SECURING EQUALITY:

The Operation of the Laws of New Jersey

Concerning Racial Discrimination

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This Report was undertaken at the request of the New Jersey Commission on Civil Rights to serve as a basis for the Commission's Report to the Governor and the Legislature of New Jersey.

THE NEW JERSEY COMMISSION ON CIVIL RIGHTS

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To: The New Jersey Commission on Civil Rights

Gentlemen:

I submit herewith this study of the operation of the laws of New Jersey relating to racial discrimination. The idea for an intensive study of a single area of state law was developed in cooperation with your chairman, Mr. Sidney Reitman. With his cooperation, the 30 second and third year students of Social Legislation were able to interview a great number of state officials who aided us immeasurably in the carrying out of this study. The increasing concern for the problems of racial discrimination made a new study of the institutions which administer New Jersey laws desirable. Studies of the internal operation of the Division Against Discrimination (now the Division on Civil Rights) have been made in prior years, but there has been no full-scale review of the operations of the agencies of the state which deal with racial discrimination.

The laws against discrimination can be simply stated. To study them in a law school classroom would take little time; two weeks, perhaps, at the most. But to understand how these laws are administered, and how those for whom they are designed respond to them, in short, to understand the meaning of these laws in action, is a task of scholarship which cannot be accomplished in a short time. Yet the endeavor, to understand the law in action, is one of the most important tasks of legal scholarship. An evaluation of the law requires an understanding of the milieu in which it operates: the arena of human activity where the law is expected to affect the behavior of men. We embarked on this study, then, with an awareness of its magnitude and with rather cautious ambitions. I think the caution was justified and the limited ambitions satisfied. We have evolved a picture of the law in action which we believe to be reasonably accurate; and we have evaluated the behavior of the legal officers by measuring their performance against what we conceive to be the constitutionally and legislatively shaped mandate for action.

We have become aware that the impact of the law depends in part on the attitude of the Negro community toward it. Therefore, we have

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embarked on an unusual study of the attitude of the Negro community toward the law in general and, more particularly, toward the law against discrimination. Mr. Leonard Zeitz, a sociologist and cultural anthropologist, received a joint appointment with the Law School and the Urban Studies Center for the express purpose of designing and directing such a study. His findings are fully reported in the third part of this report. His study attempts to relate findings about community attitudes to the choice of techniques used to enforce the law. Thus the knowledge gained from sociological inquiry becomes of direct relevance in evaluating the legal process. His report and our attempt to relate his findings to the understanding and evaluation of the legal system represent another step in a developing relation between law and sociology which has been pressed at Rutgers and other law schools for a number of years.

This report, then, consists of four parts: First, a summary of the studies conducted into the operation of four state agencies which are concerned with racial discrimination, along with conclusions and recommendations, some of which are my own. Secondly, a close study of the files of the Division covering all cases closed in Fiscal 1962-1963. This study was conducted with the cooperation of Mr. Jack Levin and Miss Marion Courtney, by myself, and the following students enrolled in a program of social legislation research at the Law School in the spring of 1964: Messrs. Hecker, Lewis, DeMarrais, Belkin, and Molnar. Thirdly, the study by Mr. Zeitz of Negro attitudes toward law, persons concerned with law, and civil rights law in particular. The fourth part of the report consists of the student reports on the operation of the laws. I have discussed the contents of this report with Attorney General Arthur Sills, Mr. George Pfaus, Director of the Division on Civil Rights, Dr. Joseph Clayton, Deputy Commissioner of Education and Mr. Robert Peacock, Executive Secretary of the New Jersey Real Estate Commission. The analysis and conclusions contained herein are my own.

We are indebted to many officials who helped us by providing information or by appearing before the Social Legislation class, or by discussing the function of their office with those students who were working on the project. Among the officials who gave their assistance are:

Mr. George Pfaus, Director, Division on Civil Rights

Mr. Howard Kestin, Deputy Attorney General

Mr. Joseph Hoffman, Deputy Attorney General

Mr. Jack Levin, Field Representative, Division on Civil Rights

Miss Marion Courtney, Field Representative, Division on Civil Rights

Dr. Frederick Raubinger, Commissioner of Education

Mr. Emil Groetzinger, Assistant Commissioner of Education

Mr. Sidney Reitman, Chairman, New Jersey Civil Rights Commission

Mr. Robert Peacock, Chairman, New Jersey Real Estate Commission

Mr. Louis Danzig, Director, Newark Housing Authority

I wish to thank especially the Commission on Civil Rights and its chairman, Mr. Reitman, for making possible a most stimulating and worthwhile educational experience for the students and for myself. Finally, my thanks and gratitude to Mrs. Florence Wotherspoon, Faculty Secretary of the Law School, for her thorough and painstaking help in preparing this manuscript for presentation to the Commission.

Respectfully submitted,

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PART I

THE LAWS OF NEW JERSEY CONCERNING DISCRIMINATION:

A CRITIQUE WITH RECOMMENDATIONS

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I. Introduction

This study examines the operation of the Laws of New Jersey concerning racial discrimination in housing, education and employment during 1962-1963. Our objective has been to determine whether the laws are being administered effectively. The evaluation and recommendations made here are based on the assumption that effective implementation of the anti-discrimination laws is desirable.

The administration of these laws is a matter of deep public concern. We daily witness the increasing intensity of demands by minority groups that the promises which the law has made be implemented in everyday life. For nearly two decades the law of New Jersey has promised freedom from racial discrimination in many areas of life. But the promise has not been fulfilled. The discrepancy between the promises of law and the reality of life contributes to the tensions of rife today. The current situation requires the effective implementation of existing law. Otherwise, social protest may take other forms. Resort to violence may be the outcome of the inadequate implementation of the law relating to minority rights.

The examination of the operation of the laws against discrimination takes us quickly into a study of the behavior of two important groups of persons: the administrators of the laws, and the minority group members whose interests are protected by the laws.

We did not study the impact of the law on those who discriminate. Such a study would ultimately be of great value, for we cannot now gauge the long range effectiveness of decisions requiring the abolition of discriminatory practices. The argument that "you can't legislate morals," often pressed against enforcement of anti-discrimination policies, is countered by the

thesis that the law can, and does, legislate concerning behavior which contravenes the moral sense of the community. Empirical studies of the impact of anti-discrimination decisions may shed light on this dialogue.

1. The Study of Negro Attitudes Toward the Law

The study of minority groups was focused upon the Negro. The Law School, through the cooperation of Rutgers Urban Studies Center, was fortunate in obtaining the services of Leonard Zeitz, a sociologist and cultural anthropologist, who designed and supervised a depth study of Negro attitudes toward law, lawyers, legal processes and the law relating to discrimination. The students in Social Legislation, second and third year law students at Rutgers, conducted many of the 130 depth interviews of Negro residents of the south side of Newark in December 1963 and January 1964. Professor Zeitz's article, explaining and evaluating the research, is the third part of this study. His findings will be utilized throughout this study as a basis for evaluating the behavior of governmental agencies. His interview sample was fairly representative of the Negro male population in the northern metropolitan areas of the state.

The genesis of the study came in the summer of 1963 when legislators and administrators remarked pointedly that, although the Negro was agitating for enhanced rights he had not extensively utilized the existing legal processes dealing with discrimination. This contributed to irritation in official and semiofficial sources during that time of incipient and sometimes actual violence. The Negro's failure to utilize the legal system threatened to widen the gap in understanding between the Negro community and the administrators and legislators who dealt with their problems.

The low rate of use of the facilities of the Division on Civil Rights, compared with other jurisdictions, was clear. Eighteen states had comparable anti-discrimination laws in 1960. A comparison of the

rate and number of complaints filed in nearby eastern states in 1960-61 illuminates the problem.

State	% Non-white in Population	Complaints per 100,000 Population	# of Complaints
NEW JERSEY	8.68	2.79	169
New York	8.91	5.36	900
Pennsylvania	7.64	2.11	239
Connecticut	4.60	6.51	165
Massachusetts	2.41	7.09	365

Of the sixteen states for whom "complaints per 100,000 population" figures were available, ten were above and only five were below that of New Jersey. The contrast between these figures and the behavior of vocal and active parts of the Negro community required investigation.

2. The Study of the Administrative Process

At the same time, we were concerned with describing and evaluating the behavior of agencies charged with the enforcement of the laws concerning discrimination, whether their tasks directly dealt with the problem, as in the Division on Civil Rights, or whether, like the Commissioner of Education, the Real Estate Commission, and the Housing Authority, the racial problem was but one facet of the performance of some other governmental function. This study was possible only because of the unstinting cooperation of the state agencies and officials involved.

3. The Limits of the Study: the Adjudicatory Function of Government

This study is concerned primarily with the law which deals with the allocation of existing resources and opportunities. It does not generally explore the areas of law which deal with the creation of new and additional resources and opportunities. The one possible exception

is in our study of de facto segregation in schools. There, we demonstrate that an increase in the available resources for dealing with a problem of discrimination can make it much more amenable to solution. But even in connection with education we are primarily concerned with the decisional process which allocates existing resources and opportunities. The concern of the law is to see that these are allocated fairly among the population without regard to race, creed, color, national origin, or age. Our concern has been with the racial aspect of the problem, and hereafter, through the report, we will refer to racial discrimination. Eighty-four percent of the cases before the Division on Civil Rights involve race issues. Normally, we will intend to include other forms of discrimination as well.

Long range solutions to problems of racial discrimination in housing, education, and employment may require the creation of new resources, not just the reshuffling of the present supply. If so, the institutions we study here cannot solve the problem they are designed to deal with. But even if additional resources are made available, the problem of seeing that they are fairly allocated among the population will remain. It will be dealt with by institutions of the type we are now studying. Hence these institutions remain relevant to the problem, even though their contribution to the total set of solutions may not be as dramatic as legislative acts which increase the resources and opportunities available to the total community.

4. A Brief History of New Jersey's Legal Policies Concerning Racial Discrimination

State legislation in the 1880's recognized the right to be free from racial discrimination in public education (Laws of 1881, p. 186) and in access to public accommodations (ch. 219, Laws of 1884). The right to be free from racial discrimination in education was occasionally protected by injunction, while the public accommodations law was enforced by means

of a civil penalty action. The statute originally provided for a $500 penalty payable to the victim of illegal racial discrimination. This provision was sapped of its vitality by legislation adopted in the World War I period. This law remains as N.J. Rev. Stat. 10:1-2. Between the World Wars there was little legislation concerning discrimination except that dealing with public contracts, which was adopted in 1933 (see N.J. Rev. Stat. 10:2).

The end of World War II saw the adoption of the foundations for the present law against discrimination. This was a fair employment practices act which was modeled after the trail-blazing New York statute (ch. 169, Laws of 1945). The Act created an Administrative Agency, the Division against Discrimination (hereafter called DAD) (now the Division on Civil Rights, hereafter called CRD) to enforce, through the processes of education, investigation, conciliation, hearing, decision and orders, the requirements of nondiscrimination in employment. A Civil Rights Council, later called the Civil Rights Commission, was created and given advisory powers only. The entire apparatus was placed in the Department of Education rather than in the Attorney General's office, to emphasize the educational rather than the enforcement character of the system. In 1963, the apparatus was transferred to the Attorney General's office.

In 1947, Art. I, para. 5 of the new State Constitution was adopted. It protected civil rights against racial, religious, or ethnic discrimination. Education and military service were explicitly required to be free of discrimination and segregation.

In 1949, the law was extended to cover public accommodations and educational institutions (ch. 11, Laws of 1949). The Act was expanded to cover publicly assisted housing in 1957 (ch. 66, Laws of 1957), and then in 1961 (ch. 106, Laws of 1961) to cover privately financed housing built in developments of ten or more, and multiple dwelling units of three or more. The law has had several court tests. The publicly assisted housing section has taken two trips to the State Supreme Court, and one trip to the United States Supreme Court. The Courts, rather sympathetically, have upheld the statute. For instance, in Jones v.

Haridor Realty Corp., 37 N.J. 384, 181 A.2d 481 (1962), the New Jersey Supreme Court said:

> "Discrimination against Negroes in the sale and rental of housing accommodations results in inadequate housing for them and in segregation in housing. They are thus compelled in large numbers to live in circumscribed areas under substandard, unhealthy, unsanitary and crowded living conditions. These conditions in turn produce disease, increased mortality, unstable family life, moral laxity, crime, delinquency, risk of fire, loss of tax revenue and intergroup tensions. * * * All of these things imperil the tranquility of a community. In addition, substandard and segregated housing seriously complicates the problem of public school integration. Manifestly, in their totality these conditions reveal an evil which it is within the competence of the lawmakers to correct.
>
> "New Jersey has a strong policy against discrimination. It is reflected in Article 1, paragraph 5, of the 1947 Constitution which proscribes the denial of any civil right, or discrimination in the exercise of such right, on account of race, color, ancestry or national origin. The statute now under attack contains a finding that such discrimination 'menaces the institutions and foundations of a free democratic State.' * * *
>
> "One of the basic functions of government is to safeguard the health, safety and welfare of its people. Upon the appearances of conditions detrimental to their welfare, it has the duty to apply remedial measures. * * *
>
> "Plainly, prohibition of discrimination against Negroes

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in publicly assisted housing will bring about substantial progress toward elimination of the mischief and the distress that have been described above. * * *"

Currently, there is a difference of opinion among the lower courts as to the constitutionality of the statutory coverage of privately financed housing.

Racial discrimination in public education is prohibited not only by the Law against Discrimination, but also by statutory provisions in the school law and by the language of the 1947 New Jersey Constitution which recognizes as a civil right the right to be free from discrimination and segregation in the schools. The Law against Discrimination has been formally invoked only once concerning education. This was in the mid-1950's when the DAD found that there had been discrimination in the drawing of school district boundary lines in Englewood. The DAD also encouraged a number of school districts to voluntarily terminate their discriminatory practices.* When, in the 1960's, the question of "de facto" segregation arose, the issues were funneled into the office of the Commissioner of Education who, utilizing his powers under the school laws rather than the Law against Discrimination, processed the cases with the use of his professional educational staff.

In addition, the Legislature has long been concerned that an adequate grounding in constitutional freedoms be given to high school students. The adequacy of the requirement and the response to the requirement as it bears on civil rights will be examined here, along with problems in the area of education of minority group youth.

The control of discriminatory practices of real estate salesmen and brokers had been vested in the DAD when the Law against Discrimination was expanded to cover housing.

*See Greenberg, Race Relations and American Law (1959) pp. 248. 251-253.

In 1963, the Real Estate Commission, which licenses real estate operators, for the first time entered the field by imposing some requirements of its own on brokers, which could be enforced by fines, or loss or suspension of license. The adequacy of these regulations will be examined here.

The emergence of public housing and urban renewal has created additional problems for the implementation of the anti-discrimination policies of the state. Questions of discriminatory patterns within housing projects have arisen, and have not been resolved. The fact that areas selected for urban renewal have usually involved minority group residential areas have created another host of problems concerning the decision to renew, the re-use of the property and the relocation of those displaced from it. Related to this is the problem of location of public housing projects which usually take up the slack in the housing market created by urban renewal projects.

5. The Current Social and Economic Context within which the Laws must be Enforced: Employment, Housing, Education.

Several student reports give detailed attention to the background in economic and human terms, against which the legislative pattern must be understood and evaluated. Here, only a small selection of this factual context will be suggested.

Employment. In 1961, Negroes constituted 11% of the population. Their unemployment rate was 18%, while the unemployment rate of whites was 5.5%. In a situation where the type of work needed was undergoing rapid change, the Negroes were disproportionately represented in the unskilled category; underrepresented in the skilled category. Nine percent of employed Negroes held skilled jobs, while 20% of the employed whites held such jobs. Employment income reflected the difference in job status; average annual income for Negro workers in 1960: $3,075, for whites: $5,137.

Housing. New Jersey seems to fit the national pattern of development of the cities as regards race. The non-white population of the cities is increasing at a more rapid rate than the white population (in Newark between 1950-1960, the white population increased 25%, Negro population was up 63%). But the increase in Negroes has not been accompanied by an increase in available adequate housing. Nearly 50% of non-whites living in the cities live in substandard housing as measured by the census figures. In Trenton, 38% of non-whites live in deteriorated or dilapidated buildings. In Newark, the figure was 52% in 1960. While 8.7% of the state's population is non-white, they occupy only 7.5% of all housing units; of these only 10% were built during the 1950-1960 period, the remaining 90% being older. Median value of housing owned by non-whites was $7,500, while the state-wide median value of owned housing for both white and non-white was $15,600. The facts concerning the housing problem in New Jersey are fully discussed in Miss Kulzer's report.

Education. The Negro community has found its children in segregated schools because of the combination of segregated housing and the application of the "neighborhood school" policy. The Negro community believes that these schools, which tend to be in the older areas of the cities, are inferior and that the education which may be had in them is inferior. The general problem is described in the 1964 Manpower Report of the President, p. 99, as follows:

> "In the North, where public expenditure for education is much higher than in the South, the Negro has obtained a better education. But in many northern cities, the Negro ghettos have resulted in essentially segregated schooling of a poorer quality than white children receive. In 1962 about one-fourth of the public elementary schools in Philadelphia were 97 percent Negro, and it has been estimated that in Chicago some 90 percent of Negro elementary

school pupils attended schools which were virtually all Negro in enrollment. Similar patterns of Negro pupil concentration in a limited number of schools are found in Detroit, New York, Boston, and other large northern cities.

"The schools in Negro neighborhoods in northern cities reflect the overcrowding resulting from the Negro migration and the failure to direct school construction to these neighborhoods. Pupil-teacher ratios are much higher in Negro than in white neighborhood schools (which have profited from the exodus of white families to the suburbs), and in the predominantly Negro schools the double session is much more common. For example, in Chicago almost all of the children affected by the double shift are Negro.

"The reluctance of qualified teachers to accept the challenge of teaching disadvantaged children, moreover, results in less adequate staffs in the schools populated by Negro children, as compared with the schools attended by white children. The percentage of positions filled by teachers not regularly licensed was found to be much greater in New York's predominantly Negro and Puerto Rican junior high schools than in others, and they also had a much higher percentage of teacher vacancies. In another city with a large Negro population, it has been estimated that an average of 12 percent of the teachers in the schools attended by whites were not certificated, as compared with 27 percent in the schools in which Negroes predominated.

"Thus, although Negro students in the North receive a better education generally than Negroes (and many whites)

in the South, their education still tends to be inferior to that of the northern white students with whom they will later compete for jobs. It should be noted, however, that in schools with a mixed population, the achievement of Negro children tends to be comparable to that of white youngsters of the same socio-economic backgrounds."

The national drop out statistics compiled in the Manpower Report, p. 97, showed that of those in the 18-24 age group who attended high school, 46% of the non-whites had failed to complete their course of study while 25% of the white students dropped out. The Manpower Report attributes this difference to "an apparently realistic response to the lack of economic incentive. The unemployment rates indicate that by completing high school, the average white student can halve the probability that he will be unemployed, but that for non-whites high school graduation reduces the chances of unemployment very little." Id. at 98. At the same time, non-white participation rates in higher education are much lower than white participation rates. The Manpower Report on educational attainment in the civilian labor force (p. 218) reports that, in March 1962, 21.9% of the white civilian labor force had some college education, while only 12.7% of the non-whites had college experience.

Problems such as these exist on the local scene. For example, the Commissioner of Education found that the racial composition of the Englewood, New Jersey, schools in September, 1962, was as follows:

SCHOOL	NO. OF PUPILS	% WHITE	% NEGRO
Cleveland	477	99.6	.4
Liberty	418	38.0	62.0
Lincoln	505	2.0	98.0
Quarles	343	96.8	3.2
Roosevelt	345	85.5	14.5
TOTAL	2,088	60.9	39.1

In some of the communities where de facto segregation has been a problem it has been possible to work out plans to reduce the proportion of Negroes by redistributing the school population. Mr. Belkin and Mr. Molnar have prepared an analysis of the various plans used. However, there is doubt as to whether the shuffling of students from one school to another

within a community can accomplish the objective of eliminating the weight of de facto segregation. It is argued, for example, that in the schools in Orange, New Jersey, the movement of students will only aggravate the situation because of "tipping point" behavior of the white residents, which will, in a short time, result in more of the schools becoming primarily Negro. Methods for dealing with this type of problem will be examined in the course of this study.

II. Negro Attitudes and the Law Against Discrimination: The Relation of Law and Sociology in the Study of Anti-Discrimination Legislation

We have the elements of an important enigma. On the one hand, the data just discussed makes it crystal clear that, in the fields of education, housing and employment the Negro is getting nothing like a proportional share of the resources, facilities and opportunities of the community. Yet there exists an elaborate statutory scheme which purports to guarantee him equal access and opportunities. The gap between the promise of law and the performance of society poses many difficult questions, and demands explanation. These explanations center on the theme of the vicious cycle of cultural deprivation: limited employment restricts housing opportunities, which restrict educational opportunities which, in turn, limit employment possibilities, etc. We are concerned in this report with one phase of the problem presented by the fact that the non-white is in an inferior economic and social position. Has the law, which promises equal opportunity, been effectively enforced so as to provide that opportunity? If it has, then the explanation for the social facts must lie elsewhere; if it has not, then perhaps law bears a share of responsibility for the present situation, and - more hopefully - may yet be an effective force in channeling social change.

When we ask whether the law has been effectively administered we plunge at once into a question of the procedure by which the law is enforced. The administrators of the law have chosen to rely on complaints by minority group members before they take action to remedy illegal racial discrimination. This was the position of both the Division on Civil Rights and the Commissioner of Education during the period studied. Since then, the Division on Civil Rights has begun to depart from this approach but the Commissioner of Education has not. Reliance on complaints is in accordance with a long tradition in the Anglo-American legal system. We have deemed it sufficient to state the substantive law, then provide a forum where one harmed by a violation can secure redress upon filing of a complaint. We assume that this complaint process will assure an adequate level of conformity to the legal norms of the community. Failure to complain is taken as demonstrating at least minimum contentment with the existing situation.

The complaint process is a basic part of our heritage. We abhor governmental fishing expeditions, and prefer to have the government do nothing without complaint than risk the tyranny of the overly aggressive administrator. This predilection persists even where we have shifted from the judicial to the administrative process for the expedited handling of masses of cases involving some specific social problem, such as workmen's compensation.

Under the statutes of this state relating to racial discrimination the administrators need not await complaints. The Commissioner of Education and the Division on Civil Rights have the power to act on their own initiative. But they have not exercised this power. They have waited for complainants to come forward. The complainants do not come. (See the figures, p. 3 supra.)

Mr. Zeitz's study shows why. He demonstrates that the assumption underlying the use of the complaint process - that those who are hurt will complain - is not true for the Negro community. He demonstrates that, by and large, the Negro:

(1) if he suspects that he will be discriminated against, will avoid the potentially embarrassing situation. (See Zeitz study, p.25.) By staying away from where

he believes he is not wanted, he prevents the act of discrimination against but himself,/allows the discriminatory practice to continue.

(2) If Negroes do face discrimination, they may not recognize it. This can occur for two reasons: (a) Either the economic or the social structure which discriminates is so complex (as in the real estate mortgage market, or in the unions' internal structure) that the discrimination is literally hidden from the Negro, or (b) for reasons which probably relate to the protection of his own personality, he may refuse to recognize the act of discrimination. (See Zeitz study, pp. 13, 23, 43-44.)

(3) Even if the Negro does recognize that he has been the victim of discrimination, he is likely to not/complain to the Civil Rights agencies: (a) 71% of those studied knew of the existence of the Civil Rights Division; (b) of those who did know of the CRD, its reputation was mediocre at best (see Zeitz study, pp. 29-31);(c) four-fifths of those who WERE interviewed said they would do nothing if faced with a discriminatory situation.

(4) Those Negroes who do use the Division on Civil Rights, tend to be better educated, higher income people.

> "This group more closely approximates the white middle class than it does the majority of Negroes of Newark who are represented by our sample. Since Division users reflect a minority of New Jersey's Negroes in terms of socio-economic status, then it must be evident that the Division operates to the benefit of only a very small portion of the Negroes, and neglects the large majority whose socio-economic class behavior is inconsistent with utilization of culturally sanctioned legal institutions."
> (Zeitz Study, partIII, pp. 1a-7a)

(5) Some 17 percent of the community studied is convinced that none of the existing legal institutions or approved forms of social change will improve the existing situation. These are people who condemn the police, who do not believe that judges, lawyers or the Civil Rights Division would be helpful to them, who do not believe that the major political parties can give them protection. Their attitude is either a desire to "fight back" to obtain their rights or to concede that their rights are unattainable. (See

Study Part II, pp. 1b-5b.)

There is a difference in the manner in which I have stated these conclusions, and the manner in which they are stated in Mr. Zeitz's report. There, the statements are more guarded, qualified and less generalized. This may stem from the fact that Mr. Zeitz is much closer to his data than I am, or, as he suggests, from the fact that the demands of our two subjects call for different organization of statements. The discipline of sociology demands that findings be stated with full qualification. My concern was to state the conclusions of his study in a manner which would be relevant and useful in the analysis and evaluation of the processes of the Division on Civil Rights. This was not, quite properly, one of Mr. Zeitz's concerns in the preparation of his report. The difference between our manner of statement of conclusions may be traceable to the difference in approach, and in function of a sociological and a legal analysis. This may be an inevitable aspect of the type of law-sociology cooperation in which we are engaged. (See p. 121 infra for a fuller discussion of this pattern of cooperation.)

Our method of reducing this "gap" is first to note its existence, and then, rather than to try to force each of our approaches into some common mold, to stand by the differences in our approach. Mr. Zeitz has examined the statements I have made in this section concerning his conclusions. He states that they are an accurate statement of the conclusions which flow from his data. This supplies the link between his data and my conclusions which might otherwise be difficult to identify.

