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HOUSING DISCRIMINATION AND SEGREGATION IN AMERICA: PROBLEMATIC Dimensions AND THE FEDERAL LEGAL RESPONSE*

Charles M. Lamb**

Legal scholars and social scientists have long been interested in civil rights enforcement. Their interest is partly reflected in research dealing with the impact of judicial decisions. The impact approach has typically been oriented toward determining the reasons for and the extent to which there is compliance with the decisions of federal courts—especially those of the United States Supreme Court. The consensus emerging from this

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2. See, e.g., T. Becker & M. Feeley, The Impact of Supreme Court Decisions:
work is that civil rights compliance has been minimized by widespread intense local and state opposition, the infrequent use of severe sanctions, and the weak organization and limited financing of civil rights groups. Attaining compliance with judicial decrees in geographic areas with high minority populations, low incomes, and nearby recalcitrant jurisdictions may also be more difficult.

These impact studies have clearly advanced our understanding of compliance with civil rights laws gained through the judicial process. Less attention has been paid, however, to federal administrative enforcement agencies that function in the crucial area between the courts on the one hand, and those who must comply with the law on the other. The result of focusing on the courts to the exclusion of other equally significant instruments of civil rights compliance is an incomplete picture—"incomplete because the entire law enforcement process outside the courts is ignored." In the words of Bullock and Rogers, "[c]ourt decisions can, of course, propound universal standards. But in the absence of bureaucratic assistance in implementation, enforcement is likely to remain sporadic for some time." What these authors wrote years ago rings equally true today.

A need still exists, therefore, for further research on federal bureaucratic performance in antidiscrimination enforcement. After all, federal agencies are obligated under law to exert—at least as a last alternative—the coercion necessary to achieve compliance with the nation's civil rights laws. When compared to litigation, enforcement by executive branch agencies can be a more effective and timely means of gaining compliance. Hence, the key to future compliance and enforcement does not lie primarily with the courts. As has been observed, "rapid movement toward equality of the races is not attainable through the judicial process." Instead, the degree

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5. S. Wasby, supra note 2, at 147.

6. C. Bullock & H. Rodgers, supra note 1, at 47.

7. For a discussion of problems in the litigative approach, see S. Scheingold, supra note 3, at 97-130.

of future civil rights compliance that the federal government will be able to achieve depends mainly, although of course not exclusively, on upgrading the effectiveness and efficiency of executive branch enforcement efforts. The role of the executive branch becomes even more vital to the future of civil rights enforcement in light of the Supreme Court's growing tendency in recent years, since the advent of the Burger Court, to smile less favorably on the claims of minorities than it did during the fifties and sixties under the leadership of Chief Justice Earl Warren.9

Without relying on the federal court system, civil rights compliance may be secured through different administrative enforcement steps which vary according to the laws involved and the agency regulations issued pursuant to those laws. In Title VI of the Civil Rights Act of 1964,10 for example, there is no specific provision for judicial enforcement.11 Yet Title VI can be a critical means for safeguarding civil rights because it prohibits discrimination on the basis of race, color, or national origin in all programs or activities receiving federal financial assistance. Programs of all federal agencies providing funds to state and local governments fall within the requirements of Title VI, and a number of agencies have issued Title VI regulations.12 Gaining voluntary compliance under Title VI normally involves investigations by enforcement agencies, negotiations and conciliation between parties, and agreement about plans to avoid future discrimination. Where voluntary compliance efforts fail, federal agencies may, within certain guidelines, act administratively to slow down or even terminate federal assistance. If firmly implemented, Title VI actions by administrative agencies seem to have a wider impact in protecting civil rights than do decisions by the courts, and their impact is more direct and less


11. As a last resort, however, Title VI agencies may refer cases to the Department of Justice for law suits. For a discussion of this enforcement technique, see Bullock & Rodgers, supra note 4, at 992.

time consuming. Similar enforcement actions to bring about compliance can be taken under myriad other federal laws, including Title IX of the Education Act Amendments of 1972, general revenue sharing, and Executive Order 11,246 which prohibits employment discrimination in government contract work.

Even where the federal courts play a crucial role in the enforcement and compliance process, administrative actions in carrying out judicial pronouncements have received too little attention in the literature. Years ago Wasby detected this gap, writing that the "impact may be more greatly affected by what those outside the [Supreme] Court do with the decision than by the decision itself." In other words, "[t]he effective law of the land in any particular area of the country will be in part a result of the amount of compliance granted to judicial decisions. If that is true, power is less in the hands of the Supreme Court than in the hands of those who legitimate the [Court's] decisions." Further, "the more persistent the 'enforcers' are, the greater the compliance." In the area of school desegregation, for instance, school boards "may be tempted to challenge the policy if they are not fully certain that it will be enforced or that noncompliance will be met only with a reprimand and no severe sanction." In short, civil rights enforcement has two faces. One involves the formal laws and judicial rulings requiring nondiscrimination in areas such as housing, education, and employment. The other is the face of reality: the fact that those laws have not been fully implemented.

The purpose of this article is two-fold, both aspects of which directly relate to the discrepancy between legal formality (what the law says) and legal reality (how the law takes effect through enforcement) in the field of fair housing. The general theme of the first section is that a national disgrace stares us in the face and should be obvious to all. The housing conditions with which most minorities must contend on a daily basis should not and cannot be countenanced in a democratic society that professes to be responsive to the most fundamental and pressing needs of its citizens. Through the Housing and Urban Development Act of 1968, Congress pledged itself to the goal of "decent" housing for all Americans within a

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17. S. Wasby, supra note 2, at 257.
18. Id. at 21-22 (emphasis in original).
19. Id. at 258.
20. Id. at 46.
decade. But thirteen years later little progress has been made toward that goal in terms of the quality and quantity of housing available to most minorities. Progress has not been forthcoming to a large extent because the problems associated with housing discrimination and segregation persist, with little relief in sight. Some major aspects of these problems are therefore surveyed in the first section. A number of objective studies are drawn upon in that discussion. From these studies it becomes clear that the problems of housing polarization and discrimination in America need not be exaggerated even so slightly; the facts are obvious and speak for themselves.

The second section examines in a unique way the overwhelming failure of the federal government’s enforcement agencies to implement effectively the nation’s fair housing statutes, and the federal court opinions and executive orders reinforcing those laws. The approach here is unique in the sense that fair housing enforcement is analyzed in terms of nine carefully selected variables that affect fair housing implementation. By focusing on these variables, it is argued that we are actually assessing in a systematic manner the ways that the legal system has or should have responded to housing segregation and discrimination. These variables, in summary form, include the role of active federal involvement and enforcement agencies in the implementation process; whether legal policy goals are clearly stated and precise standards are established for measuring compliance; the commitment of administrative personnel and their superiors in promoting fair housing enforcement; the extent to which implementation is administratively coordinated; whether the advantages of complying with fair housing policies and laws outweigh related costs; and the attitudes of, and actions taken by, those who benefit from effective fair housing enforcement.22

22. It should be noted at the outset that some may object to the relatively frequent reliance in section two on reports issued by the United States Commission on Civil Rights. However, I am thoroughly satisfied, after spending 1975 through 1977 with that agency as a fair housing specialist, that the findings of the Commission’s fair housing research have been accurate assessments of the dilemmas that this country has experienced in the past and still encounters today. Indeed, I seriously doubt that academics can conduct a substantially higher quality of research than is typically released in various reports each year by the Civil Rights Commission. All federal agencies are required to provide the Commission with complete information regarding their fair housing implementation activities. I firmly believe that Commission-obtained data are more extensive and valid than any other available, and therefore I have not been reluctant to draw upon it freely in section two.
I. DISCRIMINATION AND SEGREGATION IN HOUSING: THE MULTIPLE DIMENSIONS OF THE PROBLEM

One has only to drive in and around most large and medium-sized American cities to discover notable differences in neighborhoods. They will vary according to wealth, employment opportunities, law enforcement, educational and transportation systems, medical and recreational facilities, and various public accommodations, among other things. Yet perhaps most obvious are differences in the racial compositions of these neighborhoods—segregation and polarization that are due in large measure to past and present housing discrimination. Housing segregation is not a "natural development." Rather, it emerges largely from conscious and deliberate actions on the part of local governments, real estate interests, financial institutions, and white homeowners to keep minorities outside white community environs. And of course the problem is nothing new. Far from it. "What is new is the scale of the phenomenon and the widespread public recognition of this reality and its disastrous consequences."23

In order to understand fair housing enforcement, it is necessary to have firmly fixed in mind the fundamental dimensions and characteristics of housing discrimination and segregation in the United States. This subject has numerous facets, but the following eight are most crucial. First, fair housing constitutes one of the most controversial, emotional issues in American law and politics. Second, whites believe that they gain from continued segregated housing, and in some ways they do. Third, as a result of the first two factors, this nation has a long history of residential discrimination and segregation which became most widespread with the great migrations of blacks from the South after World War I. Fourth, various zoning, land use, and growth control devices have been widely adopted and have the effect of keeping minorities out of white communities. Fifth, housing segregation leads to a number of intolerable living conditions and injustices being forced upon minorities which should be corrected by the legal and political systems. Sixth, housing segregation contributes to a vicious circle of discrimination that includes not only housing but also education and employment. Seventh, policies of the federal government have accomplished relatively little toward ensuring equal housing opportunity and, in fact, have contributed to housing segregation in some instances. And finally, although not totally unrelated to the preceding point, there continues to be a dual housing market in the United States, and practices such as steering, blockbusting, and redlining, which

the federal government allows to persist, should be eliminated through legal action. Each of these points will now be elaborated upon.

A. Emotions and Controversy

It does not require a great deal of insight to conclude that more controversy and emotions are bound up in the question of fair or open housing than any other area in civil rights. This is why the Fair Housing Act of 1968 was “the result of a political compromise, a product more of the desire for passage than the desire for a rational scheme for uprooting discrimination.”24 Political research has keyed in on the controversial, emotional traits of the fair housing question. After studying the defeat of open housing referenda, for example, Hamilton could conclude with confidence that “the referendum poses starkly what is perhaps the most fundamental and emotionally charged issue in domestic policy,” and that “[o]pen housing indubitably generates more involvement than local politics normally.”25

As a result of the emotional nature of the fair housing issue, predominantly white communities throughout the nation have adopted exclusionary devices and practices which have the intent or the effect of keeping minorities out of their neighborhoods.26 It is thus a simple fact of American politics, law, and psychology that whites are more opposed to living in an integrated neighborhood than they are to working with, or having their children go to school with, minorities.27


27. See, e.g., Harris, Majority Sees Racial Bias in Housing, Wash. Post, Jan. 15, 1973, § A, at 4, col. 1. This survey found that half of all white respondents were aware of housing discrimination against blacks and that it is more commonplace than employment or educational discrimination. Eley and Casstevens explain white opposition to housing desegregation both in terms of emotions and property values:

One may speculate that [the emotion involved in housing desegregation is] because of white America’s historic prejudice against Negroes. Most whites simply
integration appear to occupy a peculiar position in 'the rank order of discrimination' . . . because of the implications for intimacy of personal association that residential integration has for many people."  

Residing in a neighborhood with just a small number of minorities, particularly if they live nearby, conjures up images of unwanted social contact—of white children playing and developing close friendships with those of another race. For most whites, I daresay, this is indeed a taboo—something to be avoided at almost any cost. Furthermore, in the minds of many whites, there may well exist the belief that interracial marriages are more likely to occur where children are raised in mixed neighborhoods. These factors, when taken as a whole, have led to violence when minorities have sought to move into white areas. In some cases, little or no police protection has been afforded new residents. The emotions and controversy involved therefore dictate that less progress has been made in fair housing than in any other civil rights field. Fair housing is in fact the last frontier, the area in which progress is slowest and genuine change most remote.

B. Publicly Perceived Gains of Segregation

There are at least two principal benefits that whites gain, or perceive that do not want Negroes living next door or in white neighborhoods. Buttressing this prejudice is the traditional American view of the rights of private individuals to own and control the use and disposition of property. Fair-housing laws transfer the integration issue from schools and the voting booth to the much more personal arena of one's own home and the house next door. Americans have historically thought of the authority of the state as ceasing at the doorstep of the home. Indeed, many Americans have regarded this operating principle not only as a basic right, but also as a chief reason for our national progress. Reinforcing white America's dedication to the abstract principle of property rights—and perhaps underlying it—has been the firm belief that racial integration in housing depresses property values.

Small wonder, then, that laws whose avowed purpose is the control and elimination of racial prejudice in private housing have provoked long and bitter social controversy and conflict. In the circumstances, it has not been easy for many of us to see that our history has also operated to deny Negroes equal rights to housing of their choosing. We are ready to protect our own cherished property rights at a moment's notice, but we have been largely indifferent to fellow Americans whose property rights scarcely exist.

L. ELEY & T. CASSTEVENS, supra note 25, at 6-7.


29. See text accompanying note 63 infra.


31. H. RODGERS & C. BULLOCK, supra note 1, at 196.
they gain, as a result of housing segregation. One is psychological; the other economic. At the most elementary level, as suggested above, psychological rewards can for the most part be translated as overt or covert racist attitudes. Through polarized housing patterns, many whites "are reassured that there is someone beneath them on the social ladder." Their egos are inflated by knowing that some group cannot enter the pearly gates of their white neighborhoods. "The insecure use prejudice as a defense mechanism; they feel more important when they can look down on someone else." Hence, psychological considerations, although difficult to measure, explain to a certain degree the phenomena of "white flight" and the incorporation of a large number of white suburbs surrounding most major cities across the nation. And "once ensconced in their suburban havens, members of the middle class have erected walls and moats to keep out the unwelcome features of the central city and to protect their suburban turf."

Whites also wish to protect their suburbs from "infiltration" or "invasion" in large part for economic reasons which may play a more critical role than psychology in maintaining our segregated society. Those excluded from comfortable suburbia in the early 1970s often had incomes of $10,000 or more and were predominantly black. Because of these "undesirable" people and "undesirable" subsidized housing, real estate agents, financial lending institutions, and local governmental officials are preoccupied with the notion that the entry of minorities into white communities will inevitably cause property values to plummet. For at least twenty

32. See, e.g., C. Bullock & H. Rodgers, supra note 1, at 5-6; A. Downs, Urban Problems and Prospects 91-96 (1970); Silverman, supra note 25, at 83.
33. C. Bullock & H. Rodgers, supra note 1, at 6.
35. See generally M. Danielson, supra note 26. The growth of suburbs around large cities is a twentieth century phenomenon. During the last century annexation of surrounding areas by expanding cities was relatively common. In turn, middle-class residents on the peripheries sought to keep control of local services, to avoid higher taxes, and to exclude unwanted classes of persons by incorporating suburbs. By 1930, cities throughout the country, with the exception of the South, were surrounded by independent suburbs. Id. at 15-18. These suburbs have flourished since then, usually seeking to maintain stable population characteristics in terms of race and income levels. Id.
38. See R. Helper, Racial Policies and Practices of Real Estate Brokers (1969); Orfield, supra note 30, at 786; Note, Racial Steering: The Real Estate Broker and Title VIII, 85 Yale L.J. 808 (1976). The role of the real estate agent has been particularly important in maintaining segregated housing.

Over the past few decades the real estate industry has played a leading role in
years, research has nevertheless demonstrated that this widely held belief is largely a myth.\textsuperscript{39} Yet the myth can become a self-fulfilling prophecy: panic selling by whites leads to an increased supply of housing in white neighborhoods, which naturally results in a decline in the prices of homes.\textsuperscript{40} Also, it is frequently forgotten that the relatively few minority families able to move into better white communities do so because they can afford it. They are families with an economic status generally equal to that of white residents.\textsuperscript{41} But, as the famous research of the Taeubers indicates, "[e]conomic factors . . . cannot account for more than a small portion of observed levels of racial residential segregation. Regardless of their economic status, Negroes rarely live in 'white' residential areas, while whites, no matter how poor, rarely live in 'Negro' residential areas."\textsuperscript{42} The United States Commission on Civil Rights has added that:

[if]or blacks to have incomes equal to whites would not in and of itself solve the problem [of housing segregation]. This would

creating and maintaining segregated neighborhoods. The marketing practices of real estate brokers are an important factor in determining the availability of housing in the suburban market to minority buyers. Both sellers and buyers depend extensively on a broker's advice and sales methods.

\textit{Equal Opportunity in Suburbia}, supra note 37, at 16. Moreover, "[t]he importance of the broker's practices is that they affect home buyers on a much larger scale than individual discriminatory practices ever can achieve." \textit{Id}. Thus, the Commission on Civil Rights has concluded that:

The more general view . . . among realtors is that the maintenance of a dual housing market is more profitable than creating an integrated one. Economic motivations play a large part in determining racial practices in the real estate business. . . .

