local governmental entities in caring for their constituent's basic needs.

The decision begins with a recognition that adequate shelter is a fundamental need and that the provision of adequate shelter, while a complicated undertaking, is one which is and must be infused with governmental action. The court came to acknowledge two fundamental principles:

1. the provision of adequate shelter for lower income persons can be and has been constrained, encumbered, and often prevented by overt governmental action; and
2. the provision of adequate shelter for lower income persons cannot be accomplished without overt governmental action.

Thus, the mandate of *Mount Laurel II* is two-fold: first, local government may not act to unnecessarily constrain, encumber, or prevent the production of lower income housing; and, second, local government must undertake all such action as is necessary and appropriate for local government to take which will make the production of such housing a reality.

The first aspect of the mandate addresses the more universally acknowledged areas of municipal action which have historically been identified with discrimination against lower income households. Generically encompassed in the term "exclusionary zoning," it includes such obvious types of governmental constraints as: large lot, single-family zoning; minimum house sizes; prohibitions against multifamily and manufactured housing uses; and less obvious constraints such as excessive on and off-site development costs and exactions imposed on builders.

Excessive site development costs run the gamut from overly wide streets to unnecessarily high concrete specifications for curbing and sidewalks. Excessive inspections, water/sewer hookup fees, and more exotic demands such as construction of firehouses, donations of ambulances, and even fines against the developer for each school-age child who occupies a unit in the development over a prescribed maximum.

The second aspect of the mandate addresses the less obvious areas of municipal action or inaction which effectively preclude the development of affordable housing for lower income persons. These include refusal to undertake actions which are necessary prerequisites to participation in a State or federally financed development such as adoption of a resolution of need, agreement to enter into a payment in lieu of taxes contract, designation of a local public agent, and actions necessary to encourage or mandate that private developers participate in the effort to provide affordable housing such as "floating" zones, density bonuses, and mandatory percentages of affordable units.

While the first aspect of the mandate dealt with "exclusionary zoning," the second aspect deals with a spectrum of potential governmental action now referred to generically as "inclusionary" zoning: that is, actions by local government carefully designed to attract a specific type of land use. In this case, the type of use in question is affordable housing for persons of low and moderate incomes.

We come to the only truly novel aspect of the *Mount Laurel* mandate: That is, a governmental obligation to attract housing for the poor. Inclusionary zoning, itself, is not novel. As the New Jersey Supreme Court recognized, governmental entities, for decades, have been engaged in both exclusionary and inclusionary land use practices. Thus, it has been common practice in New Jersey to purposefully exclude housing for lower income persons and such other land uses perceived as undesirable such as heavy impact industrial plants, solid waste disposal facilities, land fills, and the like. On the other hand, it has been the common practice to purposefully include housing for middle and upper income persons and light industrial and commercial ratables. Most municipalities in the State, in fact, have economic development commissions and go to great lengths to attract such ratables. Thus, what the New Jersey Supreme Court did in the most simple terms, was to move affordable housing for the poor from the exclusionary to the inclusionary side of the equation.

The bottom line of the mandate is the court's withdrawal of the traditional grant of municipal discretion in land use practices, at least in so far as affordable housing is concerned, thus, a panoply of potential governmental action which, in the past, was considered discretionary is now either unlawful

in its exclusionary aspect or mandatory in its inclusionary aspect.

The court, having articulated what local government cannot do and having mandated what it must do in the area of affordable housing then turned to an even more difficult problem: enforcement. Experience had shown the court that local government, left alone, would not abide by its rulings despite the constitutional nature of the mandate and the fundamental needs involved.

The only enforcement mechanism available to the court was through litigation and that had proven ineffective for several reasons:

First, there were few private litigants willing to undertake the litigation and virtually no public litigants.

Second, litigation was costly and endless in duration, lower court decisions lacked consistency, and a serious question was raised as to the willingness of some of the lower court judges to tackle the issues.

Third, there was little or no exposure for a recalcitrant municipality: that is, they did not fear the consequences of losing as they existed prior to *Mount Laurel II*.

The court's solution to this problem was relatively novel and dramatic. First, it recognized that litigation was the only enforcement mechanism available to it and that a prerequisite to litigation was a willing plaintiff. Since the public interest bar was small, private litigants had to be encouraged to litigate. There were three ways this might be done: award attorney's fees and costs; award money damages; or provide what has been referred to as a "builder's remedy." The court chose the latter device.

The concept of the builder's remedy, already used in other States, is that builders who bring *Mount Laurel*-type cases and who prevail will be granted, subject to certain limitations, approval of their development proposals. Thus, the builder's incentive to challenge a vulnerable municipality became enormous and, quite suddenly, a large class of potential plaintiffs was created.

The problem of the cost and duration of litigation and a lack of judicial consistency and resolve was addressed with a novel approach. The court appointed three trial court judges, each with a separate geographic responsibility, to handle exclusively all *Mount Laurel*-type cases. The effect is to insure consistency. Furthermore, the judges assigned are obviously clothed with responsibility of carrying

forth the court's mandate. The cases are all to be fast-tracked and all issues, including rezoning, resolved prior to any appeal. The impact of this device should be felt quite dramatically shortly after the first decisions are rendered.

The last and most difficult problem was one of exposure: that is, in order to encourage voluntary compliance and discourage litigation, the court had to find a device to make the risk of losing great enough to have those effects. This was done in several ways, some of which have already been discussed.

First, there had to be a realistic possibility that a recalcitrant municipality would be sued. The builder's remedy and the assignment of the three judges did that.

Second, there had to be a significant exposure if the municipality lost. This was done by the builder's remedy and the use of an independent master. The fear created by the builder's remedy is that a builder, not the municipality, will control where and when a substantial number of residential units will be built. The master's role is to supervise the rezoning process so as to insure that by the end of the litigation, the municipality will be in full compliance. Thus, the municipal exposure is significantly enhanced by the potential loss of substantial control over the local land use process.

Another speaker will address the practical implications of the court's decision, what has occurred since it was rendered and how the issues have been addressed in other States.

Providing the type of affordable housing that lower income people need is not, conceptually, a difficult problem. No one can possibly believe that our government would fail if it seriously committed itself to creating this opportunity. In fact, government has successfully accomplished this to a limited degree. The issue is not whether we can or even how we can; fundamentally, the question is whether we want to. Most of the problems which arise today are the result of a lack of governmental commitment, whether due to a lack of necessary financing, improper regulation (that is, overregulation in some areas and a lack of regulation in others), or intentional governmental acts to preclude the opportunity from occurring.

We must acknowledge that we are dealing with a pervasive hypocrisy when we discuss these issues, or we will never adequately address them. The fact is that we provide decent shelter only to the extent

that we want to, and the extent to which it is not provided is the measure of our lack of desire to provide it. Deregulation, for example, has become a focus of political efforts to spur economic growth and, presumably, housing production. We cannot address an issue like deregulation without first acknowledging that much of the regulating has been motivated by racism and classism. Given the existence of such motives, talk of eliminating exclusionary or undue cost generating regulations may be futile.

In the *Mount Laurel* case, the court recognized that discrimination against the poor was, for the most part, intentional. As has been previously detailed, the court embarked on its own effort to cure this wrong. Now, as a result of that effort, one of the important issues being raised is the role of the judiciary.