Our purpose here is to report the facts concerning Negro community attitude, and to evaluate the actions of the administrative agencies in light of these facts. We have not attempted to assess the reasons why the Negro community behaves in the ways which we have described.

The result of the refusal of administrators to act without complaint, and the refusal of the Negro community to complain is that the law remains largely unenforced. This does not mean that the Negro community is satisfied with the present state of affairs. A significant proportion of Negroes interviewed, although they denied that they were victims of discrimination, nevertheless expected improvement in their situation as a result of Civil Rights progress. Presumably this important progress is to take place without their complaining to governmental agencies. Eighteen percent of the Negroes believed that picketing was the best way to get Civil Rights. The failure of Civil Rights progress could lead Negroes to the conclusion - which has already been reached by some of the more militant - that the remedy for discrimination lies not in the law but in direct action.

Obviously there are limits to the proposition that Negroes do not complain of the violation of their rights. Some do complain to the Civil Rights Division and the Commissioner of Education. These tend to be the better educated, higher income group. (See Part II, p. 8-9, 11-13, infra.) Some express themselves by more direct action. (See Zeitz Analysis Part III, p.50 - et. seq.) The strength of the appeal to direct action may well lie in the weakness of the complaint process on which the administrators of the law insist. When a Negro observes the persistence of a pattern of discrimination, his sense that the law will not help him is reinforced. The fact of unremedied discrimination leads not toward the conclusion that the law should be used but toward the conclusion that it is useless, and that the claim for decent treatment must be pressed in forums other than those provided by law.

If law is to perform a useful function, then someone must give. Perhaps the Negro must become more aggressive, and assert, in Anglo-American way, his legal rights. On the other hand, perhaps the administrators must give. They now have the power to act without complaint, but they did not do so during the period studied. Their failure to act, in light of the Negro community refusal to use a complaint process,

means that the laws go largely unenforced, and the risks of extra-legal activities increase.

From this clash of cultural patterns concerning complaints emerges the first standard for evaluating the administration of the law. The question always asked is: May the government act in this area without a complaint from an aggrieved individual, and has the government utilized that power to the full?

A second measuring rod arises from the same root problem of cautious administration. The question is whether the agencies charged with enforcement of the laws embodying these broad policies have construed their powers as broadly as reason permits, seeking to encompass the full range of discriminatory conduct which fits within the expression of the Legislature. The existing policy statements in constitutions, statutes, and judicial decisions condemning discrimination are broad indeed, but the administrators have hesitated to exercise their powers. To the extent that the administrator narrowly interprets his statute, the legislative will is not implemented and social action groups must spend time in legislative maneuvering over stale ground. This distracts from concern for how the law is operating on a day-to-day basis. Yet it is in the day-to-day functioning of the affairs of government that the law is worked out in human society.

With these two questions, (1) does the agency act without complaint from an aggrieved individual? and (2) has it construed its powers broadly?, we will examine the agencies charged with enforcing the anti-discrimination policies of the state. What we have found, stripped of qualifications, is that during the period studied, none of the agencies utilized their powers to the full to attack discrimination. They tended to wait for a complainant, and then to construe their statutory powers narrowly. They have not enforced the law to its fullest extent, either procedurally, or substantively. This is not a criticism of individual administrators. All of the agencies studied - the Division on Civil Rights, the Commissioner of Education, and the Real Estate Commission - operated in the same way. This is a statement of fact about the governmental process in dealing with racial

discrimination. The responsibility for the administration of the laws rests with the executive branch. Vigorous administration can be expected only through the executive departments of government. During the period studied, the agencies have failed to implement the New Jersey laws concerning racial discrimination to the maximum extent possible. To document this assertion, we turn to a study of the activities of these agencies.

III. The Division on Civil Rights

1. Conclusions

The Division on Civil Rights was, for more than 15 years, located in the Department of Education. During a large part of that period, it was not viewed as engaged primarily in the processing of cases involving discrimination. Rather, its staff engaged in extensive activities outside the area of law enforcement. The Division claims to have been influential in shaping the climate of opinion and the behavior of individuals and institutions in the direction of racial equality. No attempt has been made here to evaluate the informal and subtle influences on racial attitudes and the discriminatory behavior which may have stemmed from these activities, nor have we here studied the current work of the Division in the area of general educational activity.

This report examines the work of the Division in enforcing the rights of the public and of individuals to be free from illegal racial discrimination through the period beginning in July, 1962, and ending December, 1963. Some more recent material has been added. The assumption behind this report is that the Division must be viewed as an enforcement agency, and its activities measured against the standard of an effective law administering body. This is a change in the standards applied to the agency, but it is a change called for by all contemporary circumstances, including the transfer, in May 1963, of the Division from the office of the Commissioner of Education into the Office of the Attorney General. The purpose of this transfer was to introduce a greater emphasis on the

enforcement of rights given by the statute. Since the standards used here for judging the performance of the agency are different (and, I suspect, more stringent) than those heretofore used, it must be clearly understood that this report is not a criticism of any individual or individuals. The Division itself is currently considering and making certain adjustments in its practices to reflect the newer view of its function as an enforcement agency.

When the Division is examined as an enforcement agency its record during the period studied was not satisfactory. It failed to initiate investigations into discriminatory practices, failed to construe its statute to provide for the broadest reasonable coverage, failed to seek interim injunctive relief against violations of the act, failed to proceed expeditiously with certain types of cases, notably housing, and failed to fashion effective remedies to protect the public interest and complainants' rights in cases before the Division.

Steps have recently been taken by the Division to meet some of these problems. These remedial measures will be discussed throughout this section of this report. It is too early to determine whether the measures taken or contemplated by the Division fully meet the problems which we shall discuss.

These problems can best be examined by considering the various steps in the processing of a case before the Division during the period studied.

2. Time and Place for Filing of Complaints

Formal complaints were received only at the Division's offices in Trenton and Newark during normal business hours. Informal information was received, but not considered a complaint until a personal interview had taken place and the complaint form filled out and signed. During the period studied, the Division infrequently acted without a formal complaint.

The difficulties as to time for filing and the location of the two offices undoubtedly aggravated the reluctance of an already doubtful Negro community to complain to the agency. Mr. Zeitz's findings demonstrate that the time involved in the filing of complaints is the second most

frequent grounds for criticism of the agency.

Ask those who know of the Division: Here are some things people sometimes say about the Division. I'd like to know whether you think they are mostly true or not.

	Col. 76 Mostly True	Col. 77 Sometimes True	Col. 78 Not True	Col. 79 Don't Know	Total
1. They take too long	29	21	8	24	82
2. They don't take enough interest in you	15	13	33	21	82
3. They passed the law just to make it look good	18	11	34	19	82
4. To make a complaint, you have to spend lots of time	28	14	16	24	82
5. They don't have the power to help	20	10	23	29	82
6. They don't have enough people working for them	26	7	10	39	82
	136	76	124	156	492*
	(28%)	(15%)	(25%)	(32%)	(100%)

* 10 respondents who claimed to know about the Division did not answer.

In light of his other findings about the reluctance of the Negro community to complain, it is not clear that making the filing of complaints easier will do much to encourage the use of the agency.

When you or your family or friends were faced with a discriminatory situation, what did you (they) do about it?

	Col. 56 Ego		Col. 57 Ego's Fam. or Friends		Total	
	#	%	#	%	#	%
1. Nothing	60	87	20	67	80	81
2. Went to a lawyer	-	-	1	3	1	1
3. Went to a minister	-	-	-	-	-	-
4. Went to an action group	-	-	2**	7	2	2
5. Went to Division on Civil Rights	-	-	2	7	2	2
6. Other	3*	4	1***	3	4	4
X. Don't Know	-	-	1	3	1	1
Y. No Answer	6	9	3	10	9	9
	69	100	30	100	99	100

* - two spoke of political connections; one said he left the South as a result.
** - two people went to CORE!
*** - one person said his wife was always helpful and comforting.

The Zeitz study posed a series of hypothetical questions involving (1) an automobile accident, (2) difficulties in buying a house in the suburbs, (3) difficulties in getting improvements in a dilapidated apartment, (4) an attempt to transfer a child to an all-white high school, and (5) a discriminatory refusal to hire. Then, the interviewer asked if, in any of these situations, the subject would call on the Division on Civil Rights for help. Here are the responses:

		#	%*
1.	Auto accident	16	12
2.	House in the suburbs	50	39
3.	Dilapidated apartment	27	21
4.	High school	54	42
5.	Employment	53	41
6.	None of them	36	28
X.	Don't know	16	12
Y.	No answer	18	14
	Total situations	200	
	Total respondents	(130)	(209)

* - % based on 130 respondents

Number of respondents who would call on the Division on Civil Rights in all five situations: 12.

Average number of situations

2.08	per respondents answering question	(96)
3.33	per respondents who would use Division	(60)

Note that under these conditions, a maximum of around 40% of the respondents would seek help from the Division in the housing, employment, and education cases.

These tables, as well as the Zeitz report, Part III infra, make clear that there is a definite propensity on the part of the Negro community studied not to make use of the legal facilities of the Division.

The difficulty of ignoring the problem, however, is that we have no way of assessing the possible impact of marginal complainants who may be dissuaded only because of the difficulties of filing. Since the period covered by this report, the Division has begun to investigate informal complaints without requiring a written complaint. This represents a distinct improvement.

The Division has also made one proposal which is aimed in part at making filing more convenient. This is the establishment of municipal "mayor's commissions" on human relations which would receive complaints and pass them on to the Division. There are many complicated aspects to the problems involved in the establishment of mayor's commissions. It would seem, however, that we could make it easier to file complaints without going to the trouble of establishing mayor's commissions in each community. One proposal to this end has been the establishment of additional offices for the CRD itself. But if the primary justification for such offices is the receipt of complaints, the provision of new space and man power for that purpose alone seems wasteful.

The recommendation made here is much less pretentious than either of the foregoing. The complaint form is simple, and could be made available at any number of governmental offices which now exist throughout the state, such as the offices of the Division of Employment Security. Any clerical person could assist the complainant in filling out the form, and could then forward it to the central offices of the Division.

The securing of complainants may be facilitated by social action groups which can collect complaints and bring them to the Division, in much the same way that the unions take employee complaints to the National Labor Relations Board. The Division should continue to develop relations with these social action groups and indicate its willingness to act without awaiting a complaint from the individual who has been harmed. (See p. 24 infra.) The value of this approach depends on the willingness of the Negro community to utilize its social action groups. Zeitz's Study, pp. 26-31, suggests that the Negro community may be no more willing to complain through its own social action groups than through the machinery of the law. While

the sample interviewed considered that ministers, lawyers, and the NAACP were potentially more helpful in discriminatory situations than the Division, still 80 percent of the respondents would do nothing in the event they were faced with a discriminatory situation. The possibilities for somewhat improved enforcement through the social action groups cannot be ignored, however. The table on page 16 of Part II indicates that, of the 70 cases brought to the Division in 1962-63 for which there is information, 21 were referred by social action groups.

Additionally, it has been suggested that a single telephone number for the state (or region) be established and publicized as a vehicle for the receipt of information. Complaints based on such information could be then made up, or - if a succeeding recommendation is adopted - could be dispensed with by the agency, operating on its own initiative.

3. Form of Complaint

The present complaint form, UP -1 10-61 5M, is simple and clear. However, in addition to a concise statement of the allegations of discrimination, the complainant is required to swear, as a condition to filing the complaint, that, "I have not commenced any action, civil or criminal, based upon the grievance set forth above."

Since Negroes are not prone to complain, it is unlikely that anyone going to the Division will have previously filed suit or initiated criminal proceedings. Thus this clause is unlikely to have extensive significance.

Its explanation probably lies in the history of the statute. From 1945 to 1949, the statute required a complainant to elect between starting a law suit and complaining to the Division. But, in 1949, fifteen years ago, the election of remedies theory was removed from

the statute. (See p. 101 infra.) The complainant, under the 1949 amendment, may decide to come to the Division even if he has started suit. If he does, he may not thereafter continue the judicial proceedings. N.J. Rev. Stat. 18:25-27. This requirement can be fully enforced by the court in which the other action is pending.

The Division itself need not secure dismissals of these other actions. The form of the complaint should be changed to eliminate the the above quoted language.

A much more fundamental problem is whether there must be any individual complainant before the Division acts to eliminate racial discrimination.

4. Failure of CRD to Initiate Proceedings

Given the unwillingness of the bulk of the Negro community to file complaints of discrimination (see p. 12 supra), the refusal of the CRD to initiate investigations into discriminatory behavior guarantees that the law will not be effectively enforced. The agency has had, since 1960, the power to proceed on its own initiative and has failed to exercise that power.

From 1945 until 1963, the Division was in the office of the Commissioner of Education. During most of that time, from 1945 until 1960, the statute permitted two other cabinet officers, the Attorney General and the Commissioner of Labor, to file complaints concerning its violation. Presumably this power was intended to allow these officials to complain if, in the regular course of their activities, they discovered discriminatory behavior. This power was not exercised. In 1960, the

statute was amended to permit the Commissioner of Education to file complaints. For the first time in its history, the statute permitted the cabinet officer in charge of the Division to activate the Division by his own complaint. This meant that the Division could act without awaiting either an individual complainant, or the act of another cabinet officer.

For three years, between 1960 and 1963, the Division could have acted on its own initiative, but failed to do so. In 1963, the Division was transferred to the office of the Attorney General who has had, since 1945, the power to file complaints. Thus the power of the agency to act on its own initiative continued.

In addition, the 1963 legislation made it explicit that the Division could investigate without a complaint. N.J. Rev. Stat. 18:25-8 permits the Attorney General to "conduct investigations, receive complaints, and conduct hearings thereon other than those complaints received and hearings held pursuant to provisions of sections 12 to 16 inclusive of this act." The Director of the Division has the power, under § 8(d), to "act for the Attorney General, in his place and with his powers. . . ." Thus the Director of the Division may initiate investigations without a complain/ant or, if a complaint is deemed desirable, may file a complaint. The 1963 amendment simply makes clear that a complaint is not necessary for an investigation. This amendment was not necessary to give the Division the power to act on its own initiative, for that had existed since 1960. The Division had failed to use that power during the time it was located in the Department of Education.

The Division has been in the Attorney General's office only since May, 1963. During the first months in the Attorney General's office, the power to initiate investigations was not effectively utilized.* While the newspapers in the summer of 1963 blared with issues of discrimination which reached picket-line proportions, the Division did not investigate the

* The abortive proceedings against some 60 employers in 1963 based on employment agency records do not reflect the investigative approach suggested here.

conditions which gave rise to the grievances. An investigation into these conditions was initiated in August of 1963. The Division sent questionnaires to unions and contractors in the construction industry. The unions protested, and Governor Hughes criticized the Division's timing in initiating the investigation and recommended that it be delayed. The investigation was indefinitely deferred. (See Newark News, Aug. 9, p. 7; Aug. 13, p. 7; and Aug. 14, p. 19, 1963.)

The primary ground on which the unions protested was that the action of the Division was inconsistent with the ad hoc bi-partisan committee established by the Governor in June to study discrimination in employment. The episode demonstrated how the creation of ad hoc or special committees may interfere with the normal investigatory channels, and suggested that the Governor did not support the investigatory activities of the Division. This episode has deterred the Division from acting on its own initiative. I believe that the Governor should make it clear that he supports the intelligent and responsible initiation by the Division of investigations into discrimination.

The basic point is that the Division has had these investigatory powers since 1960. Whether or not the timing in initiating the investigation in the summer of 1963 was politic, it is clear that the Division could - and should - have acted on its own motion years ago in an effort to eliminate discriminatory practices before the tensions which erupted in 1963 had developed.

The Division has still not adopted an investigatory policy which attempts to meet the problems of discrimination in a planned and systematic manner, although, as will be indicated, it may be moving in this direction.

The most commonly expressed objection to the behavior of the Division by the students who studied it went to this refusal to initiate action. It was suggested that a plan of enforcement of the law in various industries could be worked up if the Division were prepared to exercise its initiatory

power, but that, at present, its energies are dispersed in those areas which happen to come to its attention because of a complaint. With limited resources, planned enforcement of the law is an essential if the enforcement is to be effective.

Now that we know that the Negro is not prone to complain, the failure of the agency to act on its own takes decisive significance. For the decision to await complainants, which appears merely procedural, in effect means that the law is not extensively enforced.

There is yet another reason why the Division should take the initiative. Because of the complexity of the social and economic structures through which discrimination is practiced, it may be utterly impossible for any individual to prove he has been discriminated against on racial grounds, or, in some instances, even to know when this is happening. In connection with such complex institutions as the real estate mortgage market and the trade unions, an individual is in no position to assess whether the system is operating in a discriminatory manner.

The paper by Mr. Lewis demonstrates beyond any doubt that the real estate mortgage market with its "buried" discrimination in the point system and the package selling of "junk" mortgages is a complex institution. No individual could be expected to fathom its operation sufficiently to understand at what point, if ever, he has been the victim of racial discrimination. He may not make use of the federal protections against racial discrimination because he has no direct access to the FHA. His only protection against a system with which he could not cope must come from agency initiated investigations. Only a full-scale investigation of mortgage placement practices could unearth the pattern of discrimination described by Mr. Lewis. No individual complainant could be expected to grasp the complexity of the process.

Similarly, the historical patterns which have emerged in trade unions, particularly in the craft union field, require examination through an extensive agency study to determine the extent to which, if at all, the existing allocation of employment is related to race. The individual complainant is in no position to assess the situation. The Division may assist either by proving that discrimination does exist, or that it does not. If the conditions of which Negroes complain are found not to result from racial discrimination, this knowledge may be very important in clearing the air, and perhaps in more accurately defining the real problems facing the Negro community.

Within the last few months, since the transfer of the Division to the Attorney General's office, the policy of non-initiation of investigations has undergone a change. The Division, has begun to initiate investigations, without awaiting complaints, into potential "hot spots" of racial controversy. The most notable example of this new policy, which demonstrates its wisdom was the initiative taken by the Division on the question of the refusal of a barbershop in Madison, New Jersey to serve Negroes. Civil Rights groups engaged in picketing and other forms of public protest. Once the Division publicly announced that it had entered the situation and was prepared to take prompt steps through a public hearing to resolve the disputes, the pickets melted away and the orderly processes of law were allowed to work.

The Attorney General has also directed the Division to survey construction sites and the resort areas to anticipate possible troubles during the summer of 1964. These developments demonstrate movement in the proper direction on the question of initiation of investigatory activity by the Division.

At present, the Division's "self starting" activities seem to be designed to anticipate situations which might turn into "trouble spots" of racial demonstrations. This type of Division initiative is an important improvement over its previous position. This "trouble shooting" approach while desirable, cannot, in the long run, adequately cope with some of the more complex problems. These problems require careful investigation into industrial and commercial practices which cannot be accomplished on an emergency basis. An examination into union membership practices or the real estate mortgage system would entail sustained investigative activity over a long period of time. If a situation of racial tension arises in connection with such a complex problem, emergency measures by the Division can do more than postpone the difficulties for a little while. What is needed is a planned series of investigations, on an industry by industry basis, in which the Division is prepared to utilize all of its powers to eliminate racial discrimination in employment, housing and education.

The Attorney General has directed his department heads, including the Director of the Division, to submit plans for the initiation of programs to carry out the mission of each department. The program of the Division should include vigorous responsible "self starting" of agency proceedings to meet the problems of discrimination. The steps taken in the recent months represent a distinct improvement over the past position of the agency, and make it possible to hope that the agency, now freed from the necessity for a "real live" complainant, will move to the position of administrative vigor from which problems of racial discrimination may be effectively combatted.

A commonly offered explanation of the failure of the agency to initiate proceedings during the period studied was lack of personnel stemming from lack of funds. The studies of the various states do make clear that, measured by virtually any standard, the level of financial support given the agency by the Legislature is inadequate.

Per Capita Expenditure for Agency Budget, 1960-1961

		% Non-White Population
NEW JERSEY	.0221	8.68
New York	.0720	8.91
Pennsylvania	.0240	7.64
Connecticut	.0430	4.60
Massachusetts	.0210	2.41

New York spend three and a half times as much per capita for its state anti-discrimination agency as does New Jersey, with a substantially similar proportion of non-whites in the state. Pennsylvania spends a little more per capita than does New Jersey, although the proportion of non-whites in the population was one percent less than in New Jersey. Connecticut, with half the proportion of non-white population, spends nearly twice as much as does New Jersey, and Massachusetts spends but little

less per capita than we do, although its proportion of non-white population is only one-third that of New Jersey.

The budget for the Division in 1962 was $180,000, while the city of Philadelphia spent $500,000, and the state of New York $2,500,000 on their anti-discrimination agencies. The total complement of the New Jersey CRD is 22, including the Attorney General and his deputy. Thus only 20 persons are in the operating branch of the agency. This includes only 5-1/2 of whom were engaged in enforcement activity, 10 field representatives, six clerical persons and the remainder are supervisory and educational personnel. In contrast, the New York City Commission on Human Rights employs 62 persons, and the Philadelphia Commission on Human Relations has 35 on its staff. Thus it might appear as if the lack of funds has prevented the exercise of the initiative which this report calls for. However,

if the level of complaints is to be the measure of the agency activity, the Legislature is not likely to be sympathetic to a call for additional funds. Thus the agency uses lack of funds as a reason for not taking the initiative, and the Legislature uses the low level of agency activity as one justification not to increase the funds. As long as this vicious circle of administrative and legislative inaction continues, the agency will be unable to perform its tasks. It lies with the agency to break out of this circle by aggressively investigating discrimination, and thus demonstrating the need for additional funds. This, the Division now seems prepared to do. Under these new circumstances, the Legislature can no longer use the low level of complaints as a reason to deny funds because the initiative of the agency will be a factor in determining its work load, not just the level of complaints. The Legislature will then be required to face its responsibilities to adequately finance the activities of the Division. Even without this development, the extreme increase in activity in the Civil Rights field requires increased legislative financial support for the Division.

5. Time Involved in Processing a Discrimination Case

The length of time it takes the CRD to process a case is the most frequently voiced criticism of the agency in the Negro community. (See the findings, p. 18 supra.) The problem of time in relation to the activities of the agency has two facets: one relating to the time that lapses from the act of discrimination until the complainant goes to the CRD, and the other involving the speed with which the agency processes the case.

A. Time before complaint is filed.

CRD records concerning the 210 cases closed without a formal hearing/in fiscal 1962-1963 in which formal complaints were issued makes it clear that the bulk of complaints are brought promptly to the agency after the alleged discriminatory act. Nearly 85% of all complaints are filed within 30 days of the discrimination. For a full analysis of these cases, see Part II infra.

		Days from Alleged Discrimination until Complaint to CRD						
Type of Case	Total	1-10	11-20	21-30	31-40	41-50	51-60	60+
Employment	120	69	21	11	7	3	3	6
Housing	62	30	15	7	5	2	3	
Public Acc.	28	10	4	6	3	1	4	
TOTAL.....	210	109	40	24	15	6	10	6

It is clear from this table that those who complain do so with extraordinary promptness, and that the Division does not have the proof problems which might stem from stale evidence which could arise if complaints were long delayed. The statute permits a complaint to be filed within six months of the discriminatory act.

B. Time spent by the agency.

In an effort to understand and evaluate the time factor in the processing of cases through the CRD, an intensive study was made of all cases handled by the agency from July 1, 1962 through June 30, 1963. A detailed analysis of these cases

appears in Part II, infra. During this period, the agency closed 299 cases, 84% of which involved racial discrimination. Of these cases, 4 went to public hearing, 85 based on informal complaints were disposed of without a public hearing, and 210 based on formal complaints were disposed of without a public hearing. Our study focused on the 210 formal complaint cases which were disposed of without public hearing. Of these cases, nearly half were disposed of within three months of the complaint. Within six months of the complaint, 80% had been disposed of. The remaining 20% of the cases took additional time. Quite naturally, the cases in which no relief was granted, either for want of probable cause or for jurisdictional or other reasons, tended to be disposed of more quickly. The cases in which relief was afforded, by way of a settlement, without a public hearing tended to take additional time. These cases require further analysis.

The Division afforded relief to complainants in 70 of the 210 cases studied (33%). The nature of this relief is studied at p. 43, infra. Twenty-eight of the cases in which relief was granted (40%) took more than six months from the filing of the complaint. (See tables on pp. 29 and 30 infra.)

In the housing cases, the rate of processing has been the slowest. Relief was given in 36 of 62 housing cases (58%), but in over half of these cases (20 cases, 55%) that relief took more than six months.