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

\textit{Id}. at 20. \textsc{L. Eley and T. Casstevens, supra} note 25, at 7, add that:

Real estate brokers have been the group most stubbornly opposed to fair-housing laws. For some years now they have labeled the legislation "forced-housing laws," charging that by this means the state is infringing on property rights by forcing people to dispose of their housing to persons they would not ordinarily choose. By and large, realtors would rather have Negroes discriminated against, and even segregated, than have the authority of the state employed to enable Negroes to obtain housing outside the ghetto.


42. \textsc{K. Taeuber & A. Taeuber, Negroes in Cities: Residential Segregation and Neighborhood Change} 2-3 (1965).
only lower the percentage of black metropolitan residents who live in central cities (in areas of one million or more population) from 81.1 to 78.4.

At every income level whites are more likely than blacks to live in suburbia. In 1970, 85.5 per cent of black metropolitan families earning less than $4,000 lived in the central city, as compared with 46.4 per cent of white families in the same income range. In the $4,000 to $10,000 income range, 82.5 per cent of the black families and 41.6 per cent of the white families lived in the central city. For families with an annual income of $10,000 or more, the central city figures are 76.8 per cent black and 30.9 per cent white.43

In short, although minorities have made substantial economic and employment progress since World War II,44 they are still chiefly restricted to "their own" neighborhoods.45

Before leaving these economic considerations, one point needs to be underscored: in some cases whites actually pay high costs for housing segregation and discrimination. These costs, for example, are reflected in heavier tax burdens, the growth of crime and juvenile delinquency that increasingly affects our suburbs as well as our cities, and the gradual decay of our leading metropolitan and cultural centers nationwide.46 "A different [cost] is that preoccupation with racial issues will so exhaust the energies of top public administrators that other problems, such as education, housing, transportation and pollution, will receive inadequate attention."47 And, to be sure, as much as one would regret to see it, there is always the possibility of future racial riots, similar to those experienced in the 1960s, and the accompanying destruction of property owned principally by white businesspersons. The flare-ups of 1980 in Miami may only be a preface of things to come in other sections of the country unless the legal system fulfills its long-standing promise of racial equality and true equal opportunity.48

47. *Id.*
48. On the recent racial problems in Miami, see *Fire and Fury in Miami*, Time, June 2, 1980, at 10-14, 19.
C. The "Great Migration" and Resulting Segregation

Due to perceived psychological and economic gains, and other factors such as overt prejudice and discrimination by real estate agents, homeowners, financial institutions, and local governments, housing discrimination and segregation have always existed in the United States. Historically this discrimination became more obvious with the migration of blacks from the South after World War I. "A movement of Negroes toward the North and the cities was developing early in the twentieth century, but events of the second decade of the century gave impetus to the movement and transformed it into one of the major migrative streams in the nation's history."\(^{49}\) That migration has been explained in economic terms. During the twenties there was significant economic growth in the North and East. "The resulting job opportunities, plus the ravage of the boll weevil in the South, encouraged a continuation of The Great Migration, and Negroes responded by moving northward in record numbers."\(^{50}\)

These migratory shifts had a profound and lasting influence on the distribution of the black population, particularly in urban areas and central cities. Hauser has described various facets of this crucially important movement most carefully and thoroughly:

In 1910, before large migratory streams of Negroes left the South, 73 per cent of the Negroes in the nation, as compared with 52 per cent of the whites, lived in rural areas, that is, on farms and in areas with fewer than 2,500 inhabitants. By 1960, the distribution of Negroes by urban-rural residence had become completely reversed, with 73 per cent of the Negro population residing in urban areas. Thus, within a period of fifty years, less than a lifetime, the Negro has been transformed from a predominantly rural to a predominantly urban resident. In fact, in 1960, Negroes were more highly urbanized than whites, 70 per cent of whom resided in urban areas.

The great increase in the concentration of Negroes is even more dramatically revealed by analysis of their metropolitanization. In 1910, only 29 per cent of Negroes lived in Standard Metropolitan Statistical Areas (SMSA's). By 1960, the concentration of Negroes in SMSA's had increased to 65 per cent. Between 1920 and 1940, Negroes in SMSA's increased by 65 per cent as compared with 36 per cent for whites; and, between 1940 and 1960, Negroes in metropolitan areas more than doubled, increasing by 109 per cent, as compared with 50 per cent for whites.

\(^{49}\) K. Taeuber & A. Taeuber, supra note 42, at 11-12.
Even more striking than the increase of Negroes in metropolitan areas is their concentration in the central cities of these areas. Between 1910 and 1920, the Negro population in central cities of metropolitan areas increased by 40 per cent; between 1920 and 1940, by 83 per cent; and between 1940 and 1960, by 123 per cent. Hence, by 1960, 51 per cent of all Negroes in the United States lived in the central cities of SMSA’s. Of all Negroes resident in metropolitan areas, 80 per cent lived in central cities. There was a much higher concentration of Negroes in metropolitan areas and in their central cities in the North and West than in the South. In 1960, of all Negroes in the North 93 per cent were in SMSA’s and 79 per cent in the central cities; and in the West 93 per cent in SMSA’s and 67 per cent in central cities. . . . In the South, however, 46 per cent of all Negro residents lived in SMSA’s and 34 per cent in central cities. The twenty-four SMSA’s with 1 million or more persons in 1960 contained 38 per cent of the total Negro population, and their central cities, 31 per cent. Comparable figures for whites are 34 and 15 per cent.51

As a result of huge waves of blacks moving to large metropolitan centers outside the South, housing segregation became especially pervasive against blacks.52 “The development of a physical ghetto . . . was not the result chiefly of poverty; nor did Negroes cluster out of choice.”53 There is indeed a general consensus that blacks have been forced into the position of being the most residentially isolated large minority group in America.54

51. Hauser, Demographic Factors in the Integration of the Negro, 94 DAEDALUS 851-52 (1965). See also S. BERGER, supra note 39, at 21; R. FORMAN, supra note 50, at 19. It should be emphasized, too, that black migrations to the North caused new social issues and dynamics:

As Negroes moved into Northern cities from the rural South, the race problem ceased being merely sectional and became a matter of national concern. If anything, the difficulties were greater in the North than in the South. Above the Mason-Dixon line there were no established customs or mores restricting race relations. The great Negro migrations of World War I and periods following raised new questions in the North. The answers, however, were old ones. Southern attitudes toward the Negro were easily adopted in the North, and their effect, untempered by tradition, thoroughly insulated the races from each other as huge colored districts of New York, Chicago, St. Louis, and Detroit developed. There the separation of the races was even more complete than in the South.


52. R. FORMAN, supra note 50, at 19.

53. A. SPEAR, BLACK CHICAGO 26 (1967).

54. See, e.g., S. BERGER, supra note 39, at 21. Berger's research indicates that whites and blacks in urban areas live in completely different neighborhoods for the most part, and that a very high degree of residential segregation holds true for cities in all regions of the nation and for all types of cities—large and small, industrial and commercial, central and
While there are exceptions, the trend, particularly since the 1950s, has been that as more minorities move into the cities, white flight has accelerated and surrounding white suburbs have sprung up like mushrooms.\textsuperscript{55} Thus, in the 1960s, housing segregation increased even over previous decades. During the decade of the sixties, for example, the white population in central cities of at least 500,000 decreased by 1.9 million, whereas the black population rose by 2.8 million. In contrast, these cities’ suburbs gained 12.5 million whites but only 0.8 million blacks.\textsuperscript{56} “In terms of percentage changes, the increase in the black share of the central city population was two and one-fourth times as great as the increase in the black share of total metropolitan population in these areas.”\textsuperscript{57} Recent statistical studies on housing patterns support this view and demonstrate that polarization by race remained a basic metropolitan trend during the 1970s.\textsuperscript{58}

Although blatant discriminatory practices in housing are not as common today as they were prior to the passage of the Fair Housing Act of 1968,\textsuperscript{59} a great deal of research documents the fact that discriminatory attitudes and accompanying policies have been and still are a chief cause for the lack of deconcentration of minorities throughout white residential areas,\textsuperscript{60} suburban. This fact also holds true regardless of the respective proportions of black and white populations, regardless of the relative economic status of the black and white residents, and regardless of the character of local laws and policies. \textit{Id.}

\textsuperscript{55} See, e.g., M. Danielson, supra note 26, at ch. 2; C. Haar & D. Iatridis, supra note 36, at 9-10.

\textsuperscript{56} \textit{Equal Opportunity in Suburbia}, supra note 37, at 4.

\textsuperscript{57} \textit{Id.} One year later the Commission on Civil Rights concluded that, during the decade of the sixties, central cities grew by almost three million blacks and lost some two million whites. By contrast, the suburban population gained 12.5 million whites but only one million blacks. U.S. Commission on Civil Rights, \textit{Twenty Years After Brown: Equal Opportunity in Housing} 5 (1975). It should be noted, however, that generalizations about central cities and suburbs are inapplicable in some cases. Research has mostly focused on Northeastern and Midwestern cities that are older and more densely populated. Housing patterns may vary somewhat in the South and parts of the West. See \textit{Equal Opportunity in Suburbia}, supra note 37, at 7.


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and that minorities are understandably upset with residential segregation. One study published in 1978 has demonstrated that resistance by whites to housing desegregation has far more explanatory power for continued racial separation than either the economic status of blacks or the notion that blacks prefer to live together in the same communities.

White resistance to mixed neighborhoods is very evident. Even in the situation of minimum integration—one black and 14 white families—one-quarter of the whites claimed they would be uncomfortable. As the proportion of blacks rose, so too did discomfort among whites. In a neighborhood which was half black, 72% of the whites said they would be uncomfortable.

We asked those white respondents who reported being uncomfortable in a neighborhood whether they would actually try to move out. . . . This proportion was quite low for the neighborhood which contains one black family—only 7% of the whites would try to leave—but increases rapidly. Forty percent said they would move away from the neighborhood which is one-third black and 64% would leave the majority black area.

An equally revealing study was sponsored in 1978 by the United States Department of Housing and Urban Development (HUD) in forty major metropolitan areas. It showed that despite the relatively large number of federal statutes, court decisions, and executive orders making housing discrimination illegal, in 29.1 percent of all instances where blacks sought to rent housing, they were discriminated against. The comparable figure for discrimination in the selling of homes to blacks was 21.5 percent. Second, it was found that when blacks contacted four different real estate agents, there was a seventy-five percent chance of encountering discrimination in rentals and a sixty-three percent chance in sales. Third, the study examined the process of “steering”—the tendency of real estate agents to show persons property for rent and sale only or primarily in


62. Farley, Schuman, Bianchi, Colsanto & Hatchett, supra note 60.

63. Id. at 333, 336.


65. *Hearings, supra* note 64, at 165.

66. Id.
neighborhoods in which their racial group is already dominant. The study found that steering “is probably the single most widely practiced form of racial discrimination in the sales market,” but the extent to which steering occurs is not included in the above figures on discrimination. Perhaps most significantly, the data on steering indicated “that equal treatment was accorded to whites and blacks in only 30 percent of [the cases] in the rental market and in only 10 percent in the sales market.” In other words, as of 1978, seventy percent of all whites and blacks in forty major American cities were steered into “their own” neighborhoods where rental property was being sought and in ninety percent of all cases where the aim was to purchase housing! This is not, needless to say, equal opportunity to housing—not by a far cry.

Also worthy of note are the extensive, almost revolutionary changes in population distribution that would be required to bring about a desegregated society. In 1975, in the nation’s fifteen largest metropolitan areas, seventy-five to ninety-seven percent of either the white or the black population would have [had] to shift their places of residence to bring about complete integration. Another rather astonishing estimation was projected in 1970: “An average of 86 percent of the non-white population in 207 cities around the country would have to be redistributed in order to eliminate residential segregation.”

Through what legal and extralegal means has our society’s housing picture been continually stratified along racial lines? The restrictive covenant was probably the first formal procedure used to promote and maintain housing segregation, but there have subsequently developed many other

67. Id.
68. Id.
69. Id. at 166.
70. Farley, supra note 41, at 165.
71. S. Berger, supra note 39, at 21.
72. C. Vose, supra note 51, at 5. Vose notes that:

[all]though the generic name of restrictive covenant covered all devices which aimed at limiting the sale or rental of property, two distinct types of devices were used to keep property out of the hands of Negroes. Restrictions might be placed in title deeds or signed as a separate agreement quite apart from the actual property titles.

Id. at 7. After restrictive covenants were prohibited through state enforcement in Shelley v. Kraemer, 334 U.S. 1 (1948), white property owners developed organizations to maintain segregation privately:

Neighborhood property associations functioned in Los Angeles, Chicago, New York, Detroit, Baltimore, St. Louis, Washington, and other cities. They drafted restrictions, had them officially recorded and guarded against violations. These associations usually worked closely with organized real-estate interests within each city to prevent sale of covenanted property to Negroes. Out of deference to these
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Discriminatory practices. After a survey of the literature and past legal trends, one recently assembled list of the most common forms of housing discrimination in the twentieth century suggests that several basic forms of discrimination have been relied upon to hold suburban racial and income characteristics static. In addition to restrictive covenants, these have included zoning ordinances based upon race, "[l]ocal condemnation of land occupied by minority groups in suburbs or land slated for minority or integrated housing;" excluding federally subsidized housing by local communities through a broad range of devices; discrimination by financial lending institutions; discriminatory mortgage and loan policies by the Federal Housing Administration of HUD and the Veterans Administration; the lack of effective police protection for minorities who move into white neighborhoods; and the "[u]se of subsidized housing programs in ways that intensify segregation and destabilize integrated neighborhoods."73 Additionally, information concerning housing opportunities usually is not available to blacks and whites on the same basis. . . . Blacks are more likely to face limitations on credit, or are unable to secure mortgages if they seek housing outside "black" areas. Opportunities normally available to whites, such as second mortgages or flexibility in meeting contract deadlines, are frequently withheld from blacks.74

These and other discriminatory practices are further explored later in this article.75

D. Land Use, Zoning, and Growth Control Planning

At the outset it should be emphasized that zoning, land use, and growth control planning are not inherently "bad." To the contrary, they are essential. However, they become "bad" when deliberately employed to have the effect of excluding those who could otherwise move into a community and wish to do so, but are denied that right. The fact is that "nearly every powers, local newspapers refused advertisements offering to sell real estate in white areas to Negroes. Individual owners were implored not to sell to colored people. When these informal means failed, the white property-owners' groups, called variously protective, improvement, or citizens' associations, brought legal action and gained injunctions from courts which forbade violators from owning or using particular property. Their success in gaining enforcement of these privately drawn covenants developed patterns of racial segregation in northern cities.

C. Vose, supra note 51, at 250.
73. G. Orfield, supra note 1, at 409. See also H. Rodgers & C. Bullock, supra note 1, at 141-46.
74. M. Danielson, supra note 26, at 12.
75. See text accompanying notes 143-93 infra.
land use control entails some exclusion, even if indirectly, by raising the costs that the market would otherwise charge.\textsuperscript{76} Thus, piecemeal governmental planning of land usage for residential, commercial, and industrial purposes is a thoroughly legitimate legal and social problem that must be resolved—provided, again, that it does not work to the complete disadvantage of minorities seeking decent housing in urban and suburban areas.

Much American land, of course, was cleared, settled, and used for various purposes decades ago. Yet not until this century's rapidly spreading urbanization and industrialization did the importance of regulating growth and land use become clearly apparent. Reasons for concern surround the urban and suburban citizen and are becoming more evident to those affected in nearby rural and semi-rural communities. Uncontrolled large-scale development, demands for additional public services to meet escalating growth, rising taxes, suburban sprawl, deterioration of the environment, traffic congestion, and myriad related growth traits significantly impinge upon the quality of urban and suburban life.\textsuperscript{77}

The 1970s therefore witnessed the emergence of no-growth movements throughout the nation.\textsuperscript{78} Many suburban communities established new zoning regulations and building codes. Apart from, or in combination with exclusionary devices, suburbs also adopted local moratoria on the construction of low-income housing, forbade the use of mobile homes, blocked sewage development, and prevented additional commercial and industrial build-up. Perhaps most local no-growth plans were not intended to exclude minorities. Most may have been natural and predictable reactions to spreading urbanization and industrialization. It should be self-evident, however, that there is an unfortunate but seemingly unavoidable conflict between the apostles of growth controls and ecology on the one hand, and those who advocate open housing on the other:

Emphasizing "proper ecological study" and the misuse of legitimate ecological concerns . . . oversimplifies the inherent conflict between the goals of the environmental and open-housing movements. Preserving the environment through the regulation of growth cannot be fully compatible with expanding housing op-

\textsuperscript{76} C. Haar & D. Iatridis, \textit{supra} note 36, at 15 (emphasis added).
\textsuperscript{78} \textit{See, e.g.,} F. Bosseman & D. Callies, \textit{The Quiet Revolution in Land Use Control} (1972); W. Reilly, \textit{The Use of Land: A Citizens' Guide to Urban Growth} (1973).
opportunities. Environmentalists seek to redress the balance between nature and man. Housing advocates, on the other hand, argue that "people have got to come first." Protectors of the environment stress the need to conserve land, while housing activists insist that "we are filthy rich with land in America's metropolitan areas." Even when exclusionary motives are absent, environmentally inspired land-use controls limit the land available for development, thus increasing its cost and reducing its use for lower-cost housing.79

Local governments decide housing and related land use policy questions. In the strictly traditional legal sense, state governments are responsible for safeguarding the health, safety, welfare, and morals of the public under the tenth amendment of the United States Constitution. But, in practice, through state enabling acts most state legislatures have delegated virtually the entire responsibility for housing and land use planning to local governmental units.80 Local zoning boards have in turn been established in most cities of any size to implement these planning powers. Proposing maps and ordinances, these local planning agencies oversee land usage—the commercial, industrial, and residential nature of buildings in particular areas, their height and density, subdivision development, the provision for parks and open space, and related matters. Such planning efforts are necessary and are frequently said to be "comprehensive" in nature—to promote a broad, rational policymaking approach to urban and suburban problems. They are designed for both physical and aesthetic purposes with the goal of establishing a desirable overall scheme for the urban and suburban environment.