It must be remembered that originally the courts refused to permit any but the most essential form of governmental interference with land use decisions. It was the judiciary in the 1920s which ultimately unleashed government to enter this field of regulations. The courts did this fully cognizant of the potential impact on lower income persons and warned that regulations would be permitted only if the general welfare was protected. We all know what happened, yet it took over half a century for the courts to deal with it. We now have, in several States such as New York, Pennsylvania, and New Jersey some type of formal judicial declaration that governmental regulation of the housing industry must not effectively discriminate against lower income persons.

Concerns have been heard that the courts should not be involved or that the extent of their involvement should be limited. My initial reaction to such concerns is that I find it hard to believe that the people articulating them are serious. If a governmental entity unreasonably discriminates against a class of citizens in their ability to obtain decent habitation, that class, obviously, must have access to the courts for redress.

Thirteen years have passed since we first went to court in the *Mount Laurel* case. I do not need anyone to tell me that litigation is a difficult way to enforce basic substantive rights and that the legislature is the more appropriate forum for many of these issues. However, I would like someone to tell me what realistic alternative my clients had in 1970 and whether any has arisen since. We are dealing with a

situation where racism and classism have produced a desperate situation for millions of our citizens. Government has not only refused to comprehensively address this problem but it often acts to exacerbate it. Fortunately, certain jurists have been willing to step in and call a halt to such practices. They are not and will not be as effective as legislatures would be if they chose to act. But, since the legislatures are not really trying, we are hardly in a place to condemn the courts for doing so.

I have already stated that we are dealing with a fundamental hypocrisy by those in power who regulate land use decisions. Let me cite a specific example which perhaps will explain some of my cynicism.

There cannot be a serious question that mobile homes provide adequate shelter at the lowest cost known today. The Federal Government has, since 1974, preempted local control over this industry with regard to construction and on-site placement of the units. This form of governmental regulation has, in large measure, been beneficial. It centralized regulation over an industry which was suspect and which required little or no special deference as to production standards due to State or regional differences. Yet local governments continue to prohibit their use. New Jersey, for example, has experienced widespread municipal exclusion of mobile homes. The effect of this form of governmental regulation has been to eliminate a source of lower cost housing and deprive our needy citizens of adequate shelter. Two questions: First, why did the Federal Government refuse to preempt this aspect of local regulation; that is, having insured that post-1974 units are safe, decent, and sanitary, why not prohibit land use discrimination between them and conventionally built units? Second, why do local governments exclude them despite the fact that they are federally certified as fit? The answers to both questions are pretty much the same—these units are symbolically, if not factually, associated with lower income people. Their exclusion is an indirect way of keeping lower income people out of a community.

As a Commission dedicated to the protection of our citizen's civil rights, you must recognize that first and foremost the existence of geographic class and racial polarities in this country is a function not of private choice but of governmental action. Prior commissions have well documented the plight of minorities and the poor in this Nation and have acknowledged the role government has played. It is

a sorry statement that it has been necessary for the judiciary, on the State level, to act to protect and preserve the constitutional rights of our poor and minorities against government. We can take pride in the *Mount Laurel* decision, and the court which

rendered it, only to the extent that it represents the willingness of at least one arm of government in one State to act. We certainly cannot take any pride in the fact that such action was necessary.

Report on the Question of Zoning

Richard F. Bellman*

The recent ruling by the Supreme Court of New Jersey in *Southern Burlington NAACP v. Township of Mt. Laurel*, 92 N.J. 158 (1983), is by far the most comprehensive statement on the ramifications of exclusionary zoning. This ruling followed upon the court's earlier *Mt. Laurel* holding, *Southern Burlington NAACP v. Township of Mt. Laurel*, 67 N.J. 151, 391 A.2d 935, cert. den. 423 U.S. 808 (1975). In the recent decision, the court considered issues of exclusionary zoning in six separate municipalities and, in a unanimous decision, presented an in-depth review and analysis of the implications of restrictive zoning and the problems of securing meaningful remedies for low- and moderate-income persons. This decision certainly will stand as a benchmark for future judicial rulings in this area.

Carl Bisgaier, in his paper, is summarizing the various aspects of the *Mt. Laurel II* holding. This paper will focus on efforts to bring the *Mt. Laurel* decision into the State of New York and perhaps other jurisdictions. In addition, a review of the proceedings in the Mahwah, New Jersey, zoning case (one of the *Mt. Laurel II* cases) is undertaken in order to focus on the difficulties of implementing the *Mt. Laurel II* holding in the absence of public housing subsidies.

The Effort to Import *Mt. Laurel II* into New York

The attack on exclusionary zoning is, of course, not limited to the State of New Jersey. Because of the receptivity of the New Jersey Supreme Court to challenges in this area, the focus of attention has been on the holdings by the New Jersey judiciary. Nonetheless, courts in other States, most notably New York, Pennsylvania, and Michigan, have all, at one time or another, considered the legality of zoning actions that limit housing opportunities for low- and moderate-income persons. In general terms, however, it must be recognized that no State court at this time has approached the sophistication and awareness of the problem of exclusionary zoning as has been shown by the New Jersey Supreme Court.

Housing advocates in New York currently are pressing an appeal in an exclusionary zoning suit involving the town of Brookhaven, located on Long Island.¹ It is hoped that the ultimate ruling in the *Brookhaven* case will be built upon the *Mt. Laurel II* foundation. The New York challenge is undergirded by the court of appeals (New York's highest court) decision in *Berenson v. Town of New Castle*, 38 N.Y.2d 102 (1975). The *Berenson* decision constitutes the strongest statement by the New York courts prohibiting exclusionary zoning. The Brookhaven plaintiffs are attempting to have the court expand upon *Berenson* and, indeed, read *Mt. Laurel II* standards into this holding.

In *Berenson*, the court of appeals considered the nature of a town's responsibility in exercising its zoning and housing policies with respect to insuring that the housing needs of low- and moderate-income persons are met. Noting that the exercise of local zoning powers involved "highly significant public policy considerations," the court held that local governments must be responsive to the needs of their own low- and moderate-income populations and also to low- and moderate-income persons residing in the larger metropolitan region.

With respect to the housing needs of local residents, the court stated that the "primary goal of a zoning ordinance must be to provide for the development of a balanced cohesive community which will make efficient use of the town's available land." 38 N.Y.2d at 109. A trial court must ascertain if the required balance exists and if "new construction is necessary to fulfill the future needs of [local] residents, and if so, what forms the new developments ought to take." 38 N.Y.2d at 110.

With respect to a town's regional responsibility, local officials must address the needs of low- and moderate-income persons residing in the region who may seek housing in a suburban growth community such as Brookhaven, for employment, social, or economic reasons. The court stated that while the town of New Castle might have sufficient multiple-dwelling units to satisfy both the present and future needs of its own populations, there was still a

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¹ The author of this paper is serving as counsel for the plaintiffs in the Brookhaven case.

responsibility generally to the residents of the county of which New Castle is a part and to residents of the larger New York City metropolitan region who may be searching for multiple-family housing in New Castle.

Although we are aware of the traditional view that zoning acts only upon the property lying within the zoning board's territorial limits, it must be recognized that zoning often has a substantial impact beyond the boundaries of the municipality. Thus, the court in examining an ordinance should take into consideration not only the general welfare of the residents of the zoning township, but should also consider the effect of the ordinance on the neighboring communities. 38 N.Y.2d at 110-111.