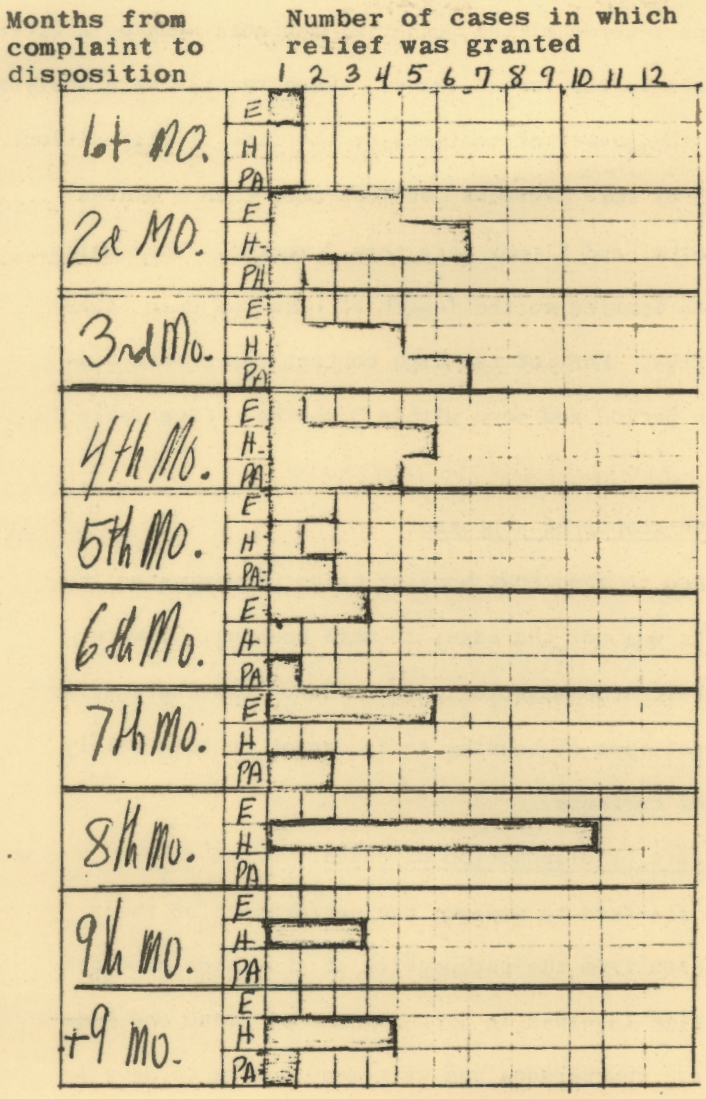
In the employment cases, relief was given in 17 of 120 cases (14%). This is the lowest rate of adjustment studied. All were concluded within seven months of filing, but nearly half of these cases in which relief was granted (8 of 17) took between six and seven months to conclude.

The general conclusion to be drawn from this study is that the agency moved fairly quickly to sift out the cases in which no relief will be granted, but takes a considerable period of time to process, even informally, many of those cases, particularly in housing and employment, in which relief will be afforded.

Months from Complaint to Disposition	Total Cases Disposed Of		Total Cases in Which Relief Granted*		Time for Decision in Relief Cases	
	#	%	#	% All Cases	#	% Relief Cases
1	8	4.3	1	.5	1	1
2	46	22	11	5	11	16
3	46	22	11	5	11	16
TOTALS	100	48	23	10.5	23	33
4	34	16	10	5	10	14
5	22	10	5	2.5	5	7
6	13	6	4	2	4	6
TOTALS (3-6 mo.)	69	32	19	9.5	19	27
(1-6 mo.)	169	80	42	20.5	42	60
7	13	6	7	3	7	10
8	13	6	10	5	10	14
9	4	2	3	1	3	4
TOTALS (6-9 mo.)	30	14	20	9	20	28
(1-9 mo.)	199	94	62	29	62	88
More than 9 mos.	8	4	5	2.5	5	)11
No data	3	1	3	1	3	)
Cum. Totals	210	99	70	33.	70	99

* Closed with either a "stipulation of settlement," or "satisfactorily adjusted" according to the Division.

Exact explanations for this time table are not possible. A study of the cases which took more than 200 days revealed no special characteristics, aside from slow processing. In some of the cases several months went by, according to the files of the Division, with no action. In others, there was a little progress in the case in each month, but no evidence of sustained activity to resolve the matter.



E - Employment
H - Housing
PA- Public Accommodations

C. Number of contacts per case related to the time for disposition.

The agency keeps records of the number of contacts made by a field representative with witnesses in the formal cases. These records were analyzed to determine the impact of the number of contacts on the time of disposition. Of the 82 cases involving 9 or more contacts, 42 took more than 6 months, 32 took between 3 and 6 months, and 8 took less than 3 months. Thus while the number of contacts has a bearing on the length of time the case takes, it does not appear dispositive. Many of the high contact cases were disposed of within the 6-month period and some within 3 months. (See Table 19, Part II, p. 17.)

D. Type of case and number of contacts.

While we expected to find that housing cases predominated in the high contact cases, this was not the case; 35 were housing, 35 were employment, and 11 were public accommodation cases. Hence the explanation for the lag in time of disposition of housing cases cannot be laid solely to the door of the number of contacts.

E. Improving the rate of disposition of cases.

Establishing a standard to measure the performance of the agency is difficult. Measured from the perspective of the needs of those who use the Division, the time involved in processing employment and housing cases appears excessive. Few persons can wait many months to have a question of their housing or employment status resolved. It has been suggested that the Division should seek to be in a position at the end of three months from the filing of a complaint where it has either settled the case or is prepared to go to public hearing. From the perspective of the need of complainants, this appears reasonable. Whether it can be accomplished will depend on the facilities of the agency and on the difficulties encountered in the investigation.

To meet this problem, the Division has initiated a new form of

record keeping, and a series of weekly meetings on case progress by the Field Representatives at which the Supervisors urge prompt action. The Division has not initiated a "target-date" approach to the investigatory process because of the complexity felt by the Division in the cases. The new method of record keeping does not provide information on the speed of disposition of cases under the tightened supervision. A review of the performance in case handling during the 1963-1964 fiscal year is indicated to determine the level of improvement achieved under the new procedures.

6. The Need for and Opportunity to Obtain Interim Injunctive Relief

The case analysis demonstrates the importance of the time factor, particularly its importance in the housing cases in which relief is granted. This study demonstrates the necessity for some action in certain cases to preserve the housing unit under consideration pending the disposition of the case before the agency. The importance of seeking temporary relief in these housing cases has long been known to the agency because of the unhappy conclusion of the Greenfield Farms case, in which the constitutionality of the statute was tested. In that case, when the legal issues were resolved and the dust had cleared, all of the property in the development had been sold so that specific relief was unavailable. Counsel for the complainant had sought interim relief during the course of the litigation, but had been unsuccessful.

The Division has not taken the initiative in seeking interim injunctive relief to preserve the status quo pending final decision. As this report is prepared, the Attorney General is prepared in an appropriate case, to seek such relief. Such relief is particularly important in housing cases, which take the longest to process within the agency and which pose the greatest likelihood that the respondent will either dispose of the property or so tie it up that it will not be available to the complainant at the end of the litigation. It is likely that the judiciary will honor a petition by the Attorney General for such relief.

Since the Division has not tested its powers to secure temporary relief, the problem of interim injunctive relief has been funnelled into the legislative arena. There, it has become a major stumbling block to the passage of an expanded coverage for the housing portion of the anti-discrimination act. The present "ragged edge" of the coverage of non-publicly assisted housing has led one lower court to find the statute unconstitutional. During the coming year, much energy will be consumed in taking this matter up to the higher courts in the state. Meanwhile, the injunctive power question will continue to be a political hot potato.

If the agency had claimed the power, and had been sustained, the legislative debate on the housing law would have been shorn of one major issue and perhaps by now the Legislature would have expanded housing coverage, thus making moot the constitutional issue on which so much energy must now be extended. The chain of cause and effect suggested here is, of course, speculative. It does seem clear that the agency has needlessly complicated its own role and aggravated the problems confronting supporters of this

type of legislation by failing to assert the power to secure injunctive relief under the present law. Thus the decision of the Attorney General to seek such relief is a welcome one.

The argument against the existence of the power to seek injunctive relief is that such power was not specifically granted by the statute. The Division, as an administrative agency, has only such remedial powers as the Legislature has given it, and the Division therefore may not seek interim injunctive relief. This argument misconceives the statute, and ignores the fact that the Legislature, in 1963, placed the Division in the office of the Attorney General. The Attorney General may seek such relief on the grounds that the disposition of property, subject to a proceeding before the Division, could frustrate the statutory purpose for which it was created.

A. Powers under the Law Against Discrimination.

The language of the statute creating the Division states that, to carry out its purpose of preventing and eliminating discrimination, ". . . the Division created hereunder is given general jurisdiction and authority. . . ." (N.J. Rev. Stat. 18:25-6.) Within the ambit of this "general jurisdiction and authority" lies the power to see that the orders finally made by the Division, after a full hearing, are not frustrated by an action of the respondent taken after a complaint has been filed but before a final order has issued. This is necessarily implied if the broad remedial powers of the Division are not to be frustrated. Once the Division has made a determination that the act has been violated, the Director is required, by statute, to order the respondent to:

> ". . . cease and desist from such unlawful [act of discrimination] and to take such affirmative action, including, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, or restoration to membership, in any respondent labor organization, or extending full and equal accommodations, advantages, facilities, and

privileges to all persons, as, in the judgment of the director, will effectuate the purpose of this act. . . ." (N.J. Rev. Stat. 18:25-17.)

This broad remedial power could be frustrated, as it was in the Greenfield Farms litigation, if the temporary restraint is not, in appropriate cases, imposed. The "general jurisdiction" of the agency seems sufficient to protect its power to grant broad final relief as contemplated by the Legislature.

The Legislature did not intend to permit the respondent, or anyone else, to frustrate the effective operation of the statute. Section 26 provides that any person who shall "willfully resist, prevent, impede or interfere with the Attorney General or any representative of the division in the performance of duty under this act, or shall willfully violate an order of the Attorney General, or the director, shall be guilty of a misdemeanor . . . punishable by imprisonment for not more than one year, or by a fine of not more than $500.00, or by both; . . . ." (Emphasis added.)

The presence of this criminal provision provides a poignant illustration of the complications involved in the use of the criminal law. The policy which the statute expresses is that of protecting the powers and authority of the agency. Therefore, I believe it supports the theory that the Division, through the Attorney General, may seek injunctive protection for that purpose. Yet,

because it is criminal, it creates the risk of loss of liberty and must, in a criminal proceeding, be narrowly construed to protect defendants from unfair prosecutions. Narrowly construed, it would not (and, I believe, should not) cover the sale of property prior to the issuance of a remedial order by the Division. Yet this narrow construction is utterly at odds with the broad remedial powers given by statute to the Division and to the Attorney General.

This dilemma is more apparent than real. The courts may utilize the broad policy which the provision reflects to support the Attorney General's application for interim relief, without committing themselves to a similarly broad construction of the statute in a criminal case. If a criminal action should be brought, the court could consistently give it the narrow construction which its criminal penalties require. No criminal prosecutions have been undertaken under the statute.

B. Power of the Attorney General.

The power to seek interim relief is not rooted only in the Law Against Discrimination. In addition, it is based on the powers of the Attorney General as chief law officer of the state. The powers of the Attorney General are stated broadly in statutes, court decisions and commentary. In New Jersey, his power (identified with the Department of Law) is set forth in N.J. Rev. Stat. 52:17A-4. The powers of the Department of Laws

> ". . . shall be the powers and duties now or hereafter conferred upon or required of the Attorney General, either by the Constitution or by the common and statutory law of the state, and as specifically but not exclusively as detailed herein, to wit:
>
> "d. Carry out and enforce the provisions of . . . the Civil Rights Law.
>
> "h. Enforce the provisions of the Constitution and all other laws of the state, as well as perform all of

the duties conferred and imposed by law upon the Attorney General."

This broad grant of power to the Attorney General has a long history, which has been detailed in various opinions of the courts in this state. The most recent description of the powers of the Attorney General is found in Alexander v. N.J. Power and Light Co., 21 N.J. 373, 380 (1956):

> "Under the common law of England, the Attorney General was the chief law officer and adviser of the Crown upon whom devolved the management of its legal affairs and the prosecution of all suits, civil and criminal in which the Crown had an interest; and these functions and responsibilities, in the absence of constitutional limitations, appertain to the office of Attorney-General in New Jersey as a part of our common law inheritance, subject to enlargement or abridgement by legislative authority [citations omitted]. In equity, as at law, the Attorney-General has the right, save as provided otherwise by the lawmaker, to intervene by suit for the protection of the property of the sovereign or the interests of the public, where such are directly involved."

This corresponds with the general view in states with constitutional provisions similar to ours.

The matter is discussed in 7 Am. Jur. 2d Attorney General section 11, as follows:

> "Pursuant to his statutory, constitutional, or common-law powers as the chief law officer of the state, the attorney general may institute, conduct, and maintain all such suits and proceedings as he deems necessary for the enforcement of the laws of the state, the preservation of order, and the protection of public rights. Generally

speaking, therefore, there can be no dispute as to the right of an attorney general to represent the state in all litigation of a public character. The attorney general represents the public, may bring all proper suits to protect its rights, an d he alone has the right to represent the state as to all litigation in which the subject matter is of statewide interest. Generally speaking, however, a breach or violation of public right or duty, either actual or threatened, is essential to the right of the attorney general to bring suit, and participation in a matter wherein the attorney general has no legal standing will not change the nature and character of the state's interest or create a right where none existed before. Whether or not a particular action is such that it could be maintained by the state must be decided by the court in which it is brought. In determining this question it should be noted that pecuniary interest on the part of the state is not decisive of the matter, for the obligation it is under to promote the interest of all and to prevent the wrongdoing of one resulting in injury to the general welfare is often of itself sufficient to give it standing in court."

Two New Jersey cases demonstrate that the public interest in the efficient and effective functioning of the law is a sufficient basis upon which the Attorney General may participate in litigation. This is the precise basis on which he would seek interim relief in the type of case we are considering. The relief would be designed to permit the Law against Discrimination and the procedures it establishes to operate in the manner contemplated by the Legislature to implement the public interest in ending discrimination.

In O'Regan v. Schermerhorn, 25 N.J. Misc. 1 (1946), Judge Ackerson

decided that the Attorney General had the power to defend a libel action against former members of a grand jury based on a presentment which the jury had handed down. The argument of plaintiff was that, under his jurisdictional statute the Attorney General could defend only "officers and instrumentalities" of state government, and that grand jurors did not come within that classification. Judge Ackerson held that the Attorney General could properly protect the former grand jurors, without reliance on the particular statutory language which plaintiff cited. He examined the statutory structure relating to the Attorney General and concluded:

> "So we see that the statute does not restrict but rather reaffirms the common law authority of this official to attend to all legal matters in which the people of the state are interested. It is too narrow a view of the case sub judice to say that the people of the state at large are not interested, as citizens, in the defense of a case of this nature which involves the legal rights and liabilities of members of grand juries generally, who represent the people of the entire state, and serve by compulsion of law and not voluntarily. Certainly if the people of the state can be said to be interested in their grand jury system and the unfettered operation of it within lawful limits, they are, we think, equally interested in this action growing out of it, which depends, as it does, on whether the acts of the defendants, as grand jurors, and therein complained of, were judicial acts and, therefore, within the rule of immunity from civil liability . . . ." 25 N.J. Misc. 1, 9. (Emphasis added.)

In Van Riper v. Jenkins, 140 N.J. Eq. 99 (E. & A. 1947), officers of the Union City police department, after indictment for a criminal offense, filed a bill in Chancery to prevent the taking and distribution of fingerprints and photographs of themselves before conviction, as was required by statute. The Attorney General sought to intervene, but the Vice-Chancellor denied the application. The Vice-Chancellor was reversed by the Court of Errors and Appeals on this point.

> "The petition of the Attorney General was made in his representative capacity. As such he is the chief law officer of the state and is concerned with certain of the legal affairs of the entire community. In this instance his was the duty to vindicate, in his capacity of principal law officer of the state, the statutes under attack. These statutes manifestly, since the time of their enact- (P. L. 1930 ch. 65) became ancillary to the administration of our criminal law, a matter of supreme importance to the people. Certainly the sovereign state is concerned when its laws of this character are challenged. . . .
>
> "We do not intend to intimate that it is the duty of the Attorney General in New Jersey to enter into a private litigation where a statute is assailed as unconstitutional (citation omitted) but where the rights of the state or the welfare of the people have an interest in the subject matter of the suit. This is a suit of a public nature, emerging as it does from an indictment. If the order or decree settles the rights of the parties to this litigation and the rights and interests of people of the state are necessarily involved, then they are entitled to be represented. The Attorney General is the people's

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attorney and is properly in court to represent the state." (140 N.J. Eq. 101-103.) (Emphasis added.)

The type of proceeding we are considering fits within this framework. The suit is of a public nature, growing out of the main proceeding to vindicate complainant's rights to be free of discrimination, and is essential to the operation of the Laws against Discrimination. See State Bd. of Milk Control v. Newark Milk Co., 118 N.J. Eq. 504, 179 Atl. 116 (1935) for a discussion of the grant of an injunction at the request of the Attorney General. In Attorney General v. Delaware & Bound Brook R.R. Co., 27 N.J. Eq. 631, an injunction was issued at the request of the Attorney General. There was no statute specifically authorizing the relief.

If there were any doubt as to whether, in New Jersey, the enforcement of these laws is a matter of "public concern" as distinct from purely "private right" within the meaning of the decisions relating to the power of the Attorney General, it is dispelled by reference to Art. 1, § 5 of the Constitution of 1947, as well as in §§ 25-2 and 25-3 of the Law against Discrimination, which provide:

> "The enactment hereof shall be deemed an exercise of the police power of the state for the protection of the public safety, health and morals and to promote the general welfare and in fulfillment of the provisions of the Constitution of this state guaranteeing civil rights.
>
> "The legislature finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color . . . are a matter of concern to the government of the State, and that such discrimination threatens not only the rights and proper privileges of the inhabitants of the State, but menaces the institutions and foundations of a free democratic State."

Thus the public nature of the problem, and the general state interest in the elimination of racial discrimination have been clearly defined by the Legislature.

Even without such express legislative judgment, the courts would probably reach the conclusion that the Attorney General was entitled to seek injunctive relief.

This question has recently been decided in the California District Court of Appeals. In Wilson Builders et al. v. The Superior Court, 33 Cal. Rptr. 621, 8 Race Rel. Rep. 1125 (1963), the intermediate appellate court of California held that the Attorney General had the power to seek permanent as well as temporary injunctive relief against racial discrimination by the builders and developers of a real estate housing tract.

The builders contended that the California statutes created only a private right against discrimination, and that the Attorney General had no authority to litigate to protect the private right. After an exhaustive analysis of the statutory power of the Attorney General (which seems generally similar to that in New Jersey) the court, with one judge dissenting, held that there was a public interest in the elimination of racial discrimination and that the Attorney General did have the authority to sue in chancery to protect that interest.

The California statutory structure relating to discrimination is much less favorable for such an interpretation than is the New Jersey statute. In California, the Legislature did not expressly give the Attorney General any power with respect to the Law against Discrimination, nor did it establish an administrative agency to implement th at law. Thus no direct connection between the effectuation of statutory policy and the actions of the Attorney General was spelled out. The rights under the statute seemed largely "private." Nevertheless, the court upheld the Attorney General's action. In New Jersey, the Legislature has not only given the Attorney General the power to "carry out and enforce . . .

the provision of the Civil Rights law," but has also given the Division "general jurisdiction and authority" to "prevent and eliminate discrimination in the manner prohibited by this act. . . ." This connection between the enforcement of the Law Against Discrimination and the Attorney General's office makes his power to seek injunctive relief in specific cases clear.

Once the power to seek interim injunctive relief is established, ordinary principles of equity will determine whether the court will grant the injunction. Equity has jurisdiction to enjoin activity which would upset the status quo pending an adjudication of the merits of a dispute where the failure to grant such relief would result in serious harm. This principle will justify the granting of interim injunctive relief in the type of case we are considering. Packanack Lake Country Club v. Alexander D. Doig, 72 N.J. Super. 360 (Ch. Div. 1962) and cases there cited; Bergen Drug Co. v. Parke Davis & Co., 307 F.2d 725 (3rd Cir. 1962). Practices and procedures in such a case would be governed under the ordinary Rules of Court.

7. Restrictive Interpretation of Coverage of Housing Provisions

The CRD, as any administrative agency, initially interprets its statute in deciding whether to take action. If the CRD construes the statute narrowly, then the broader possible constructions are never tested judicially. One such narrow construction has been given by CRD in the case of housing built with FHA or VA financing, but subsequently refinanced by private funds; or housing originally constructed with private funds, but at one point in the chain of ownership, financed with a VA or FHA mortgage. The Division takes the position that, unless, at the time of the alleged discriminatory act, the housing was "financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the Federal Government or any agency thereof.", it is not covered. The Division has in effect written the word "currently" into the statute.

A Memorandum prepared by the Attorney General, dated December 1, 1963,

for distribution by réal estate brokers to sellers of real property, states that real property is covered by the law if "there is a current mortgage or loan guaranteed by the Federal Housing Administration (FHA) or the Veterans Administration (VA)." It also states that property is not covered if it involves one or two family dwelling which is not "part of a development containing 10 or more dwelling houses and on which there is no FHA or VA guaranteed mortgage or loan."

The Division, in order to reach the conclusion that housing is not covered unless it is currently financed by a federally supported loan, points to the word "is" in the above quoted portion of the statute to demonstrate

that the Legislature meant to cover only properties which are currently so insured. Therefore, a dwelling which was once subject to federally insured financing, but is no longer so, is not within the statute.

This interpretation is directly contrary to the construction of this same statutory phrase by the Supreme Court of New Jersey in Levitt & Sons, Inc. v. State Division Against Discrimination, 31 N.J. 514, 158 A.2d 177 (1960). In Levitt, the developer argued that his houses were not covered by the law because he did not have VA or FHA financing at the time of the discriminatory refusal to sell, although he did have a commitment from the FHA that they would give mortgages to purchasers. He argued that unless there was currently a federally insured loan on the property the law did not apply. The Supreme Court rejected this argument on two grounds:

> "In approaching the construction of the statute it is necessary to be mindful of the clear and positive policy of our state against discrimination as embodied in N.J. Const. Art. I, par. 5. Effectuation of that mandate calls for liberal interpretation of any legislative enactment designed to implement it."

The Court then indicated that it might be prepared to give a broader reading to the term "financed" to cover the Levitt case, but that this was unnecessary because the entire section of the statute involved in the case made it clear that the "financing" clause was merely an illustration of the type of housing covered by the law, and that the real question was whether the housing was "publicly assisted." Section 5m of the statute, so far as relevant here, provides that

> "'A publicly assisted housing accommodation' shall include . . . all housing financed . . . by a loan, . . . repayment of which is guaranteed . . . by the Federal Government . . . ." (Emphasis added.)

"Publicly assisted" housing includes housing which is not mentioned in § 5m, and it is therefore inadequate to look only to the definition in § 5m to determine what housing is included in the phrase.

The real issue, said the Court, was whether the housing was "publicly assisted." The Court then stressed the importance of federal financing in the home construction industry and concluded, "The very existence of the development can be attributed to the FHA commitment. . . . Thus the very fact that there are houses with which to discriminate in the development in question is primarily attributable to public assistance." The federal role which makes the housing "publicly assisted" is the support of the mortgage market which makes financing of development, building, or the purchase of the house possible. Thus Levitt holds: (1) that the statute covers all "publicly assisted housing," not just housing mentioned in § 5m; (2) that the "publicly assisted" character of the housing depends on a financial relationship between the house and the federal mortgage program; (3) that such a relationship may exist without a current federally insured mortgage, and (4) that such a relationship will be found readily in the spirit of liberal construction of the act. In fact, it is quite probable that houses are covered by the statute which never were and never will be subject to a federally insured mortgage. Presumably all houses in Levittown are covered because of the relation between the federal mortgage program and the entire development spelled out in the Levitt case.

Levitt clearly implies that the statute operates on the housing itself, not on the contemporary financial status of the owner or developer. Once a house has been the beneficiary of "public assistance," its character as publicly assisted housing accommodation will never change. The financial history of the house has been irrevocably affected by the federal mortgage program. The coverage of the house is determined by the financial history of the house in relation to the federal mortgage program, not by the current financial arrangement of its owner. The publicly assisted character of the house continues, although ownership and financing may change. The obligation not to discriminate attaches to the property.

All of this flows either inevitably, or at least with reasonable clarity, from the Levitt decision. But the Division, by interpolating the word "current" into the housing coverage provision is acting as if it had lost Levitt, and as if the argument of the developer in that case had prevailed, when it was directly and distinctly rejected by the Supreme Court. The Division is construing the statute narrowly, not liberally as the Supreme Court suggested, and as one would expect of an agency charged with such a high public function. But even more surprising, it is construing the statute more narrowly than the Supreme Court itself.

This is not merely an idle point. A fair construction of the phrase "publicly assisted housing" would cover a substantial amount of housing in this state, and would change substantially the dimensions of the problem involved in implementing the Civil Rights guarantees of the Constitution.

The same narrow construction which marks the Division's interpretation of the "publicly assisted" housing provision also marks its interpretation of the 1961 amendment to the act which deals with non-publicly assisted housing. This provision is poorly drafted. The relevant portion reads as follows (N.J. Rev. Stat. 18:25-5n):

> "The term 'real property' includes real estate, lands, tenements and hereditaments, corporeal and incorporeal, provided however that, except as to publicly assisted housing accommodations, the provisions of this act shall not apply (1) to the sale or rental of a dwelling, or of a portion thereof, containing accommodations for not more than 3 families, one of which is maintained by the owner at the time of sale or rental as the household of his family, or; (2) to the sale or rental of a dwelling, or

> a portion thereof, containing accommodations for not more than 2 families, except, however, such dwellings shall be included within the term 'real property' when they are part of a group of 10 or more dwelling houses constructed or to be constructed on land that is contiguous (exclusive of public streets) and are offered for sale or rental by a person who owns or has owned or otherwise controls or has controlled the sale or rental of such group of dwelling houses, ..."

The statutory provision has three steps: (1) All real property of any nature is covered by the statute (see § 4); (2) except that it does not apply to the sale or rental of two-family dwellings or three-family-owner-occupied dwellings or to smaller units; (3) unless said dwellings are "part of a group of 10 or more dwelling houses constructed . . . on land that is contiguous . . . and are offered for sale

or rental by a person who owns . . . or controls . . . the sale or rental of such group of dwelling houses."

[Warning to non-lawyers. Please skip this paragraph. It is an intricate explanation required because the statute was badly drafted.] Step three in the above analysis requires a departure from the language of the statute. It assumes that the reference to developments of 10 or more houses was intended to limit the exceptions in step 2. To put it more simply, it assumes that the statute was intended to cover developments of 10 or more houses. This is the only way in which the development section makes sense. Literally, it only repeats what is explicit in the opening sentence of the section, that development houses are real property. If that is all it means, then development houses are subject to the exceptions, and the entire reference to developments is unnecessary and circular. To give meaning to the reference to the developments, it is necessary to treat it as a limitation on the exception.