But in this process political considerations inevitably appear, including the issue of exclusionary zoning to keep minorities and the poor out of white suburbs. If politics involves the "authoritative allocation of values for society"81 then the planning process is in no small measure political in character. In this process the interests of numerous individuals and groups are plainly affected when planning actions are adopted and implemented. "Significant planning problems are never simply technical; they always involve the determination of priorities among values."82 Further, these values are deeply held, and planning constitutes a political issue not only because values are authoritatively allocated, but because land use is intri-

80. See generally the sources cited in note 78 supra.
cately related to other major issues (minority housing, energy conservation, transportation, etc.) and because it profoundly affects so many fundamental aspects of everyday life (the location of where people live and work, their sewage and water facilities, transportation systems, recreation alternatives, and many economic considerations involved in such questions).

Take the case of the suburbs, where the issue of additional development outside a metropolitan area is usually of great concern to citizen's groups, real estate and business interests, and governmental officials. Citizen associations are often most anxious to stop undesirable land usage within their specific communities. "Undesirable" uses may include rezoning which would permit new commercial activity, industry, or low-income housing, thus bringing in minorities and newcomers of lower socioeconomic status. Some developers, by contrast, are strongly prone to support continued commercial growth and higher population densities because they earn their keep through such new development. Developers may therefore find themselves in conflict with organized citizens of an area, but in agreement with minorities and the economically disadvantaged who back low-cost, high density housing. In these instances, traditional "liberal" and "conservative" labels are often inapplicable, for as mentioned above, environmentalists may oppose actions which would help upgrade the lives of poorer minority citizens, while developers may typically favor such actions. "Clearly, less expensive housing would be built if builders were not confronted by local restrictions which reduce the supply of land available for housing, increase its costs, and prevent the most economical construction methods and materials from being used."

Between these opposing camps are elected officials and professional planners, each well aware of the positions of these groups. As might be expected, each group finds that certain officials are more sympathetic with their positions than others—a fact that may give rise to intergovernmental friction. In suburban planning commissions, for instance, planners often have liberal values, as contrasted to the more conservative viewpoints of commissioners themselves. This "may lead to an undercurrent of conflict and distrust between the lay and professional portions of the planning bureaucracy." A chief reason for this conflict and distrust is that political officials typically furnish little guidance for planners in the early stages of their work when strategic choices among opposing values must be

83. The following discussion is based in large part on H. LeBlanc & D. Allensworth, THE POLITICS OF STATES AND URBAN COMMUNITIES 281-83 (1971).
84. M. Danielson, supra note 26, at 76.
weighed. Only later, when value clashes become plainly evident, does political conflict often surface, and then, to no one's surprise, it is discovered that new suburbs have neglected to plan any housing to speak of for the poor and minorities. In a nutshell, this is the essence of the process involved in land use, zoning, and growth controls. But, again, the rub comes when this process is employed to exclude "undesirables" who, like everyone else, have a right to live wherever they care to and can.

What has the federal judiciary, and specifically the Supreme Court, done to affect this process? In the landmark case of *Euclid v. Ambler Realty Co.*, the Supreme Court sanctioned the constitutionality of municipal zoning. The Court, demonstrating a strong deference to local control, held that the zoning power was a rational means to promote the safety, health, morals, and general welfare of the public. Yet aside from these laudatory purposes, municipal zoning soon was seized upon by local governments for discriminatory purposes. Communities wanting to exclude "undesirables"—of course a euphemism for racial minorities and indigents—often utilized the zoning power to effectuate their goals. Long ago the Supreme Court struck down local zoning enactments that explicitly barred racial minorities, but exclusionary zoning and the use of the zoning

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86. 272 U.S. 365 (1926). Commenting on the *Euclid* decision, Haar & Iatridis have appropriately emphasized that:

> [t]he potential for racial segregation to become a motive for legislative action was recognized (and put aside for consideration at some future, indeterminate time if the case could be established) by the first Supreme Court decision on the subject, which upheld the validity of comprehensive zoning in 1926. Fodder for sharp debate on both moral and constitutional grounds ever since that date, the exclusionary aspects of land-use controls have recently come to be recognized as a major roadblock to the implementation of national housing policies.

C. HAAR & D. IATRIDIS, supra note 36, at 15.

87. See, e.g., *Shelley v. Kraemer*, 334 U.S. 1 (1948); *Buchanan v. Warley*, 245 U.S. 60 (1917). *Buchanan* ruled that local zoning ordinances expressly forbidding housing opportunities for blacks in "Caucasian" neighborhoods were unconstitutional, although some Southern cities continued to enforce such laws. See L. MILLER, THE PETITIONERS: THE STORY OF THE SUPREME COURT OF THE UNITED STATES AND THE NEGRO 250-51 (1966). Rather than being a zoning case per se, *Shelley* prohibited state enforcement of racially restrictive covenants. However, Vose, the foremost expert on restrictive covenants, has interestingly noted that "[t]he end of equitable enforcement of racial covenants in 1948 changed few attitudes about the desirability of having Negro neighbors. Some home owners confessed to racial prejudice, pure and simple. A larger number claimed to abhor discrimination, but defended residential segregation with economic arguments." C. VOSE, supra note 51, at 218. Moreover:

Without legal support but with the compulsion to segregate remaining, white property owners in all parts of the country received the cooperation of real-estate boards in keeping Negroes from buying homes in residential areas traditionally reserved for whites. In the past, realtors ordinarily respected the force of restrictive covenants. The Supreme Court's decision in the 1948 case did not change the
power to raise the cost of decent housing beyond the economic means of low and moderate-income persons soon supplanted earlier and more blatant racial discriminatory practices.88

Given the fact that a disproportionately large percentage of low and moderate-income persons are also members of minority groups, exclusionary zoning ordinances have directly promoted housing segregation, polarization, and isolation. With this in mind, one might expect that the Supreme Court would be prepared to overturn zoning practices that intentionally price these persons out of the marketplace. However, the Court generally refrained from deciding exclusionary zoning cases until the 1970s,89 and the Burger Court has refused to declare various exclusionary practices illegal.90 The Burger Court continues to apply the deferential standards of Euclid to exclusionary zoning actions that impinge on the legitimate though legally unrecognized rights of nonresident minorities. As a consequence, these people are forced to reside in inferior neighborhoods where their economic hardships are exacerbated.91 In short, although the federal courts, and particularly the Supreme Court, have long stood as the bastion of hope for powerless minorities, the exclusionary zoning decisions of the Burger Court have reversed this time-honored role by precluding anything but the most perfunctory role for them in exclusionary land use disputes.

88. The most commonly utilized types of exclusionary zoning ordinances have been those mandating minimum lot size and floor space requirements, and those prohibiting construction of multiple-family dwellings. See Note, Exclusionary Zoning and Equal Protection, 84 HARV. L. REV. 1645, 1645-46 (1971).
89. See Note, Exclusionary Zoning and a Reluctant Supreme Court, 13 WAKE FOREST L. REV. 107 n.3 (1977).
The Burger Court has also shown little interest in the fact that exclusion has a major impact on equal educational opportunity. Since education is one of the necessary attributes for success in later life in most cases, failure to receive an adequate education is often tantamount to permanent confinement to life in run-down neighborhoods. But the disparities in educational spending between central city school districts and suburban school districts are astronomical. A comparison of expenditures per pupil and pupil/teacher ratios between central city and suburban schools reveals that expenditures per pupil in the suburbs are approximately 35 percent greater and that pupil/teacher ratios are about 35 percent lower. Moreover, the physical isolation of the poor from wealthier pupils and schools hinders academic achievement. The classic study of the effects of socio-economic status on educational quality, the so-called Coleman Report, indicates that a student's academic performance is highly dependent on the background of the other pupils in his or her school. Thus, if a pupil of low socio-economic status is taken from a school of similar pupils and placed in a suburban school with students of higher socio-economic status, his or her academic performance is likely to increase significantly. Yet, while the guarantee of desegregated education has been the express policy of the American legal system ever since Brown v. Board of Education, unless this nation can thwart exclusionary practices so that low and moderate-income housing is located in suburban areas with substantial white populations, the commendable goal of equal educational opportunity will not be accomplished. Interdistrict busing, the only other major alternative


Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. (emphasis added).


95. Id.

means to provide for desegregated educational opportunities, is not only a burdensome and costly remedy, but its use was limited by the Burger Court in *Milliken v. Bradley*.\(^7\)

Finally, exclusionary zoning clearly stands in direct opposition to the long recognized national commitment to provide a decent home and a suitable living environment for all persons. The Housing Act of 1937,\(^8\) which established a federal housing agency authorized to make loans and grants to state agencies for slum clearance and low-rent housing projects, and the Housing Act of 1949,\(^9\) which created the first major federal urban renewal program, laid the foundation for this commitment. A more recent housing enactment by Congress, the Housing and Community Development Act of 1974,\(^10\) authorizes the allocation of federal grants for the primary purpose of “the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.”\(^11\) But because of widespread exclusionary practices, such congressional goals and commitments have not been and cannot be met. As a result, most minorities still are forced to live in less than “decent” housing facilities. The ineluctable conclusion that must therefore be drawn is that the goals that Congress has set forth for this country have not been achieved, because “to deny any group of persons access to reasonably priced housing in the suburbs is to deny that group access to a higher quality education, to diminish its ability to compete for new jobs in expanding industries, and to deny it amenities like fresh air, open space, and a lower crime rate.”\(^12\)

### E. Ghetto Living Conditions in a Segregated Society

The disadvantages that minorities suffer as a result of housing polarization and discrimination need some elaboration, although they should be at least partially understood by all. To begin to comprehend these disadvantages, we must recognize that the great migration of blacks from the South to the North too often led to a ghetto existence for most blacks. Moving to the cities, blacks typically found themselves forced into the older parts of cities, central business districts, and later high-rise publicly-financed apartment buildings which rapidly declined in quality. There were some excep-

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99. Id. §§ 1441-1490 (1976).
100. Id. §§ 5301-5317 (1976).
101. Id. § 5301(c) (1976).
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of course, where blacks were scattered thinly throughout white neighborhoods, frequently in servants’ quarters in the first half of the twentieth century, or in black housing pockets. The early development of black ghettos, and exceptions to these living patterns, have best been described in the following words:

The black ghettos of American cities are primarily a twentieth century phenomenon. . . . Recent scholarship indicates that the roots of the twentieth century black ghettos are to be found in the patterns of urban living that developed during the nineteenth century. While much research remains to be done, it can be said that although Negroes were widely distributed in various neighborhoods within the cities, they were more concentrated in certain areas than in others, with many blacks living in small enclaves along waterfronts or on the edges of towns. . . .

In cities like Philadelphia, alley dwellings created a distribution of the black population in small clusters intermixed with clusters of better dwellings of whites. A special case of this was the pattern of urban slaves in Southern cities like Charleston, New Orleans, and Georgetown (an old part of Washington), where the slaves inhabited quarters in back of the grand houses of wealthy whites. The poorer, unskilled, laboring class of free Negroes, on the other hand, tended to live in the least desirable areas—sometimes in predominantly white working-class neighborhoods and at other times in black enclaves which, except that they were smaller, had all the characteristics of modern urban slums. Over the decades, as cities grew and economic and social conditions changed, the areas of greatest black concentration often shifted, and the degree of residential segregation tended to become more clearly defined. . . .

In the Northern cities of the twentieth century, the ghettos usually first developed in the decaying older residential areas, near the central city. In the South this was also often true. Ghettoization in the South was still most prevalent in the newer towns such as Durham, Atlanta, or Birmingham, where the ghettos frequently developed in Negro additions built on the edges of the expanding cities. The older Southern municipalities were slower to completely segregate their black populations. New black neighborhoods appeared, but older mixed areas persisted as well. In Charleston, an extreme case, the black population was scattered throughout the city as late as World War II.103

103. J. Bracey, Rise of the Ghetto 1-3 (1971). It should be noted, however, that despite the problems associated with ghetto living, there are some advantages which attach to minority concentration in the cities. For example, in 1968 the National Commission on
Of course, the growing discriminatory practices against blacks had a great deal to do with the evolution of black ghettos and overt—often violent—attempts to keep blacks in "their place" and out of white areas.104

With many minorities living in city ghettos, problems abound.105 First are the problems of overcrowding and disproportionately high housing costs.106 And historically, the limited supply of housing has intensified these problems. For example, the period of World War II was characterized by restrictions being placed on the building of new homes, making it even more difficult for minorities to locate in decent and affordable facilities.107 "Under these circumstances, neither pressures of rapidly growing Negro populations in many cities, nor improvement among Negroes in levels of occupational status and income had much effect on patterns of residential segregation."108 After the War there was a sharp growth in the housing supply, with the suburbs expanding at a more rapid rate than ever before for white households.109 With the white exodus from the cities, more housing opportunities were available to minorities in formerly white areas. "Substantial expansion in Negro residential areas occurred, in contrast to the crowding and congestion of the preceding decade."110 Nevertheless, blacks are far less likely to own homes than whites. While a mere thirty-eight percent of blacks owned their homes in 1960, sixty-four percent of whites owned theirs.111 And poverty does not completely explain this discrepancy.112

Beyond the questions of overcrowding and costs, minorities must contend with deteriorating, substandard housing. A 1976 report on black housing, issued by the Department of Housing and Urban Development, found that blacks as a whole were much more poorly housed than the total

104. J. Bracey, supra note 103, at 3.
108. Id.
109. Id.
110. Id. at 3-4.
111. S. Berger, supra note 39, at 23.
112. Id.
population. The report indicated that black housing is flawed more than twice as often as the housing of the total population; that the proportion of blacks living in units with multiple flaws is more than three times that of the total population; that blacks typically live in older housing more so than the overall population does; and that black housing suffers most frequently from deficiencies in maintenance and plumbing. Additionally, the study reaffirmed the fact that blacks spend significantly more of their total incomes for housing than does the remainder of the population. Thirty-seven percent of blacks, but only twenty percent of the total population, need to spend more than a quarter of their incomes to live in decent, uncrowded housing. The situation is better, but not substantially so, for Hispanics, as well as other minority groups. As a result of the substandard, decaying condition of housing in which many minorities are forced to live, family life is disrupted and emotional problems emerge. "The economic and psychological burdens resulting from these housing conditions have contributed notably to . . . broken homes, emotional instability, and the ghetto brutalization of life." One would be totally remiss to ignore another important problem of the ghettos: crime, juvenile delinquency, and vandalism. Data reveal that crime rates are greatest in slums. "The rates are generally highest near the center of the city and decrease with distance from the center; they are also high near industrial and commercial subcenters." These are of course precisely the areas in which most minorities have been forced to reside. In 1964 it was reported that "in slums comprising something like

114. Id.
117. M. DEUTSCH & M. COLLINS, INTERRACIAL HOUSING: A PSYCHOLOGICAL EVALUATION OF A SOCIAL EXPERIMENT 6 (1951). It should be noted, too, that ghettos are characterized by unsanitary living conditions and higher morbidity and mortality rates. D. WILNER, HOUSING ENVIRONMENT AND FAMILY LIFE 243-46 (1962).
118. See generally A. DOWNS, supra note 26, at 73-76, 176-77; D. HUNTER, supra note 105, at 69-76; C. SHAW & H. MCKAY, DELINQUENCY AREAS (1929).
119. D. HUNTER, supra note 105, at 70. However, as Downs points out: "The high crime, vandalism, and delinquency rates in low-income areas are caused to a great extent by the pervasive economic deprivation there. . . . Furthermore, neighborhood institutions in crisis ghettos debilitate individual households by exploiting and encouraging their weaknesses while providing minimal support to their strengths. Examples are retail stores that charge exorbitantly for credit purchases, drug pushers, numbers racketeers, and street gangs." A. DOWNS, supra note 26, at 74.
20 per cent of the average American city's residential area occur 45 per cent of the major crimes, 55 per cent of juvenile delinquency, and 50 per cent of the arrests. Since that time ghettos have spread in most major metropolitan areas, bringing along rising crime rates. As crime spreads, those able to move further away from it have overwhelmingly done so. Suburban growth therefore reflects to some degree the desire of economically and socially mobile citizens to flee high crime rates. They then seek to take measures in their new environment to insure that police protection is of the highest caliber and crime rates are low. "Many whites associate high crime rates with blacks; so they are doubly fearful of having low and moderate-income black households as neighbors."