The *Berenson* court thus confirmed that a municipality in a suburban growth area may not ignore the needs of its less affluent citizens nor isolate itself from the needs of disadvantaged residents of neighboring towns and the inner city. To emphasize this responsibility, the court stated that by upholding time growth restrictions in *Matter of Golden v. Planning Board of Town of Ramapo*, 30 N.Y.2d 359, it had been "careful to note that 'community efforts at immunization or exclusion' would not be countenanced." 38 N.Y.2d at 108.

The *Berenson* court, in fashioning its standards for dealing with suburban zoning practices, noted that its holding was consistent with the approach taken by the New Jersey Supreme Court in *Mt. Laurel I*. In the first *Mt. Laurel* decision, the New Jersey court, in forceful language, held that suburban communities could not foreclose housing opportunities to low- and moderate-income persons and that a town's zoning regulations must "affirmatively afford that opportunity, at least to the extent" of the municipality's fair share of the regional housing needs. *Mt. Laurel I*, 67 N.J. at 174.

Unfortunately, since the *Berenson* holding, the New York Court of Appeals has had extremely little to say concerning the problem of exclusionary zoning and there has been no significant interpretation of the *Berenson* language. Thus, unlike the situation in New Jersey, New York litigants must deal with very general language which does not give clear direction as the duty of a trial court.

With respect to the *Berenson* case itself, the court of appeals remanded the proceeding for trial. The trial court in Westchester County found that New Castle's zoning failed to meet both tests outlined by the court of appeals and fashioned a broad remedial order directing, among other things, that New

Castle allow for the construction of 3,500 multifamily housing units. New Castle appealed from that order, contending that the trial court did not have the authority to enter a ruling of such broad scope. The appellate division agreed with New Castle to the extent of holding that the trial court should not have set a fixed number of multifamily units to be provided for by the town. Instead, New Castle was to be given a 6-month period during which time the town was to revise its ordinance on its own and attempt to design its zoning so as to be responsive to lower income housing needs. *Berenson v. New Castle*, 67 A.D.2d 506.

The appellate division, in considering the scope of a proper remedy following a finding of exclusionary zoning practices, was particularly concerned that plaintiff *Berenson* was not a low-income person in need of housing, but rather a housing developer whose principal interest related to a particular parcel of land. In light of that situation, the court questioned the trial court's remedy as going well beyond *Berenson's* interest in the litigation. In fact, *Berenson* did not appeal from the appellate division ruling cutting back on the trial court's remedy. The appellate division had directed that *Berenson* himself was to be given full relief with respect to his parcel of land (i.e., a builder's remedy) and no economic incentive existed thereafter for *Berenson* to pursue the litigation.

Subsequently, the New York Court of Appeals dealt with another exclusionary zoning matter in *Matter of Kurzius v. Upper Brookville*, 51 N.Y.2d 338 (1980). Again, the *Kurzius* case had nothing to do with the rights of low-income persons seeking decent housing opportunities in compliance with *Berenson*. The plaintiff in *Kurzius* was a landowner challenging Upper Brookville's zoning ordinance which required 5-acre sites for single-family homes on the plaintiff's land. The plaintiff sought an order reducing the requirements to one unit for every 2 acres. The housing to be produced, therefore, would still have been only for the affluent. The court of appeals upheld the 5-acre zoning, stating there was no proof that the zoning sought by the plaintiff had anything to do with meeting local or regional housing needs for low-income people. The court also held that it may be appropriate in some

circumstances for a town to maintain some large lot zoning in order to protect open spaces.²

The *Brookhaven* case involves the first across-the-board challenge to a municipality's zoning practices as exclusionary and discriminatory against low-income people. The plaintiffs are, in fact, low-income residents of Brookhaven, low-income residents living outside of Brookhaven, and several civil rights organizations, including the NAACP. The plaintiffs contend that several Brookhaven zoning policies are in violation of *Berenson* and New York State town law.

Most importantly, the *Brookhaven* plaintiffs challenge the method by which multifamily housing is built in this town. While multifamily housing is permitted in Brookhaven and a substantial number of units have been constructed, the town does not premap any vacant land for multifamily use. Instead, developers are required to submit applications for rezoning of their parcels to the multifamily categories. The town board then considers the rezoning application and either grants the request by enacting a new ordinance affecting the zoning on the specific parcel involved or rejects the application, leaving the zoning unchanged.

The plaintiffs argue that under this discretionary system, housing which would meet the needs of lower income persons, and particularly subsidized housing, does not and cannot get approval. The reason for this is that low-cost housing is always controversial and local officials are reluctant at best to jeopardize their political careers by sanctioning such development. In fact, Brookhaven officials have vetoed subsidized housing in recent years. It is argued that the purpose and effect of Brookhaven's method of zoning for multifamily housing is discriminatory and exclusionary.

The *Brookhaven* plaintiffs also challenge the town's procedure of imposing covenants in conjunction with rezoning for multifamily use, restricting the number of units with more than one bedroom. A common covenant that has been imposed requires that 80 percent of the approved multifamily development be one-bedroom or efficiency units and only 20 percent two-bedroom units. These covenants bar altogether three-bedroom units. Some of these covenants have actually limited development exclu-

sively to efficiency and one-bedroom units. The plaintiffs also challenge a practice whereby developers of multifamily housing are compelled to agree that all their units will be for sales (condominiums) and none for rental. Finally, the *Brookhaven* plaintiffs challenge the town practice of not premapping any land for mobile home use (the town has a mobile home park provision in its ordinance but no such units exist in the community) and its failure to map land for smaller lot single-family development.

The trial court in *Brookhaven*, in a ruling issued in September 1982, upheld all of the town's zoning practices. This method of creating multifamily housing was sustained on the basis that it was done throughout Long Island. The court did not address the issues of the restrictive bedroom covenants, the covenants requiring apartment sales, the method of zoning for mobile homes, or the lack of zoning for small lot single-family developments. An appeal has been taken to the appellate division which should hear argument early in 1984.

A principal argument being pressed by the *Brookhaven* plaintiffs is that the *Berenson* language requiring a trial court to ascertain whether new construction is necessary to fulfill the future needs of residents and to determine what form that construction should take, does actually establish a *Mt. Laurel* obligation. Plaintiffs argue that the trial court should have determined the low-income housing need among Brookhaven residents and this need in the region. The trial court should then have acted to insure that Brookhaven's zoning laws will lead to the fulfillment of that need. Contrary to the appellate division's holding in *Berenson* after remand, a trial court would have to determine the number of multifamily and low-income units a suburban municipality must work to achieve. Thus, the fair share notion articulated in *Mt. Laurel* would be applicable to New York.

The *Brookhaven* case is significant as it will provide an opportunity in New York to test the impact and reach of *Mt. Laurel* outside of New Jersey. Should the New York court indicate a willingness to adopt the approach articulated in *Mt. Laurel II*, this would have profound impact in establishing the New Jersey holding as a national standard in the area of exclusionary zoning. If the

² The Kurzius court did outline procedures to be followed in evaluating challenges to specific zoning requirements. It held that where a zoning provision is shown to have an exclusionary

impact, the burden of proof then shifts to the defendant municipality which must justify its procedures. Kurzius, 51 N.Y.2d at 343-45.

New York courts endorse *Mt. Laurel II*, a significant national trend at the State court level will have been established.