Step 3 is the step under consideration here. The Division takes the position that development houses are covered by this section only while they are in the hands of the developer. Once they have been sold, this section no longer applies, and unless they are publicly assisted they come within the exemption of step 2, if they are one-family or two-family houses. A literal reading of the statute does not require this result. In order to come within step 3, a house must meet two conditions: (1) it must be in a development of 10 or more, and (2) be offered for sale by the owner or developer of the development. If these conditions are satisfied, the house is covered by the statute. There is nothing in the statute which suggests that the house, once covered, ceases to be covered because of its later history. A literal reading of the statute makes it clear that the Legislature was directing its attention to the house itself, not to the situation of the owner, and intended that in developments of 10 or more the houses should

be covered. It is the Division which has narrowly interpreted the statute to take the houses out from under the coverage after the initial sale. This construction certainly does not meet the Levitt case test of liberality, nor does it follow canons of literal interpretation. It is, rather, the narrowest interpretation which could be placed on the statute.

If the Division were to change its interpretation of the statute, in the two respects just discussed, I believe the statute would cover much one-family housing in the state which has been built since the federal mortgage programs came into effect. I believe the interpretations suggested here are sound, within the literal reading of the statute, and well within the precept of liberal construction adopted by the Supreme Court in Levitt. My criticism is of the mutilatingly narrow interpretation which the Division has imposed on its own statute. The Division has the duty to develop the full potential of the statute by its initial interpretation of its provisions, and, in case of doubt, to test its construction in the courts. Its narrow interpretation of the housing provisions does not fulfill this obligation.

8. Consequences of Restrictive Approach in Employment Cases

In employment cases the basic difficulty with the agency seems historic to be its/unwillingness to tackle large problems which are not presented through complainants. Questions concerning racially discriminatory practices of unions, for example, which arose violently in the summer of 1963, could have been the subject of appropriate investigation and resolution by the Division. By failing to initiate proceedings in employment cases, and then by taking the cases which are brought and dismissing them if the complainant is personally satisfied or becomes disinterested, as was done during the period studied, / the agency has not developed enforcement techniques for dealing with discrimination by unions or employers on a large scale. The events of last summer included accusations leveled by Negro groups at unions in the

construction industry and at a large manufacturer employing thousands of people, based almost entirely on the fact that neither the unions nor the employer had any substantial number of Negroes (in the employer's case it was supervisory personnel). In neither instance did the CRD inquire into the alleged discriminatory practices on its own motion. (See p. 23 supra.)

If the Division had moved to consider discriminatory employment practices without an individual complainant, it would have faced certain difficulties of proof because the substantive statutory standard is written with the assumption that the cases which the agency presses will be cases involving individual complainants. The following analysis is intended only to identify problems which may arise if the Division pursues a vigorous enforcement policy.

For example, the law makes it unlawful for an employer, for improper reasons, "to refuse to hire or employ or to bar or discharge from employment such individual, or to discriminate against such individual in compensation or in terms, conditions or privileges of employment. . . ." (N.J. Rev. Stat. 18:25-12a.)

And a union is forbidden on racial grounds "to exclude or to expel from its membership such individual or to discriminate in any way against any of its members, against any applicant for, or individual included in, any apprentice or other training program, or against any employer or individual employed by an employer." (N.J. Rev. Stat. 18:25-12b.)

Both of these provisions are written in terms of individual complaints being pressed to decision before the agency in which an individual has been harmed by the respondent. Violation of the act seems to require proof that a specific individual has been harmed.

These sections were adopted before the 1960 Amendments which, for the first time, permitted the cabinet officer in charge of the Division, the Commissioner of Education, to file complaints in his own name. (N.J. Rev. Stat. 18:25-13.) This permission was clearly not added to protect the Commissioner against discrimination aimed at him. Rather, it was designed to permit a broader

scope of enforcement of the important policies of the act. This philosophy of allowing the agency to initiate proceedings, introduced in 1960, was expanded in 1963 with an explicit provision authorizing investigations without the necessity of complaints. (See p. 22 supra.) This legislative authorization is of little utility if, in hearings based on such complaints, the state must still prove that an individual had been harmed by the acts of respondent. If such proof is required, then the permission for the government to file complaints deals merely with the captions on the papers in the proceeding, and has no substantive effect, except to permit investigation.

Presumably, the Legislature intended that proceedings initiated by the head of the agency could terminate in effective and enforceable orders. If the presence of the complainant is required for proof of the discrimination, then the agency has no more genuine power to regulate discrimination under the provision allowing officials to complain than it had before.

To give effect to the legislative decision allowing the head of the agency to file complaints it is necessary to conclude that the substantive standards in the statute are satisfied by the proof which might be adduced in a proceeding brought on official complaint without an individual who has been harmed. This leads directly to a consideration of the difference between proof in such a case and proof in the case of an individual's complaint.

Where an individual complains, /the proof must demonstrate that/ the complainant was qualified for the job, but it was given to someone else, and that the apparent basis for the distinction was the race of complainant. But in the case of the agency initiated complaint there is no individual complainant. The proof adduced will have to show, in some less direct way, that the respondent has been engaged in discrimination. One such method of proof would be to establish that the respondent had made overtly discriminatory statements, such as advertisements in the newspapers or verbal statements to individuals, that he was discriminating. Another type of proof of

discrimination without a discriminatee might consist in a demonstration that the respondent's employment pattern is segregated and hence is consistent with the thesis that he has been discriminating, leaving it to him to suggest an alternative thesis. From proof that his employment practices have produced a segregated labor force, it may be inferred that there was in fact some discrimination in the process of selection.

Further investigation may adduce facts which justify a conclusion that the employer discriminated in the selection of his labor force. If the investigation discloses (1) that the labor force is segregated, (2) that there were sources from which a racially mixed labor force might have been recruited, and (3) that the recruitment methods used would foreseeably lead to a segregated labor force, the Division may infer that the recruitment methods used constituted discrimination within the meaning of the statute. The Division may treat the effect which was substantially certain to result from the actions of the employer as intended. See Radio Officers v. NLRB, 347 U.S. 17 (1954). The common law has long held that consequences known to be substantially certain are to be considered as intended. See Restatement, Torts, § 13, comment d, Tentative Draft No. 1, Restatement, Torts, Second, § 8(a), comments A and B; Prosser, Torts, § 8 (2d ed. 1955).

This inference of discrimination would justify a finding of probable cause, and the calling of a public hearing by the Division. If the respondent did not justify his conduct on non-discriminatory grounds, the Division could find that there had been discrimination. (Compare the reasoning in the jury exclusion cases discussed in Note, 51 Mich. L. Rev. 925 (1953).)

If the employer offered an explanation for the segregated nature of his labor force, the Division would have to determine if it justified the employer's conduct and if the employer was entitled to continue the conduct. For example, if the employer utilized a union as a primary source for labor and, in fact, the union referred only white employees, the Division could

conclude that the respondent was knowingly drawing his labor force from a source which would produce segregated employment, and that he had, therefore, discriminated illegally. The Division could order this practice to cease. If the employer acted under a collective bargaining contract, the Division could order the employer to cease giving effect to the provisions of the contract which led to the discriminatory result. Whether the union had intentionally discriminated would be irrelevant under this view.

A question of pre-emption is presented by this analysis, but in light of Colorado Anti-Discrimination Commission v. Continental Air Lines, 372 U.S. 714 (1963), discussed in I 1963 Proceedings, A.B.A. Sect. on Labor Relations Law 160-163 (1964), I believe state power would be upheld. Cf. Teamsters v. Oliver, 358 U.S. 283 (1959). A non-discriminatory source of labor can often be found in the United States Employment Service.

The drawing of the inference of discrimination would presumably rest with the discretion of the CRD, subject to judicial review, for it is a matter lying within an area conventionally left to agency expertise. If the agency is without power to draw it in a case in which, in its informed judgment, the inference is appropriate, then the legislative authorization to the head of the agency to initiate complaints is either nullified or rendered impotent.

The remedy in such a case would be difficult to draft, but the problems of remedy are sufficiently far in the future as to obviate more than speculative discussion here. Clearly, any remedy would have to be tailored to the proof adduced. Presumably the "affirmative action required" would include an order to cease and desist from utilizing a source which led to a segregated employment pattern, and might include

the employment of some members of a minority group in such numbers as will rebut the inferences which may be drawn from the lack of any substantial representation minority group/. This is a modest notion, and certainly does not rise to the dignity (or indignity) of a quota concept. Whatever is necessary to rebut the inference of discrimination must be done. What that is will depend on the particular facts. These problems lie past the threshold of the use of the complaint process in New Jersey. They are apparently real in New York where the anti-discrimination agency has found, on the basis of numerical evidence, that a union has discriminated against minority group members. In New Jersey, with aggressive administrative action, the same problem could, and probably will, arise.

In housing and in public accommodations the problem is not as acute, because no specific statutory standards are spelled out. If the matter of discrimination in employment is disposed of as suggested above, then the same conclusions would probably apply in the other areas. (See Evans v. Ross, 57 N.J. Super. 223 (1959).)

9. Processing of Complaints

While the complaints are being processed, the agency has until very recently gone through two informal hearings. One is a so-called "validation conference" with the respondent, which precedes a finding of "probable cause." If the case could be settled at this point, the matter was disposed of. Otherwise, the agency made the requisite finding of probable cause and then held the statutorily required "conciliation conference." If this did not succeed in terminating the matter, the case was docketed for public hearing. Four such hearings were held in the 1962-1963 period studied. The validation conference and the conciliation conference performed the same function: to provide an occasion for a discussion with the respondent which

might lead to a settlement. Considerable expenditure of agency time and energy was involved in arranging for these meetings and in sending out the notices required for them. In April, 1964, the Division recognized that, if the validation conference were eliminated and the agency proceeded directly to the statutory "conciliation conference" after a finding of probable cause, much time and energy could be saved and the agency could negotiate with the understanding that the next step, if the negotiations failed, would be a public hearing. The validation conference was not required by statute. The same function could be served in a conciliation conference called after a finding of probable cause, thus shortening the proceeding and putting the agency in an improved bargaining position because of the immediacy of the public hearing. The holding of a "validation conference" for settlement purposes before a finding of probable cause probably contributed to the weakness of the settlements which resulted from such conferences.

Since this report was completed, the Division has terminated the double conference system, and now attempts to conciliate after it finds probable cause. This desirable change in procedure is a part of the internal review of agency practices now under way.

10. Settlement of Cases: Type of Relief Granted

The statistics in this report are based on the CRD's definition of a case in which there was a "satisfactory adjustment," or an acceptable stipulation. In examining the formal cases, however, it seems clear that the agency did not maximize its use of remedial power to protect either

the complainant or the public interest in the elimination of discrimination, during the period studied.
The following tables demonstrate the type of relief actually awarded in the 70 cases in the various classes studied in the 1962-63 fiscal year. See the Appendix for a more extensive study.

EMPLOYMENT. Total: 17 Cases

14 cases - Complainant offered employment or re-employment. In 9 of these, employment was accepted, and in 3 a stipulation of settlement was signed.

1 case - Stipulation of settlement, but no offer of employment.

2 cases - No relief identified on records studied.

HOUSING. Total: 36 Cases - 16 Involving Brokers, 18 Involving Apartments, 2 Others.

Apartment Cases:

10 cases - Offers of apartment to complainant, but no other relief. In 5 cases, complainants accepted apartments.

1 case - Letter of intent to comply with law.

6 cases - Stipulation of settlement or consent order.

1 case - Relief not clear.

Broker Cases:

13 cases - Broker offered to show listings to complainant, or offer for sale the house which had been denied.

1 case - Letter to CRD indicating intent to behave legally in the future.

1 case - Closing of Levittown case in which constitutionality of statute was sustained. Complainants purchased house.

1 case - No explanation.

PUBLIC ACCOMMODATIONS. Total: 16 Cases

6 Cases - Change of policy of motel assumed because Negro field representative given room without identifying self as such. No further action.

4 Cases - Bathhouse-swimming club cases in which respondent agreed to change policy and sign consent order.

2 Cases - Motel operator offered complainant facility. Agreed to stipulation of settlement.

1 Case - Right to use trailer park established.

1 Case - Complainant allowed to play on golf course.

1 Case - Letter of apology to complainant.

1 Case - Letter to CRD promising compliance.

From this analysis it can be seen that the agency has failed in most cases to bind the respondent to a legally enforceable promise of future good behavior. Of the 70 cases in which relief was granted, a stipulation of settlement which might be used in some future enforcement proceeding, involving complainant or some other person, was obtained in only 18 cases (8 housing, 6 public assistance, and 4 employment).

The stipulation of settlement, enforceable as a court order with the threat of contempt proceedings for subsequent violations, is one vehicle by which the CRD may police the behavior of those who have been found guilty, or have conceded guilt under the statute. If the case is settled by the CRD, with no protection against future acts of discrimination, then there has been a large expenditure of time and effort for a minuscule result which may in the end be purely symbolic. This is particularly true if the complainant, at the end, refuses to accept the employment or the housing which the agency has won for him.

The public interest in these cases is that the respondents cease

their discriminatory practices. This is particularly important in the case of respondents who, because of their business activities, are likely in the future to be in a position to discriminate, such as employers of large numbers of workers, real estate and apartment operators, and managers of places of public accommodation. But if the cases involving such units are settled without any binding obligation for the future imposed on the respondent, then, when the next case arises, the CRD must start anew with the consequent loss of time as well as stature in the agency. The data show, however, that in only 18 of the 70 cases in which relief was granted was it of the type which might be used in the future to compel the behavior which the statute requires.

The importance of broad remedial orders in cases in which complaints are filed is underscored by the Zeitz study findings concerning the reluctance of the Negro community to complain. Given that background, if the CRD continues to insist on having complainants, at least they should use each complaint as a vehicle for binding the respondent to a legally enforceable promise of future lawful behavior.

An examination of the stipulation of settlement or consent order entered into in the 18 cases under review demonstrates that, at least in the housing cases, the stipulation is of doubtful legal effectiveness.

11. Evaluation of Stipulations of Settlement Entered Into by the Division during the 1962-1963 Period

The stipulation of settlements in housing cases took the following general form: First, an introductory paragraph identifying the parties and indicating a desire to settle issue, then:

1. "The respondents hereby agree that their policy in the past and in the future is and will be one of non-discrimination against any and all persons because of their race, creed, color, national origin or ancestry in

the renting and offering of apartments which are covered by the law against discrimination."

2. Employees of respondent to be notified by letter of this policy, asked to sign letter, which is then returned to the agency.

3. Respondent agrees to offer in writing to complainant the next available 4-room apartment on the same terms and conditions as prevailed at time of the first application, sending copy to Civil Rights Division.

4. Respondent to inform agency of compliance within 30 days.

5. Respondent to give CRD right to observe compliance.

6. Settlement represents a complete and final disposition of the matter.

7. Order may be entered by Director which shall not be attacked or appealed from and will have the same effect, except for admissions, as an order issued after public hearing adjudicating all matters on the merits.

8. "Respondents agree that [upon violation]* upon application of the Division on Civil Rights, with [out]* notice and hearing to respondent, the County Court or the Superior Court or both may enter an order compelling performance of the foregoing order."

The difficulty with the form of section 1 of this order is, that it provides a weak foundation -- if indeed it provides any foundation -- for subsequent enforcement actions. The agreement or promise includes a representation that the respondent has in the past not discriminated. The statement relating to the future is a reference to the policy rather than the behavior of the respondent, and there is no identification of the particular place or subject matter involved in agreement not to discriminate.

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* Indicates variation in the form of the order which appears in some stipulations, but not all.

Hence it is quite doubtful that this agreement has any legal effect insofar as the future behavior of the respondent is concerned.

The Division has, since the period under study and as a result of some experience with this type of order, recently modified its form to provide -

> "The Respondents, shall, from the date of these presents, rent, lease, assign or sublease the apartments in the subject premise [fully described above] in such a manner that no person or persons will be discriminated against in any fashion because of race, creed, color, national origin or ancestry."

This form represents a distinct improvement in style, and is probably capable of enforcement via contempt proceedings in future instances.

However, the identification of a certain location creates the possibility that the respondent may later discriminate in another location. Furthermore, if the individual respondent's capacity was, in the first case, as a corporate official, there may be some doubt as to whether an order runs to him personally. Both problems were present in the order issued, and upheld by the New Jersey Supreme Court in Jones v. Haridor Realty Co., 37 N.J. 384 (1962). This order provided:

> "That the Respondent The Haridor Realty Corporation, a New York Corporation, its officers, agents, employees and assigns, including but not limited to Harold Strauss, Isadore Strauss and Arthur C. Samuels and the Respondents Harold Strauss and Arthur C. Samuels in their individual capacity, shall cease and desist from discriminatory practice against Ermon K. Jones and all other persons because of race, creed, color, national origin or ancestry in affording an opportunity to apply for, in passing on

> application for, in the sale of and in giving occupancy of its publicly assisted housing accommodations known as 'Asbury Gables' and situated in Neptune Township, New Jersey; . . . ."

The specificity of the language of this order is an encouraging contrast to the language of the generally used stipulation of settlement described above. However, by curing the defect of vagueness, the CRD ran the risks incident to excessive specificity. When one of the named respondents was accused of discriminating in connection with housing in another city in New Jersey, the Division concluded that its order had not been drafted broadly enough to reach discrimination practiced in another place. Hence it was not possible to proceed on the second act of discrimination for violation of the original order.

To meet this problem, the Division is including in its orders the following:

> "Should either Respondent, whether severally, jointly with the other Respondent herein, or jointly with another person or persons, at any time in the future become the owner, lessee, proprietor, manager, superintendent, agent or employee of any other apartment house or property which falls within the purview of the Law Against Discrimination [citing it] he or she shall not unlawfully discriminate therein in violation of N.J.S.A. 18:25-12."

This language clearly covers a change in capacity and seemingly covers apartment or property operations anywhere in the state. The quality of the Division's orders is improving, as measured by enforceability, as the Division becomes more self-conscious about the impact of these orders. Mr. Roth and Mr. O'Rourke concluded that, until recently, the Division has been proceeding purely on a case-by-case basis with little

regard for the future. The new attention being shown the form of the order is encouraging.

An examination of the form of consent order used in the employment and public accommodation cases reveals a greater degree of specificity. The stipulation in the typical employment case read:

> "Respondents hereby agree that their policy in the future will not be to discriminate against any and all persons because of their race, creed, color, national origin or ancestry in initial employment, in upgrading or in consideration for any new position which may be created or in any employment practice whatsoever."

This seems to be more specifically limiting than does the stipulation in the housing cases, but the vague language concerning their "policy in the future" should be eliminated.

In the public accommodation cases, the stipulation reads:

> "1. The facilities owned and operated by the respondent are a place of public accommodation within N.J.S.A. 18:25-5.
>
> "2. The Respondents will operate their enterprise in such a manner that the use of such facilities will not be denied anyone because of race, ..."

based on the study of the 1962-1963 cases
Our conclusion/is that the stipulation or order running to the future, which is the part of the relief which most affects the public interest, was obtained in only 26% of the cases in which a settlement was made. And even in these cases there are grave doubts as to whether the stipulation thus obtained have binding legal effect in many situations. See the form of order and discussion in Massachusetts Commission Against Discrimination v. Colangelo 182 N.E.2d 595 (1962). In all other cases only the complainant's interest was protected, and that to varying degrees of effectiveness which will be discussed below. The public interest was not otherwise vindicated.

12. Remedies for Complainants

We must evaluate the cases closed in 1962-1963 in which relief was afforded to complainants to determine if it has been adequate. In the public accommodation cases, the consent order required the respondent to open his facilities to complainant. In employment, it required respondent to offer the complainant the next available employment for which he is qualified. In housing, it required respondent to offer complainant the next available vacancy on the same terms as prevailed at the time of the violation.

In short, in housing and employment cases, even where the case was settled with a stipulation, the complainant was not afforded any immediate relief, if there were no available openings. The complainants, whose patience was worn thin, often did not secure personal vindication for their claims, even though they were a sine qua non for the initiation of the proceedings.

The agency refused to initiate proceedings without a complaint, but accepted a stipulation of settlement of the case, which finally disposed of complainant's rights, without affording him any personal relief, if to do so would disrupt the existing situation. Recalling that, under § 27, when complainant presents his case to the agency he is barred from any other action, the agency should protect his personal interest in the outcome by awarding effective relief.

The CRD should consider specific relief for respondents of the following types:

A. In employment cases.

An immediate offer of the same or substantially equivalent employment which the employee was

discriminatorily refused, or from which he was discharged, should be ordered. This is the remedy used by the NLRB in the case of refusals to employ on anti-union grounds, and it would be equally efficacious in these cases. In addition, back pay for time lost due to the failure to employ should be ordered./ This would lead to employer pressure for prompt Division action. Back pay is a matter which is commonly negotiated and provides for some flexibility in the areas in which there may be doubt concerning the case. If immediate employment is not offered, the respondent should be required to pay the complainant the difference between what he is earning and what he would have earned, if he had not been discriminatorily refused employment, until such time as a position becomes available.

The Division should institute a notice posting procedure in connection with all settlements and dispositions, which would include a promise not to discriminate and an indication that the notice was posted by order of the Division. This is particularly important in light of the lack of knowledge of the Division, or willingness to complain on the part of the Negro community. The Division has recently taken action in this direction and now includes a notice posting requirement in each stipulation of settlement in employment and housing cases.

B. In housing cases.

Remedies in housing cases should/include, in addition to the be considered which might offer of the first available vacancy, the requirement that the landlord in apartment cases evict any tenant not presently under a lease, or terminate any existing lease as soon as legally possible and not renew any leases, in order to provide an apartment for the complainant.

Secondly, the respondent should be required to pay the complainant the difference between the rental cost of the premises denied for reasons of racial discrimination and the rental cost of comparable premises which the complainant had paid, as a result of his discriminatory

refusal of a lease. This remedy would allow a Negro complainant to charge to the respondent the additional rental costs which were related to the discriminatory refusal to rent. Thirdly, posting notices is important because of the reluctance to complain on the part of the Negro community.

Remedies against the real estate broker are harder to identify. Certainly the posting of a notice is an important factor in this situation because the complainant really feels the denial of access to opportunities rather than the specific loss of a purchase. In any case in which the Division is satisfied that the complainant suffered any financial loss because of the refusal of a broker to show or to sell any premises, the Division should require the broker to pay such sums to the complainant.

All remedies should be tailored to meet the needs and equities of the situation. These types of remedies would make the settlement of cases less likely. The rather phenomenal record of the Division in 1962-1963 of only 4 public hearings, and 70 adjustments for a record of 33% of the cases settled would undoubtedly drop, as respondents refused to agree to such settlements. However, the 1962-63 record was compiled at the expense of the complainants. The high settlement rate was possible because the settlements cost the respondents little or nothing and gained the complainants the same amount. The Division, during the period in question, purchased high settlement rate with the sacrifice of complainants' rights.

Obviously, the use of remedies proposed here involves a drastic change in the policy of the agency. But I believe the time has come for the agency to enforce both the public interest and the complainant's rights under the statute.

13. Persons Securing Relief in Housing and Employment Cases

The evaluation of the records of the CRD in Part III reveals that in the housing and employment cases those getting relief tended to be the wealthier, better educated minority group members. In the housing cases, those complainants with incomes of more than $7,500 fared much better than did those with lower incomes. In the employment cases, of the 17 cases in which relief was afforded we have data concerning 13 covering education. Ten of the 13, or 80%, had high school diplomas. Furthermore, all of the cases involving racial discrimination, in which relief was granted, concerned employees in the 20-35 age range, which includes the most economically desirable working ages.

14. The Work Load of the Division during Fiscal 1962-1963.

As Part II more fully discloses, the Division processed 299 cases which were closed between July 1, 1962 and June 30, 1963. The cases took the following form:

Total Agency Activity: Cases Closed July 1, 1962-June 30, 1963 (Table 4, Pt. 3)						
Type Case	Total		Relief Granted		Cases Involved Race	
	#	%	#	%	#	%
Employment	148	56	25	17	119	80
Housing	77	29	45	58	72	93
Pub. Acc.	39	15	21	54	32	82
TOTAL	264	100	91	34	223	84
Special Investigations	35		10	28		
	299		101	34		

Roughly, 40% of the formal complaint cases studied required more than eight contacts by the field representative. There were 10 field representatives at work during the period studied, so that there was an average of 30 cases per representative. Of these, 40%, or 12, required more than eight contacts, while 60%, or 18, required no more than eight. (Table 14.)

Of the ten field representatives, only five and a half worked on compliance problems during the period studied. This would double the average cases per representatives from 30 to 60.

15. Some Concluding Observations: Education and Enforcement

Our study of the operations of the CRD during fiscal 1962-1963 disclosed a series of paradoxes.

(1) The CRD had the power to investigate discrimination, but refused to exercise that power without a complainant.

(2) When a complaint was filed, the CRD held two conciliation conferences instead of the one required by law seeking a settlement which may not protect the complainant.

(3) If the complainant was satisfied or became disinterested during the course of the proceedings, the CRD did nothing to regulate the future conduct of respondent.

(4) Where the CRD moved to obtain a stipulation concerning respondent's future behavior, it was, in many cases, so loosely worded as to be unenforceable.

(5) The complainant, so important at the outset of the case, was often given no relief at the end.

This pattern of nonenforcement of the law seems to be intimately related to two intertwined concepts which have hampered the Division and prevented it from developing a clear sense of mission. These concepts involve the difference between public interest and private right, and the distinction between education and enforcement. Perhaps the root of the problem lies in the initial conception of the agency as one which, unlike other law enforcement institutions, was placed in the office of the Commissioner of Education rather than in the Attorney General's department. The recent shift to the latter office, accomplished in May, 1963, may go some distance toward clarifying the mission of the institution.