Meanwhile, stranded in the city, low-income minority families find themselves the main targets of criminals. Still, it must be emphasized that "[t]hough crime rates are high [in these areas], only a minority of the residents actually commit crimes or exhibit what most Americans would consider undesirable behavior."

A final problem faced by minorities, although this list is by no means complete, is that housing segregation and polarization lead to major inequities in governmental services, with whites enjoying better public services than minorities. Given the ever growing flight of the white middle and upper-class, cities are finding themselves with steadily diminishing tax bases to provide vital municipal services. The overall quality of housing, education, fire and police protection, sanitation disposal, health and other services is frequently deficient in the urban centers in comparison to that in the suburbs. Inequities in public services for whites and minorities are thus virtually inevitable under current conditions. For example, one careful and comprehensive statistical analysis found that "the segregation of public goods consumption through suburbanization has become a central part of the structure of inequality among urban residents," and that "municipal government becomes an institutional arrangement for promoting and protecting the unequal distribution of scarce resources." Government therefore may perpetuate the inequities that exist among different

120. D. Hunter, supra note 105, at 70-71.
121. Id. at 73-76.
122. A. Downs, supra note 26, at 73.
123. Id. at 74.
125. Hill, supra note 124, at 1557.
126. Id. at 1559.
societal groups by providing better services to those who actually need them the least. "The persistence of institutional racism reflects a struggle among racially demarcated status groups over the distribution of commodities, symbols of status, jobs and valued ways of living in the metropolis," and there has been "a deterioration of public services [for minorities] in such crucial areas as education, health, housing, and police and fire protection." In sum, "[t]he political incorporation and municipal segregation of classes and status groups in the metropolis tend to divorce fiscal resources from public needs and serve to create and perpetuate inequality [of public services] among urban residents in the United States." The most appropriate way to conclude this discussion, from an overview perspective, is to repeat the basic conclusion of the 1968 National Advisory Commission on Civil Disorders. What the above facts indicate is that we are still inexorably heading in the direction of two largely separate but unequal societies. One is mainly black and impoverished, located in the central cities; the other, predominantly white and comparatively affluent, is located in the suburbs and in outlying areas. This is a particularly ominous development, for the present pattern of racial segregation is a potentially explosive feature of American society. The rigid segregation and polarization of racial and economic groups intensifies the potential for interracial violence. Unless we want a repeat of the urban riots of the 1960s, low-income minorities must be allowed to share equally in the overall societal distribution of "the good life."

F. The Vicious Circle

Segregated housing contributes mightily to a vicious circle that also includes educational and employment discrimination. The concept is simple, but it has received relatively little attention when compared to the above dimensions of discrimination and segregation. Because of poor schooling for many minorities, they cannot find well-paying jobs. Without such jobs they often cannot afford to live in nicer neighborhoods with decent housing. And because of their location in less desirable communities, good educational systems are less likely to be available. Thus we face what former Senator Birch Bayh called "[a] sordid endless chain of inequality." "That interlocking system of education, employment, and

127. Id.
128. Id. at 1560. See also id. at 1564-65; Farley & Taeuber, supra note 58, at 953-56.
129. Hill, supra note 124, at 1567.
130. NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT 25-26 (1968).
131. Hearings, supra note 64, at 106.
housing," noted Bayh, "has been used to enslave a people by keeping them undereeducated, jobless, and poor, as well as separately and substandardly housed."¹³²

Few scholars have addressed this question. Of those who have, some stress that the circle of discrimination is broader than the housing-employment-education trilogy. For example, Sorenson, Taeuber, and Hollingsworth write that "[r]esidential segregation of Negroes and other ethnic minorities [has] been shown to be both cause and consequence in the intricate web of relationships among poverty, racial discrimination, education, access to government services and benefits, and life chances of children."¹³³ Taeuber and Taeuber note further that residential segregation not only inhibits the development of informal, neighborly relations between whites and Negroes, but ensures the segregation of a variety of public and private facilities. The clientele of schools, hospitals, libraries, parks, and stores is determined in large part by the racial composition of the neighborhood in which they are located.¹³⁴

A similar theme and its myriad implications have been elaborated upon by Deutsch and Collins:

[R]esidential segregation brings with it, as a natural consequence, segregation in many other areas of living. If Negro and white people do not live near each other, . . . they cannot—even if they otherwise would—associate with each other in the many activities founded on common neighborhood. Segregated racial neighborhoods tended to bring with them segregated schools, recreational centers, shopping districts, playgrounds, theaters, hospitals, leisure-time facilities, etc. Thus, one result of residential segregation is that prejudiced whites have little opportunity to see Negroes in social contexts which bring out the fundamental condition humaine of Negroes and whites. They do not see the Negroes, for example, as school children disliking homework, as expectant mothers in their first pregnancy, as tenants complaining about their landlords, or as breadwinners facing a contracting labor market. Moreover, the latent hostility in the segregated, exaggerated by the guilt feelings of the segregators, is likely to result in behavior which will provide a further rationale for prejudice and segregation. Residential segregation has a dynamic which tends to be self-perpetuating and reinforcing of

¹³². Id. at 2.
¹³³. A. SORENSEN, K. TAEUBER & L. HOLLINGSWORTH, supra note 45, at 1.
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Various psychological implications of segregated housing, as part of the vicious circle, have also been explored by Hecht. He observes:

[T]he Negro is profoundly affected as a person by the low self-image [that housing] discrimination creates. John Howard Griffin, a white writer who posed as a Negro by undergoing a series of medical treatments which temporarily changed the color of his skin to black, wrote in *Black Like Me*, "The Negro sees and reacts differently not because he is a Negro, but because he is suppressed. . . ."

Discrimination in housing also prevents what otherwise would be an effective way of breaking down traditional prejudices. Well-known psychologists such as Gordon Allport, Kenneth Clark, Morton Deutsch, and Thomas Pettigrew have shown that while prejudices are caused in many ways, more favorable attitudes between whites and blacks usually result when there is equal-status interracial contact in a noncompetitive situation.

Another important factor is the relation between attitudes and behavior. Behavior is not the result of attitudes. Rather the two are closely interrelated, and attitudes often are altered as a result of behavior. The phenomenon has been termed "cognitive dissonance." In simple terms, if someone behaves contrary to his attitudes, he tends to adjust his attitudes in the direction of his behavior. Thus a person may be moderately positive about a proposed purchase, such as a house or a car, but once the contract is signed his moderate attitude becomes stronger. Obviously the effect of cognitive dissonance will be to decrease unfavorable prejudices in interracial housing situations in order that the attitude be more consistent with the pattern of behavior. Conversely, when people discriminate they will need to increase their prejudicial attitudes to justify their behavior.  

This entire subject of the circle of discrimination naturally leads to the all-important question of how to break and destroy it. There is, alas, no easy answer. I would contend, however, that it would be most effective to break the circle through aggressive implementation by the federal government of fair housing laws and court decisions—although this is not the most politically popular or possible route. My basic argument, preliminary and elementary though it is, would be that by providing greater opportunities for housing in white urban and suburban areas through active federal

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135. *M. Deutsch & M. Collins, supra* note 117, at 5-6, (quoting *G. Myrdal, An American Dilemma* (1944)).

civil rights enforcement, minorities would undoubtedly have greater access to the rapid growth of employment opportunities outside the central city, and minority children would not have to be bused, thereby avoiding that explosive issue. In addition, as others have suggested,\textsuperscript{137} housing desegregation helps to break down at least some traditional white feelings of prejudice toward minorities. Intermingling in the same neighborhood will tend to undermine the ingrained stereotypes of many whites, although admittedly some attitudes will remain little affected. The commonalities of all persons, regardless of race, will become more obvious to many whites who have never regularly associated with minorities. While many lower-class whites may feel economically and psychologically threatened by housing desegregation, this will be less true of most middle- and upper-class whites.\textsuperscript{138} If more favorable racial attitudes can be nurtured in the latter groups through desegregation, surely such an experiment is worth the effort.

Yet, in the final analysis, there is little agreement among civil rights advocates or academics on the "best way" to break the chain, and strong cases can be advanced for attacking educational and employment discrimination before the more complex and emotional method involving housing. Or, some may assert, the real panacea may more likely be a simultaneous three-pronged attack on all forms of housing, employment, and educational discrimination. As enticing as this idea sounds at first blush, it is even more idealistic than my proposal. Such a three-way attack would probably require administrative coordination between myriad federal civil rights enforcement agencies to the degree that we have never even approached in the past.\textsuperscript{139} Coordination in fact involves a "conservative strategy, and, as such, is often an alternative to the development of more far-reaching social and institutional reforms,"\textsuperscript{140} and past efforts to coordinate civil rights implementation among only a few agencies have largely been failures.\textsuperscript{141} If dreams could be transformed into realities, a three-pronged attack would most likely be successful through the merger of all federal civil rights programs into a Cabinet-level Department of Equal Opportunity. But I have explained elsewhere the disadvantages that

\textsuperscript{137} See text accompanying notes 135-36 supra.
\textsuperscript{138} S. Berger, supra note 39, at 26.
\textsuperscript{139} Lamb, Administrative Coordination in Civil Rights Enforcement, supra note 1, at 857-59.
\textsuperscript{140} Advisory Commission on Intergovernmental Relations, Improving Federal Grants Management 81 (1977).
\textsuperscript{141} Lamb, Presidential Leadership, Governmental Reorganization, and Equal Employment Opportunity, supra note 1, at 85-86.
would inevitably be associated with such a scheme.\textsuperscript{142} If there is a solution to breaking the circle of discrimination, then, it may still lie just as much in aggressive and unequivocal fair housing enforcement as in any other approach.

\textbf{G. The Federal Government's Role in Housing Segregation}

Federal policies have been a principal cause of the extensive growth of American suburbs, yet those policies have done little to promote equal housing opportunities for minorities and the poor in these areas.\textsuperscript{143} Before World War II, "[w]hen the collapse of the private housing market brought the government massively into the housing business in the New Deal period, the new federal agencies adopted and reinforced the racial practices of the real estate and mortgage lending industries."\textsuperscript{144} The role of the federal government in housing then grew substantially between the 1940s and 1970s, but equal opportunity remained a low priority. Thus, in 1975 the U.S. Commission on Civil Rights boldly asserted that "[b]ecause of the extensive nature of its involvement in housing and community development, the Federal Government . . . has also been most influential in creating and maintaining urban residential segregation."\textsuperscript{145}

Specifically, six of the most significant federal policies that have had a discriminatory effect—if not initially a discriminatory intent—involve home mortgage insurance, highway development subsidies, the location of federal facilities, the location of public housing, urban renewal, and federal income tax deductions that make it easier for suburbanites to flee to segregated areas. Federal mortgage guarantees have allowed millions of families to purchase homes.\textsuperscript{146} The creation of the mortgage programs of the Federal Housing Administration (FHA) was particularly crucial. "FHA mortgage insurance revolutionized home financing by guaranteeing payment on mortgages which met the agency's standards of housing quality and appraised market value. With the risk eliminated, lenders were

\begin{itemize}
\item \textsuperscript{142} Id. at 89-90.
\item \textsuperscript{143} See, e.g., D. Falk & H. Franklin, supra note 58, at 93-96; Orfield, supra note 30, at 785-90.
\item \textsuperscript{144} Orfield, supra note 30, at 785.
\item \textsuperscript{145} TWENTY YEARS AFTER BROWN: EQUAL HOUSING OPPORTUNITY, supra note 57, at 39. See also EQUAL OPPORTUNITY IN SUBURBIA, supra note 37, at 36. The federal government has "furthered the extent to which metropolitan growth has led to racial separation. The Federal role has ranged from direct action which assured neighborhood segregation, through action for other purposes which produced segregation as a side effect, to a policy of inaction when actual discrimination occurred." Id.
\item \textsuperscript{146} M. Danielson, supra note 26, at 203; BUILDING THE AMERICAN CITY, supra note 103, at 100.
\end{itemize}
willing to accept lower interest rates and much longer periods of repayment." The vast majority of FHA-supported homes were, as a result of underwriting requirements, located in the suburbs and used to house whites. Indeed, for years the practices of the federal government, and especially the FHA, directly contributed to housing segregation. The policies of the Veterans Administration (VA), which assists veterans with low-interest loans for purchasing homes, had a similar effect. And subsequent changes in FHA and VA policies have had little impact on segregation which had already set in very firmly. Thus, one might expect that less than 1.5 million low-income units were built with public monies between 1934 and 1970, and that only two percent of FHA insured loans were made to blacks from the mid-1940s through the end of the fifties. Likewise, President Johnson's rent supplement program primarily assisted blacks in the inner cities; less than ten percent of those funds were devoted to rent supplements for minorities and the poor in suburbia.

Virtually all white suburbs similarly could not have developed without federally subsidized highways. "Suburbanization was greatly facilitated by massive federal highway investments which opened vast areas along the metropolitan periphery for development." Congress authorized over $5.4 billion in 1971 alone, for example, for highway subsidies. New highway systems made it easier for persons working in the city to escape to surrounding areas to live, with the accompanying loss of tax revenues for the cities. Relatively little attention was paid by the Department of Transportation during the 1960s to whether these highway developments would promote residential segregation via the growth of suburbs, the impact that new highways would have on minority neighborhoods that they were built through, or whether the highways were designed and located— overtly or covertly—to separate white and minority areas within the cities. Thus,
"Urban freeways have cut through ghettos to facilitate white suburbanites' travel from suburban homes to central city jobs. And the new roads also have uprooted suburban minority communities, forcing minority suburbanites to relocate in the central city."  
Beyond all of this, federal agencies have often been guilty of relocating government employment opportunities in the suburbs and away from the areas in which minorities reside. "In its role as the nation's largest employer, the federal government . . . fueled the exodus to the suburbs." Between 1963 and 1968 alone, over 17,000 federal jobs were moved from predominantly black Washington to the predominantly white suburbs of Maryland and Virginia, but virtually no pressure was placed on Washington's suburbs to change their housing and zoning practices to be more open to minorities. The lack of moderately priced housing in the suburbs, combined at times with various other practices that tend to control growth, has therefore meant that inner-city residents could not move to new job locations. These types of policies have directly contributed to increasing housing segregation—and not only in the Washington metropoli-
A chief reason is that, since minorities cannot find affordable accommodations in the suburbs, weak or nonexistent transportation systems make commuting to work difficult, time-consuming, costly, or even impossible. A 1968 study of five major metropolitan areas found that in those cities having transit systems capable of transporting inner-city residents to suburban job locations, actual travel time could range from an hour and a half to five hours a day and might entail three or four transfers! The cost of transit fares ranged from $4 to $15 per week. These figures indicate that a worker earning $150 for a 40-hour week, or $3.75 per hour, could be effectively earning only $2.25 per hour when transit time and expense are taken into account.\textsuperscript{6} Thus, because of transportation costs, central city minorities may easily be excluded from the job markets where they could otherwise find regular work at higher salaries.

With regard to site selection under the federal government’s public housing program, local public housing authorities (LHA’s) were originally allowed by the government to practice the “separate but equal” doctrine, and they chose to do so in the overwhelming number of cases. “Under the separate but equal policy, LHA’s assessed the need for low-rent housing separately for minorities and whites and provided housing according to relative needs on a segregated basis.”\textsuperscript{162} Moreover, only persons who could pay some rent were selected for public housing. “Because a larger proportion of poor minorities than of poor whites were at the lowest income levels, with little or no resources available for rent, public housing under the racial equity policy actually met the need of a smaller proportion of the low-income minority population.”\textsuperscript{163} This trend continued through the decade of the fifties and into the sixties, despite laws and court decisions suggesting that it was unconstitutional.\textsuperscript{164} Where there were mixed occupancy practices, moreover, “mixed occupancy meant that a few minority families lived in otherwise all-white projects or vice versa.”\textsuperscript{165} What was worse, separate locations for white and minority public housing were widespread, and two different sets of waiting lists were employed to perpetuate segregation. “In some localities, the policies pursued by

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\begin{enumerate}
\item[\textsuperscript{160}] District of Columbia Committee of the United States Commission on Civil Rights, The Movement of Federal Facilities to the Suburbs (1971).
\item[\textsuperscript{161}] Building the American City, supra note 103, at 48.
\item[\textsuperscript{162}] Twenty Years After Brown: Equal Opportunity in Housing, supra note 57, at 46.
\item[\textsuperscript{163}] Id.
\item[\textsuperscript{164}] Id. at 46-47; see, e.g., Heyward v. Public Hous. Administration, 238 F.2d 689 (5th Cir. 1956); Detroit Hous. Comm’n v. Lewis, 226 F.2d 180 (6th Cir. 1955).
\item[\textsuperscript{165}] Twenty Years After Brown: Equal Opportunity in Housing, supra note 57, at 47.
\end{enumerate}
\end{footnotesize}
LHA's, with the [Federal] Government's blessing, actually created segregated residential patterns and concentrations of minority poor where they had not existed before. In virtually all metropolitan areas, the location of public housing accentuated the concentration of minority groups in central cities. It was not until the late 1950s that the federal government's public housing program began to combat these obvious discriminatory practices actively, but these "efforts were frequently stymied by local opposition."