Can *Mt. Laurel II* Housing Remedies Provide Actual Housing Units for Low Income Persons?—Implementation in Mahwah, New Jersey

What does it all mean? Can exclusionary zoning litigation actually lead to housing production for low-income persons? It is clear that the New Jersey Supreme Court, in handing down *Mt. Laurel II*, was going to take whatever steps it thought necessary in an effort to achieve meaningful remedial action. The court acknowledged that results under *Mt. Laurel I* were discouraging and that new standards for compliance and instructions to the lower courts were necessary. Most importantly, the New Jersey Court stated that affirmative governmental devices were required to make the opportunity for low-cost, low-income housing realistic and that a municipality must cooperate with private developers who attempt to build housing for low- and moderate-income persons.

Mt. Laurel II was certainly a response to the argument pressed by housing and civil rights advocates that the results under the first decision were totally unacceptable. In one of the *Mt. Laurel II* cases, involving the township of Mahwah, for example, the town had simply rezoned areas for planned unit developments involving low density, multifamily housing. The housing resulting from the Mahwah rezoning was expensive condominium units selling well in excess of \$100,000. The dilemma confronting the court, however, was what to do in terms of remedy in the absence of Federal subsidies for low-and moderate-income housing construction.

The next few years will determine the fate of *Mt. Laurel II*. The issue will be whether the recent decision, like its predecessor, will merely increase the supply of multifamily housing in New Jersey while having little to do with low-income persons, or whether truly low-income housing opportunities will be created.

Of the six *Mt. Laurel II* cases remanded by the supreme court, the *Mahwah* case is the one most advanced at this time in terms of remand hearings.³

³ The author of this paper represents the plaintiffs in the Mahwah litigation.

⁴ The expert appointed by the court is Philip Caton, a former

A review of the status of the *Mahwah* case may, therefore, be helpful in understanding the *Mt. Laurel II* process and may provide some indication as to whether meaningful relief is possible.

Almost immediately after the supreme court remand, the trial court in *Mahwah* appointed an expert to assist the court in determining a fair share number.⁴ In July the expert submitted his report. In it, he found that Mahwah's fair share housing responsibility through 1990 was for 469 low-income units and 230 moderate-income units, for a total of 699 units. An evidential hearing was held on September 6-7, where this recommendation was reviewed and considered. On September 16 the trial court issued an order adopting the expert's fair share recommendation.

Under the terms of *Mt. Laurel II*, Mahwah is now required to rezone to accomplish its fair share housing obligation. As part of its September 16 order, the trial court appointed the same individual who served as the fair share expert to now serve as special master to assist the township in the rezoning process. Under *Mt. Laurel II*, Mahwah will have 90 days from September 16 to accomplish the rezoning. In the event the town does not rezone within this time or presents a revised ordinance which is insufficient to accomplish the fair share number, the trial court must order rezoning.

Given the absence at this time (and probably for the immediate future) of Federal housing subsidies, the real question is whether the affirmative devices mentioned by the Supreme Court will lead to the provision of low-cost housing. Unfortunately, there has not been extensive experimentation with incentive zoning and mandatory set-asides. It is anticipated, therefore, that the special master will play a critical role in contacting landowners and developers in Mahwah in an effort to identify those who would be interested in implementing the *Mt. Laurel II* fair share remedy in exchange for permission to develop their land with substantially increased densities. The plaintiffs also will be performing this function.

One developer has already come forward in the *Mahwah* case seeking rezoning of his parcel from a single-family classification, promising in exchange that 20 percent of his development will be for low-

State official and currently a private housing and planning consultant with offices in Trenton, New Jersey.

and moderate-income families. This developer owns a 26-acre site in a prime section of Mahwah adjacent to an already developed condominium project. In July the trial court granted the developer's motion to intervene in the zoning case and the developer is now looking to the special master for assistance in securing rezoning. This developer needs densities of 10 to 14 units to the acre to make possible a *Mt. Laurel II* remedy.

Initial studies of the intervenor's proposal indicate that it is possible to create low- and moderate-income housing units through *Mt. Laurel II* incentive zoning and absent Federal subsidies. Of fundamental importance to achieving such a result is that the land was purchased while in a single-family zoning classification, a fact which dictated a lower sales price. Rough calculations show that if the developer were allowed to build 283 units on this site, the development costs including land, site improvements, profit, and risk contingencies, would total about \$19.1 million. Projected sales prices for the nonsubsidized units (i.e., 80 percent of the development) would range from \$75,000–85,000 for condominium units and from \$90,000–100,000 for single family units. The low- and moderate-income units (i.e., 20 percent of the project) would sell from \$20,000–27,000. Based on these prices, the developer can project total sales of about \$22 million, thus assuring a reasonable profit on the undertaking.

Developers are, of course, asking the question whether they will be able to market the standard units at these projected prices while including the low- and moderate-income units. The standard units are priced below what is being charged for comparable condominium units in Mahwah. The fear is, of

course, that the presence of the internally subsidized units will turn away the regular homeseeker. One answer to this problem is that if most future development building in New Jersey is to include lower income units, there will be a greater receptivity to and acceptance of this type of housing.

Civil rights advocates will be watching to see that sufficient checks are written into *Mt. Laurel II* rezonings to insure that the low-income component is actually built. Also, mechanisms must be devised to insure that the low-income units remain in that status in the years to come. On condominium (sales) units, covenants must be written into the original deeds to insure that, upon resale, the units are sold only to other low-income persons and that the original purchasers do not reap profits.

Should the Mahwah intervenor obtain his rezoning, which appears extremely likely, and is able to proceed in a successful fashion with his development, the *Mt. Laurel II* doctrine will begin to have real meaning for low- and moderate-income families. Obviously, the process will be greatly simplified if public subsidies reappear. In any event, New Jersey landowners and developers, concerned for maximizing the profit in their development projects, have shown substantial interest in injecting themselves into the *Mt. Laurel II* process.

This Commission on Civil Rights would be performing a valuable service if it undertook to monitor, over the next several years, the private efforts to implement the *Mt. Laurel II* doctrine. Evidence of success in New Jersey will be extremely important with respect to the efforts to import the *Mt. Laurel II* holding into other States.

Special District Zoning in New York City's Chinatown: A Design for Destruction

Margaret Fung*

Introduction

New York City's Chinatown, located on Manhattan's Lower East Side, is the major residential and commercial center for the city's Chinese population. It is a stable, vibrant, and diversified ethnic community, both socially and economically. However, in recent years, Chinatown has been facing unprecedented development pressures, in part because of its proximity to the Wall Street financial district and the critical housing shortage in Manhattan. The demand for luxury housing has led to growing real estate speculation and inflated land values in the Chinatown area. However, a major force in precipitating plans for luxury development in Chinatown has been New York City's zoning policies and, in particular, the creating of the Special Manhattan Bridge District in August 1981.

The Chinatown Community—An Overview

Since the abolition in 1965 of discriminatory immigration quotas,¹ there has been a continuing influx of Asian immigrants to the United States. Of the 315,000 Chinese immigrants who entered the country between 1965 and 1979, about one-fifth have settled in New York City.² As a result, New York City's Chinese population has nearly quadrupled in the past two decades to almost 125,000 in 1980, making it the largest Chinese community in the United States.³

According to the 1980 census, Chinatown has about 35,000 residents.⁴ However, community agencies estimate that because of the census undercount, the actual Chinatown population is closer to 80,000. Because of language barriers, limited job skills, and a long history of discrimination against Asian Americans, a majority of Chinese residents live in Chinatown and work in the hundreds of

garment factories, restaurants, and small businesses located in the neighborhood.