During the last few months, the Division has been making efforts to improve its performance. It has improved the quality of its stipulations and orders (see pp. 46-50), now makes quick attempts to settle disputes without elaborate paper work, has simplified its filing and record-keeping system so that it is easier to follow the work of the Division, and is attempting a general speed-up of its investigations. The effect of these internal improvements in the operation of the Division should be a matter for continuing study. These changes have not, however, solved the crucial question of self-initiated investigations and broad construction of the statute.

The Director of the Division states that the various steps which have been described herein, as well as certain other actions taken by the Division during the past few months, have worked a drastic change in the direction of more efficient enforcement of the Law Against Discrimination. He states that the Division, during the current fiscal year, has undertaken 13 surveys of suspected discriminatory situations, eight dealing with club communities, that he has signed 15 complaints, and that "preliminary complaint" forms have been distributed to various civil rights groups to expedite the processing of cases. He recommends that a study be made in approximately one year to determine the efficacy of these changes. I believe that this is an excellent idea and that such a study should be undertaken.

A. Public interest versus private rights.

In the eighteen years during which the CRD was in the Department of Education it may have been assumed that its function was primarily to further the broader interests of nondiscrimination by educational means, and only secondarily to enforce individual legal rights. Efforts were made to concilate and to settle cases without adopting rigid concepts based on assertions of abstract legal rights. This would explain the mild manner in which the agency settled cases. The settlements de-emphasized the protection which the Division afforded complainants. But if the agency was pursuing the "public interest" as distinct from complainant's rights during this period, there were several inconsistencies in its behavior. First, if it was pursuing the public interest, it should not have insisted on having complainants before it started investigations. Second, it should have been more concerned with getting respondents to agree to change their conduct for the future than in settling individual grievances. But the CRD insisted on having a complainant, and on disposing of the case if the complainant becomes satisfied or disinterested. The Division did not insisted on controlling respondent's future behavior. In one case in which the complainant failed to seek an apartment under a stipulation, the Division mailed the stipulation back to the respondent! Thus it cannot be said that its enforcement policies reflected any conscious unified concept of protecting the public interest in ending discrimination where it may, operationally, conflict with private right. But neither can it be said that the CRD proceeded with diligence to protect the private claims of complainants before it. Certainly the modest relief in the employment and housing cases belies any such notion. One is led finally to conclude that the distinction between public interest and private right does not provide a basis for understanding the CRD behavior, although it may provide a method for

criticizing its behavior.

B. Education versus enforcement.

It has been suggested that the mission of the Division is to "educate" rather than to "enforce the laws," as if there is an inconsistency between the two concepts. If the Division is to "educate," so goes the theory, then it will undertake only minimal enforcement activities. Under this view the law against discrimination is equated to a civics text book statement to be inculcated, or a Fourth of July pronouncement to be promulgated, rather than a law to be lived under. This concept of the "educational function" of law is at odds with the legal tradition.

It was undoubtedly furthered by the placement of the Division in the Most of the weaknesses in the Division developed while it was in the Department of Department of Education. / The movement of the Division into the Attorney Educa General's office may cause this distinction between education and enforcement to fade away. It has already been modified by the recent actions of the Divis

The strength of the law as an educational instrument lies not also alone in its preachments but/in its power to affect the direction of everyday life. In this sense law educates. There are no two separate compartments of law, one marked "education" and the other marked "enforcement." There is, at the last, only educational effect of the law as vigorously and fairly enforced. It is doubtful if vigorous enforcement would produce any fewer results than the present policies. And vigorous enforcement itself might communicate a governmental mood that demands compliance.

As Justice Brandeis said in dissent in Olmstead v. United States, 277 U.S. 438, 484, 48 S. Ct. 564, 574 (1927):

> "In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example."

I suggest that until such time as we are convinced that "education" distinct from law "enforcement is a meaningful concept, we should insist that vigorous enforcement of the laws against discrimination provides the best way to educate the community concerning the value it protects!

It is at this juncture that the findings of the Zeitz study becomes critical. They demonstrate convincingly that vigorous enforcement of this law requires that the Division on Civil Rights take the initiative in the issuance of complaints, conduct of investigation, and prosecution of violators. Otherwise, for the various reasons which have been mentioned here (p. 12 supra) and which are more fully elaborated upon in the Zeitz report, the law will remain largely unenforced. The study has exploded one thesis which has been prevalent in official circles to explain the lack of use of the Division. That is the thesis that the Negro community is, by and large, unaware of the existence of the agency and the law. Inform the public and they will use the law, runs the theory. Informing the public is a highly desirable activity, but the Zeitz study demonstrates that the reasons for non-use of the agency by the Negro community run far deeper into their cultural attitudes toward society than mere lack of information about this agency./ (See p. 13 supra.) Therefore, in-, while valuable, forming the Negro community of the existence of the law/can be no substitute for vigorous enforcement action initiated by the Division.

IV. The Department of Education and the Problem of "De Facto" School Segregation

1. On the Distinction between De Jure and De Facto Segregation

For more than a century the law has treated the intentional wrongdoer more harshly than the negligent. Wrongful acts deliberately intended to injure others have called forth the harshest penalties of both the civil and the criminal law. But merely negligent conduct has been deemed, in most cases, to be subject to a civil action only. The line between the intentional wrongdoer and the negligent is drawn with the concept of knowledge. Foreknowledge of the consequences of one's act makes those consequences intentional and unleashes the harshest penalties of the law.

This distinction between the intended and the unintended wrong seems to lie at the root of the difference between de jure and de facto segregation in the school situation. De jure segregation consists in deliberately drawing school district lines in order to produce racially segregated schools. The behavior described by the concept takes place largely in the South where Negroes and whites live in racially mixed neighborhoods. If a "neighborhood school policy" were applied, it would yield integrated schools. To avoid this result, deliberate planning to separate the races in schools was instituted.

In the North the problem is precisely opposite. Housing is largely segregated. The "neighborhood school policy" will, therefore, produce segregated schools with no more governmental effort that the assignment of pupils to the schools closest to their homes. This is called "de facto" segregation, presumably to indicate that it arises from the housing pattern rather than from the deliberate efforts of the authorities. But the distinction is without substance. The school officials know that their policy will produce segregated schools. This knowledge makes innocence impossible.

The segregation which results from the "neighborhood school policy" is, therefore, as fully "intended" as that which results from the school board decisions in the deep South.

The law of nuisance deals with those who cause harm through a continuous enterprise or activity. Defendant's liability is less if he is unaware of the harm he causes, but when knowledge is pressed home to him this limitation disappears. So, too, in the "de facto" segregation cases. Once the fruit of knowledge is eaten innocence is at an end, and all that happens thereafter is viewed as the deliberate choice of government.

In both North and South, the operative governmental decision is the assignment of pupils to the schools. When the policy behind the assignment results in segregation - whether because of law which requires it, or because of a policy which "mechanically" produces it - the governmental involvement is the same, and, given knowledge of the consequences, the moral and legal judgment must be the same. This leads toward the hardest conclusion of all: one which must ultimately be faced by all governmental units engaged in allocating resources and opportunities. When government allocates resources, the luxury of the unplanned condition - a concept left with us by the era of laissez faire - is no longer possible. In a planned society the planners will be held to have intended the known consequences of their plans. Innocence is inconsistent with planning.

It is ironic - and perhaps symbolic - that it is in our struggle to educate our children that we are learning this truth for ourselves.

De facto segregation, then, is segregation and must be dealt with as such. The label "de facto" loses significance. Only the problem remains.

2. The Commissioner's Approach

The Commissioner of Education has not moved with administrative

vigor to eliminate the deleterious effects of school segregation. He has insisted on utilizing a complaint process, culminating in a formal adversary proceeding before ordering local school officials to take steps to eliminate segregation. The difficulties and disadvantages in using a complaint-based process have been discussed at length in Section II (pp. 11-17 supra), and in connection with the Division on Civil Rights. The disadvantages are magnified in connection with the school segregation problem, because the use of an adversary proceeding almost always generates intense community emotional tensions. The Negro community must be aroused before it will sustain a proceeding, and the bringing of such a "case" almost inevitably engenders tensions among the white community. The Commissioner has the power to remedy de facto segregation situations without awaiting a "case" by issuing appropriate rules and directives to local school authorities. He need not await a complaint or an adversary hearing. His failure to exercise this power makes the intelligent and effective resolution of the school segregation problem more difficult.

Claims of school segregation may be processed under two state laws. The Law Against Discrimination includes public educational facilities as "places of public accommodation." (N.J. Rev. Stat. 18:25-5 1.) The school laws of the state have a variety of provisions prohibiting racial discrimination. The CRD has disposed of only one school case, and that involved deliberate segregation in Englewood. (See p. 7 supra.) A policy decision was made, when the Division was in the office of the Commissioner of Education, to process segregation cases through the office of the Commissioner of Education, rather than through the Division on Civil Rights. The pros and cons of this decision are discussed in some of the student papers. The arguments in favor of CRD jurisdiction include the desirability of a single agency to handle the interrelated effects of race on housing and education and employment (in fact, in one special investigation conducted in the year under study the CRD did intercede in the planning of a public housing project and secured the increase in the number of facilities for the aged, and a reduction in the number of general units, to help avoid aggravation of a potentially explosive de facto school segregation problem). Furthermore,

complainants before the CRD need not use their own counsel nor finance the proceedings.

The advantage of using the office of the Commissioner of Education is that his staff is intimately familiar with various problems within the educational system and with the personnel at various levels who must deal with these problems. The disadvantage is that the Commissioner has many other duties in supervising the educational process within the state. He has not given this problem priority treatment. After the de facto segregation cases in Englewood, Plainfield, and Orange had been heard, the Governor found it necessary to suggest action before the Commissioner rendered his decision that, where alternatives exist, de facto school segregation violated New Jersey law.

3. A Criticism of the De Facto Segregation Opinions

The opinions of the Commissioner in these cases, while reaching a correct result under New Jersey law, do not spell out the full scope of the statutory policy concerning segregation in schools, nor do they indicate the breadth of the Commissioner's power to carry out that policy. The incomplete analysis in the opinions may generate doubt about the result reached or hesitancy in enforcing the decisions. The Commissioner has not taken effective action to end segregation in the state school system, even though he has determined that segregation violates the laws. For this reason, a full exposition of the law concerning segregation in schools and the Commissioner's power to end it is included. The analysis was prepared by Mr. Buck, Mr. Carolonza, and Mr. Pisansky.

In his opinions, the Commissioner relied on Art. 1, paragraph 5 of the New Jersey Constitution of 1947 which provides:

> "No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin."

He also quoted N.J. Rev. Stat. 18:11-1:

> "Each school district shall provide suitable school facilities and accommodations for all children who reside in the district and desire to attend the public schools therein. Such facilities and accommodations shall include proper school buildings, together with furniture and equipment, convenience of access thereto, and courses of study suited to the ages and attainments of all pupils between the ages of five and twenty years. . . ."

With these constitutional and legislative materials providing the background, the Commissioner then provided the link between the statutes and the de facto segregation problem by concluding:

> ". . . in the minds of Negro pupils and parents a stigma is attached to attending a school whose enrollment is completely or almost exclusively Negro, and that this sense of stigma and resulting feeling of inferiority have an undesirable effect upon attitudes related to successful learning. Reasoning from this premise and recognizing the right of every child to equal educational opportunity, the Commissioner is convinced that in developing its pupil assignment policies and in planning for new school buildings, a board of education must take into account the continued existence or potential creation of a school populated entirely, or nearly so, by Negro pupils."

While the Commissioner reached a correct result under New Jersey law, the opinion does not reflect the strength of New Jersey's statutory policy concerning discrimination. The importance of a full understanding of the legal powers of the Commissioner in this area cannot be overestimated. For, as the Zeitz study shows, the Negro community is committed to the

proposition that the best way to improve their civil rights is to get a good education. The attitudes studied by Zeitz demonstrate that the Negro community has adopted, enthusiastically, what might be called "middle-class morality" on this issue.

Which do you feel is the best way for Negroes to get their civil rights?

	#	%*
1. Picketing	24	18
2. Getting a good education	70	54
3. Strengthening the laws we have now	42	32
4. Making new laws	33	25
5. Joining civil rights groups	30	23
6. Praying to change men's hearts	33	25
7. Other**	13	10
8. None	6	5
X. Don't Know	7	5
Y. No Answer	2	2
Total ways to get civil rights	251	
Total respondents	(120)	(199)

* % based on number of respondents

** Of the 13 "other" responses, 6 said "fight back," 4 said "mind my own business," 3 gave vague responses.

As the events of this year (1964) have already demonstrated, we may expect the strongest pressures from Negro social action groups to be brought to bear on the educational system. Anticipating that this will be a most crucial area, we should be very clear about where the legal power lies to face and resolve the various conflicting interests and issues which this pressure from the Negro community will undoubtedly generate.

4. An Alternative Analysis

The framers of Article 1, paragraph 5 of the 1947 New Jersey Constitution were especially concerned with the problems of discrimination in education. Mr. Buck and Mr. Carolonza demonstrate that, in the debates on the Civil Rights article, the major question was whether any specific rights should be spelled out in the Constitution. This issue was resolved by expressly mentioning education and service in the militia as activities in which there should be no racial segregation. As for the rest of the activities of mankind, the framers were content to provide general protection against discrimination in the exercise of all civil rights. The fundamental law of the state therefore explicitly prohibits racial discrimination in the exercise of any civil rights, and segregation in education and the militia on grounds of race is specially proscribed. The legislative history shows there was doubt as to whether any specific civil right should be named. The victory for those who wished to single out segregation in education and the militia for special mention is an indication of the strength of the policy embodied in the provision.

In addition to the Constitution, there are four separate statutory provisions dealing with discrimination in education. The Commissioner's opinion mentions only one which, of all four, is least clearly applicable. The four provisions are:

(1) The Law against Discrimination (N.J. Rev. Stat. 18:25-12f) prohibits both "direct" and "indirect" discrimination in places of public education (N.J. Rev. Stat. 18:25-5j). Presumably, "indirect" discrimination would include discrimination which was not apparently intended to affect racial minorities, but, nevertheless, had the same effect as intended discrimination. This would include de facto segregation. Because of residential segregation, the use of the "neutral principle" of neighborhood

school districts has the necessary effect of dividing schools along racial lines. This type of conduct would presumably fall within the prohibition of "indirect" discrimination. So-called "de jure" discrimination, where lines were drawn on the basis of a racial restriction, would of course fall under the ban of "direct" discrimination.* This provision is enforceable by the Division on Civil Rights.

(2) N.J. Rev. Stat. 18:14-2 provides that "No child between the ages of four and twenty years shall be excluded from any public school on account of his race, creed, color, national origin or ancestry." It provides criminal penalties for school board members who vote to violate its mandate. While the section, insofar as criminal penalties are concerned, must be narrowly construed to cover only intentional voting to segregate, it clearly demonstrates that the Legislature (a) did not think the question was one of local concern, but rather required state standards for solution, and (b) was important enough to impose criminal sanctions on elected officials who violated the mandate. This is a strong indication of basic legislative policy to protect racial minorities from discrimination. The statute's predecessors date back to 1881, and were applied to invalidate segregation in schools as early as 1884 (see Pierce v. Union District School Trustees, 46 N.J.L. 76 (1884), aff'd, 47 N.J.L. 348 (1885)).

(3) N.J. Rev. Stat. 18:10-29 provides that school districts must comply with regulations and standards for the equalization of opportunity. Failure to comply authorizes withholding of state funds. Again, the Legislature indicated its concern that the local school boards behave in this situation in accordance with a uniform statewide policy of equal educational opportunity.

(4) Finally, there is the provision of N.J. Rev. Stat. 18:11-1 which requires each school district to provide, "suitable school facilities and accommodations for all children. . . ." This section, properly construed,

* See Greenberg, op. cit. supra p. 7.

does support the Commissioner's position, but only after extended analysis and a reading in light of the Constitution and the other three statutory provisions. This analysis is outlined here because an evaluation of the position of the Commissioner requires a full awareness of the strength of the constitutional and statutory policies involved. Here we have a policy which dates back eighty years in New Jersey's legal history which has been confirmed in constitutional debate and in other statutes. The more important the policy, presumably, the stronger should be administrative action to implement it. Unfortunately, the Commissioner has not taken vigorous steps to enforce the mandate of the law.

5. Rule Making Versus Case-by-Case Adjudication

The issue has been raised whether the Commissioner should proceed in these cases on a "rule-making" basis or on a "case-by-case" approach. take the initiative in ending school segregation. He The Commissioner has refused to/proceeds on a case-by-case basis, requiring proof in each community that (a) there is de facto segregation and (b) there are reasonable means to avoid it which have not been utilized by the school boards. This proof is established in an adjudicatory hearing before an Assistant Commissioner who acts in a judicial capacity. The hearing is held with evidence presented by both sides, once a local board has refused to correct a situation allegedly involving de facto segregation. The Negro complainants must produce through counsel proof on both of these questions. This means that before the Commissioner will take official action the pressures in the community must rise to the level of litigation. The Commissioner not only requires a complainant, as does the Division on Civil Rights, but further requires that the complainant press the case through a hearing. The Commissioner states that much informal activity has taken place between his office and the county and local school

authorities on this problem, which has resulted in the reduction of the severity of the segregation problem. Detailed information concerning the nature and extent of this activity was not available.

The Commissioner's office states that disclosure of this information, even in general terms, would hamper informal efforts which are underway in this area. The Commissioner's office is proud of its role in terminating segregation in South Jersey, see p. 7, supra, and Greenberg, Race Relations and American Law, 248, 251-253 (1959). However, the unwillingness of the Commissioner to disclose, even in statistical terms, the dimensions of its activity prevents any understanding or appraisal of its significance or effect. This report therefore concentrates on the overt public activity of the Commissioner.

The Commissioner's office is not persuaded that a vigorous public enforcement of the anti-discrimination policy is the most effective way to end school segregation. The Commissioner's office prefers "informal" persuasion. The thesis of this report is that vigorous realistic law enforcement is now desirable in connection with race relations problems; that an effectively enforced law is itself an excellent educator; and that informal adjustments are more likely to be satisfactorily consumated within the framework of a vigorous law enforcement policy. (See p. 57 supra.)

In the execution of such a policy, the Commissioner should consider a program along the following lines:

(1) Require information concerning racial balance from each school district.

(2) Where such information discloses improper racial balance, direct local officials to take appropriate steps to correct such imbalance and offer advice as to what steps are appropriate.

(3) Review the effectiveness of such local programs periodically to determine if the steps taken are adequate, and

(4) In the event that such steps are administratively determined to be inadequate, direct that additional measures be taken.

All of this can be accomplished under the existing statutory power of the Department of Education, without the necessity for an adjudicatory hearing which develops into a contest between the Negro and the white community. The statutory authority of the Department will be discussed infra.

In contrast to the New Jersey approach is that taken by the Commissioner in New York, who has issued general rules requiring the abolition of de facto segregation and has required that the school systems report to him the racial balances in their schools (using, for reporting purposes, any school

of over 50% non-whites as the basis for the report). This approach, which requires local communities to take stock of their position on this matter before the approach of litigation, and to take action to avoid de facto segregation without the pressures of aroused social action, would be more appropriate for our Commissioner in light of the strong statutory policy which has been outlined above. Such action might precipitate informal adjustments such as were made in Morristown.

The statutes provide a vehicle perfectly suited to the gathering and dissemination of information about the racial balances in the schools. Under N.J. Rev. Stat. 18:3-11, the Commissioner is required to report annually to the State Board of Education in December on

> ". . . the condition of the public schools and of all the educational institutions receiving support or aid from the state. The report shall contain full statistical tables of all items connected with the cause of education that may be of interest to school officers or the people of the state, together with such suggestions and recommendations for the improvement of the schools and the advancement of public instruction as he shall deem expedient.
>
> "The commissioner shall report to the state board once a month and at such other times as it may designate, such information as it may prescribe." (Emphasis added.)
>
> (N.J. Rev. Stat. 18:3-11.)

Here, if it were needed, is an express statutory warrant for the gathering by the Commissioner of data concerning the question of racial balance, and the presentation of that data to the State Board in a form available to the public. This provision demonstrates that the Legislature viewed the Commissioner's task as supervising a system of education, not

merely adjudicating conflicts.

Furthermore, the statutes clearly authorize the Commissioner to direct the activities of local school officials in connection with the segregation problem.

> "The commissioner shall from time to time instruct county superintendents and superintendents of schools as to their duties and the best manner of conducting schools and constructing and furnishing schoolhouses." (Emphasis added.) (N.J. Rev. Stat. 18:3-19.)

The office of the Commissioner is much concerned, however, that local considerations would be inadequately taken account of if any such general rule were established. The Commissioner's office feels that the policy embodied in the Englewood, Plainfield, and Orange decisions has been widely publicized, and that promulgation of a general rule would accomplish little, if anything, more than has the dissemination of the decisions. The problem, however, is not only to state the policy, but to enforce it. The Commissioner's policy is not self-executing. If the Commissioner leaves the matter in local hands, except where a case is brought before him, the risk is that local considerations will dominate to the extent that the state policy is not enforced. Adequate means for enforcing the policy may not be developed, if the matter is left in local hands. Direct action by the Commissioner is required if the problem is to be effectively solved with a minimum of social tension. The difficulty with the "case-by-case" approach of the Commissioner, in light of our knowledge of community reaction to the problems of school segregation, is that either the law goes unenforced, because the Negro community will not complain or will not engage in sustained group action necessary to pursue a suit before the Commissioner, or the law is enforced in an atmosphere of community tension generated by the Commissioner's insistence on having a hearing before he takes action. (See

the Belkin-Molnar report on alternative plans, and Molnar's report of a community meeting to discuss an integration proposal.)

6. Types of Desegregation Plans

If the Commissioner were to initiate steps to end segregation, there is adequate play for local consideration as to the type of plan which will be most advantageous in the community. Actually, there are three types of plans which have been proposed to cure a situation of de facto segregation. These plans can be analyzed and discussed. The application of any plan locally would, of course, turn on the particular surroundings, but the types of plan can be, and have been, discussed. They are

A. Open enrollment or optional registration.

This proposal is stated by Mr. Belkin and Mr. Molnar to be the least effective way of achieving racial balance in the school.

In Alston v. Board of Education of Union (April 6, 1964), the Commissioner refused to set aside an "open enrollment" plan, even though during its first year of operation, 11 of the 25 white students in a 95% Negro school had transferred out of the school along with four of 444 Negro pupils, thus increasing the racial imbalance. The Commissioner reasoned that the plan had not been given adequate time to be tested, and that he was not prepared to declare it a failure. The petition was dismissed with leave to reopen the case if, after a further period, the plan did not operate to eliminate the extreme concentration of Negro pupils in the Jefferson School. The opinion may stand for no more than the Commissioner will allow any plausible plan a reasonable test period before declaring that it is an inadequate compliance with the constitutional and statutory mandate.

There is disturbing languages in the opinion which suggests that the

Commissioner is not fully cognizant of his plenary power in the area. The extent of his power is clear. It is discussed in section 7 infra.

Under the "open enrollment" policy, transfers

are usually limited to available classroom space and are available to both Negro and white students, and might well produce an equivalent or greater degree of segregation than existed previously. It might be noted, furthermore, that the responsibility for avoiding segregation in schools is placed by the statute on the school authorities, not on the parents. Hence an open enrollment plan which did not result in the elimination of the de facto segregation situation could not possibly constitute compliance with the statutory mandate. The wishes of the parents in any given locality may not override the legislative judgment.

B. The paired or sister school plan. (Known as the Princeton plan.)

This plan will work reasonably well if the schools involved in a transfer contain equal and opposite ratios of whites and non-whites. In such a case all the children in certain grades can go to school A, then transfer to school B for the remainder of their education, producing continuous integrated education. The plan is also subject to transportation problems, the magnitude of which will depend on local factors.

C. Rearranging grade system and pupil assignment.

This type of plan changes the feeder system of schools into the intermediate and junior high schools, usually by establishing such a junior high or intermediate, thus reducing the number of grades in each elementary school and providing differing amounts of classroom space in the schools which had formerly been for kindergarten through eighth grade. Then the pupils could be effectively reassigned to these schools so as to eliminate both racial imbalance and unnecessary transportation costs. The plan has been adopted in Morristown.

Which plan to adopt, and how to adapt the plan to the particular problems of the community is obviously an administrative and planning problem of some dimension, but it is not an esoteric experiment. We have

the experiences described by Buck-Carolonza and by Molnar-Belkin to fall back on. It is not any longer necessary to conclude that the methods of handling de facto segregation problems are matters for local innovation. Rather, the state which has access to all the varieties of experience should use its expertise in the area to see that the obligation of the local board is adequately carried out.

7. The Commissioner's Power to Remedy De Facto Segregation

The Commissioner clearly has full power to require any solution which he deems necessary to the problem, and, with one exception which we shall mention in a moment, he does not deny that he could enforce the desegregation requirement. However, he indicates that as a matter of policy the matter should be informally handled at the local level. The Commissioner's modesty about his power may obscure his duty. The statutes make it clear that plenary power and responsibility for the supervision of the requirements of the school laws rest on the Commissioner. Under N.J. Rev. Stat. 18:3-7 the Commissioner is ordered to ". . . enforce all rules and regulations prescribed by the State Board (of education). He shall have supervision of all schools of the state receiving any part of the state appropriation." N.J. Rev. Stat. 18:3-7.1 recognizes that the Commissioner has, subject to the approval of the State Board of Education, certain power to "determine policies and make regulations" and to "execute such policies and to administer such regulations. . . ." N.J. Rev. Stat. 18:3-7.2 makes the Commissioner the "chief executive and administrative officer of the department and the official agent of the State Board for all purposes." Under N.J. Rev. Stat. 18:3-16a the Commissioner, subject to the advice and consent of the State Board shall "ascertain the thoroughness and efficiency of any or all public schools and of any or all grades therein by such means, tests and examinations as seem proper to the commissioner, whenever he or the state board deems it advisable; . . . ."