In addition, federal urban renewal programs of the 1950s and 1960s completely upset the living patterns of many minority Americans, while perpetuating segregation. As one observer has accurately noted, "urban renewal was [frequently] devastating":

Financially strapped central cities often forgot the social goals of the program in a futile rush to escape the vicious cycle of urban deterioration and escalating costs. To get the projects moving, local officials often certified that replacement housing was available for poor blacks when there was none. Federal officials who knew they were lying accepted their assurance and provided funds.

The definition of successful renewal became efficient removal of blacks from an area and their speedy replacement by higher-income whites or businesses. Local officials chased after the chimera of a restored tax base while pushing black families from terrible housing conditions in old deteriorated areas to terrible housing units, which cost more, in nearby deteriorated areas. "It was all legal and proper," Charles Abrams wrote. "Wrecking a Negro's building no longer had to be done by a mob. Here was a way to do it constitutionally."

Federal housing and renewal policies respected the fragmentation of local power in metropolitan areas. Very few suburban communities built public housing and some even used the urban renewal program to wipe out small pockets of long-time poor black residents. Most of all, however, the FHA and the Veterans Administration (VA) mortgage insurance programs shaped and reinforced the racial and economic segregation of suburbia. FHA appraisers required assurances that insured properties "shall continue to be occupied by the same social and racial group." The agency even drafted a model restrictive covenant

166. Id.
167. Id. at 48.
168. Many of the problems associated with urban renewal are detailed in J. Wilson, Urban Renewal: The Record and Controversy (1966).
and urged its adoption. Private developers who wanted to sell
without discrimination met unending bureaucratic delays.169

Finally, federal income tax policies have promoted housing segregation,
for obviously "[d]eductions for federal income tax purposes of locally as-
sessed real estate taxes and mortgage interest significantly eased the
financial burdens of suburban homeowners."170 Rubinowitz has concisely
summarized the above factors, and others, which clearly show the role that
the federal government has played in promoting segregation:

It is no accident that most middle- and upper-income people
live in the suburbs and most of the metropolitan poor live in cen-
tral cities. Public policies and subsidies made it possible. The
steady stream of the relatively affluent from the central cities in
the past several decades has not been merely the coincidental re-
sult of massive numbers of private market decisions. Public
funds built the roads which facilitated the trek to the suburbs,
since commuting to central city jobs was often necessary. FHA
mortgage insurance helped to finance the housing in the suburbs.
Tax breaks, subsidies for public services and numerous other
public benefits were bestowed on the suburbs, enticing the middle
class out of the central city.171

In recent years federal policies have contributed less—at least in a direct
sense—to residential segregation. Nevertheless, enforcement of the fair
housing laws has been weak, and continual efforts are being made to main-
tain the status quo.172 Although private discrimination is illegal under Ti-
tle VIII of the Civil Rights Act of 1968,173 and the Supreme Court's
decision in Jones v. Alfred H. Mayer Co.,174 real estate companies and
lending institutions perpetuate the dual housing market for whites and mi-
norities.175 "[F]inance companies, banks, and governments usually are ex-
tremely unwilling to make more money available to arrest deterioration,
and, given the ghetto environment, people forced into the ghetto have little
reason to identify with their neighborhood and to want to invest the effort

169. Orfield, supra note 30, at 788, (quoting C. Abrams, Forbidden Neighbors 112,
242-46 (1955)).
170. D. Falk & H. Franklin, supra note 58, at 94.
171. L. Rubinowitz, supra note 23, at 94.
172. With respect to weak enforcement, see Lamb, Presidential Fair Housing Policies,
supra note 1, at 620; 2 U.S. Commission on Civil Rights, The Federal Civil Rights
Enforcement Effort: To Provide . . . for Fair Housing (1974).
175. D. Falk & H. Franklin, supra note 58, at 59.
necessary to try to maintain it." Generally speaking, the federal government has been lax about curbing such real estate and lending practices, and has not adequately stimulated reinvestment in decaying parts of the cities.

**H. Persistent Segregation and the Need for More Aggressive Legal Action**

It follows from the preceding discussion that there are a number of traditions and practices that the federal government should take legal action against, particularly through more forceful administrative regulations and implementation, to fight segregation and discrimination in housing. One extremely important practice mentioned earlier is steering, especially when it involves showing housing to minorities only in minority, racially changing, or deteriorating neighborhoods. It deserves repeating that white homeowners and particularly persons in the business of real estate and lending still believe that housing desegregation leads inevitably to minority slum neighborhoods and declining property values. Steering therefore remains the most obvious and blatant form of housing discrimination, and the one for which legal action is most necessary now.

Blockbusting is another practice which, although illegal, still occasionally occurs. When a minority family is able to penetrate the invisible wall of housing segregation, realtors may use blockbusting to make large profits and to turn the community into one which is soon mostly minority. Blockbusting typically occurs in lower- and middle-class white areas where minorities can afford to purchase homes. The real estate agent sells a house to a minority family and then passes the word around the neighborhood that a minority family is moving in. Soon thereafter realtors encourage other whites to sell before their property values precipitously decline. The dimensions of blockbusting and its impact have been vividly described:

> Although most realtors have been staunch protectors of the status quo, a few have made fortunes by blockbusting. ... This scheme involves the rapid transformation of a residential neighborhood from all white to virtually all black. At its worst it is carried out in somewhat the following manner. A house will go on the market in a block of white-occupied, inexpensive, single-family residences. A realtor will sell the home to a black family,

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177. See note 38 & accompanying text supra.

178. See text accompanying note 67 supra.

then place a "Sold" sign in the front yard and circulate the rumor that the purchaser is black. In the next phase, nearby whites are bombarded with telephone calls, letters, and door-to-door solicitations by real estate agents encouraging them to sell before the area goes all black. Blockbusters play on the whites' fears of racial isolation, economic loss, and physical harm. The landowner is warned that if he does not move now his may soon be the only white family in an area which will become increasingly unsafe. And since the influx of blacks will cause property values to decline, the realtor cautions, the owner had better sell immediately. As evidence that the neighborhood is deteriorating rapidly, some blockbusters have been known to hire blacks to roar through the area in noisy cars and to have black women with numerous children walk the sidewalks. Except when neighborhood organizations geared to maintaining the area on an integrated basis spring to life, the blockbuster has usually had his way.\textsuperscript{180}

These blockbusting techniques, needless to say, contribute to the perpetuation of housing segregation, but the legal system has been too slow to combat them vigorously. The small number of minority agents in major real estate associations is another related problem where a solution could have the effect of reducing the incidence of blockbusting. As illustrations, the St. Louis Metropolitan Real Estate Board contained only about a dozen black agents in 1970 out of a total membership of some 4,400, while the Real Estate Board in Baltimore consisted of no black members until 1960, and only fifteen out of approximately 650 in 1970.\textsuperscript{181} Certainly if there were more black real estate agents in the white real estate establishment, one might suspect that blockbusting would become more rare if for no other reason than that black agents might be offended by the process and raise private or even public controversy over its utilization.

Other practices such as redlining unjustifiably extend the effects of past discrimination.\textsuperscript{182} Redlining refers to the fact that banks and mortgage


\textsuperscript{181} \textit{EQUAL OPPORTUNITY IN SUBURBIA}, \textit{supra} note 37, at 16-19.

\textsuperscript{182} In at least two instances, federal courts have ruled that redlining is illegal under Title VIII. See Harrison v. Heinzeroth Mortgage Co., 414 F. Supp. 66 (N.D. Ohio 1976); Laufman v. Oakley Bldg. & Loan Co., 408 F. Supp. 489 (S.D. Ohio 1976). Because of the growing recognition of redlining in urban areas, the related legal literature has expanded rapidly. See, e.g., Marshall, \textit{The Flight of the Thrift Institutions: One More Invitation to Inner-City Disaster}, 28 \textit{Rutgers L. Rev.} 113 (1974); Renne, \textit{Eliminating Redlining by Judi-
companies have refused to make loans for housing in certain areas of cities, are reluctant to make loans without a guarantee of mortgage insurance, require stricter lending terms for certain types of property, and reject applications for loans on houses over a certain age. These and other traits of redlining were spelled out by the former Governor of Illinois, Dan Walker, when he testified before the United States Senate in 1975. He emphasized eleven ways in which redlining occurs:

1. Requiring down payments of a higher amount than are usually required for financing comparable properties in other areas;
2. Fixing loan interest rates in amounts higher than those set for all or most other mortgages in other areas;
3. Fixing loan closing costs in amounts higher than those set for all or most other mortgages in other areas;
4. Fixing loan maturities below the number of years to maturity set for all or most other mortgages in other areas;
5. Refusing to lend on properties above a prescribed maximum number years of age;
6. Refusing to make loans in dollar amounts below a certain minimum figure, thus excluding many of the lower-priced properties often found in neighborhoods where redlining is practiced;
7. Refusing to lend on the basis of presumed "economic obsolescence" no matter what the conditions of an older property may be;
8. Stalling on appraisals in amounts below what market value actually should be, thus making home purchase transactions more difficult to accomplish;
9. Setting appraisals to discourage potential borrowers;
10. Applying structural appraisal standards of a much more rigid nature than those applied for comparable properties in other areas;
11. Charging discount "points" as a way of discouraging financing.\(^{184}\)

Lenders tend to rationalize their redlining practices on grounds that they have limited funds and that avoiding older or more racially changing neighborhoods produces a "happy" neighborhood.\(^{183}\)

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\(^{183}\) Equal Opportunity in Suburbia, supra note 37, at 23; Renne, supra note 182, at 990.

\(^{184}\) Hearings on S. 1281 Before the Senate Comm. on Banking, Housing and Urban Affairs, 94th Cong., 1st Sess. 35 (1975).
neighborhoods is one of the best means of reducing bad loans. To be sure, it is a responsibility of lenders to protect their depositors and shareholders. However, since minority persons are most likely to reside in the redlined areas, economic discrimination inevitably has the same effect as racial discrimination, regardless of its intent.

Redlining therefore compounds the many severe problems that minorities have experienced throughout the country's history. Homeowners in redlined areas discover it to be extremely difficult to sell their homes. If they rent their property, the character of the neighborhood is changed, which discourages other potential homeowners from buying in the area. Strict mortgage terms promote rates of default. Property increasingly becomes converted for commercial or industrial use. Thus, once redlining becomes a regular practice, community decline rapidly accelerates.¹⁸⁵

Beyond the problems caused by steering, blockbusting, and redlining, suburbs employ various means to discourage population growth and to prohibit the construction of low-cost and multiple-dwelling housing that would assist minorities.¹⁸⁶ As noted earlier, the 1970s witnessed the emergence of no-growth movements throughout America.¹⁸⁷ Voters in a number of suburban communities have blocked sewage development and additional construction to prevent further growth.¹⁸⁸ Other practices have an even greater exclusionary impact. Minimum requirements for lot size, square footage, and quality of building materials easily make suburban housing too expensive for minorities and other persons of lower income.¹⁸⁹ Where zoning codes are employed to keep these people out of suburbia, the intent may be simply to discriminate, although the publicly stated reason typically is to avoid the higher taxes and costs that such residents are thought to bring.¹⁹⁰ In order to keep educational expenses low, for instance, apartments may be limited to one bedroom, thereby excluding minority or low-income families of any size.¹⁹¹ Indeed, new apartment buildings may be completely forbidden by local zoning codes. For instance, "[i]n the New York metropolitan area, where exclusionary zoning is particularly widespread, over 99 percent of all undeveloped land zoned

¹⁸⁵. Renne, supra note 182, at 992-93.
¹⁸⁶. See generally M. Danielson, supra note 26, chs. 2-4; Sloane, Changing Shape of Land Use Litigation: Federal Court Challenges to Exclusionary Land Practices, 51 NOTRE DAME LAW. 48 (1975).
¹⁸⁷. See note 78 and accompanying text supra.
¹⁸⁸. Id. See M. Danielson, supra note 26, at 64-69.
¹⁹⁰. M. Danielson, supra note 26, at 40.
¹⁹¹. EQUAL OPPORTUNITY IN SUBURBIA, supra note 37, at 29-32.
for residential uses is restricted to single-family housing."\(^{192}\)

The central message of most of part one of this article, in short, is that there are several reasons why housing segregation and discrimination developed and continue even though they are contrary to federal law. The causes are complex, but the effects are clear.\(^{193}\) Minorities suffer from governmental and private practices that may be rationalized on myriad grounds, yet too often are intended to discriminate. In most instances intent is difficult to prove, and the federal government is usually extremely reluctant to act with force. The extent to which the government has responded, and how that response could and should be improved, is the subject of discussion in part two.

II. THE LEGAL RESPONSE OF THE FEDERAL GOVERNMENT

The remainder of this article addresses the nine variables summarized in the introduction. More specifically, in social science terms, there is an attempt to demonstrate support for nine hypotheses regarding fair housing enforcement by the federal government. These are: (A) active federal involvement is a basic prerequisite for fair housing implementation; (B) federal fair housing enforcement agencies are essential for effective implementation; (C) implementation of equal opportunity in housing is more successful where policy goals are clearly stated; (D) a precondition for full fair housing implementation is having monitoring agencies establish precise standards for measuring compliance; (E) administrative personnel responsible for fair housing implementation must be committed to that purpose; (F) the commitment of the enforcer’s superiors affects the behavior of those directly responsible within federal agencies for enforcement; (G) administrative coordination is imperative for fair housing laws to be successfully implemented; (H) benefits of complying with fair housing policies must outweigh related costs in order for them to be enforced; and (I) the attitudes and actions of those who gain advantages from fair housing implementation affect whether there will be vigorous enforcement in the future.

A. Active Federal Involvement

Until President Johnson and Congress joined forces to pass the Civil Rights Act of 1968,\(^{194}\) commonly referred to as the Fair Housing Act, the

\(^{192}\) M. DANIELSON, supra note 26, at 52-53.

\(^{193}\) EQUAL OPPORTUNITY IN SUBURBIA, supra note 37, at 7.

\(^{194}\) 42 U.S.C. §§ 3601-3631 (1976). The other major federal laws designed to promote equal housing opportunity include Title VI of the Civil Rights Act of 1964, 42 U.S.C.
federal government remained almost totally passive and rarely took noteworthy steps toward the goal of achieving equal housing opportunity.\textsuperscript{195} Needless to say, there has never been any supplanting of local or state authority with regard to fair housing as there has been in the field of voting rights.\textsuperscript{196} Therefore, the chief recourse for those discriminated against prior to 1968 was costly and time-consuming private litigation.

Yet, even prior to the passage of the Fair Housing Act, other federal laws were long ignored that could have been utilized by the federal government to fight housing discrimination. Two of the oldest concern the relevant provisions of the fourteenth amendment and the Civil Rights Act of 1866. The fourteenth amendment provides that “[n]o State shall deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.”\textsuperscript{197} For decades these provisions for due process and equal protection were not construed by the federal government to support the concept of fair housing. And while the Civil Rights Act of 1866 explicitly requires that “all citizens of the United States . . . [have] the same right, in every state and territory, as enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, or convey real and personal property,”\textsuperscript{198} this statutory provision was similarly not enforced for over a century.\textsuperscript{199} It was only with the Supreme Court’s decision in \textit{Jones v. Alfred H. Mayer Co.}\textsuperscript{200} that the actual intent of the 1866 Act was officially recognized. In \textit{Jones}, the Court held for the first time that the 1866 Act was designed to prohibit

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  \item \textsuperscript{195} Lamb, \textit{Presidential Fair Housing Policies, supra} note 1, at 619-20. \textit{See also} T. Dye, \textit{The Politics of Equality} 67-68 (1971); H. Rodgers & C. Bullock, \textit{supra} note 1, at 139.
  \item \textsuperscript{196} With regard to the supplanting of state and local power in the area of voting rights, see C. Hamilton, \textit{The Bench and the Ballot: Southern Federal Judges and Black Voters}, ch. 10 (1973); H. Rodgers & C. Bullock, \textit{supra} note 1, 17-37.
  \item \textsuperscript{197} U.S. Const. amend. XIV, \S\ 1.
  \item \textsuperscript{198} Ch. 31, \S\ 1, 14 Stat. 27, 42 U.S.C. \S\ 1982 (1976).
  \item \textsuperscript{199} The 1866 Act had no provision for administrative enforcement but, instead, placed the burden of proof on an injured party bringing a law suit in federal district court. Ch. 31, 14 Stat. 27, 42 U.S.C. \S\S\ 1981-1982.
  \item \textsuperscript{200} 392 U.S. 409 (1968).
\end{itemize}

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all forms of racial discrimination in both public and private housing, and that the Act constituted a proper exercise of congressional power under the thirteenth amendment which outlaws slavery.