The Chinatown population is comprised largely of the working poor. Twenty-three percent of the families living in Chinatown had incomes below the poverty line, as compared to 17.2 percent of the families citywide.⁵ With two wage earners in the typical Chinatown family, the 1979 median household income was relatively low, ranging from \$8,093 to \$14,527.⁶

Given the large proportion of working poor living in Chinatown, the lack of decent and affordable housing is of major concern to community residents.⁷ Chinatown is one of the most densely populated neighborhoods in New York City with overcrowding in 25 percent of all dwelling units.⁸

Eighty-five percent of Chinatown's housing stock consists of "old law" tenements built before 1901.⁹ Because rent control and rent stabilization laws offer long-time Chinatown residents greater protection against rent increases, median rents in Chinatown are low at \$135 per month.¹⁰ However, these statistics understate the cost of apartment rentals for new tenants, who pay between \$250 to \$350 for unrenovated tenement apartments, as well as "key money" of up to \$5,000.¹¹ Most of these tenements are in poor condition, with antiquated plumbing and heating systems and deteriorating windows, roofs, and plaster walls.¹² Despite these substandard housing conditions, the City Planning Commission has projected that Chinese families, especially new immigrants, will continue to reside in Chinatown's existing housing stock, in view of their low-income status.¹³

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¹ Pub. L. No. 89-236, 79 Stat. 911 (1965).

² U.S., Department of Justice, Immigration and Naturalization Service, Annual reports for 1965 to 1979.

³ Abeles, Schwartz, Haeckel and Silverblatt, Inc., The Chinatown Garment Industry Study 89 and n.29, 238 (1983).

⁴ U.S., Department of Commerce, Bureau of the Census, U.S. Census of Population, 1980.

⁵ *Id.*

⁶ *Id.*

⁷ See U.S., Commission on Civil Rights, Civil Rights Issues of Asian and Pacific Americans: Myths and Realities 571 (1979).

⁸ Chinatown Garment Industry Study, note 3, at 127.

⁹ New York City Planning Commission, Manhattan Bridge Area Study: Chinatown 41 (1979).

¹⁰ Chinatown Garment Industry Study, note 3, at 128.

¹¹ *Id.* at 129.

¹² *Id.* at 132-33.

¹³ Manhattan Bridge Area Study, note 9, at 44-45.

The Special Manhattan Bridge District— The Design

In the past two decades, the City Planning Commission has increasingly used the technique of special district zoning to regulate development in areas of unique interest. There are presently about 30 special districts, covering such areas as Little Italy, South Street Seaport, the United Nations, and the theatre district. These special districts, conceived with specific planning and urban design objectives, have often utilized zoning incentives which encourage private developers to provide certain amenities in return for increases in the floor area of new buildings.

The Special Manhattan Bridge District (SMBD)¹⁴ was prompted by a planning study published by the City Planning Commission in 1979.¹⁵ This study revealed serious overcrowding in Chinatown resulting from sharp increases in Asian immigration. The city also noted the presence of several vacant sites in Chinatown on which new construction was economically unfeasible because of existing zoning regulations.

At approximately the same time, the Overseas Chinese Development Corporation approached the City Planning Commission, requesting a zoning change in order to build a 33-story, luxury apartment building in Chinatown. The plans were ultimately rejected as inappropriate for the neighborhood. However, the developer's application, together with the city's new planning study, led the commission to draft legislation for a new special zoning district in Chinatown. The Special Manhattan Bridge District, which received final approval from the New York City Board of Estimate in August 1981, was specifically designed to encourage new residential development consistent with the existing urban design character of the neighborhood.

The SMBD limits new construction to sites requiring "minimal residential relocation" (i.e., sites that were vacant or "substantially vacant" as of the district's date of enactment). Floor area bonuses are available to developers who provide certain amenities to the community: construction of low- and moderate-income housing units, rehabilitation of existing substandard housing units, and community

facility space. The special district specifically provides that before a developer may evict tenants from a substantially vacant site, it must have a plan to relocate displaced tenants, comply with legal eviction requirements, and affirm that no harassment of tenants has occurred. Proposed projects within the SMBD must go through a special permit application process in order to gain city approval.

In theory, the SMBD seemed to offer a favorable solution to ameliorate the housing shortage and overcrowding problems in Chinatown. At the same time, it promised to preserve the character of the Chinatown community and minimize the potential displacement of tenants. In addition, it seemed to provide an example of incentive zoning at its best: private capital would be used to create or rehabilitate new housing and provide space for community-based programs. However, the flaws in the SMBD became readily apparent within a matter of months. Luxury housing, not apartments for low-income people, was proposed; demolition, not rehabilitation, was the result. The practice fell far short of the promise.

The Special Manhattan Bridge District— The Destruction

Overseas Chinese Development Corporation, whose requests for a zoning change had previously been rejected, became the first beneficiary of the SMBD's new zoning provisions. The developer, financed by investors in Hong Kong and Kuwait, proposed to build an 18-story, luxury condominium building, known as East-West Towers, with apartments priced at \$150,000 each. This application was submitted well before the SMBD had been enacted and was approved on the same day that the special district was created.

The developer had certified to the City Planning Commission that the site was vacant; however, tenants were in fact living in two rent-controlled buildings on the site. Several months after the permit for East-West Towers had been approved, the New York City Department of Investigation issued a report, documenting the developer's concerted campaign of tenant harassment.¹⁶

August 20, 1981 of a Special Zoning Permit, Pursuant to the Special Manhattan Bridge District, to Overseas Chinese Development Corporation to Build the East-West Towers Apartment Complex (1982).

¹⁴ Zoning Resolution of the City of New York, §§ 116-00 *et seq.*

¹⁵ Manhattan Bridge Area Study, note 9.

¹⁶ New York City Department of Investigation, East-West Towers: Report of the Department of Investigation's Inquiry Into Certain Events Preceding the Board of Estimate's Grant, on

The department's report showed that in attempting to clear the site for construction, the developer had cut off heat and hot water during the winter and had failed to make repairs of broken windows, fallen ceilings, and defective plumbing. The report also confirmed that several suspicious fires had been set in the building. After enduring several months of increasingly intolerable conditions, all of the tenants finally left the building when the developer offered them various sums of money. The Department of Investigation concluded that the developer had bought the two apartment buildings with the intent of vacating and demolishing them, and that the tactics of harassment had eventually driven the residents from their homes.

Although the City Planning Commission ultimately revoked the special permit for East-West Towers in September 1982,¹⁷ this action provided little consolation for the Chinatown residents who had been forced out of their neighborhood.

The harassment of tenants at the East-West Towers site is the most dramatic and concrete example of how the SMBD has led to the displacement of low-income minority residents from Chinatown. The anti-harassment provisions of the SMBD provided little protection to tenants, since the city made no serious attempts to enforce these measures. Moreover, it is obvious that allowing new construction on "substantially vacant" sites in the SMBD will inevitably create incentives for tenant harassment of the kind which occurred in connection with the proposed East-West Towers project.

This experience, together with the widespread community protests which followed, has helped to focus attention on other substantive flaws with the special district. First of all, despite the lip service that is given to the need for low-income housing, the SMBD actually encourages high density, luxury housing in the midst of a minority community of immigrants and working poor. This is confirmed by the fact that 5 months after the SMBD was approved, another developer applied for a special permit to build Henry Street Tower, a 21-story luxury condominium building with apartments selling for up to half a million dollars.