In addition, as noted on p. 68 supra, he is required to report annually to the Board of Education, with full statistics on "all items connected with the cause of education that may be of interest to school officers or the people of the state," and authorized to make recommendations for the improvement of the schools and advancement of public instruction. Further, he is directed to "instruct the county superintendents and superintendents of schools as to their duties and the best manner of conducting schools and constructing and furnishing schoolhouses." (P. 69 supra.)

Aside from making policies and regulations, the Commissioner is empowered, under N.J. Rev. Stat. 18:3-14, to "decide without cost to the parties all controversies and disputes arising under the school laws, or under the rules and regulations of the State Board or of the Commissioner." These decisions are subject to review by the State Board of Education.

The Federal District Court has recently stated that the Commissioner has full power to dispose of de facto segregation cases, Shepard v. Englewood Board of Education, 207 F. Supp. 341 (D.C.N.J. 1962).

The New Jersey Supreme Court has had occasion recently to discuss the statutory power of the Commissioner. In In re Masiello, 25 N.J. 590 (1958), the Commissioner attempted to narrowly interpret his power under N.J. Rev. Stat. 18:3-14 to "decide . . . all controversies and disputes arising under the . . . rules and regulations of the State Board or of the Commissioner." An appeal was made under this section from a decision of the State Board of Examiners concerning the denial of a School Administrator's Certificate. The Commissioner asserted that his only function was to determine if the Board of Examiners had acted arbitrarily, but that he was not to review the case de novo, nor was he free to require the Board of Examiners to alter their interpretation of the rules of the State Board of Education. The Supreme Court disagreed with the Comissioner on both points. The Court held that, when the Legislature gave him the power to

"decide" disputes and controversies arising under the rules and regulations of the Board or of the Commissioner, this meant that if he were hearing the case he was required to give a de novo and independent decision on the facts, or, if he were reviewing a decision reached after hearing by another, he was required to make independent findings of fact based on the record, giving due regard to the opportunity of the hearing officer to observe the witnesses. In either event, his decision under the statute was to be a decision on the merits of the controversy, and not a decision as to whether a subordinate hearing body had behaved arbitrarily.

On the Commissioner's contention that he could not require the State Board of Examiners to alter its interpretation of the rules, the Court said:

> "Such self-imposed limitation does not appear to be proper upon a study of the broad statutory authority granted to him. [H]e is required to enforce 'all rules and regulations prescribed by the State Board' and to decide all disputes arising under the rules and regulations of the State Board. And as Laba notes, 'his primary responsibility is to make certain that the terms and policies of the School Laws are being faithfully effectuated.' Consequently if, on appeal to him, it appears on the exercise of his independent judgment that an interpretation by the Board of Examiners of any rule of the Board of Education is violative of the letter or spirit of such rule, the proper discharge of his duty requires corrective action." 25 N.J. 590, at 607 (1958).

Masiello is relevant to the de facto segregation problem because the decision was based on the general powers of the Commissioner under N.J. Rev. Stat. 18:3-7 and under N.J. Rev. Stat. 18:3-14, which are two of the sections involved in the decision of segregation questions. The holding that the Commissioner must decide controversies, rather than review the arbitrariness of a subordinate decision-maker, means, in the segregation case context, that local control cannot possibly prevail for ultimately, even if the matter is handled as a case, the Commissioner must exercise an independent judgment as to whether the local body was correct. The holding on the Commissioner's power to change interpretation of state rules by the Board of Examiners means, as applied to local board decisions in the segregation cases, that the Commissioner must decide what the rules mean and whether they have been properly applied. His attempt to perform a more limited function in the segregation cases, as in Masiello, will be rejected by the courts./ The Commissioner's Decision in the Union Township case (supra p. 69a) may have failed to take adequate account of Masiello.

Thus there can be no doubt that the final responsibility for the enforcement of the de facto segregation ruling lies at the state level and, in light of the strength of the statutory and constitutional policy expressed therein, should be enforced by a direct exercise of the power of the Commissioner. A concern for local considerations in this type of case is important in shaping a sensible remedy, but not in determining the policies which must be pursued. These have already been determined by the Constitution, the Legislature, and the Commissioner.

8. The Power to Order Transfers of Pupils between School Districts

There is one area in which the Commissioner maintains that his power to remedy de facto segregation is limited. This is in the type of case which may arise near the edges of a metropolitan area where a community which already has a substantial Negro population may conclude that shifting

school populations around within the city will not substantially alter the situation of high concentration of non-whites in the schools. The City of Orange argues that it is now in this situation. Without evaluating the accuracy of the argument with respect to the City of Orange, it is clear that the problem is a real one on the edges of the North Jersey metropolitan area, and possibly on the fringes of the Camden-Philadelphia area. For many reasons the Negro residential patterns move slowly from the central core of the city. As the Negro residential area expands, the problem of de facto segregation changes in dimension. Now, it is not only the "neighborhood school plan" which produces segregation, but also the districting of the school system along municipal boundary lines. Under this system, predominantly white suburban communities exclude Negroes from their schools because few Negroes live within the community. Meanwhile, in the next town closer to the city the problem of de facto school segregation may be reaching serious proportions. If a community feels it has such a substantial Negro school population that it cannot realistically eliminate segregation within its boundaries, the ability to look beyond those boundaries becomes very important. If all school facilities reasonably available to the student on a geographic basis, without regard to the municipality in which such schools are located, are available to help resolve the segregation problem, the Commissioner is in a much better position to resolve the problem. This broader view increases the number and racial composition of the schools which can be taken into account in any rearrangement of school attendance patterns.

The Commissioner, however, denies he has the power to suggest, or direct the transfer of a student from one school district to another, from one community to another, incident to providing a remedy for de facto segregation. While the Commissioner is willing to abrogate the neighborhood school policy under appropriate circumstances, to cure de facto

segregation, he is unwilling to ignore municipal or school district boundaries. The logic of his decision in the neighborhood school cases should lead him, under appropriate circumstances, to the same conclusion with regard to the municipal or district lines.

Mr. Ungerleider's paper demonstrates that the Commissioner in fact does have the power to implement a desegregation order by facilitating the transfer of pupils from one district to another and, if necessary, by compelling the receiving district to accept such students. The argument begins with a consideration of the constitutional and statutory provisions prohibiting segregation which we have already examined (pp. 65-67 supra), and moves to an examination of the Commissioner's power to enforce the school laws. (See pp. 71-74 supra.)

Statutory provisions now in effect permit the admission of non-residents where the community of residence does not have a high school, N.J. Rev. Stat. 18:14-7; where the student lives a long distance from local school facilities, N.J. Rev. Stat. 18:14-5, and where it is felt desirable to send the student to a school district across the state line, N.J. Rev. Stat. 18:14-5.1. In all of these cases, the statute provides that the sending district shall pay the tuition of the student.

In cases of physically handicapped or subnormal children, the local board of education is obligated to provide for their education. This obligation can be satisfied by sending students to facilities in other districts and, if such facilities are available, the Commissioner may order the district in which they are located to accept pupils. This statute also provides for the payment of tuition by the sending district. (N.J. Rev. Stat. 18:14-71.1 et seq.)

Thus there is in these statutes a legislative precedent for the handling of special cases in which the "neighborhood school concept" for diverse reasons fails to effectively implement the educational policy of the state. The legislative model is simple: the students are sent to a

facility outside of the residential area, and the sending district pays the tuition. This provides a firm basis on which the Commissioner in the de facto school segregation case could model his relief. He could act in this area, with full understanding that he was handling this problem, in exactly the same way in which the Legislature has handled analogous problems. If the receiving district refused the transfer, a question would arise as to whether such refusal violated N.J. Rev. Stat. 18:14-2 as a refusal to accept a pupil on racial grounds. In any event, the powers of the Commissioner in this area are so extensive that he would have little formal difficulty in implementing his order, if there were adequate facilities in the community adjoining the one in which the problem arose. Mr. Ungerleider's description of the situation as between Orange and West Orange is not intended to suggest a solution to the Orange problem as such, but to demonstrate that this method of thinking about such problems may lead to a more adequate adjustment of the conflicting claims which arise out of the segregation situation.

9. The Culturally Handicapped Child and Recent Legislation Dealing with Emotionally and Socially Maladjusted Children

There is further legislative precedent for inter-district transfer under the 1959 legislation making special provision for "emotionally and socially maladjusted pupils." (N.J. Rev. Stat. 18:14-71.36 et seq.) Here, the state pays part of the educational costs and the Commissioner of Education has the power to insist that local boards, having facilities, receive pupils from outside the sending districts. If the Negro student in a de facto segregation situation is deemed "culturally handicapped," then the analogy to the situation covered by the statute is clear and the Commissioner could model his relief after the manner in which the Legislature has dealt with the analogous problem.

Mr. Ungerleider makes another argument in connection with this statute. It is that victims of de facto segregation may themselves qualify for state assistance and special training under the legislation as emotionally and socially maladjusted pupils. There appears to be a difference of opinion as to whether the statute is intended to benefit only students with either brain damage or those who are emotionally maladjusted to the point of being "dangerous" in the ordinary classroom situation, or might also include students whose maladjustments could be attributed to environmental factors. Under a broader interpretation, which is no where negated by the language of the statute, it might be possible to find that individually identified students who had been in a de facto segregation situation required the "special treatment" of an integrated education. See the finding of the Commissioner concerning the impact of segregated education (supra p. 62). The intricacies of this matter are beyond the scope of the report, except to indicate that the Commissioner, were he minded to vigorously enforce the laws concerning segregation in schools, could find here either a model to apply by analogy or perhaps ready-made statutory program to give special assistance to the victims of de facto segregation.

Thus it must be concluded that the Commissioner, as the CRD, has failed to maximize his opportunities to enforce the laws; and by insisting on case-by-case adjudication, in light of the reluctance of Negroes to complain, has delayed by some undetermined number of years the time when de facto segregated education will cease being the burning issue.

Only when this has been done, in my opinion, can the community turn to the fundamental problem of providing adequate educational experiences to all the students. It is no answer to say that this will now be done, if the Negroes will only forget the de facto segregation problem. The limited extent of enforcement of the statutory and constitutional policy

on racial matters up to this point entitles the Negro community to skepticism that any general improvement in educational programs will rebound to their benefit unless they are imposed on an educational scene in which de facto segregation has already been eliminated. If it is believed that the proper remedy is to swiftly upgrade the largely non-white schools with heavy doses of talent and money, this program requires legislative support which has not as yet developed. Once progress on the segregation front has been demonstrated, the Zeitz study suggests that the supporters of greater emphasis on education will find staunch allies in the Negro community. When queried as to the best way to improve civil rights, more than 50% of these studied said they believed a better education was the best answer.

10. The Constitutionality of Remedies for De Facto Segregation

There is one further respect in which the failure of the Commissioner to spell out the full extent of the constitutional and statutory program against segregated schools is relevant. This is in connection with currently pending litigation which questions whether the Board of Education may expend funds for the purpose of curing de facto segregation. The asserted constitutional issues here, as to whether the Board may "prefer" one race over another by spending monies on their behalf, become totally irrelevant when such expenditure is seen as a remedy for a situation which has b een roundly condemned by constitutional and legislative policy statements. Obviously, the state has the power to correct, through normal methods of appropriation and expenditure of funds, a condition in the educational system which is contrary to the policies of the state. See Railway Mail Assn. v. Corsi, 326 U.S. 88 (1945); Morean v. Board of Ed. of Montclair, 42 N.J. 237 (1964).

11. The Financing of the Remedies for De Facto Segregation

There is one respect in which the Legislature has been remiss in this area. The Legislature has not as yet recognized that the remedy for de facto segregation may be expensive, not only in terms of the more dramatic moves to transport students to schools, but also in the long-range upgrading

of students from segregated schools by means of special instruction and the like. These costs are an incident of a broad social change in population, in law, and in community attitudes. They cannot be traced to the people in a given community in which the issues of segregation arise. Under these circumstances, the state as a whole should bear, or at least share, the costs of remedying de facto segregation. State-wide financial assistance to communities remedying segregation should be provided. We know that the transportation of children in Morristown, where a successful desegregation program was undertaken, cost $45,000 the first year and $20,000 the second, and that the costs of revision of the Englewood school system are expected to run $134,000. These are significant sums for a community to spend in addition to the normally heavy local expenditure for education.

The necessity for raising these funds cannot but help to aggravate racial tensions which may already have arisen, induced in part by the Commissioner's insistence on adjudicatory proceedings before remedying de facto segregation. The Legislature should appropriate a special fund of substantial proportions to assist the local communities in meeting their financial costs incident to de facto segregation, and/or to rapidly improve the conditions of non-white schools.

V. The New Jersey Real Estate Commission

1. The 1963 Rules

The Real Estate Commission, in 1963, entered the field of regulation of racial discrimination for the first time. The decision to engage in any regulation of this area marked a distinct improvement in Commission policy. Real estate salesmen and agents had theretofore been prohibited by the Law against Discrimination from engaging in discriminatory practices with respect to housing covered by that statute. This left the real estate brokers free to participate in discriminatory sales with respect to privately financed one and two-family homes, and three-family-owner-occupied homes. The Commission's new rules do not affect the broker's right to participate in such transactions. The rules prohibit the

broker from advertising or making inquiry on racial issues, require him to transmit all written offers to the owner, and prohibit "blockbusting activities." This is a desirable development, but these rules permit the broker to continue to bring together on a discriminatory basis buyers and sellers of real property not covered by the Law against Discrimination. The rules do not forbid broker participation in sales of property which is not covered by the Law against Discrimination.

2. The Consequences of Broker Participation in Discriminatory Transactions

The question, as before, is whether this agency has done all it can within its statutory mandate to curb racial discrimination and to prevent participation therein by its licensees. This is particularly important here because, if the brokers are forbidden to participate in discriminatory transactions, the opportunity for such discrimination would be reduced and the market would presumably become more open to both buyers and sellers. The broker, licensed by the state, permits the discriminating seller to have access to the commercial channels for the sale of property. If these channels could be closed, the opportunity for racial discrimination would be reduced.

The economic consequences of broker participation in racially discriminatory sales were vividly described by Justice Souris in McKibbin v. Michigan Corporation & Securities Commission, 369 Mich. 69, 119 N.W.2d 557, 561 (1963):

> "The fact of the matter is that discriminatory restrictions such as are here involved may well be economically unfair to someone; to the seller, because his market may be artificially contracted without a corresponding increase in 'value' to 'qualified' prospects for purchase; to the purchaser barred by such discrimination from a particular market, thereby increasing the price to him for 'available' property because of

artificially concentrated demand therefor by others similarly subject to such discrimination; and to the public generally, which ultimately bears the cost of the consequences of such discrimination; — consequences measured by the inevitably enhanced racial and religious tensions resulting from such manifestly unjust prejudice."

3. Broker Participation as "Unworthy Conduct"

The precise question is whether involvement of a licensed real estate agent, broker, or salesman in a sale in which racial discrimination is a factor violates N.J. Rev. Stat. 45:15-17 e, which authorizes the Real Estate Commission to revoke or suspend a license where the licensee is deemed guilty of "Any conduct which demonstrates unworthiness, incompetency, bad faith or dishonesty; . . . ." The Executive Secretary of the Commission does not believe that there are adequate standards to justify a rule banning all broker participation in any discriminatory transaction as unworthy conduct.

A substantial group of policy statements in the New Jersey constitution and the Statutes provides, in my opinion, adequate grounds for the conclusion that broker participation in a racially discriminatory transaction is unworthy conduct under the licensing law. See the discussion of the strength of the anti-discrimination policy of the constitution and statutes in the Levitt (supra. p. 34) and Haridor (supra p. 6) cases. In addition to the anti-discrimination provision of Art. 1, par. 5 of the 1947 Constitution, we have Art. 1, par. 1 of the Constitution which guarantees the natural right to "acquire" real property. Participation in a racially discriminatory sale deprives potential Negro purchasers of this right and hence is unworthy conduct. Certainly the "natural right" to acquire property in Art. 1, par. 1 is a "civil right" within Art. 1, par. 5. Hence activity which interferes with the acquisition of property because of

race is an interference with a constitutionally protected right. When done under a state-granted license which prohibits "unworthy" transactions, this activity transgresses the limit of the license. The problem of writing specific standards into the prhase "unworthiness" is satisfactorily resolved by the use of Art. 1, paras. 1 and 5 of the State Constitution and the policy stated in the Law against Discrimination.

The assumption behind our analysis is that, if the conduct violates the statute, the Real Estate Commission may promulgate a rule to notify the licensees to this effect. Broad rule-making power is conferred on the Commission in New Jersey (N.J. Rev. Stat. 45:15-6). It would be anomalous to conclude that the Commission may find a broker or agent or salesman in violation of § 15-17 e and suspend or revoke his license, but may not identify by rule the type of conduct it considers to constitute "unworthiness." Therefore, it lies within the power of the Commission to promulgate a broad rule forbidding broker participation in any discriminatory transaction.

In Michigan, the Real Estate Commission did promulgate a set of rules prohibiting licensed real estate personnel from participating in racially discriminatory sales. The rules were held invalid in McKibbin v. Corporation and Securities Commission, supra p. 81. However, the Michigan statute is narrower than ours, does not contain a clause authorizing license revocation for unworthiness, and has been construed to cover only "unfair" activities of brokers as measured by the standards of business morality. The New Jersey statute is not only broader in language than the Michigan statute, but it has received a broad construction. Only one case need be mentioned. In Div. of the New Jersey Real Estate Commission v. Ponsi, 39 N.J. Super. 526 (1956), the Appellate Division reviewed the denial of a license renewal based on broker's conduct in connection with the sale of his own land, not as agent but as owner. Judge Jayne discussed and then rejected the defense that the statute applied the test of "unworthiness" only to the conduct of the licensee as a broker.

> "Would not personal acts of insanity unrelated to the brokerage business demonstrate the mental incompetency and unworthiness of the licensee? Would not defalcation

as a bank teller demonstrate bad faith or dishonesty within the import of the real estate brokers' statute? The mentionable variety of such disqualifying acts or manifestations of a licensee extraneous the practice of brokerage and within the signification of 'unworthiness' is limited only by the fertility of one's imagination. This explains the use of the word 'unworthiness,' viz., not fit, undeserving, unsuitable." (Emphasis added.)

The breadth of the interpretation of the New Jersey statute is in sharp contrast to the narrow interpretation placed on the Michigan statute in the McKibbin case. Again, it is not my purpose to suggest a definitive conclusion as to the power of the Commission, but to point out that if the Commission had exercised its powers to the full it could have foreclosed all broker participation in discriminatory transactions and subjected its power to a test before the judiciary. Recalling that the Real Estate Commission is a statutory body created at the request of the real estate industry to engage in self-policing, and that the real estate industry has not been sympathetic to efforts to end discrimination in housing by law, it is perhaps not too surprising that the Commission has not tested the limits of its power in this area. The action of the Commission provided primarily an additional penalty for violation of existing law. It does restrict the freedom of the broker to participate in discriminatory sales beyond the limits already set in the Law against Discrimination.

VI. Civil Actions to Vindicate the Constitutional Right to be Free of Discrimination in the Exercise of Civil Rights

The modern machinery for dealing with large number of cases efficiently and quickly, without the necessity for great expenditure and energy by persons aggrieved, is the administrative agency. And there is no doubt that, in some fields, the administrative process has proved more satisfactory than the judicial process for the enforcement of the law. However, in connection with discrimination in housing, employment, education, and public accommodation, the record of the various administrative agencies in either securing complainant's rights or in vindicating the public interest in elimination of discriminatory patterns has, as this report suggests, been less than adequate.

The question then arises as to means to improve the quality and tone of enforcement of these laws. Certainly the agencies must be staffed by men sympathetic with the statutory objective. In addition, political pressure on the agencies to perform well provides a primary vehicle to encourage their activity. There may be another legal mechanism which can assist in insuring that the Law against Discrimination and the Constitutional Rights to Freedom from Discrimination are in fact honored. This is the time honored judicial process in tort cases.

It is reasonably clear that there exists a cause of action in tort for interference with the rights which are protected under Article 1, par. 5 of the Constitution; that the judiciary has the power to grant relief to vindicate these constitutional rights, and that the New Jersey Supreme Court will recognize and enforce these rights in judicial proceedings.

1. Constitutional and Statutory Standards

Article 1, par. 5 of the 1947 Constitution guarantees freedom from racial discrimination in the exercise of civil rights. Article 1, par. 1 declares that the right to acquire and possess property is a natural right. These two provisions read together establish a civil right to be free from racial discrimination with respect to property.

The Legislature has further specified what constitutes "civil rights" under the Constitution. Section 4 of the Law against Discrimination states that:

> "All persons shall have the opportunity to obtain employment, and to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation, publicly assisted housing accommodation, and other real property without discrimination because of race, creed, color, national origin, ancestry or age, subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right."

This legislative declaration that the rights in relation to employment, public accommodations and housing are "civil rights" must be understood as "filling out" the constitutional provision with respect to such rights. In § 2 the Legislature indicated that the enactment of the statute was "in fulfillment of the provision of the Constitution of this State guaranteeing civil rights."

From the foregoing it is clear that the law of this state prohibits racial discrimination in relation to any and all of the rights enumerated in § 4 of the Law against Discrimination. There remain for our consideration two questions: First, does the law of this state permit direct judicial enforcement of these constitutional and statutory provisions; and second, has the Legislature, by creation of the Division on Civil Rights, channeled all enforcement activity of the state into this

administrative agency? As we shall see, the answer to the first question is in the affirmative, and to the second is in the negative.

2. Availability of Judicial Remedies

What is the law of New Jersey as to whether a person deprived of housing, employment, or accommodations may sue in tort for appropriate relief, including damages and injunctive relief? The answer to this question is surprisingly clear. The history of the tort suit for damages for infringement of civil rights is traced and some current problems are raised in Mr. Rinaldo's paper. The argument will only be sketched here.

In a suit based on racial discrimination, the question is whether the defendant had breached a duty owed to plaintiff not to harm the interest for which compensation is sought. The law of tort exists, in part, to enforce the standard of decent behavior within the community. Conduct which falls below that standard tends to come within the ban of the law of tort. The law has elaborate mechanisms, including the use of juries, to determine whether the standards of the community have been violated. The problem of fixing standards of conduct is avoided if the Legislature or the framers of the Constitution have established such standards. Then, the question is whether the judiciary will enforce the constitutional or legislative standards without "express orders" from the Legislature to do so.

The courts differ in their approach to this question. Some are willing to enforce the standards while others wait for a clear command from the Legislature. See Pound, Common Law and Legislation, 21 Harv. L. Rev. 383 (1908), and Stone, The Common Law in the United States, 50 Harv. L. Rev. 4 (1936). The view that a court takes on this question depends in large part on the historical factors shaping the relation of the court to the Legislature and on the subject matter under consideration.

(My own view on this problem may be found in, The Right to Seek Workmen's Compensation, 15 Rutgers L. Rev. 491, 498 (1961).) In New Jersey, the courts have historically played a leading role in the development of the law, and have liberally construed their mandate to enforce the standards of conduct established by Constitution and Legislature. This same approach applied to Art. 1, paras. 1 and 5 of the New Jersey Constitution provides a clear basis for a tort action by the victim of racial discrimination. The tort of racial discrimination exists in New Jersey.

The willingness of New Jersey courts to fashion remedies for violation of constitutionally protected rights is demonstrated by the course of decision under another clause of the new 1947 Constitution, Art. 1, para. 19, which provides:

> "Persons in private employment shall have the right to organize and bargain collectively. Persons in public employment shall have the right to organize, present to and make known to the State, or any of its political subdivisions or agencies, their grievances and proposals through representatives of their own choosing."

Two cases have recently been decided by the New Jersey Supreme Court under this provision, one involving a suit against an employer who allegedly discharged employees because they were union adherents, and the other against a union for picketing because dairy employees had selected another union to represent them. In both, the plaintiffs claimed that the Constitution gave them rights which could be enforced in court against the individual defendants. In both, the defendants claimed that the Constitution did not provide the basis for a suit, but only provided a foundation for legislation. The issue thus joined was most recently and succinctly decided in Cooper v. Nutley Sun Printing Co., 36 N.J. 189, 195-97 (1961):

"Our Constitution recognizes that employees have 'the right to organize and bargain collectively.' If plaintiffs' allegations are to be believed, and they must be at this posture of the case, the sole object of the discharges was to thwart through economic duress the employees' rights to freely choose their bargaining agents. Thus the employers' conduct worked to violate the rights of members of a class protected by the Constitution.

"Defendants contend that the sole purpose of the constitutional provision is to prevent legislative or judicial action which would diminish the guaranteed rights and does not safeguard these rights from infringement by individuals. We agree that the Legislature or the judiciary cannot abridge these rights, but the constitutional provision reaches beyond governmental action. It also protects employees against the acts of individuals who would abridge these rights. Independent Dairy Workers Union of Hightstown v. Milk Drivers and Dairy Employees Local No. 680, 23 N.J. 85 (1956); Quinn v. Buchanan, 298 S.W.2d 413 (Mo. Sup. Ct. 1957).

"Defendants further contend that the court is powerless to safeguard these constitutional rights of employees without a statute regulating labor relations. Certainly the Legislature may enact legislation to facilitate the exercise of constitutional powers and enforce rights granted. Indeed such legislation in the labor relations area would not be unwelcome. However, just as the Legislature cannot abridge constitutional rights by its enactments, it cannot curtail them through its silence. People v. Western Air Lines, Inc., 42 Cal.2d 621, 268 P.2d 723, 732 (Sup. Ct. 1954). The judicial obligation to

protect the rights of individuals is as old as this country. Chief Justice Marshall said in Marbury v. Madison, 1 Cranch 137, 163, 2 L. Ed. 60, 69 (1803):

> "'The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.'