Hence, for far too long the federal government largely turned its back to the seemingly intractable problem of housing discrimination and treated it as purely a form of \textit{de facto} discrimination which was viewed as legal, of course, because state and local governments rarely had enacted laws that explicitly excluded minorities from living in white neighborhoods. The major exceptions to this lax federal posture are found in two prominent Supreme Court decisions. In \textit{Buchanan v. Warley},\textsuperscript{201} the Court announced that local zoning ordinances explicitly forbidding housing for blacks in “Caucasian” communities were unconstitutional.\textsuperscript{202} \textit{Buchanan} thus stimulated an alternative to anti-black zoning ordinances: the development of private restrictive covenants through which white purchasers of housing agreed in writing not to sell or lease their property at a later date to members of certain racial, religious, and ethnic groups.\textsuperscript{203} These private agreements were upheld and enforced by state courts with increasing frequency, and since state action then became involved, the Supreme Court finally ruled that these restrictive covenants were unconstitutional in the landmark case of \textit{Shelley v. Kraemer}.\textsuperscript{204} Unfortunately, since \textit{Buchanan}, \textit{Shelley}, and \textit{Jones}, the Supreme Court has retreated into a shell and has handed down few decisions that outlaw more subtle forms of housing discrimination.\textsuperscript{205}

While endeavors to bring about open housing for minorities reached high tide in 1968 with the Fair Housing Act and \textit{Jones}, the election of Richard Nixon in the same year threw a damper on emerging progress.\textsuperscript{206} The leadership provided by both Presidents Nixon and Ford was in fact minimal in the area of fair housing, and as a consequence the effectiveness of fair housing implementation declined significantly.\textsuperscript{207} Even the Department of Housing and Urban Development openly admitted at the end of eight years of Republican White House control that “[a]lthough the Federal Fair Housing Law, Title VIII of the 1968 Civil Rights Act, has been in effect for nearly a decade, residential segregation and overt discrimination

\begin{footnotesize}
\begin{footnote}{201} 245 U.S. 60 (1917).\end{footnote}
\begin{footnote}{202} See, e.g., C. Vose, supra note 51, at 3-4.\end{footnote}
\begin{footnote}{203} Id. at 4-5.\end{footnote}
\begin{footnote}{204} 334 U.S. 1 (1948).\end{footnote}
\begin{footnote}{205} See note 90 and accompanying text supra; Sloane, supra note 186.\end{footnote}
\begin{footnote}{206} Lamb, \textit{Presidential Fair Housing Policies}, supra note 1, at 633-40; Mitchell, \textit{Moods and Changes: The Civil Rights Record of the Nixon Administration}, 49 \textit{NOTRE DAME LAW.} 63 (1973).\end{footnote}
\begin{footnote}{207} Lamb, \textit{Presidential Fair Housing Policies}, supra note 1, at 637-49.\end{footnote}
\end{footnotesize}
in housing continue.\textsuperscript{208} Here then we have an illustration of the primary federal agency responsible for implementing fair housing laws publicly acknowledging that it had for the most part failed to carry out one of its cardinal duties.\textsuperscript{209}

The Carter administration took a more active stance on fair housing enforcement.\textsuperscript{210} For example, unlike during the Nixon and Ford years, the Carter administration cautioned some cities and suburbs that federal funds would be terminated if low- and moderate-income housing was not spread throughout larger urban areas and throughout smaller suburban communities.\textsuperscript{211} More importantly, President Carter endorsed the need for strengthening enforcement powers under Title VIII and thus fair housing implementation. As Carter commented in his 1979 State of the Union Message: "We need to correct a weakness in an existing civil-rights law. Title VIII of the Civil Rights Act of 1968, which prohibits discrimination in housing, remains largely an empty promise because of the lack of an adequate enforcement mechanism."\textsuperscript{212} Yet the enforcement effort under Carter did not move quickly to fulfill that "empty promise." The Carter administration was not sufficiently aggressive to correct present or to compensate for past discrimination, and the "new HUD" that former HUD Secretary Patricia Roberts Harris promised was not forthcoming either under her leadership or that of her successor as HUD Secretary, Moon Landrieu. Consequently, in 1979 the Commission on Civil Rights again announced an old, familiar theme—the federal government's fair housing implementation effort was still handicapped by significant problems, including the fact that "[t]hose Federal departments and agencies charged with ensuring equal housing opportunity have not adequately carried out their duty."\textsuperscript{213}

\begin{itemize}
\item[-] 209. Title VIII designates HUD as the central or lead agency in the federal government's fair housing enforcement effort in the following words: "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 subchapter \textit{and shall cooperate with the Secretary of HUD} to further such purposes." 42 U.S.C. § 3608(c) (1976) (emphasis supplied).
\item[-] 210. Lamb, \textit{Presidential Fair Housing Policies, supra} note 1, at 649-59.
\item[-] 211. \textit{Id.} at 655; Interview with William F. Kerrigan, Program Analyst, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, D.C. (July 31, 1980).
\item[-] 212. \textit{Hearings, supra} note 64, at 4 (quoting President Carter).
\item[-] 213. \textit{U.S. Commission on Civil Rights, The Federal Fair Housing Enforcement Effort} 230 (1979). For details regarding HUD, see \textit{id.} at 231-32.
\end{itemize}
B. Federal Civil Rights Enforcement Agencies

Under Title VIII, all federal agencies have the legal responsibility of promoting equal housing opportunity to the extent possible in their programs.214 For our purposes, however, only seven of these enforcement agencies need to be singled out for attention: the Federal Housing Administration (FHA), the Veterans Administration (VA), the Federal Reserve System (FRS), the Federal Deposit Insurance Corporation (FDIC), the Comptroller of the Currency (COC), the Federal Home Loan Bank Board (FHLBB), and, most importantly, the Department of Housing and Urban Development (HUD). That all these agencies have failed, to varying degrees, to fulfill their legal assignment to affirmatively carry out fair housing laws is reflected in the fact that the National Committee Against Discrimination in Housing has initiated litigation against each over a period of years.215

Prior to the creation of HUD in 1965, the FHA was the principal federal enforcement agency in the field of fair housing.216 But it is no secret that the FHA's enforcement record has traditionally been pathetic. Indeed, the FHA has actually contributed to housing discrimination throughout most of its history:

For 15 years, for example, the FHA Underwriting Manual warned of the infiltration of “inharmonious racial groups” into neighborhoods occupied by families of a different race. FHA actively promoted the use of a model racially-restrictive covenant by builders and owners whose properties would receive FHA insurance. This policy was in full effect during the first 5 years of the building boom after the Second World War, when over 900,000 units of FHA housing were produced.217

The FHA has not completely changed its policies, even today, to be largely consonant with the nation's fair housing laws. Thus, one of the most comprehensive studies ever published on the FHA found that even in recent years “FHA policies and practices with respect to equal opportunity persist in the historical pattern of lagging behind the state of the law” as outlined in Title VIII.218

A second federal agency with primary fair housing enforcement duties is

214. See note 209 supra.
215. Hearings, supra note 64, at 98.
216. FHA merged with HUD in 1965. Id.
218. Rubinowitz & Trosman, supra note 1, at 496. See also Silverman, supra note 25, at 88-89.
the Veterans Administration, which among other things assists veterans in purchasing homes through VA low-interest loans.\textsuperscript{219} However, the VA's carrying out of its enforcement responsibilities has traditionally been no better than that of the FHA. Indeed, the VA's record on this score has been quite similar to that of the FHA. The Commission on Civil Rights has therefore concluded that "VA administrative policies with respect to segregation [have] closely paralleled those of FHA."\textsuperscript{220} More specifically:

FHA and VA housing for the most part has benefitted moderate to middle-income families. Thus, many minorities have not been eligible for FHA mortgage insurance or VA loan guarantees simply on the basis of income. Moreover, until very recently homeownership opportunity for minorities at virtually all income levels has been restricted to older housing. Older housing frequently has failed to meet minimum FHA and VA construction requirements and, therefore, has not been eligible for FHA insurance or VA loan guarantees.\textsuperscript{221} In addition, for years neither the VA nor the FHA advertised their housing programs for open occupancy, and they failed to encourage builders to take steps to attract minority purchasers.\textsuperscript{222}

Not until the Supreme Court's decision in \textit{Shelley v. Kraemer}\textsuperscript{223} did the FHA and the VA change their policies encouraging housing segregation and restrictive covenants.\textsuperscript{224} Yet the failure to encourage separate housing markets does not, of course, mean that either agency began to push aggressively for desegregation. In fact, neither the VA nor the FHA has ever actively supported housing desegregation.\textsuperscript{225} As a consequence, for example, in 1979 the VA still did not "monitor compliance with the fair housing certificates it [had obtained] from brokers, builders, and other program

\textsuperscript{219} See \textit{The Federal Civil Rights Enforcement Effort: To Provide . . . for Fair Housing}, supra note 172, at 219; \textit{The Federal Fair Housing Enforcement Effort}, supra note 213, at 108.

\textsuperscript{220} \textit{Twenty Years After Brown: Equal Opportunity in Housing}, supra note 57, at 40.

\textsuperscript{221} \textit{Id}.

\textsuperscript{222} \textit{U.S. Commission on Civil Rights, Federal Civil Rights Enforcement Effort: One Year Later} 64 (1971).

\textsuperscript{223} 334 U.S. 1 (1948).

\textsuperscript{224} \textit{Twenty Years After Brown: Equal Opportunity in Housing}, supra note 57, at 40. After \textit{Shelley}, "FHA and VA ruled that they would not provide mortgage insurance for property on which restrictive covenants were recorded after February 15, 1950. In 1951, FHA announced that all repossessed, FHA-insured housing would be administered and sold on a nonsegregated basis." \textit{Id} However, "[i]tse changes had little real effect in increasing minority participation in FHA and VA programs on an integrated basis." \textit{Id} at 41.

\textsuperscript{225} With respect to the VA, for example, see \textit{The Federal Fair Housing Enforcement Effort}, supra note 213, at 266-327.
participants. Moreover, VA's complaint handling [was] poor, and there [was] considerable evidence that the minorities applying for loans from VA [did] not receive as favorable treatment as nonminorities.226

The fair housing activities of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Federal Home Loan Bank Board can be examined in conjunction since all four are federal financial regulatory agencies.227 In other words, these four agencies, taken as a whole, regulate the mortgage lending practices of the vast majority of all American banks and savings and loan institutions. As late as the mid-1970s, the FHLBB was the only federal financial regulatory agency issuing regulations reaffirming the fact that discrimination based on race, national origin, and color was illegal, and it was the only agency that had overtly discouraged sex discrimination in housing.228 On the other hand, "[n]one of the four financial regulatory agencies [had] required its regulatees to develop affirmative action programs regarding the enforcement of Title VIII."229 Yet, as the decade of the eighties approached, all four agencies had improved their performance in fair housing in some ways. As illustrations, these agencies had proposed or issued guidelines and regulations reminding lenders that they must discontinue certain discriminatory practices, and the agencies had also required the collection of data on mortgage application forms.230 Overall, however, the federal financial regulatory agencies are not fully meeting their civil rights implementation responsibilities. In 1979, these agencies had generally "taken insufficient corrective action when Title VIII [had] been violated and [had] not satisfactorily monitored the remedial steps which lenders [had] promised."231 These key shortcomings and others suggest that all four agencies still have a long way to go before they meet either the letter or the spirit of the 1968 Fair Housing Act.

Since its creation in 1965, the Department of Housing and Urban Development has been the main federal executive branch agency responsible for enforcing the promise of equal housing opportunity. Specifically, HUD's Office of Fair Housing and Equal Opportunity has been assigned the job of overseeing fair housing in the programs that HUD administers nation-

226. Id. at 232.
227. See, e.g., id. at 165-70; The Federal Civil Rights Enforcement Effort: To Provide . . . for Fair Housing, supra note 172, at 134-208.
228. The Federal Civil Rights Enforcement Effort: To Provide . . . for Fair Housing, supra note 172, at 334-35.
229. Id. at 335.
230. The Federal Fair Housing Enforcement Effort, supra note 213, at 76.
231. Id. at 232.
Although HUD has generally come closer to meeting its fair housing duties than have the above six agencies, for the past fifteen years HUD has still only partially met its designated legal role. For example, in 1971 HUD had too small a fair housing staff to implement its responsibilities, and it had not effectively used the enforcement tools or the fair housing budget given it by Congress. By 1975, HUD was still taking a case-by-case approach to fighting housing discrimination, relying upon individual complaints as an indicator of discrimination rather than actively conducting compliance reviews in metropolitan areas or specific communities that were known to discriminate against minorities. HUD had also allowed a large number of housing discrimination complaints to accumulate without resolution; it had permitted the conciliation process to be extended for long periods of time; it had referred few cases of discrimination to the Department of Justice for suits; it had not monitored compliance agreements effectively; it had not issued regulations against sex discrimination in housing; and most importantly, it had rarely imposed sanctions such as the termination of funding for those known to discriminate. Although HUD has resolved some of these shortcomings, as of 1979 a number of others continued as before. Its complaint processing mechanisms were still ad hoc in nature, oriented toward individual complaints. Where communities had entered into voluntary compliance agreements with HUD, those agreements were not being monitored. HUD's organizational structure and staffing were not conducive to full implementation of its fair housing duties. The enforcement of Title VIII was only one of several jobs placed on the shoulders of the Assistant Secretary for Fair Housing and Equal Opportunity, and hence Title VIII still did not receive the emphasis that it should have received at HUD. HUD's field staff which monitors Title VIII was not directly answerable to

232. Id. at 12-14.
233. See generally Lamb, Presidential Fair Housing Policies, supra note 1, at 633-59.
234. FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT, supra note 222, at 348.
235. THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT: TO PROVIDE . . . FOR FAIR HOUSING, supra note 172, at 329.
236. Id. at 330.
237. Id.
238. Id. at 231.
239. Id.
240. Id.
241. Id. at 330.
242. THE FEDERAL FAIR HOUSING ENFORCEMENT EFFORT, supra note 213, at 231.
243. Id.
244. Id.
245. Id. at 12, 231.
the Assistant Secretary but, instead, to HUD field officials who were primarily concerned with general housing programs, not civil rights.\textsuperscript{246} Nor, as of 1979, had HUD issued comprehensive regulations explicitly defining what constituted housing discrimination in violation of Title VIII.\textsuperscript{247} While HUD is designated by the Fair Housing Act as the “lead agency” responsible for the Act’s implementation,\textsuperscript{248} in view of the above weaknesses it cannot be said that HUD is serving as a model that other agencies with fair housing enforcement responsibilities can or should emulate completely.