Moreover, the SMBD actually contains disincentives for the construction of low-income housing. Of

the three amenities a developer can provide in return for a new building of increased density, the smallest bonus is given for the construction of low-income housing units. By comparison, the bonus floor area for community space is over three times greater. Thus, the developer of Henry Street Tower received 107,000 square feet of additional floor area in exchange for providing the Chinatown YMCA with space to build a new swimming pool—a community facility of dubious importance, given the critical housing shortage in Chinatown.

The widespread prevalence of deteriorating tenements in Chinatown, together with the high costs of new construction suggests that the SMBD's intent to give bonuses for rehabilitating housing was a good one. However, these provisions are potentially dangerous since they offer no protections for tenants living in the buildings to be rehabilitated. For example, there are no controls on the future rents for newly rehabilitated units, and prior tenants are not guaranteed a right to return to their previous homes. The absence of such guidelines will merely result in the displacement of low-income Chinatown residents and their replacement by a new, affluent elite which can afford to lease renovated tenement apartments at escalating rents.

Finally, the SMBD allows new construction that is double the density of the area, as presently zoned.¹⁸ It is highly questionable whether such increased population density is desirable in a neighborhood that is already one of the most overcrowded in New York City. As a matter of urban design, it is obvious that 20-story buildings, such as the proposed Henry Street Tower project, are clearly out of scale and character with a community of 5- and 6-story tenements and several historic landmarks.

Compounding these problems are the procedural irregularities which accompanied the passage of the SMBD. Under New York City's Uniform Land Use Review Procedure, the city is required to conduct public hearings in advance of any action on proposals such as the SMBD. This is designed to encourage community participation at initial stages of the planning process and to ensure governmental accountability to local community needs. With few exceptions, Chinatown residents knew nothing

¹⁷ The revocation of this special permit, the first in the City Planning Commission's history, was based on the developer's misrepresentations to the city. See *The New York Times*, Sept. 21, 1982.

¹⁸ The SMBD raised the maximum allowable floor area ratio for this area from 3.4 (135 dwelling units per acre) to 7.5 (248 dwelling units per acre).

about the SMBD or the public hearings held to discuss it, until after they read stories about its enactment in Chinese-language newspapers. The lack of notice to this predominantly nonEnglish-speaking community is the basis for a legal challenge to the SMBD, currently pending in the New York Court of Appeals, the State's highest court.¹⁹

Moreover, under the New York State Environmental Quality Review Act, the city is required to prepare an environmental impact study whenever a proposed action may have adverse effects on the environment—which includes such factors as population density, socioeconomic considerations, and the existing character of the community. The city's failure to conduct environmental impact studies on the SMBD²⁰ or on the proposed Henry Street Tower project,²¹ which was approved by the city in April 1983, is also being challenged in the New York State courts.

The issues raised in these lawsuits go to the heart of the problems described above. The deft manipulation of technical zoning mechanisms, the exclusion of genuine community participation in governmental decisionmaking processes, and the extreme demands upon a limited supply of housing—these are all factors which effectively deny Asian Americans equal opportunity of access to private housing in New York City. If zoning provisions such as the SMBD are allowed to remain in effect, Chinatown residents will eventually be forced out of their homes to make way for the luxury developments favored by powerful real estate interests.

¹⁹ *Jin v. Board of Estimate*, 115 Misc. 2d 774 (S. Ct. 1981), *rev'd*, 92 A.D.2d 218 (1st Dep't 1983), *appeal pending*.

Conclusion

Ultimately, of course, zoning is only a limited tool which does not provide a comprehensive solution to the desperate shortage of decent and affordable housing for minorities and the poor. Other means to encourage the construction of new, low-income housing units, such as tax incentives to private developers and substantial increases in government subsidy programs, must be explored and implemented. However, the experience with New York City's Special Manhattan Bridge District has demonstrated that zoning policies, despite their laudable purposes, may have precisely the opposite effect by destroying minority communities.

If the intent of the Special Manhattan Bridge District was to generate incentives for the creation of new, affordable housing—as proponents claimed at its inception—then it has failed to do so. In fact, its net effect has been to diminish the existing housing supply for low-income Chinatown residents. It is zoning as a design for destruction.

The task of enlightened planners in the next decade will be to develop new zoning techniques—with effective enforcement mechanisms—that can withstand the manipulation of avaricious developers. Such zoning laws, formulated after consultation with community residents, will hopefully bring us closer to the goal of providing decent and affordable housing for all people in this country.

²⁰ *Id.*, Index no. 28394/81 (S. Ct. N.Y. Co.) (Gammerman, J.).

²¹ *Chinese Staff and Workers Association v. City of New York*.

Housing and Development Restrictions and Social Equity

H.M. Franklin*

The separation of people in metropolitan areas by racial and economic characteristics has concerned most thoughtful observers of our urban society. Those worried by the social implications of this pattern are joined by others who regard existing ways of allocating land resources in our metropolitan areas as ecologically irresponsible and economically wasteful.

Inequities in the existing system of metropolitan development are insidious to the average consumer. The family in a central-city apartment that would like to "graduate" to a modest suburban house, for example, is not a party to suburban zoning hearings, nor is it aware that a sewer moratorium might ultimately affect its interests. On the other hand, the suburban homeowner does not recognize that the location of a new industrial plant in a neighboring suburb, or that suburb's exclusionary housing policy, may create a surge of modest-income housing construction in his area, overloading his schools and other public services. The system for allocating land for housing is therefore quite invisible to those who are most disadvantaged by it. This retards the emergence of a broad based political consensus to do anything about changing the system.

Accordingly, the actual process of urbanization has rarely, if ever, been the focus of political grievance in American society. The continuing pressure of metropolitan population growth and the shortage of affordable housing, however, could set the stage for a new attitude toward urban land in which the Federal Government may have to take the lead. This new attitude must address systemic problems that affect the provision of lower income housing opportunities generally, rather than concentrating only on opportunities for racial minorities. The future of lower income minority housing opportunities is inextricably linked with the fate of lower income housing generally.

Historically, urban development in America has been largely a private affair, and the forces of the marketplace, combined with citizen attitudes, have shaped the physical and social destinies of American urban areas. There was a brief period, however,

when the Federal Government emerged as the leading urban planner.

The New Deal created the National Resources Planning Board (NRPB) in the 1930s. The board's 1937 report, entitled "Our Cities—Their Role in the National Economy," recited a litany of urban problems that is still familiar: traffic congestion, substandard housing, the concentration of the poor in blighted areas, lack of public open space, undue concentration of land values, and inequitable apportionment of local tax burdens. The only item that could be added to the 1937 list today is increasing racial separation. The presence of blacks in the cities of the 1930s had not yet become so deeply intertwined with the presence of poverty. The metropolitan areas themselves had become so fragmented politically and economically that the NRPB urged "an enlargement and development of local government areas, powers, and techniques, irrespective of the political boundary lines which crisscross these complex urban districts." The focus of the physical problem, as well as the resource for properly planning metropolitan areas, was land. "The nonexistence or nonenforcement of rational land policies," it concluded, "are the underlying factors in some of the most acute problems of urban life."