The right to organize and bargain collectively is included in the Rights and Privileges Article of our Constitution and should be accorded the same stature as other fundamental rights. The United States Supreme Court has stated that violations of rights recognized by the Bill of Rights Amendments to the United States Constitution are actionable. [Citations omitted.] Indeed, in Independent Dairy Workers Union of Hightstown v. Milk Drivers and Dairy Employees Local No. 680, 23 N.J. 85 (1956) this court held that the rights of employees declared in N.J. Const. 1947, Art. I, ¶ 19 were enforceable when individuals interfered with those rights. The court needed no implementing statute to enjoin the interfering conduct. It follows that the court in the present case needs no legislative implementation to afford an appropriate remedy to redress a violation of those rights. To find otherwise would be to say that our Constitution embodies rights in a vacuum, existing only on paper."

In Independent Dairy Workers Union of Hightstown v. Milk Drivers and Dairy Employees Local No. 680, 23 N.J. 85 (1956) (hereafter Milk Drivers I), the question arose whether an independent union, which had been selected by the employees of an employer to be their bargaining representative, and had negotiated a collective contract with him, could enjoin

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picketing by another union (Local 680) which wanted to have bargaining rights with the employer. The court held that the picketing was enjoinable because it interfered with the employees' rights under Art. 1, ¶ 19 to bargain collectively through their chosen representatives. The basis for the injunction was stated to be that the picketing violated the constitutional rights of the employees. See my analysis, 12 Rutgers L. Rev. 99-114 (1956).

The case came a second time to the Supreme Court, 30 N.J. 173 (1959) (hereafter Milk Drivers II). The picketing union contended, inter alia, that the rights under Art. 1, ¶ 19 could be enforced only by the adoption of a state labor relations act, but not by the court acting without a statute. In response, the court said:

> "Local 680 urges the judiciary be inert because it cannot provide a mechanism equal to the task of formulating and effectuating a fair pattern of labor-management relations. It suggests that nothing less than a statute and an administrative agency can contend fairly and expeditiously with the inevitable problems. Legislation may indeed be appropriate and surely would not be unwelcome. The considerations thus emphasized might well be addressed to the Legislature. But it is contrary to the judicial grain to create a no-man's-land in which the outcome of any and all controversies would depend upon the strength of the combatants. It has been the traditional role of the courts to deal with matters affecting labor relations, Hughes v. Superior Court of State of California, 339 U.S. 460, 467, 70 S. Ct. 718, 94 L. Ed. 985, 993 (1950), and until the Legislature intervenes, the judicial obligation remains.

"It should not be assumed that it is beyond the capacity of the judiciary to remedy the wrongs which appellants claimed. For the discharge of employees in violation of their right under Article I, paragraph 19 of the Constitution, an action for damages may well lie, and as well a suit to reinstate with back pay and to forbid discharge because of union activity. [Citations omitted.] Such enforcement of the constitutional guaranty would give to employees the assurance they need to permit them to pursue their own self-interest. It would free them to respond to appeals of others in the industry to seek improved terms and conditions of employment to the end that there may be eliminated competitive advantages gained by employers through sub-standard labor practices. * * *

"So also, if Local 680 had wished to question the election because of Decker's unfair practice, the Chancery Division would have been equal to the issue. It could have ordered another election with such protective provisions as would be appropriate to assure an uncoerced result."

The Court granted relief, in tort, to protect the contractual relation between the independent union and the employer against the interference provided by the picketing of defendant union. While the Court stated that it reached its decision "without resort to our constitutional provision" (Art. 1, ¶ 19), it is clear that the policy of promoting collective bargaining and its end product, the collective contract, provided the basis for the decision. Technically, the issue was whether the picketing was justified. This required a balancing of the interests of the picketing union in expanding their activities, and the interests of the inside union

in maintaining its contractual relations with the employer. These latter interests were viewed by the court as protected by the constitutional provision, hence the interests of the picketing union were deemed insufficient to justify the picketing. The value judgment favoring collective bargaining which is expressed in the Constitution was used to strike the balance against the picketing union under tort law.

From the analysis of these cases, it can be seen that the constitutional provision can play one of two roles in the judicial process. It can, as in Cooper and Milk Drivers I, provide the basis for a law suit designed to implement the rights which it creates, or, as in Milk Drivers II, it can provide the policy basis for a judgment that the conduct of a defendant falls below the standard of conduct demanded by some other branch of tort law. In Milk Drivers II, it was the law of interference with contractual relations. In either case, the constitutional provision without the intermediary influence of a statute becomes a source of rights of a plaintiff in litigation against another private person.

3. The Analogy between the Collective Bargaining and Civil Rights Provisions of the Constitution

Will the Court treat the Civil Rights section of the Constitution, Art. 1, ¶ 5, in the same way as they have treated the collective bargaining section? If they do, then they will recognize a cause of action for violation of the rights protected under Art. 1, ¶ 5. This question can be approached on several levels.

A. The language of the clauses.

There seems to be no basic difference between ¶ 19 and ¶ 5 of Art. 1. Paragraph 19 is quoted on page 88 supra. Paragraph 5 reads as follows:

"No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the

exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin."

Paragraph 1 of the Constitution, which deals with property, reads as follows:

"All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness."

All of these statements are of the same order. They could be taken as recognizing legislative jurisdiction to protect rights and prohibiting legislation which is inconsistent with such rights. But Art. 1, ¶ 19 has been held to also provide a standard to be applied in private litigation. There is nothing to suggest that ¶ 19 is different in this regard from ¶ 5.

B. The history of the debates on the sections.

Without reproducing the debates in detail, I suggest that there is no essential difference in the level of debate on the two clauses. In both cases the major thrust of the debate centered on the necessity for the clause, and a desire not to tie the Legislature's hands by adopting a restrictive provision.

C. The traditional judicial jurisdiction over the subject matter.

In Milk Drivers II (supra p. 91), Chief Justice Weintraub suggested that a primary reason for the court's decision to implement the policy of the constitutional provision was that,

". . . it is contrary to the judicial grain to create a no-man's-land in which the outcome of any and all

> controversies would depend upon the strength of the combatants. It has been the traditional role of the courts to deal with matters affecting labor relations [citations omitted], and until the Legislature intervenes, the judicial obligation remains."

The opinion makes two points which are both applicable to the racial situation. First, that the matter should not be left to the "strength of the combatants." Certainly in the present era of the sit-in and picket line, the exercise of judicial jurisdiction to resolve controversies fits within the framework of the discussion in Milk Drivers. Second, the Court noted that "labor relations" has been a subject traditionally dealt with by the courts. Certainly the same can be said of the various areas of civil rights.

Protection of the right to acquire and possess property is of ancient, primary, and perhaps original, concern of the courts in the Anglo-American tradition. The minority group's claim for access to real property fits within this concept of an area historically within the scope of judicial decision. The problem of discrimination in employment falls within the holding of the Milk Drivers case because it is an aspect of the law of labor relations. In fact, the case on which Milk Drivers relies for the proposition that the judiciary has traditionally taken jurisdiction over labor relations matters, is a case involving the precise question of our concern: racial discrimination in employment (Hughes v. Superior Court). The right of access to public accommodations, which is the third facet of civil rights protected by the Law against Discrimination, is of judicial invention. It was the courts which imposed upon innkeepers and common carriers the duty of serving all comers (see Prosser, Torts, 2d ed. 480 (1955)). Hence, here, the judicial tradition reaches far back into history.

The civil rights cases thus meet both tests used by the New Jersey Supreme Court in Milk Drivers II to determine whether the policy of the Constitution will be directly enforced by the courts; the desirability of peaceful adjudicatory solutions, and the historic jurisdiction over the subject matter exercised by the judiciary.

D. Constitutional treatment as a fundamental right.

One additional ground for giving direct judicial effect to the constitutional provision relating to collective bargaining was suggested in Cooper and is equally applicable to the civil rights provision. In the portion of the opinion in Cooper quoted above, the court said:

> "The right to organize and bargain collectively is included in the Rights and Privileges Article of our Constitution and should be accorded the same stature as other fundamental rights."

The parallel between ¶ 19 and ¶ 5 is obvious: they both originated with the Convention of 1947 and were both placed in the "Rights and Privileges Article" of the Constitution and should, therefore, under the test of the Cooper case, be given the same effect by the judiciary. Under all these circumstances, Art. 1, ¶ 5 should be deemed self-executing in the sense that it either provides the basis for a cause of action, or the policy judgments which must be made in connection with causes of action already available within the framework of tort law.

One holding in Levitt & Sons, Inc. v. Div. Against Discrimination, 56 N.J. Super. 542 (1959), aff'd on other grounds, 31 N.J. 514 (1960), appeal dismissed, 363 U.S. 418 (1961), was that Art. 1, ¶ 5 of the Constitution constituted a law of the State of New Jersey so that under N.J. Rev. Stat. 18:25-9.1 the Division had jurisdiction to proceed against those who discriminated in connection with the sale of housing built with public funds or public assistance. This supports the view that the

constitutional provision can be treated as giving rise to directly enforceable rights.

All of these methods of analysis lead to the conclusion that the courts will, and should treat the Civil Rights section of the Constitution the same as they have treated the Collective Bargaining section, and will recognize that civil actions, whether they fit into traditional tort categories (as did Milk Drivers II) or not (as in Cooper), can be brought to effectuate the state policies as laid down in the provision in connection with civil rights.

4. Equitable Remedies Available

It is clear that, once the courts take jurisdiction they have adequate power to award any effective remedy. In Milk Drivers II, they indicated that Chancery could conduct a representation election which may involve intricate questions of law and labor policy, which are as complicated as any involved in the sale of a home, the lease of an apartment, or the affording of employment. Facing this problem in the Cooper case, the court wrote:

> "If the trial court finds the individual plaintiffs' constitutional rights have been infringed upon, it can exercise its vast equitable powers and grant the relief which the circumstances dictate. As was stated in Westinghouse Electric Corp. v. United Electrical, Radio and Machine Workers of America, Local No. 410, 139 N.J. Eq. 97, 108 (E. & A. 1946):
>
> '...'A wrong suffered without a remedy is a blot upon the sound administration of justice. In the dissenting words of Cardozo, C. J., in Graf et al. v. Hope Building Corp., 254 N.Y. 1; 171 N.E. 884, 888, 70 A.L.R. 984, "* * * Let the hardship be strong enough, and equity will find a way, though many a formula of inaction may seem to bar the path. * * *" [Citations omitted.] This is justice in action. This is giving meaning to the proper exercise of the jurisdiction of the Court of Chancery.'

The broad extent of equity's power to remedy a wrong was aptly described by Justice Heher in Sears, Roebuck & Co. v. Camp, 124 N.J. Eq. 403, 411-412 (E. & A. 1938):

> 'Equitable remedies "are distinguished for their flexibility, their unlimited variety, their adaptability to circumstances, and the natural rules which govern their use. There is in fact no limit to their variety and application; the court of equity has the power of devising its remedy and shaping it so as to fit the changing circumstances of every case and the complex relations of all the parties." Pomeroy's Equity Jurisprudence sec. 109.
>
> 'A lack of precedent, or mere novelty in incident, is no obstacle to the award of equitable relief, if the case presented is referable to an established head of equity jurisprudence—either of primary right or of remedy merely.'

"The plaintiffs seek the specific relief of reinstatement with back pay for the discharged employees and reinstatement for the striking employees. * * *

"When all of the facts are developed and equitable principles and defenses are considered, it may well be that the relief sought by the plaintiffs will be appropriate under the circumstances. When the United States Supreme Court was concerned with a violation of employees' rights to organize and bargain collectively as granted by the Railway Labor Act of 1926, it said that reinstatement with back pay could be a proper remedy for unlawful discharges in contravention of those rights. Texas and New Orleans Railroad Co. v. Brotherhood of Railway & Steamship Clerks, 281 U.S. 548, 50 S. Ct. 427, 74 L. Ed. 1034 (1930). Reinstatement is the conventional correction for discriminatory discharges. Phelps Dodge Corp. v. National Labor Relations Board, 313 U.S. 177, 187, 61 S. Ct. 845, 85 L. Ed. 1271, 1279 (1941). In answering a contention

that only a statute and an administrative agency can properly deal with labor-management relations, Chief Justice Weintraub, speaking for this court, in Independent Dairy Workers Union of Hightstown v. Milk Drivers and Dairy Employees Local No. 680, 30 N.J. 173 (1959), said, at p. 182:

> 'It should not be assumed that it is beyond the capacity of the judiciary to remedy the wrongs which appellants claimed. For the discharge of employees in violation of their right under Article I, paragraph 19 of the Constitution, an action for damages may well lie, and as well a suit to reinstate with back pay and to forbid discharge because of union activity. * * * [Citing cases.] Such enforcement of the constitutional guaranty would give to employees the assurance they need to permit them to pursue their own self-interest. * * *'

The above principles apply to the present case. Reinstatement with back pay may well lie. Of course, this also means that reinstatement with partial back pay or reinstatement without back pay or no reinstatement at all may be the proper result in this case. After the facts have been fully developed, equity has the power to tailor the remedy to insure a just result. * * *"

On the question of remedy, these cases seem directly and clearly analogous to those which might arise under Art. 1, ¶ 5 of the Constitution. The Cooper case could easily have an exact parallel if an employee were discharged or a prospective employee refused employment on racial grounds. The possibility of reinstatement discussed in Cooper would be directly in point. If a person were denied housing for reasons of race, etc., a damage remedy or specific performance of an obligation to convey or lease could be had. The enforcement of such a remedy would be no more difficult than the problem of determining an appropriate bargaining unit for the conduct of a representation election to be held under judicial supervision, as is contemplated in Milk Drivers II.

Real estate agents who failed to show properties for racial reasons might be found to be unreasonably interfering with advantageous relations between their client and the victim of discrimination. Neighbors who object to the sale to Negroes could themselves be made defendants, if their conduct interfered with the right of access to property protected by the Constitution. Such a cause of action has been recognized in New York in Ruiz v. Bertolotti, 236 N.Y. Supp.2d 854 (1962). The parallels here seem so clear that further elaboration is unnecessary. I do not suggest that the extended use of the tort remedy is likely. Its occasional use may demonstrate how much safer the respondent is before the administrative agency, and at the same time allow the agency to become more aggressive because its final award will protect respondents against potential damage claims. The performance of the agency virtually assures that the tort remedy will be projected in the foreseeable future as a viable alternative to inadequate administration of the law.

The use of the tort remedy will undoubtedly spur a drive to make the remedy before the Division exclusive. This was the history of the development of workmen's compensation. In the process of bargaining in the political context, the strengthening of the Division in its day-to-day performance may be a major outcome. But the ineffectiveness of the Division during the period / studied makes it fairly clear that the tort remedy will be projected in the foreseeable future as a viable alternative to the present administration of the law.

Our remaining question is whether, by the creation of the Division on Civil Rights, the Legislature has already indicated that the constitutional-statutory civil rights are to be protected through the actions of this agency to the exclusion of the courts.

5. The Effect of the Existence of the Division on Civil Rights on the Availability of the Judicial Remedy

Presumably, it is within the competence of the Legislature to eliminate judicial proceedings with respect to racial discrimination and to confer exclusive jurisdiction over such suits on an administrative agency. This has been done in most states in the area of work-connected injuries by the adoption of the Workmen's Compensation Act and the concomitant elimination of a civil action for personal injuries against the employer. See N.J. Rev. Stat. 34:15-7 et seq.

On the national scene, the same result has been achieved by Congress in conferring exclusive primary jurisdiction over labor relations matters on the National Labor Relations Board. San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959). This excludes the judiciary from participation in decision of such cases, except in review of the agency determination.

In connection with Art. 1, ¶ 19 of the New Jersey Constitution, Chief Justice Weintraub, in Milk Drivers II, indicated that labor legislation would be welcome. So, too, in connection with rights under Sec. 5, is the Legislature free to act as it has done in the adoption of the Law against Discrimination. However, the provisions of the Law against Discrimination make it clear that the Legislature has not exercised this power to make the jurisdiction of the Division exclusive. Section 27 of the statute deals explicitly with the exclusiveness of the jurisdiction of the Division. It provides:

> "The provisions of this act shall be construed fairly and justly with due regard to the interests of all parties. Nothing contained in this act shall be deemed to repeal any of the provisions of the civil rights law or of any other law of this State relating to discrimination because

> of race, creed, color, national origin or ancestry or liability for service in the armed forces of the United States; except that, as to practices and acts declared unlawful by section eleven of this act, the procedure herein provided shall, while pending, be exclusive; and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the individual concerned. Nothing herein contained shall bar, exclude, or otherwise affect any right or action, civil or criminal, which may exist independently of any right to redress against or specific relief from an unlawful employment practice or unlawful discrimination."

The last sentence makes clear that, unless the complainant is seeking a "right to redress against or specific relief from an unlawful employment practice or unlawful discrimination" his rights are not to be affected by this statute. The terms "unlawful employment practice" and "unlawful discrimination" are words of art used to define conduct condemned by § 18:25-12. The right to redress against or specific relief from such practices is spelled out in § 13 of the statute, which begins:

> "Any person claiming to be aggrieved by an unlawful employment practice or an unlawful discrimination <u>may</u>, by himself, or his attorney-at-law, make, sign and file . . . a verified complaint. . . ." (Emphasis added.)

Thus it seems proper to interpret the last sentence of § 27 as meaning that, unless the complainant is seeking relief under § 12 of the act by filing a complaint under § 13 (which is permissive and not mandatory) invoking the Division's jurisdiction, the existence of that jurisdiction does not affect complainant's rights to proceed at law or in equity.

This reading is buttressed by the second sentence in § 27, which expressly defines the conditions under which the jurisdiction of the Division shall be exclusive. First, the Division's jurisdiction attaches only to "practices and acts declared unlawful" by § 12 of the statute. As to them, "the procedure herein provided shall, while pending, be exclusive." Clearly, once a proceeding has been initiated before the Division, it has exclusive jurisdiction over the subject matter. And when the Division has disposed of that pending matter, "the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the individual concerned." This makes clear that when the Division disposes of a case by a final determination, the same matter may not be thereafter litigated elsewhere. The Act which brings the Division's jurisdiction into being, and simultaneously makes it exclusive, is that act which brings a matter before the Division — a complaint. Without a complaint (filed either by an individual or by the government), the Division cannot grant any relief, and its existence does not affect the cause of action based on discrimination which we discussed above.

One doubtful question concerns the scope of the exclusive jurisdiction of the Division. Does the word "grievance," which is the word the statute uses to describe the scope of finality of the Division's jurisdiction, encompass a set of facts presented before the Division, or does it encompass the characterization of a set of facts as a violation of the Law against Discrimination. This question can best be answered when a concrete case raising it is presented to the Division and the courts.

This reading of § 27 is supported by an examination of its history. In the 1945 law (Laws of 1945, ch. 169, p. 598) § 26, which is the precursor of the present § 27, contained similar provisions except in the first and last sentences. The first sentence provided for "liberal

construction" of the act as distinct from the present "fair construction." The second sentence was substantially the same as the present second sentence, but the last sentence provided:

> "If such individual institutes an action based on such grievance without resorting to the procedure provided in this act, he may not subsequently resort to the procedure herein."

This sentence was dropped in 1949 in favor of the present language. Under the language of the 1945 statute, there was a true election of remedies. The complainant could choose the Division, in which case its jurisdiction was exclusive, but if he chose to institute "an action based on such grievance" then he could not later seek the aid of the Division. Obviously, such a provision recognizes the possibility of an action based on facts which, if brought to the Division, would give it exclusive jurisdiction. Under the 1945 law, it is clear that the Division was not given exclusive jurisdiction over racial discrimination matters, but was considered as one forum, alternative to the judicial forum. The complainant was forced to elect his remedy. He made this election by filing his complaint either with the Division or in court. Having once chosen a forum in which to press his discrimination claim, he could not thereafter switch to the other forum.

It is against this background that the change in language of the 1949 amendment must be considered. It provided:

> "Nothing herein contained shall bar, exclude, or otherwise affect any right or action, civil or criminal, which may exist independently of any right to redress against or specific relief from an unlawful employment practice or unlawful discrimination."

The 1949 amendment seems to make two changes in the 1945 act. First,

it rejects the "election of remedies" doctrine under the 1945 act, and permits recourse to the Division at any time before a judgment would be given res judicata effects. Secondly, it makes clear a point which, while clear under the 1945 law, might have become doubtful because the election of the remedies doctrine was eliminated; that is, that there exists a right to relief outside the confines of the Division. In short, while eliminating the election doctrine, the Legislature avoided one possible inference from their act, that the courts no longer had jurisdiction. This language makes clear that the right to apply to the Division is permissive, and does not deprive the complainant, who does not seek to use the Division, of his judicial remedy. If a complainant chooses to use the Division, his common-law-constitutional-statutory right is wiped out, but if he goes to court instead of to the Division his rights are intact.

VII. Municipal Powers and Racial Discrimination

One proposal which recurs in the field of racial discrimination is for the establishment of Mayor's Commissions or other local agencies for the purpose of dealing with the problem. The statute recognizes that Mayor's Commissions may be established for limited non-enforcement functions. An additional and basic question is whether municipalities which are concerned with the problem may deal with it in any way they wish, subject only to the general laws governing municipalities, or whether they are required to confine themselves to the Mayor's Commission as described in the Law against Discrimination. Mr. Kraus and Mr. Springstead have exhaustively analyzed this problem and have concluded that the municipalities retain general jurisdiction over discrimination within their territorial limits, which can be destroyed if the complainant files with the Division on Civil Rights. This interpretation is contrary to an Attorney General's opinion issued some years ago, which failed to take into account all of the relevant provisions of the statute. It is based in part on an

exhaustive analysis of the problem of state-local relations on this matter in other states. Under this interpretation, local ordinances dealing with every aspect of racial discrimination could be adopted.

VIII. The Role of the Civil Rights Commission

Any consideration of the effectuation of the policy of the state concerning racial discrimination would be inadequate without some examination of the role of the Civil Rights Commission. The Commission has not been influential in shaping the civil rights policy of the state. It has not exercised significant direction—and may not exercise such direction—over the Civil Rights Division, for the Division is responsible not to the Commission but to the Attorney General. It has not figured largely in the general policy approach of state government, for that has been conducted most recently through Ad Hoc Bipartisan Committees established in the summer of 1963 by the Governor. There seem to be three alternatives which relate to the future of the Commission

(1) Abolish it as unnecessary.

(2) Give the Commission control over the Division as is the case in most other jurisdictions. In fact, New Jersey is the only state with the split between a Division and a Commission of this type.

(3) Provide the Commission with some meaningful role other than direction of the day-to-day functioning of the Division.

The memorandum of Mr. Frakt explores the possibilities involved in alternatives two and three. There may be a function for the Commission in dealing with problems of a nature that go beyond the processing of a single case — such as the problem of location of public housing, or the impact of de facto segregation in schools. But to adequately cope with such general problems, while leaving the day-to-day processing of cases

to the Division, the Commission would need to be manned by those who were regularly concerned with its problems and given certain independent investigatory authority, including the power to conduct investigations and hold public hearings, with subpoena powers, if necessary. The Commission could draw on the Division's staff for investigatory work. The Commission could become the forum for the presentation and resolution of policy questions of the type which last summer came before the Governor's Bipartisan Committee. These are issues which transcend the individual case and take us into the realm of pure policy making. Presently, this function of recommending policy decisions is not being performed on a sustained basis at all in the state. Perhaps it could be performed by the Director of the Division. But, it could also be performed by the Commission, if it were given the appropriate powers, direction and personnel.

In the alternative, or perhaps in addition, the Commission could function unofficially in dealing with major problems in the area of discrimination. If this is to be the case, then the Commission would need to be staffed by important personages who could throw their own weight behind the policy of the state.

This study has demonstrated, if nothing else, that any attempt to understand, much less unravel, the strands of state policy dealing with discrimination and then evaluate that policy in action, is a complex and difficult one which takes the investigator into diverse and unfamiliar areas. A continuing, searching examination into the implementation of New Jersey's anti-discrimination policies in all areas of governmental activity is desirable. This study illustrates one activity that the Commission might usefully sponsor on a continuing basis. A follow-up study on the Division on Civil Rights, the Commissioner of Education,

and the Real Estate Commission to determine how they have met the criticisms and recommendations of this report would be desirable. The succeeding section of this report lists several additional areas which could be usefully studied by the Commission. Any sustained activity by the Commission will be difficult, however, as long as it continues in its largely honorary capacity with no budget, no staff and no "status" or sense of independent mission. That two vacancies on the Commission have gone unfilled for more than a year is indicative of the lack of significance attributed to the Commission.

The Commission, if it were adequately staffed, empowered to investigate all areas of governmental activity, and then manned by persons dedicated to the enforcement of civil rights in the state, could perform such a useful overseeing function. But at present, it appears to be

performing no significant function in connection with the operation of the state laws concerning discrimination.

IX. Some Areas for Further Investigation

When we pass beyond an evaluation of the adjudicatory or rule-making function of the various New Jersey agencies dealing with racial discrimination, we encounter problem areas which are so highly complex as to be beyond consideration in this report. However, the ongoing operation of our system of education and the continuous functioning of the Urban Renewal and Public Housing authorities in the state may have a tremendous impact on the problems of race relations. They deserve intensive and continuing study.

Several students engaged in intensive inquiry into certain aspects of these institutions, but, because of the complex and dynamic nature of the agencies and the limited time available, it has not been possible to complete an analysis of the impact of their performance on the problems of race in New Jersey. In the long run, their impact may be greater than any of the institutions here studied, and therefore it is necessary to suggest the direction of future investigations.