\textbf{C. Clarity of Policy Goals}

The two main pieces of federal legislation which prohibit housing discrimination are Title VI of the 1964 Civil Rights Act and, more significantly, as we have seen, Title VIII of the 1968 Civil Rights Act. However, both of these enactments have some vague, weak provisions and fail to state forcefully what precisely shall be the law of the land with regard to fair housing or how it shall be implemented. The same is true with respect to many regulations of federal agencies directed by law to eliminate housing discrimination through their own regulatory procedures and guidelines.\textsuperscript{249}

Title VI is so broadly stated that it has very rarely been relied upon to fight actively housing discrimination and segregation in America. In sweeping language it declares that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”\textsuperscript{250} Though surely no one would contest the fact that federal financial assistance in the form of housing falls within the intent of Title VI, three years after its passage HUD had terminated no funds nor even convened any hearings with regard to the law’s implementation.\textsuperscript{251} By 1971, there was still “little activity by HUD” in enforcing Title VI.\textsuperscript{252} By 1975, HUD was continuing to conduct Title VI compliance reviews only where formal complaints had been filed.\textsuperscript{253} The agency had also allowed many complaints to become

\textsuperscript{246} Id. at 231.
\textsuperscript{247} Id.
\textsuperscript{248} See note 209 supra.
\textsuperscript{249} Lamb, \textit{Presidential Fair Housing Policies, supra} note 1, at 642-44.
\textsuperscript{251} Comment, \textit{supra} note 12, at 994.
\textsuperscript{252} \textit{Federal Civil Rights Enforcement Effort, supra} note 222, at 349.
\textsuperscript{253} \textit{The Federal Civil Rights Enforcement Effort: To Provide . . . For Fair Housing, supra} note 172, at 329.
backlogged, not acting upon them with dispatch.\textsuperscript{254} And by 1977, although the number of Title VI complaints filed with HUD had substantially decreased over the prior two years, a backlog still existed.\textsuperscript{255} Of the eighty-seven Title VI complaints filed with HUD in 1977, the agency decided that there was noncompliance in only six cases, and on the average it took HUD 202 days to resolve these complaints.\textsuperscript{256} This delay in resolving Title VI complaints is primarily due to HUD's vague and inadequate regulations. They indicate that Title VI investigations shall be "prompt," but that term simply is not defined in the regulations.\textsuperscript{257}

The Civil Rights Act of 1968 is far more explicit in declaring unfair housing practices to be illegal. Title VIII contains a totally unambiguous, forceful statement that "it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."\textsuperscript{258} Title VIII, as amended, goes on to prohibit discrimination on the basis of race, color, religion, sex, or national origin in the sale or rental of both private and public housing.\textsuperscript{259} The only instances in which Title VIII does not apply are those involving single family dwellings sold or rented without the use of a broker and without being advertised as unavailable to the above protected classes, and, second, a housing facility for up to four families within which the owner also resides.\textsuperscript{260}

Despite the clarity of its general intent, Title VIII is plagued by vagueness on a number of specific points crucial to the civil rights implementation process. In 1979, former HUD Secretary Robert C. Weaver pointed out some of these ambiguities.\textsuperscript{261} For example, there is no precise definition of what constitutes "fair housing" under Title VIII.\textsuperscript{262} Title VIII is vague regarding whether racial redlining and discrimination in property insurance is outlawed.\textsuperscript{263} Nor does the fair housing law make clear the type of relief that courts can provide in Title VIII litigation, and especially whether money damages can be awarded to those subjected to discrimination.\textsuperscript{264} The statutory reliance on the Justice Department also permits too much discretion regarding whether legal action will be pursued by the fed-

\begin{itemize}
\item \textsuperscript{254} Id. at 330.
\item \textsuperscript{255} The Federal Fair Housing Enforcement Effort, supra note 213, at 37.
\item \textsuperscript{256} Id. at 37-38.
\item \textsuperscript{257} Id. at 38.
\item \textsuperscript{258} 42 U.S.C. § 3601 (1976).
\item \textsuperscript{259} Id. § 3604(a)-(e) (1976).
\item \textsuperscript{260} Id. § 3603(b) (1976).
\item \textsuperscript{261} Hearings, supra note 64, at 94-100.
\item \textsuperscript{262} Id. at 94.
\item \textsuperscript{263} Id. at 97.
\item \textsuperscript{264} Id. at 100.
\end{itemize}
eral government. In many instances the Justice Department has decided not to ask for an injunction or to file a law suit—even though HUD has discovered a pattern or practice of discrimination in violation of Title VIII.265 Indeed, over the past few years the Department of Justice “has initiated no important litigation against suburban housing exclusion.”266 It is therefore with respect to the likelihood of legal action, as well as to the factors of statutory ambiguity alluded to above, that Title VIII standards are not stated with clarity and force. Since fair housing implementation is often dependent on a viable threat of litigation by the Department of Justice, this is one key reason why Title VIII has had a limited impact on widespread practices involving housing discrimination and segregation in the United States.

Beyond these statutory ambiguities, Title VIII also contains weaknesses that have severely hampered its aggressive implementation by the federal executive branch. First, the law limits HUD investigations only to instances where a housing discrimination complaint has been filed.267 Even if a community is notoriously known to engage in a variety of exclusionary practices, HUD cannot commence enforcement activities unless these practices are spelled out in a formal complaint. Second, under Title VIII third parties not directly affected by discrimination cannot file a complaint with HUD.268 This precludes civil rights interest groups from fully mobilizing their resources to help fight housing discrimination in many cases. Third, and most importantly, HUD is given very limited enforcement powers under Title VIII.269 In the words of former HUD Secretary Patricia Roberts Harris, Title VIII “is a law without teeth.”270 The agency must rely upon the methods of “conference, conciliation, and persuasion” to resolve disputes between those who allegedly discriminated and those who were allegedly discriminated against.271 Unlike the Equal Employment Opportunity Commission,272 HUD is not currently authorized to initiate law suits in federal district court in instances where discrimination is ap-

265. The Federal Civil Rights Enforcement Effort: To Provide . . . for Fair Housing, supra note 172, at 128-30; The Federal Fair Housing Enforcement Effort, supra note 213, at 57.


267. The Federal Fair Housing Enforcement Effort, supra note 213, at 230.

268. Id.

269. Id.

270. Hearings, supra note 64, at 21.


parent or even blatant. Nor can HUD request a federal court to issue an injunction or a restraining order to halt temporarily discriminatory practices, but must instead refer cases involving a pattern or practice of discrimination to the Department of Justice for possible prosecution. Of further significance is the fact that Title VIII does not require that data be provided to HUD by those who receive federal housing funds and are thus regulated by HUD. This necessarily leads to little specificity in the standards used in evaluating compliance with the legislation and, indeed, difficulty on the part of HUD in determining whether there has been compliance with Title VIII that has not been addressed by HUD regulations. For example, HUD has not issued regulations to guide other federal agencies pursuant to its responsibility as the lead agency in enforcing Title VIII, or regulations pertaining to the discrimination in the sale or rental of housing, discrimination in the financing of housing, and discrimination by brokerage services. Even when HUD regulations have been forthcoming, they have too frequently lacked the clarity and specificity needed to enforce Title VIII fully.

D. Monitoring and Precise Standards

For federal civil rights laws to be implemented effectively, federal agencies cannot just sit back and rely upon the case-by-case process of acting only when and if formal individual discrimination complaints are filed. That process is far too slow and has far too limited an impact in fighting discrimination and segregation. To bring about relatively rapid change in any field of civil rights, including fair housing, federal agencies must assert themselves by regularly monitoring the extent to which civil rights laws are being complied with, and apply stringent sanctions uniformly when there is noncompliance. Regarding fair housing, this especially calls for the use of community-wide pattern and practice reviews so that neighborhoods or even entire cities and their suburbs can be detected in any illegal attempts to keep minorities out. In addition, precise agency

274. See text accompanying notes 265-66.
276. Id. at 26.
277. Id.
279. Id. See generally H. Rodgers & C. Bullock, *Coercion to Compliance* (1976); Bullock & Rodgers, supra note 4.
standards must be established to prohibit such discrimination, and regular follow-up compliance reviews are absolutely essential.\textsuperscript{281}

But so far, no federal agency has met the majority of its responsibilities to monitor fair housing efforts with precise standards. Before such monitoring can take place, an agency must first have the quantity and quality of data that permit a determination of housing discrimination.\textsuperscript{282} Once such data are available, an agency must then issue regulations establishing quantifiable standards for compliance. To date most federal agencies have not even required those that they regulate to collect adequate data regarding fair housing.\textsuperscript{283} And even where they have, quantifiable standards for identifying the presence of housing discrimination either have not been issued as regulations, or the regulations are so vague as to be of very marginal value.\textsuperscript{284}

Consider, for example, the Department of Housing and Urban Development—again, statutorily named as the lead agency in promoting and implementing the Fair Housing Act of 1968.\textsuperscript{285} As of 1970, HUD had not even begun gathering the racial and ethnic data necessary for determining whether housing discrimination existed in the programs that it funded and administered.\textsuperscript{286} The following year, data had been collected which conclusively demonstrated that substantial segregation was occurring in HUD programs and that HUD compliance reviews were “desperately needed.”\textsuperscript{287} By 1974, some progress had been made, and HUD was collecting data for most of its programs.\textsuperscript{288} These data were not regularly used, though, by HUD field representatives actually involved in implementing fair housing goals.\textsuperscript{289} Moreover, HUD had not collected data on the racial and ethnic make-up of most single-family dwelling neighborhoods where HUD housing was being built, thus making it impossible to determine whether those communities were receiving HUD funds while still practicing discrimination.\textsuperscript{290} Since the mid-1970s, however, HUD has

\begin{footnotes}
\textsuperscript{281} Id.
\textsuperscript{282} Id. at 116-19. See generally Bogen & Falcon, The Use of Racial Statistics in Fair Housing Cases, 34 MD. L. REV. 59 (1974).
\textsuperscript{283} See, e.g., The Federal Civil Rights Enforcement Effort: To Provide . . . For Fair Housing, supra note 172, at 333, 335, 340, 350-51, 353.
\textsuperscript{284} Id.
\textsuperscript{285} See note 209 supra.
\textsuperscript{286} Federal Civil Rights Enforcement Effort, supra note 222, at 150, 349.
\textsuperscript{287} U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Effort: One Year Later 44 (1971).
\textsuperscript{288} The Federal Civil Rights Enforcement Effort: To Provide . . . For Fair Housing, supra note 172, at 116.
\textsuperscript{289} Id. at 118.
\textsuperscript{290} Id. at 118-19.
\end{footnotes}
apparently improved its data collection and usage.\textsuperscript{291}

On-site compliance reviews or inspections are another crucial component of an adequate fair housing monitoring system. Still, five years after the passage of Title VIII, HUD had failed to conduct a single compliance review and claimed that even when it began employing such reviews, it would do so only where there were already clear indications of housing discrimination.\textsuperscript{292} Even the latest information available indicates that HUD has not conducted on-site inspections regularly or frequently enough to meet its fair housing enforcement duties assigned by law. For example, HUD area offices are responsible for monitoring affirmative fair housing marketing plans. However, “[i]n the Atlanta region, no monitoring was conducted by area offices in fiscal year 1976. In the Seattle region, only 13 plans were subjected to on-site monitoring by area offices, representing 3 percent of all plans received in that year.”\textsuperscript{293} And in instances where monitoring has detected practices that require a full compliance review, such reviews have not been forthcoming in too many instances. Only sixty-three compliance reviews were conducted for the entire year of 1977, representing less than 0.3 percent of all HUD-approved affirmative fair housing marketing plans.\textsuperscript{294} This is substantial evidence of an essentially passive role in civil rights implementation that must be corrected by HUD.

The size and training of a federal agency’s civil rights staff are also key ingredients making for acceptable monitoring programs. In 1971, HUD had “a staff grossly inadequate” for executing its fair housing responsibilities. This staff consisted of a mere forty-one employees to deal with all Title VIII complaints filed nationwide, meaning that it took anywhere from five to twelve months to resolve complaints.\textsuperscript{295} By 1975, HUD had a larger number of fair housing employees but was still understaffed to carry out its duties.\textsuperscript{296} Hence, with respect to the size of HUD’s enforcement staff, there has been progress, though seemingly not enough.

The quality of training given to HUD’s equal opportunity staff is even more questionable. Prior to 1973, HUD’s training program was disorganized, and by 1973 the agency was only slowly developing the early stages of a training program—unsystematic in nature—for its Washington staff

\textsuperscript{291} THE FEDERAL FAIR HOUSING ENFORCEMENT EFFORT, \textit{supra} note 213, at 52-67.


\textsuperscript{293} THE FEDERAL FAIR HOUSING ENFORCEMENT EFFORT, \textit{supra} note 213, at 23.

\textsuperscript{294} Id.

\textsuperscript{295} THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT: ONE YEAR LATER, \textit{supra} note 287, at 41.

\textsuperscript{296} THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT: TO PROVIDE . . . FOR FAIR HOUSING, \textit{supra} note 172, at 16.
members. At that time, too, fair housing staffers in the HUD regional offices were receiving "little or no training." By 1975, however, HUD's training program was considerably improved, with four weeks of classroom instruction provided in Washington, plus on-the-job training of up to eight additional weeks. Nonetheless, by 1979 HUD had allowed its training program to back-slide to the point where equal opportunity training was again receiving little attention. In the words of the Commission on Civil Rights, "[n]ot only have junior civil rights staff been poorly trained, but sometimes the equal opportunity directors in area offices and even directors in Regional Offices of Fair Housing and Equal Opportunity have also not received proper training." The Commission gave a number of other illustrations of how HUD has recently been neglecting the civil rights training of both its fair housing and general programmatic staff. Apparently, then, it is relatively easy for federal training programs in civil rights implementation to reach a high level of proficiency, only to deteriorate in a short period of time.

E. Commitment of Fair Housing Personnel

Pinpointing the degree to which federal civil rights enforcement officials are committed to their implementation tasks is largely a subjective—perhaps even an intuitive—question. Nevertheless, there are certainly some subjective statements that can be made about the commitment of the personnel at various federal agencies regarding fair housing implementation with which few would disagree. For instance, some of the discussion in the preceding sections relating to HUD is applicable to the question of commitment and thus need not be repeated. It is more revealing here to focus on other agencies.

As mentioned earlier, the Federal Housing Administration and the Veterans Administration provide further examples regarding this variable, for they have had notorious reputations for contributing to housing discrimination—a clear indication of virtually a total lack of commitment to fair housing principles. In fact, the policies of these two agencies have at times been in direct contradiction of federal fair housing laws. If we take

298. Id.
300. THE FEDERAL FAIR HOUSING ENFORCEMENT EFFORT, supra note 213, at 19.
301. Id.
302. Id.
303. See text accompanying notes 217-26 supra.
the Veterans Administration as an illustration, we find that, throughout its history, one of that agency’s highest priorities has been to provide loans for housing white veterans and their families, with fair housing being one of the lowest priorities of the agency—if indeed it can be called a “priority.” This is reflected in the fact that three years after the enactment of Title VIII, and three years after the Supreme Court’s decision in *Jones v. Alfred H. Mayer Co.* the VA would only conduct a compliance review if a formal complaint had been filed with the agency. If it were determined that a builder had been engaging in a discriminatory practice, VA would merely require the builder to provide housing for the complainant, not housing for others similarly situated. And, in 1971, VA had conducted no surveys to determine the extent to which minorities occupied housing accommodations in VA subdivisions. Moreover, the VA’s loan guaranty program was staffed by only two employees whose primary responsibilities involved civil rights. Specifically, “two professional civil rights staff members were expected to monitor the entire VA loan guaranty program carried out in fifty-seven regional offices and amounting to more than $3 billion in guaranteed mortgage loans annually,” and, to make things even worse, a year later one of those two positions was eliminated. Thus, the Commission on Civil Rights concluded that “[t]he factors of inadequate staff, racial and ethnic data which are not readily retrievable, and an absence of written procedures for conducting compliance reviews for enforcing equal opportunity requirements, taken together, strongly indicate that there is virtually no civil rights monitoring of VA housing programs at the present time.” This of course translates into a lack of commitment by VA officials and an apparent absence of desire on their part to strengthen the VA enforcement program.

Subsequent investigations by the Civil Rights Commission discovered only slight indications of a greater commitment on the part of Veterans Administration personnel to carry out their fair housing responsibilities. In 1973, the Commission found that its 1971 recommendations to VA were “still at the planning stage” and that, again, “VA’s fair housing effort [lack-
ed] a fulltime director and [was] severely understaffed." 311 In 1975, VA still did not require that the lenders with which it dealt promise nondiscrimination in their lending practices, it still had an extremely small equal opportunity staff, and it provided no equal opportunity training. 312 By 1979, VA had only three equal opportunity employees overseeing billions of dollars used to assist veterans. 313 It is somewhat doubtful that one could find a better example of a comparable lack of commitment on the part of equal opportunity personnel in any other federal agency, regardless of its mission. However, the related fair housing activities of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Comptroller of the Currency may come reasonably close. 314

F. Commitment of the Enforcer's Superiors

When a President and his political appointees heading federal agencies view civil rights implementation to be a low administration priority, this has a chilling effect upon even the most dedicated federal employees responsible for implementing civil rights. 315 The forcefulness of the civil rights enforcement activities of federal agencies, in other words, reflects presidential priorities which cannot be easily offset by the actions of career-level bureaucrats working in civil rights. The President has the duty to enforce the civil rights laws and the power to remove high level executive branch appointees that fail to promote effective implementation. As always, in every area of public policy, the "buck stops" at the President's desk in the Oval Office.

The impact that a conservative administration can have on antidiscrimination implementation is readily demonstrated by an examination of the Nixon and Ford years. Richard Nixon's support for equal employ-

311. THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT—A REASSESSMENT, supra note 292, at 44.
313. THE FEDERAL FAIR HOUSING ENFORCEMENT EFFORT, supra note 213, at 107.
314. Id. at 214-18.
315. In the words of Longaker, "[w]here the law assists minority groups, as do the civil rights statutes and many court decisions, [the president] must make clear without cavil or doubt, that it will be enforced." R. LONGAKER, THE PRESIDENCY AND INDIVIDUAL LIBERTIES 196 (1961). Or as put by the U.S. Commission on Civil Rights, absent presidential leadership in civil rights enforcement there develops "a steady erosion of the progress toward equal rights, equal justice and equal protection of the law." THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT—A REASSESSMENT, supra note 292, at 11. See generally M. ABERNATHY, CIVIL LIBERTIES UNDER THE CONSTITUTION 91-94 (3d ed. 1977); Lamb, Presidential Leadership, Government Reorganization, and Equal Employment Opportunity, supra note 1.
ment opportunity and especially school desegregation was luke-warm, to say the least. But his position on fair housing was even less supportive—even more chilling. Although occasionally giving lip-service to the principle of equal opportunity in housing, Nixon's actual policies were totally alien to the bare essentials of that concept. He refused to take actions to discourage the use of exclusionary practices by local governments. Rather than acknowledge the fact that such practices are primarily designed to keep minorities out of white areas, Nixon camouflaged the issue in economic terms. He would not, under any conditions, "impose economic integration" on communities that opposed the building of federally subsidized low-income housing, despite the fact that such communities typically do provide adequate federally assisted housing for poor whites, including the elderly. More generally, he would not, under any conditions, allow then HUD Secretary George Romney to promote open housing in white suburbs. Nor would he continue to support the concept of federally subsidized housing, essentially terminating all such programs in 1973 by placing an eighteen-month freeze on funds appropriated by Congress for that purpose.