The Federal Government, early in the New Deal, was acting upon some of these approaches and conclusions and crossing the traditional barrier of assumed State power by directly involving itself in city and regional planning and building. Indeed, under pressure of the unemployment emergency, both State and local governments invited such action. The Public Works Administration not only financed construction of schools, sewage systems, bridges, roads, and dams, but also took over the actual building of housing for low-income people.

Since then many Federal programs, of course, have influenced settlement and land-use patterns without overtly claiming to do so. The Federal highway and housing and community programs, airport development, open space, development of sewer and sewage treatment programs all have affected the character of metropolitan areas. In the

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19th century, the disposal of public lands for homesteading, railroads, and municipal development directly affected the shape of America. When the Nation was spurred to conquer the wilderness and overcome the economic and human crises of earlier days, the Federal Government was planner and builder of housing and communities. Today, in this area it has retreated to the role of financier and insurer, and with diminishing conviction and resources even in that limited function.

This brief history is recited to indicate that a more active, and perhaps more direct, Federal role in dealing with our metropolitan problems would not be novel. Conditions today, however, intrude questions of race into already complex policy choices. And general perceptions of environmental values are far more developed. A sense of "crisis" on these issues does not exist, and is unlikely to emerge in the absence of calamitous domestic difficulties. Nevertheless, despite substantial cutbacks in Federal aid, the volume of grants directly or indirectly affecting metropolitan development amount to many billions of dollars and could provide enormous leverage for reform and innovation in dealing with metropolitan problems if a decision were made to do so.

A more equitable distribution of housing opportunities throughout a metropolitan area would avoid the increasing separation of the Nation's population by race and economic status. In the absence of constraints and incentives stemming from court action or national policy, communities will tend not to plan or zone to accommodate housing needed by lower income households in their region. Land use and related controls do not produce housing and rarely create incentives for it. They can greatly inhibit housing, however. In the present state of land use planning and zoning in the United States, and for the foreseeable future, the regulation of land use will remain largely ad hoc, highly localized, and less and less receptive to needed lower income housing.

Development patterns in the suburbs today are the legacy of legislative actions and judicial doctrines that developed during the first three and a half decades of this century, policies that guided the explosive growth of the suburbs following the end of the Second World War. The zoning power of local governments to separate land uses is a practice that swept the Nation in the 1920s under a significant Federal initiative: model legislation drafted under the sponsorship of the U.S. Department of Commerce. Ironically, that such power would be used

for socially and economically exclusionary purposes was accurately predicted in 1924 by the Federal district judge in the famous *Euclid* case. In holding that zoning was invalid under the Federal Constitution, he remarked that "in the last analysis, the result to be accomplished is to classify the population and segregate them according to their income or situation in life." The U.S. Supreme Court reversed that decision and upheld the zoning power of local government. In doing so the opinion of Justice Sutherland turned the lower court's concern with exclusion on its head by describing an imagined evil scenario (no doubt influenced by the character of immigrant-filled New York City tenements of the day) in which:

The development of detached house sections is greatly retarded by the coming of apartment houses, which has sometimes resulted in destroying the entire section for private house purposes; that in such sections very often the apartment house is a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district.

He concluded that for these and other reasons the zoning power could not be found to be so arbitrary and unreasonable, and without any relation to the public health, safety, and morals, as to be declared an invalid exercise of the State's police powers. In effect he recognized that socioeconomic exclusion was the fundamental rationale for zoning in the first place.

The simple separation of incompatible land uses that characterized zoning in its early days has in recent years been supplemented by more sophisticated land use controls embodied in zoning and subdivision ordinances and building regulations. The specific practices having exclusionary intent or impact have been exhaustively documented: exclusively large-lot zoning, minimum house size requirements, exclusion of multifamily housing and mobile homes, restrictions on numbers of bedrooms, high infrastructure specifications in subdivisions, discriminatory withholding of special exceptions or refusals to permit sewer and water connections, and others. Following the cue provided by the Supreme Court's opinion in *Euclid*, for decades these were usually viewed by courts as matters of local regulatory discretion. Legal challenges have come mainly from local landowners seeking greater profits from a more intensive use of their property, or from neighbors complaining that newly authorized uses would ruin

their peaceful neighborhood. The needs of outsiders—lower income families and others likely to live in the newly developed housing—were typically not given judicial recognition.

In the absence of any likely forceful regulatory intervention by the Federal Government to overcome local exclusionary land use policies, the social housing movement has therefore had to live in alliance with the only supportive political forces of any strength: the private developer, the homebuilder, and to some extent the construction labor unions. The goals of the social housing movement do not seem reachable except through a program of vigorous production and rehabilitation of housing, which in turn depends primarily on private market and Federal monetary and subsidy policies. But the Federal Government has now withdrawn from an actively interventionist position by severely reducing subsidies for housing construction and rehabilitation; it has adopted a freemarket, trickle-down posture with respect to meeting the housing needs of the less advantaged.

Social values of our society have deep roots in basic notions of equality and the increase in individual choices and opportunities. Few people seek an American future of an aristocracy of wealth housed in palatial suburbs and a peasantry of wage earners confined to declining neighborhoods, crowded into sterile, monotonous, multifamily projects, or assigned to pockets of dilapidated housing on the urban fringe. Most would instead embrace another vision: the extension of the urbane values of the cities into the suburbs without the overcrowding, the social tensions, and the other negative facets associated with older, larger cities. The variety, the color, and the cultural stimulation of the city could invigorate suburban areas of the future, given a higher density urban form and the dropping of barriers to settlement by people of diverse backgrounds and economic circumstances.

Any doubts about the strength of claims of inclusionary values on the American conscience are laid to rest by decisions of Federal and State courts. Local zoning practice may not meet the standards of our egalitarian credo, but the credo is enforced frequently in the courts. The Federal courts have been in the forefront of the effort to overcome racially exclusionary practices, and some leading State courts have led the attack on economic exclusion. Just as an individual cannot refuse to sell a home to another because of his race under civil

rights legislation, a locality cannot use its governmental power to regulate land uses so as to prevent the construction of a housing development by reason of the race of its prospective occupants. Such power used for economic exclusion is also coming into legal question.

A frontal attack on exclusionary land use practices in the suburbs was begun in the courts in the mid-1960s. Its leading edge was the conventional homebuilder who found that the market for single-family, tract-built homes was slipping. Unexpectedly, he became the champion of high density apartment and townhouse living, largely because of Federal subsidies. After the enactment in 1968 of major, federally subsidized housing programs, conventional developers and homebuilders were joined by sponsors of lower income housing in the fight against suburban exclusionary practices. With subsidized lower income housing then freed from the shackles of local government approval as a prerequisite to Federal funding of a project, with the increased Federal appropriations that contrasted those programs from their predecessors, and with the emphasis of the first Nixon administration on high production, the pressure to construct lower income housing in the suburbs became intense. Public interest groups, seeing these pressures as providing an opportunity to overcome suburban barriers, took on the cause of builders and sponsors of subsidized housing and invested the necessary time, money, and energy to mount a relatively steady attack in the courts.

The result was a large body of law that, through dozens of cases, imposed a standard of specific nondiscriminatory conduct on both HUD and local government. The most ambitious goals sought by proponents of social housing, however were not reached: beginning in the early 1970s the Supreme Court began a moderate retreat on tangential issues affecting the role of the judiciary in such disputes. The ability of certain interests (other than "testers") to become cognizable parties to lawsuits has been limited, far-reaching systemic remedies that were sought were not granted, and the standards for proving discrimination were tightened. But overt race discrimination in the housing and land use area became a far greater risk to local governmental authorities than ever before.