President Ford's record was not much better, for his administration did little to implement the letter and the spirit of the fair housing laws. Consider for example the fair housing activities of HUD under Ford's leadership. HUD regulations tended to be ineffective in meeting congressional intent in fair housing and were of limited success in providing low-income housing to minorities. Indeed, HUD officials frankly admitted that they were doing a poor job of monitoring whether the civil rights requirements of the Housing and Community Development Act of 1974 were being met. This Act was designed to open new housing opportunities for minorities and the poor outside of ghettos and inner cities. But since Ford, like his predecessor, opposed "economic integration," HUD regulations fell short of meeting the congressionally established goal of

316. H. RODGERS & C. BULLOCK, supra note 1, at 97-104, 126-27.
318. Lamb, Presidential Fair Housing Policies, supra note 1, at 635-40.
319. Id. at 635.
320. M. DANIELSON, supra note 26, at 205-06.
322. Id. at 641-49.
323. Id. at 642.
324. HUD Assistant Secretary Blair Hits Block Grant Civil Rights Monitoring, [1975] 3 Hous. & Dev. Rep. 538 (BNA).
housing desegregation through the dispersal of minorities and the poor throughout larger metropolitan areas. Moreover, Ford's 1976 proposals to Congress so neglected housing for low-income families that the Commission on Civil Rights, in a relatively rare burst of political rhetoric, bitterly criticized the administration's stance. Like Nixon, Ford was obviously more interested in winning the support of middle-class white voters than he was in implementing the nation's fair housing laws. Ford candidly stated in public that the concept of open housing did not describe his administration's policies. Similarly, Carla Hills, Ford's Secretary for Housing and Urban Development, argued that "home ownership for the poor is probably an unrealistic goal" and that low-income families were simply incapable of coping with problems involved in home ownership.

The Carter administration had a substantially better track record in fair housing than did its two Republican predecessors. Among other things, new regulations were issued by the Federal Reserve System to outlaw the practice of redlining in the granting of home mortgages, and HUD leaders were reasonably outspoken on the need to fight housing discrimination and to provide more low-income housing in the suburbs. And, as mentioned earlier, President Carter announced that he strongly supported 1979 congressional attempts to increase considerably the enforcement powers of HUD in fighting housing discrimination. These and other indicators definitely distinguish Carter from Nixon and Ford as a supportive superior, although ideally the Carter administration could have been far more supportive than it actually was in fair housing implementation.

G. Administrative Coordination

Coordination of civil rights implementation activities, where different federal agencies possess overlapping responsibilities, has also been an impediment to sound civil rights enforcement. As the 1980s opened, significant strides had been taken to resolve enforcement coordination

326. Lamb, Presidential Fair Housing Policies, supra note 1, at 653.
327. Twenty Years After Brown: Equal Opportunity in Housing, supra note 57, at 33.
328. President's Remarks in a Question-and-Answer Session With a Panel of ASNE Members, 12 WEEKLY COMP. OF PRES. DOC. 650, 653.
331. Lamb, Presidential Fair Housing Policies, supra note 1, at 652-53.
332. See text accompanying note 212 supra.
333. See, e.g., J. Hope, Minority Access to Federal Grants-in-Aid: The Gap Between Policy and Performance 16-28 (1976); Lamb, Administrative Coordination and Civil Rights Enforcement, supra note 1; Orfield, supra note 266; Taylor, supra note 1, at 984-
problems in the area of equal employment opportunity.\textsuperscript{334} They remain as major obstacles to effective civil rights implementation in the field of fair housing, however, although some progress has been initiated.

Title VIII clearly suggests that HUD provide guidance and coordination to all federal agencies with fair housing responsibilities.\textsuperscript{335} Yet three years after the passage of Title VIII, HUD had taken few steps to bring about coordination.\textsuperscript{336} HUD's long-awaited coordination activities ultimately began to bear a little fruit in the form of an agreement with the General Services Administration (GSA) to the effect that the two agencies would work together to insure that low-and moderate-income housing for minorities would have to be available in a community before GSA would locate a federal facility in that area. In addition, HUD obtained an agreement from the four federal financial regulatory agencies to send out questionnaires to all the banks and savings and loan institutions that they regulate, soliciting information on their lending practices involving racial and ethnic minorities.\textsuperscript{337} By late 1975, the HUD-GSA agreement was not working as planned because there had been few efforts to follow specific steps in determining whether communities where federal facilities were being placed were actually discriminating in the sale or rental of housing.\textsuperscript{338} On the other hand, HUD had succeeded in making a new agreement with the Department of Justice which provided that the two agencies would exchange information regarding housing discrimination in various cities throughout the nation.\textsuperscript{339} HUD was still referring few cases of housing discrimination to the Justice Department for prosecution, however, and the Justice Department was filing lawsuits in only about five to ten percent of all cases referred to it by HUD.\textsuperscript{340}

After eight years of token coordination between HUD and other federal agencies with fair housing duties, the Commission on Civil Rights released an extensive report in 1979 detailing HUD's successes and failures.\textsuperscript{341} The Commission observed that while HUD had succeeded in establishing the


\textsuperscript{334} Lamb, \textit{Presidential Leadership, Government Reorganization, and Equal Employment Opportunity, supra} note 1.

\textsuperscript{335} \textit{See} note 209 supra.

\textsuperscript{336} \textit{Federal Civil Rights Enforcement Effort, supra} note 222, at 148-49.

\textsuperscript{337} \textit{The Federal Civil Rights Enforcement Effort—A Reassessment, supra} note 292, at 36-37.

\textsuperscript{338} \textit{The Federal Civil Rights Enforcement Effort: To Provide . . . for Fair Housing, supra} note 172, at 121-22.

\textsuperscript{339} Id. at 127-28.

\textsuperscript{340} Id. at 128-29.

\textsuperscript{341} \textit{The Federal Fair Housing Enforcement Effort, supra} note 213, at 329-33.
Federal Equal Housing Opportunity Council, the Council was a low HUD priority and had been inept in coordinating federal fair housing enforcement activities. The major project of the Council has been the nurturing of an Interagency Fair Housing Agreement to ensure that minority federal employees working throughout the country are not discriminated against. But of the fifty-two Council member agencies, only eight have entered into the agreement. Moreover, the Commission complained that “[t]he Council has not attempted to seek interagency solutions to the problems of exclusionary zoning, discrimination by the real estate industry, or the need for interagency sharing of compliance information.” As a consequence of inadequate coordination, there exists no Government-wide system for gathering, storing, or sharing fair housing information. Thus, there is no mechanism to prevent duplicative reviews and investigations, to ensure that participants in one Federal program who violate Title VIII are not allowed to continue that violation in other Federal programs, and to enable HUD to be aware of all possible Federal sanctions when it attempts to conciliate resolution of a Title VI violation.

Finally, the problems that had been associated with the HUD-Department of Justice Agreement in 1975 were still evident, as were coordination problems between HUD and the Veterans Administration, and HUD and the Comptroller of the Currency. As things now stand, therefore, not very much fair housing coordination has been forthcoming, and problems such as duplication of effort, inconsistent compliance standards, and the lack of sharing of civil rights data among agencies continue.

H. Costs and Benefits of Housing Discrimination

To what extent have the benefits of noncompliance with fair housing laws outweighed the costs? As suggested earlier, the short answer to this question is that those who have practiced housing discrimination have rarely experienced any major direct costs, and thus the benefits of noncompliance have been significantly greater than the costs to those actually discriminating. Yet, in a larger sense, cities and their white occupants are hit by costs of housing discrimination and segregation—primarily the tax bur-

342. Id. at 216.
343. Id.
344. Id.
345. Id.
346. Id. at 216-25.
347. See text accompanying notes 25-45 supra.
den associated with social services and urban decay that flow directly from the unhealthy, overcrowded, crime-ridden conditions with which many inner-city minorities have no choice but to live.\textsuperscript{348}

The benefits or advantages of discrimination, in general, have been outlined by Bullock and Rodgers.\textsuperscript{349} Among other things, the advantages include the fact that the persons and institutions dealing in real estate have reaped substantial monetary benefits from the practice of blockbusting.\textsuperscript{350} Although blockbusting is illegal,\textsuperscript{351} it vividly illustrates how sizable monetary gains have often accompanied unfair dual-market housing practices. And as observed earlier,\textsuperscript{352} many white homeowners also enjoy important psychological benefits from knowing that they live in communities that are too expensive for most minorities to relocate in, although in numerous instances racial discrimination and steering, rather than the prices per se, are responsible for maintaining segregated housing patterns.\textsuperscript{353}

So, why do the benefits of noncompliance continue to outweigh the costs? The answer, for the most part, lies in the simple fact that federal agencies with fair housing enforcement duties have rarely utilized sanctions that would make the costs of housing discrimination surpass its advantages. For example, three years after the passage of Title VI, HUD had never terminated any of its Title VI funding based upon a finding of discrimination.\textsuperscript{354} If HUD has been reluctant to cut off Title VI funds that are housing-related, other federal agencies have undoubtedly been even less inclined to do so. Without Title VI sanctions being employed, it is unlikely that state and local governments will take active steps available to them to insure that housing discrimination does not continue within their jurisdictions. Benefits of housing discrimination also still surpass costs because few are found to discriminate under Title VI. While one might assume that HUD would be the federal agency most likely to decide in favor of Title VI complainants in housing discrimination disputes, findings against alleged discriminators by HUD have not been commonplace. Findings of noncompliance, on the average, occurred in only one case in five in 1974, one in six in 1975, one in nine in 1976, and one in four in 1977.\textsuperscript{355} Regarding the percentage of HUD Title VI compliance reviews

\begin{itemize}
  \item \textsuperscript{348} J. Hecht, \textit{supra} note 34, at 20-22.
  \item \textsuperscript{349} C. Bullock \& H. Rodgers, \textit{supra} note 1, at 5-6.
  \item \textsuperscript{350} \textit{See} text accompanying note 180 \textit{supra}.
  \item \textsuperscript{351} 42 U.S.C. § 3604(e) (1976).
  \item \textsuperscript{352} \textit{See} text accompanying notes 33-36 \textit{supra}.
  \item \textsuperscript{353} \textit{Hearings, supra} note 64, at 166.
  \item \textsuperscript{354} \textit{The Federal Civil Rights Enforcement Effort: One Year Later, supra} note 287, at 42.
  \item \textsuperscript{355} \textit{The Federal Fair Housing Enforcement Effort, supra} note 213, at 37.
\end{itemize}
resulting in a determination of noncompliance, the figure was thirty-one percent in 1974, but fell to twenty-one percent in 1975, 1976, and 1977.\textsuperscript{356} It must be emphasized, too, that Title VI compliance reviews usually are infrequent and are customarily conducted only when there is clear evidence that housing discrimination is indeed occurring.

Second, concerning Title VIII complaints, one would think that the lead agency in federal fair housing enforcement would refer a reasonably large percentage of all such complaints to the Department of Justice for litigation where HUD has indications that discrimination is actually being practiced. But “even when HUD has proof of discrimination, respondents may be unlikely to agree to the remedies HUD suggests because they realize that if they reject the agreement, the probability of further action against them is slight.”\textsuperscript{357} To illustrate, two years after the enactment of Title VIII, HUD had referred a mere thirty-three out of some 1500 Title VIII complaints to the Justice Department, which in turn filed law suits in only twenty-two of those cases.\textsuperscript{358} In 1979, eleven years after the passage of Title VIII, the Justice Department had filed less than thirty Title VIII lawsuits per year, and on the average only three of these thirty cases had been referred to Justice by HUD.\textsuperscript{359}

The moral of the story is that the Justice Department is not prone to initiate litigation against most of those who appear to be engaging in housing discrimination, and strict administrative sanctions by the Department of Housing and Urban Development—or any other federal agency—are even less likely to be imposed. Nor can we expect widespread voluntary compliance, or for the vast majority of white communities to accept federal inducements in the form of additional funds to build subsidized housing that could be used in part to provide minorities with a chance to disperse throughout larger metropolitan areas. Under present conditions, then, there is little hope that the nation’s fair housing laws will be enforced with any substantial degree of vigor. Without noncompliance being swiftly but fairly penalized, the perceived benefits of housing discrimination will continue to far outweigh the costs.

I. Attitudes and Actions of Beneficiaries and Interest Groups

Those who benefit most directly from attempts to fight housing discrimination and segregation are of course minorities. It must, however, be em-
phasized that other groups derive advantages from the fulfillment of fair housing goals. They include developers, unions, and employers who would gain from greater dispersal of minorities into the suburbs.

Builders and their organizations have an interest in eliminating suburban obstacles so they can build more housing and make more money. Unions have an interest in getting housing near job sites for their workers. Companies need workers who stay on the job and can get there consistently. These and other groups will increasingly feel the need to see to it that housing for low- and moderate-income families is provided, in quantity, in suburbia.360

In seeking the benefits of fair housing, some individuals, on their own, have at times made their political weight felt. This is especially true with regard to civil rights activists who, despite physical intimidation or force, have overtly protested unfair housing practices to bring discrimination to the public's attention. Individual activists have also filed lawsuits, even when they often lacked adequate resources, and have taken other efforts to jar federal, state, and local government officials out of their stupor of complacency. On the other hand, there is only so much that individuals can accomplish in the field of fair housing. When "victory" at the individual level finally emerges, if in fact it does, it is often too late and the pay-off is usually too small.

It is axiomatic then that mass protests or other forms of collective action have more widespread consequences than individuals acting on their own to protect their rights.361 The resources and bargaining power of individuals simply do not approximate that of groups in most cases. As the old saying goes, there is indeed power in numbers, and a more credible threat can be lodged against the status quo when minorities band together to air their grievances and to voice their demands. Therefore, the more critical role that individual beneficiaries can play is through active participation in civil rights interest groups and by providing support for civil rights organizations.362

The civil rights organizations that have been most vigorous in pursuit of the goal of equal housing opportunity include the National Committee Against Discrimination in Housing and the Suburban Action Institute. They have received some help from more general purpose civil rights organizations such as the NAACP, the Southern Christian Leadership Conference, the Leadership Conference on Civil Rights, and the Center for

360. L. Rubenowitz, supra note 23, at 3.
361. See, e.g., T. Dye, supra note 195, at 113-16.
362. Id.
National Policy Review. These organizations also have attempted to cultivate alliances with developers, unions, employers and other potential beneficiaries.

Regarding civil rights organizations, Rubinowitz has asserted that there is "a significant movement to alter the residential [segregated] patterns in our suburbs." But his statement deserves a bit of analysis here. To the extent that a few dedicated groups have taken political and legal action at the federal, state, and local levels to fight discrimination, this "movement" can be considered a noteworthy departure from earlier years when there was a paucity of interest group activity pushing for fair housing. One might, however, go a step further. Whether such groups have had a "significant" impact on eliminating unfair housing practices is quite another question. Most likely those commendable souls who work so hard and endlessly for such private groups as the National Committee Against Discrimination in Housing, the Suburban Action Institute, the Center for National Policy Review, and the Leadership Conference on Civil Rights believe that their impact is significant. Yet the extent of their impact, however praiseworthy, certainly does not and cannot come close to matching the potential consequences of effective fair housing enforcement by the federal bureaucracy. Instead, such groups are most influential in devoting their limited resources to selected litigation that has the prospects for widespread change in housing segregation and discrimination. Without in any way detracting from the importance of the role that such groups perform, their impact still must be judged as a supplementary, secondary means of eliminating unfair housing policies and practices throughout the nation. True change will ultimately come only with forceful federal executive branch involvement.

III. Conclusion

In closing, it is appropriate to refer again to the national disgrace which I initially asserted to exist in America. Obvious factors distinguish minority from white communities, including overcrowded and over-priced housing, decay and unsanitary conditions, high rates of crime, vandalism and juvenile delinquency, and general inequities in the quality and quantity of governmental services. These conditions stem largely from past and present housing discrimination practiced by real estate interests, financial institutions, local governments, and individual white homeowners. For most of the minority population, the average suburbs remain closed for

364. See text accompanying note 21 supra.
purposes of buying or renting a home close to new employment opportunities and better financed educational systems. By examining the variables in part two, it should be clear beyond a doubt that the federal government has consistently dragged its feet in fighting housing discrimination and segregation in America. In other words, the legal response has fallen far short of its goal. Yet federal administrative agencies must be heavily relied upon to bring about effective resolutions to these problems in the future, with the support of the White House, Congress, and the federal courts. Much, much more aggressive enforcement is required if the disgraceful and tragic picture painted in part one is to be replaced by a mosaic of equal housing opportunity for all Americans.