Where racial discrimination was not involved, the Federal courts have broken little new substantive ground in the last decade. For example, the Supreme Court has held that there is no right to housing

guaranteed by the Constitution, and lower Federal courts have held that neither the Federal Government nor local government has any constitutional or statutory duty to construct low- and moderate-income housing. The Supreme Court has also held that local government actions that discriminate against housing for lower income persons—as distinguished from housing for a racial minority—do not violate the equal protection clause of the Federal Constitution, and such actions can include the requirement for voter approval of public housing projects or changes in land use controls.

A potentially more powerful inclusionary standard may come from seminal decisions of leading State courts, New Jersey in particular, whose Supreme Court is a traditional pace setter in land use jurisprudence nationally. Reversing a long line of its own precedents on the basis of changes noted in demographic patterns in metropolitan areas of the State, the New Jersey court held in its famous *Mount Laurel* decisions (1975 and 1983) that every developing municipality in New Jersey must by its land use regulations, presumptively make realistically possible an appropriate variety and choice of housing. It held that a developing municipality cannot foreclose the opportunity of people for low- and moderate-income housing, and in its regulations must affirmatively afford that opportunity, at least to the extent of the municipality's fair share of the present and prospective regional need for such housing.

The New Jersey doctrine is significant for these reasons:

1. It recognizes that the injury sustained by the plaintiffs stems from economic rather than racial discrimination.
2. The legal basis of the doctrine is an interpretation of the State constitution rather than the State's zoning enabling act, which means that a State constitutional amendment would be required to overrule the decision (and attempts at such an amendment have failed). It further insulates the State doctrine from potentially adverse treatment by the U.S. Supreme Court.
3. The measure of a developing locality's affirmative land use obligation is its "fair share of the present and prospective regional need" for low- and moderate-income housing, giving regional housing-allocation planning potentially significant legal meaning in New Jersey.

4. The typical municipal practice of premising the exclusion of uses on the avoidance of fiscal burdens is specifically prohibited.

In addition, the New Jersey decision specifies that the new standard for regulating land use consistent with the region's general welfare is also consistent with the protection of legitimate ecological values. This was recently demonstrated by the court's decision that New Jersey's Department of Environmental Protection has the statutory authority to impose fair share housing quotas on developers seeking to develop coastal areas under State regulations protecting the coastal zone.

An "inclusionary" lessor for growth-management decisionmaking may be learned from cases such as *Mount Laurel*, reinforced to some extent by other judicial decisions dealing specifically with comprehensive growth-management programs. When a locality adopts a comprehensive, articulated program to control its population growth over the foreseeable future, it places its public policy intentions visibly on the table for judicial scrutiny if challenged, and the inclusionary nature of its program may be essential to its legal success.

There emerge from these cases, particularly in the State courts, guidelines of potential significance for land use decisionmaking. Comprehensive local regulations that limit population densities in growing suburban areas may be found invalid unless the community is absorbing a reasonable part of the region's housing needs. The community's fair share of anticipated regional growth will depend on many factors, but absorption of significant low- and moderate-income demand for housing is likely to be a major one.

Balancing and accommodating conflicting economic, environmental, and social values must take place within a growth management decision-making process. Most of these decisions are taken, however, on a case-by-case basis, and frequently no general standards guide the decision-makers. A process for accommodating conflicting values and judging performance on the wide array of decisions can be devised by a conscious reevaluation of the existing system.

Fifty years of experience with Euclidean zoning have taught us that a detailed premapping of land areas—or frozen "end state" planning—does little to produce rational land-use decisions. Legislative foresight is not strong enough to translate relative values into absolutes, and the assumed prescience of plan-

ners easily falls prey to overriding economic forces and political interests. Land use controls are a rare example of a regulatory scheme that must be designed to contemplate and accommodate continuous change in contrast with almost all other local regulatory schemes, which are intended to be relatively static.

But what, then, is to guide case-by-case decision-making if premapped solutions have failed? By what criteria do we judge how much growth is good growth? By what standards do we decide how many low- and moderate-income families (and, of course, minority households) are to be housed in order to provide diversity and equal opportunity? Can these objectives be defined with enough precision to guide case-by-case decisionmaking rather than escaping into the general and amorphous, though pleasant sounding cliches that abound in so many master plans? The answer to these questions must be affirmative, and it is vital that urban areas be provided with the incentives to make the attempt.

Case-by-case land use decisionmaking will always remain most difficult, simply because even if a weighing of competing principles might suggest a clear policy in the abstract, the facts supporting a specific development proposal must be carefully sifted. The immediate effects of a proposed development are often in legitimate dispute, and the more far-reaching effects of a proposed development are often virtually unknown. For, in assessing the impacts—both positive and negative—of a proposed development, decisionmakers are often not dealing in establishable facts but in predictions, and are often measuring these predictions against a range of acceptability rather than a received truth.

In most major land use decisions, those who decide must, therefore, have the insight of Sherlock Holmes, the foresight of the Delphic Oracle, and the wisdom of Solomon.

The existing system of decisionmaking would frustrate anyone with these qualities. Generally there is no agreed upon limit to the qualities. Generally there is no agreed upon limit to the quality or quantity of "evidence" that may be provided by the proponents or opponents of charge. Hearings can continue indefinitely. Attempts to influence the decisionmaker take on the aura of a political campaign. And this is not surprising, since the decider is legally "legislating," and even the most diligent, unbiased, and thoughtful decisionmaker is caught up in a maelstrom of contention.

Unfortunately most jurisdictions consider rezonings—the major method of land use decisionmaking—to be "legislative" in character even if a specific site is involved. As such the decisions are subjected to only rudimentary procedural requirements and often are "political" in the worst sense of that term.

A small but growing number of jurisdictions, however, regard such decisions as "quasi-judicial" determinations. So characterized, all site specific development decisions are required to be resolved by application of predetermined planning norms and appropriate findings of relevant facts. Judicial scrutiny is potentially much greater than is the case with "legislative" decisions, and thus judicial review is far less frequent because those who decide are guided by fair and thorough standards. This introduces a greater degree of rationality and reduces the opportunity for discrimination, abuse, plain ignorance, and surrender to parochial political or financial pressures. A process that accommodates growth, equity, change, planning, and reason can be more readily fashioned if it is not immunized from the standards applied by the society to quasi-judicial decisionmaking.

The twin objectives of racial inclusion and environmental protection can be sought most effectively by a reformed growth management decisionmaking process that the Federal Government could encourage at the local and metropolitan area. Model standards are at hand; the work of the American Law Institute, the 10-year old recommendations of the Rockefeller Task Force on Land Use, and the 1978 American Bar Association's report ("Housing For all Under Law") provide useful guidance, which are embedded in our system, but would structure the local decisionmaking process to more likely take regional needs—both social and environmental—into account.

Federal resources might be applied to encourage new forums and processes for such decisionmaking just as a Federal model legislation brought into being State zoning legislation. This must grapple with new methods for dealing with development decisions that shape urban regions fiscally, environmentally, and socially while allowing for local experimentation and creativity. Racial and economic justice is now thwarted by a system that also inflicts environmental damage and stimulates lawless regulation and decisionmaking.

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