1. Education and Civil Rights

The concern for the future which makes the educational institution of such central importance is heightened in the case of non-white minority groups for whom the present is a pale reflection of an unhappy past, and for whom the future offers the only hope for full participation in the society. Mr. Zeitz's study shows that 54% of the Negro community interviewed believed that the best way to achieve civil rights was by improved education. This is obviously not only a matter of desegregation of the schools, but of improvement in their capability to educate their children. This, perhaps, is the most optimistic aspect of the relation between civil rights movement and education. Our concern is focused, however, on certain narrow aspects

of the educational system as it directly affects minority groups. (See p. 9 supra.)

A. Helping the minority group youth and the drop out.

The unemployment rate among 16-24 year old high school drop outs is 28.6% (1964 Manpower Report of the President, p. 217). The unemployment rate of all Negroes in the 16-19 age bracket is 25.4%, while among whites it is 14.2% (id. at 105). Efforts are being made to keep minority group youth in school, and, if he drops out, to assist him in finding employment. Both of these efforts should be carefully studied. The latter effort is being carried on in Newark, under the joint sponsorship of the Department of Labor and the New Jersey Department of Labor and Industry. It consists of the operation of an institution known as the Youth Career Development Center. The YCDC attempts to assist youngsters to find employment by both preparing them for the work and lining up employment opportunities. More than 90% of the applicants to the YCDC are non-white. The placement success of the agency must be viewed as an attempt to correct the imbalance in unemployment ratios (see above) which beset the minority group youth at the start of his working career.

B. Vocational education.

While the YCDC seems to be servicing largely non-white youths in an effort to find employment, the Vocational High Schools seem to be servicing largely white students in providing vocational education. The three boys Vocational High Schools in Essex County are estimated to have an enrollment between 75% and 80% whites. This matches the population balance in the county which is around 20% non-white. The drop out rate in the VHS is estimated at between 22% and 24%. This is alleged to reflect policies of the sending districts throughout the county to use the VHS as "dumping grounds" for boys who disciplinary problems have not risen to the level of the criminal law. Thus many VHS pupils are not apt to stay

longer than legally necessary. This image of the VHS, which could be providing basic skills training for qualified minority (as well as majority) group youths, being used instead to handle disciplinary problems among white students from the suburbs, while probably much oversimplified, nevertheless requires further investigation. Since the VHS educational program ties in directly to the construction industry employment picture, and since the job placement rate among VHS graduates seeking work is 85%, a further study of the admissions, operations, and placement policies of these schools is indicated.

C. Education in civil rights.

One function of the school system is education concerning the shared political morality of the nation. The adequacy of the performance of the school system on this point is of utmost importance in assessing state policy concerning civil liberties. The Legislature requires local boards of education to provide education in "the privileges and responsibilities of citizenship as they relate to community and national welfare . . ." in elementary schools (N.J. Rev. Stat. 18:14-83.1), and a "two-year course of study in the history of the United States . . ." to be given in high school (N.J. Rev. Stat. 18:14-85.1). This course is required to include "instruction in the principles and ideals of the American form of representative government as expressed by the framers of the United States in said documents and particularly in the Bill of Rights. . . ." In addition, N.J. Rev. Stat. 18:19-8 requires that a "regular course of instruction in the Constitution of the United States shall be given in all public and private schools."

The problem of evaluating the performance of our educational system with respect to this legislative mandate is difficult. Two students, Mr. Kleimer and Mr. Vitale, sent questionnaires to teachers and superintendents, and examined literature and some text books dealing with the

matter. The questions raised by their investigation deserve further inquiry. They include:

(1) In light of the varying quality of text book treatment of civil rights, how well is the legislative policy carried out in the selection of books?

(2) Should the Commissioner play a greater role in identifying those materials which could be used in classes in the light of the above legislative mandate?

(3) Is adequate time spent on the study of civil rights materials in the schools? Is this time strategically placed with an eye to exposing those students who may drop out of high school before graduation?

(4) Are the teachers who instruct in this area adequately prepared to do so intelligently and incisively? Should there be advanced teacher training programs in the area?

The exploration of Mr. Kleimer and Mr. Vitale leaves these questions unanswered. A full examination into instruction in civil rights in our school system is desirable.

2. The Urban Renewal Program

This program is so complex in itself, and involves such an intricate blend of private economic interests, government planning for the social good, and public control of the life of the cities, that it is most difficult to evaluate its impact on the racial question. Since urban renewal normally involves slum clearance, and since a large proportion of non-whites lives in areas likely to be renewed, a built-in question of whether urban renewal is Negro removal arises in connection with most urban renewal projects.

A. The issues.

The issues which are projected in connection with urban renewal

projects include:

(1) Why engage in this project with its implications for the racial composition of the community instead of some other project?

(2) How much of the planning of the project has in fact taken account of the interests of the racial group most likely to be affected?

(3) What mechanism was used in the planning process to assure that these interests would be considered? Is "citizen participation" an adequate method of expression of the group interest, or does it fail because the spokesmen are not representative or are unequipped to meet the technical issues posed by urban renewal, or because the timing of their participation is such that the crucial decisions have been finalized before they participate?

(4) What provisions are made for the relocation of the displaced persons, either private or public housing, both within and without the renewal areas?

In an effort to lay the groundwork for an understanding of this program and its impact on the racial questions, several students examined three related subjects. There is a case study by Mr. Hecker and Mr. Pollard of the "Clinton Hill Project" in an effort to understand the interaction between the community and the municipal authorities in the development of an urban renewal project. Secondly, there are studies concerning the possibility of relocating persons displaced by urban renewal outside of the city in which the renewal program takes place, either in private housing or in public housing. Finally, there are two studies concerning public housing itself. First, a discussion of the literature which evaluates public housing, and secondly, a consideration of the problems of the "quota system" in public housing.

B. Planners and interests.

The Clinton Hill study opens the way for a much more intensive analysis of the relation between the planners and the various segments of the community concerned with urban renewal. This analysis should seek to get beneath the label "citizen participation" to determine how the urban renewal policy decisions are actually made. Also, the analysis should focus on the function of the public hearings required under federal and state statutes, for these hearings are obviously not intended to compile a record on which judicial relief can be afforded affected groups. Rather, they appear to be part of a complex political and administrative process which has little relation in operation to the issues which may be raised in litigation arising out of the hearings.

C. Relocation beyond the municipal boundary lines.

The Newark Housing Authority, like most housing authorities, does not render relocation assistance beyond the city limits to those displaced by urban renewal. Hence, the NHA facilitates the impression that the urban renewal program is designed, in part, to shift minority groups from one part of the city to another, thus aggravating the image of the black city as against the white suburb. Our studies have revealed no legal reason why relocation assistance should not be rendered to displaced persons in any suburban area in which they might wish to locate. A more intensive study of the relocation process should shed more light on the function of urban renewal in relation to the living patterns of those displaced by its operation.

3. Public Housing

A. Location of units beyond municipal boundary lines.

The process of transforming the core city into a non-white ghetto is facilitated by the local base of operations of public housing. As long as Newark must provide public housing facilities only in Newark,

the combination of public housing and urban renewal means the constant shuffling of the non-white population toward life in public housing in the city. The possibility of providing public housing beyond the city boundary lines is worth careful and full exploration, both under existing statutory provisions and with a possible statutory amendment in mind. Localism in the area of public housing is a problem which has obvious racial as well as economic class overtones, and should be carefully examined.

B. Admissions practices and public housing: the quota system.

Since public housing is a primary source of residence for those dislocated by urban renewal, and since public housing generally is reputed to be an improvement over existing housing accommodations (see Sullivan's report), the question of the racial composition of public housing frequently arises. The law forbids deliberate segregation in public housing. Where public housing is in short supply and is desired (the tenant pays a straight 20% of his income in rent, and gets as many rooms as he needs for his family), the allocation of the housing units among whites and non-whites creates difficult administrative problems. Mr. DeMarrais examines some of these problems in his paper. The risk of unlimited tenant free choice seems to be that of any "open occupancy" program: the preferences of the dominant group for segregated facilities may prevail. In housing, this is talked of as a "tipping point" beyond which white tenants of a housing project may move out, with the result that the project becomes almost totally Negro. To prevent segregated housing, administrators of housing projects are faced with what Mr. DeMarrais defines as a dilemma:

> "Should some individuals be denied access to public housing so that housing can be integrated or allocated fairly

between the races, or should all individuals be given equal access opportunity, with the probable result of segregated housing?"

To limit the choices which might otherwise be made, administrators have considered "quotas." Mr. DeMarrais distinguishes quotas based on total area population, on proportion of whites and non-whites among housing applicants, or on some other mathematically arrived formula from quotas based on the tipping point phenomena designed to keep a project integrated. He concludes that white quotas of the first type are constitutionally invalid, but a quota of the latter type may be valid because its object is the "beneficial purpose of achieving integrated housing."

Whether such a quota can survive will depend on whether the Supreme Court decisions, dealing with questions of racial discrimination, are read as prohibiting the use of race per se as a basis for governmental action, or only as prohibiting an invidious use of the racial classification by government. If the latter is the case, so-called benign quotas might survive the test of reasonableness although they would then face the test of individuality. The benefits of the constitutional protection of equal protection are said to run to individuals, and even if a governmental decision seems appropriate from the standpoint of the larger interests, which it adjusts, it may harshly affect an individual. In the benign quota cases, a Negro may be kept from a housing project so that the project can remain integrated. Without attempting to resolve these difficult constitutional issues, Mr. DeMarrais points out that the conditions under which such a quota could be used usefully from an administrative perspective are limited.

It could not sensibly be used if the "tipping point" is too low as measured either by percentage of occupancy or by proportion of non-whites applying for housing. Used in such a situation, the quota would become a means by which the segregationist-minded tenants could limit non-white occupancy. Furthermore, the quota could not be used in any situation where

the proportion of Negro applicants for housing was much higher than that of white applicants, for it would then become a means of allowing a high proportion of whites and a low proportion of Negroes into the project.

Thus the quota remains desirable as a timing device to integrate housing units where the tipping point is high enough to permit substantial numbers of Negroes into projects, and the proportion of Negro and white applicants is not too far from the proportion of residents which the tipping point would permit.

The problem remains, however, as to the policies which housing authorities administer if the "benign quota" cannot be used. The assumption that there may be "neutral principles" of admission is probably unfounded. Here, as in the de facto schools segregation situation, it appears the only thing that is forbidden the administrators is unconscious action. There must be conscious decisions in this area, because "no decision," in light of the history of segregation and tipping point phenomena, is apt to be a decision in favor of segregation. Once the agencies are aware that this is the consequence, they are no more entitled to ignore it than local school boards are entitled to ignore the fact that the neighborhood school concept may, in application, produce segregation. Hence, in the housing authority situation, too, it would seem there is a duty to take some action, however it may be defined or formulated (and it need not be established in any rigid sense), to see that by their decisions segregation does not result. The last study of racial composition in public housing in New Jersey indicated that in 1956, of the 1,119 buildings reported by 35 New Jersey authorities, 481 housed whites exclusively, 190 housed Negroes exclusively, and 448 were racially mixed. Since something less than half of the housing units were integrated (and since, nationally, non-whites occupy 46% of public housing units), the possibilities of continuing segregation patterns exist here. I agree with Mr. DeMarrais that an

investigation is in order to determine if, whatever their policies, the housing authorities within the state are contributing to continued segregation.

X. Conclusions — Politics and Sociology

Fifty years ago, the public policy of a state could be gleaned from a mass of judicial decisions and a few legislative enactments. The world has become infinitely more complex since then, and the methods by which law implements policy have proliferated. It is impossible to summarize the activities of the agencies we have studied in a few words. The operations themselves are so extensive as to make understanding and analysis difficult. We have examined only a few of the agencies and institutions in New Jersey which deal with the question of racial discrimination. These agencies — adjudicatory and rulemaking — are, in a relative sense, the simplest to understand and evaluate. We have not attempted to master the intricacies and subtleties of the operating agencies of state government, the educational system, the Urban Renewal Authorities, and the Public Housing Authorities. Nor have we examined the operation of federal agencies which have an impact in the area.

All of these agencies express, in their day-to-day activity, the operational meaning of the policies of the state concerning civil liberties. Hence they are all "too important to be left to the expert." The fact of the matter is that we do not have adequate understanding about how the modern state translates the policy decisions made on the formal level into operational terms.

The results of our examination of the facet of this question dealing with the policies concerning discrimination in New Jersey have been disappointing. Many of the difficulties have roots in the administration of the law and can be cured by changes in administrative technique. Some

of these changes will flow, and are already flowing, from the transfer of the Division on Civil Rights into the office of the Attorney General.

In a few instances, legislation is urgently needed. The areas of legislative need are largely financial. In connection with the problem of de facto segregation in the schools, sharp improvement in the quality of the school system is urgently called for. If the predominantly Negro schools were the subject of a crash improvement program by the state, the pressure for transfers and for correction of the racial balance might be reduced. Where such pressure exists, and improvement in racial balance is called for, the costs of such changes should be borne by the state, not by the local community. This, as I see it, is the most urgent legislative need in the area of race discrimination at the moment. Legislative appropriations to strengthen the Division on Civil Rights will also be necessary, if the Division is to undertake the type of law enforcement program that this report recommends. Additional investigative and legal staff will be necessary.

1. Implementing the Recommendation that the CRD become a Self-Initiating Agency

Our major conclusion, flowing from the sociological study of Negro attitudes toward the uses of law, is that a complaint-initiated process will not lead to the enforcement of the laws concerning discrimination. The governmental agencies concerned with race relations must act on their own initiative, if the law is to be enforced effectively. To adopt this position is not to solve all the problems of the agency, but to substitute another set of problems. In a proceeding based on a complaint, the complainant provides the impetus which pushes the case through to its conclusion. In a government-initiated proceeding, what pressures will serve the same function of forcing the case through to a conclusion?

Certainly an administrative staff in sympathy with the objectives and mission of the agency is of transcendent importance. This we have now. But even top level administrative enthusiasm is not sufficient. There are great difficulties in all organizations, private or governmental, in translating a policy from top administrative level into operational terms. Most administrators I know are happy if 50% of the policy changes they recommend are in fact put into effect.

In addition to the willingness of administration, there are other types of pressures which may take up the slack left by the absence of a complainant. The pressure for agency action generated by the risk of tort liability has been discussed (see p.100 supra). There is still another level of pressure to get the cases processed and decided which must be considered.

The agencies we have studied operate within the executive branch of the state government. Hence, their activities must be consistent with the concepts and policy formulations generally maintained within the executive branch and within government. The decision to act on agency initiative and to press cases vigorously involves a judgment that this is politically permissible and desirable. The role of interest groups in shaping this judgment is obviously very important. The role of the electorate is important, also.

But on that question, the findings of the Zeitz study leave one in a quandary. They suggest that the pronouncement of high policy, coupled with minimal enforcement, may have been politically correct, at least in a narrow sense. If the Negro community by half refuses to recognize that it is the victim of discrimination, it may not pay particular political attention to the problem so long, at least, as the proper speeches are made. The Zeitz study indicated that the Negro community considers the passage of laws relating to discrimination on the same level with prayer, as a vehicle for improving civil rights. Hence the politician may conclude

that he is under no more obligation to account for his performance than are religious institutions.

And yet, there are findings in the Zeitz study which must disquiet the politician.

In assessing these findings, the limitations of the study which are explained in the Zeitz Report must be kept in mind. The interviews were conducted during the winter of 1963-64, commencing shortly after the assassination of President Kennedy, and during the time when the National Civil Rights picture was much more prominently in the public mind than the state and local picture. It also should be noted that the list of political personalities presented to the respondents was limited, particularly with regard to state governmental officials.

	Which political party do you think is best for civil rights?							
	Newark		Essex Co.		New Jersey		U.S.A.	
	#	%	#	%	#	%	#	%
1. Republicans	10	8	11	9	12	10	15	12
2. Democrats	66	51	61	47	68	52	76	58
3. Other	1	1	-	-	-	-	-	-
4. None	21	16	21	16	20	15	17	13
X. Don't Know	25	19	30	23	23	18	16	12
Y. No Answer	7	5	7	5	7	5	6	5
	130	100	130	100	130	100	130	100

Which of these whites do you feel has done the most for the Negroes? Which one has done the least?				
	White Doing Most	White Doing Least	Ranking Order & Total (+1 most, -1 least)	
1. President Kennedy	78	10	1	+68
2. Chief Justice Warren	9	3	4	+ 6
3. Senator Case	9	2	3	+ 7
4. Attorney General Kennedy	26	6	2	+20
5. Governor Hughes	4	13	7	- 9
6. Senator Goldwater	-	19	8	-19
7. Governor Rockefeller	7	9	5	- 2
8. Senator Williams	1	5	6	- 4
9. Other*	8	4	-	
0. None	11	21	-	
X. Don't Know	7	25	-	
Y. No Answer	4	17	-	

* Of the eight "other" responses for whites doing most, 3 were for President Johnson, one for President Eisenhower, one for President Roosevelt, one for Mayor Wagner of New York, one for Mayor Addonizio of Newark, and one for Adlai Stevenson. Of the four "other" responses for whites doing least, two were for President Truman, one for President Eisenhower, and one for Governor Wallace.

Democrats must be disheartened by the relatively small majority which the party can claim by way of allegiance. Only 47-58% of the sample seemed steadfastly democratic. The concern of the Democrats must be that the remainder, though not Republican, could tip the political balance against the democrats either by not voting at all or by voting for a Negro party candidate.

New Jersey State Library

On the other hand, the republicans, although they have gained political credit for civil rights legislative proposals in this state, have but a token proportion of Negro support. If this proportion could rise, it could further cut into the democratic majorities in the North and strengthen the political power of the GOP. With the impending reshuffling of political power by redistricting, the Negro vote becomes more and more crucial to the GOP, hence the need to take action to win such political allegiance becomes clearer. The remaining uncertainties relate to the Negro propensity to vote which we have not studied.

Clearly, the Negro community is conscious of the power of the politician. More of them would turn to him in cases of discrimination than would turn to the CRD itself. (See Part III p. 27 infra.)

There is an additional political aspect to this problem. While most of the sample believed that the best way to improve civil rights was through getting a good education, and the next most extensive group favored praying and passing laws, there was nearly 20% who favored picketing. (See p. 64 supra.)There are also many who have nothing but contempt for the police. There are in these findings the seeds of violent change. What unfolding events could cause this facet of Negro attitude to expand is not clear at the moment. Our legislative process has, historically, recognized that when a segment of the community has risen to the boiling point of violence in a cause not condemned by law the development of lawful and effective channels to meet the demand is preferable to violence. We have the channels in New Jersey. The decision to make them effective remains to be made.

2. A Model for Law-Sociology Cooperation

This study may have interest from another perspective. For several years now, legal education has been concerned with the relationship

between legal education and those disciplines which deal with the life which the law seeks to regulate: economics, sociology and psychology, in particular. The interest in the relation of law and sociology at Rutgers is nearly ten years old. Professor Julius Cohen has co-authored one of the leading books in the area of interdisciplinary work, Parental Authority. Professor Thomas A. Cowan has, in his extensive writings and contacts, stimulated much thinking in the area. Out of a seminar involving both the law and sociology faculties of Rutgers has come a volume of essays, Evan, W., Law and Sociology, Free Press, Glenco, 1962.

In an essay prepared for that book entitled, Legal Process and Labor Law: Some Notes on the Relation between Law and Sociology 185, at 221-25, I suggested one way in which interdisciplinary activity between lawyers and sociologists could be made meaningful to both. What I said there provided the model for this study.

Some Implications for the Relationship between Law and Sociology

The discussion to this point suggests that the legal system is receptive to information regarding value and fact. Courts are aware that their decisions embody policy choices made when they are called upon to adjust conflicting values and interests. In making these decisions the courts seek an understanding of the characteristics and needs of the institutions being regulated adequate to the task of wise decision-making. The awareness of the importance of such understanding may lead them to defer to decisions made by those with greater familiarity with the institutions subject to regulation.

This pattern of thinking about legal problems is, of course, not confined to the courts. Lawyers trained to think in this mold fill many of the decision-making posts in the legal system as administrators or legislators. Furthermore, the nonlawyer in such capacity, by force of circumstances, must consider value choices and institutional consequences of his decisions. Thus our observations concerning judicial behavior hold, with differences depending on the role, for other participants in the decision-making process of the legal system. The receptivity of law to information about fact and value suggests general areas of law-sociology cooperation.

FROM LAW TO SOCIOLOGY: A SYSTEM OF VALUES

The sociologist may view the law as reflecting the value choices made in a particular context by an important institution of the society. This perspective may be useful to him because sociology, as a study, does not purport to make value judgments. It is within the range of his professional competence for the sociologist to investigate those values held by others. Thus the sociologist may wish to draw upon the legal system for evidence of those value choices which have been made. He may investigate the consequences of these choices to determine, for example, (a) the relation between the choice made by the legal system and the institution being studied; (b) the extent to which the behavior under study complies with the legal requirements; (c) the process of formulation and transmission of values; and (d) the probable consequences, in light of knowledge of institutional structure and function, of alternative choices that might be made by the legal system.

FROM SOCIOLOGY TO LAW: ASSISTANCE IN REACHING WISE DECISIONS

What has gone before should not be taken as a defense of the legal system. Not all judges are aware of, or capable of using, policy and institutional analysis in making particular factual choices; not all legislators respond to the needs of public policy; and not all lawyers are conscious of the breadth of the role of counsellor. In fact, the dominant motivation that leads me to relate law and sociology is the desire for tools that will improve the quality of the legal system. And these tools sociology has, albeit they have not yet been extensively used. For sociological examination of human behavior, in light of the problems posed by the legal system, can yield information that would be of inestimable value in making legal choices.

In a simpler age, judges may have carried in their life experience sufficient material to deal adequately with the problems presented by the cases that came before them. The material in the preceding section indicates that this is no longer true. A judge faced with a request that a Negro be admitted to participation in union activities may have no personal experiences that bear on the consequence of his issuing an order one way or another in the case. If he refers to works such as Greer's *Last Man In*,[50] he can develop some conception of the possible consequences of admission of minority groups to union activities and hence is in a better position to make a judgment in the case before him.

Similarly, in an action to enforce an individual employment contract, the judge may have no personal familiarity with the institutions that have developed concerning employment in the industry involved. Recourse to a work such as Vollmer's *Employee Rights in the Employment Relation*[50] may broaden his understanding of the institutional behavior he is called upon to regulate leading to a decision that is the wiser for having been made on the basis of fuller knowledge. . . . .

THE LEGAL DIMENSION OF SOCIOLOGICAL PROBLEMS

The relationship suggested here is close to that identified by Selznick as Stage II in the relationship between law and sociology.[51] He says:

> In sociology, the roughly defined area we call "social organization" remains a challenging frontier. In this field we attempt to identify the essential characteristics of different types of society, to locate the key human relationships that give a social order its distinctive qualities, to discover how major groups interact and what stable arrangements result. . . .
>
> . . . . .
>
> From the legal side, the important problems also suggest an emphasis on studies of social organization. . . . Thus an assessment of demands upon the legal system depends on what is going on within the major groups and in the relations among them. Whether modern

51. Philip Selznick, "The Sociology of Law," in Robert K. Merton, Leonard Broom, Leonard S. Cottrell, Jr., eds., *Sociology Today* (New York: Basic Books, Inc., 1959), pp. 118–124.

economic institutions can autonomously safeguard their members against arbitrary treatment and undue loss of liberty depends on the nature of participation and the dynamics of internal control. The sociological answer to this question inevitably affects the role of the courts. The potential achievements and vulnerabilities of both legal and nonlegal institutions are a proper and even urgent subject for sociological inquiry.

Selznick suggests that "sociology can contribute most to law by tending its own garden." I would only suggest that the sociologist may wish to define the boundaries of his garden by reference to the interest that the legal system has in its fruits. Certain aspects of any problem under study might disclose matters concerning organizational or institutional facts or values that could be utilized in the process of legal decision that we have examined. Sociologists may profitably decide to study what we may call the "legal dimensions" of the activity they are investigating, as well as those other characteristics which they have chosen to examine.

But how is the sociologist to identify the legal dimensions of such problems? He may seek this information by asking a member of a law faculty who shares concern for value, policy, and consequence, and who is interested in the legal problems of the area being studied. This information would, in all likelihood, be forthcoming with a minimum of interpersonal difficulty. It is not necessary to repeat the agonizing struggles of others to achieve deep understandings between law professors and sociologists in order for the sociologist to elicit the relevant insights. The sociologist needs the lawman to provide only enough information about the legal system so that the sociologist can identify the legal dimensions of his problem. Exit the lawman, who will re-enter later to use the sociologist's results in the nomal processes of legal decision.

The results of sociological inquiry that includes a study of the legal dimension would provide a fund of knowledge about human behavior and values, which apart from its possible contribution to sociological theory, would be of use to law because it was developed with those questions in mind which the legal system is likely to ask. This aspect of the relation between law and sociology seems likely to aid in the fashioning of wise legal decisions.

Thus the decision to conduct a sociological study of Negro community attitudes toward law and lawyers as a part of this review of New Jersey legal institutions is one manifestation of this continuous interest in the relationship. I think that this report demonstrates that there can be a direct and tangible payoff both to the legal system and to the development of sociological knowledge from this interaction of law and sociology. The basic sociological finding that the Negro community is not complaint oriented has provided a major basis from which to evaluate the performance of the various agencies. It has also demolished the thesis that it is lack of knowledge of the agency which has resulted in such a low level of complaint activity. These accomplishments demonstrate how, in this concrete instance, a fuller knowledge of the community can enrich and inform the legal system. In addition, the study has provided much valuable data on the attitude of the Negro community toward the legal system in general, and toward various types of persons who participate in its operation. The matters raised in the course of our investigation have suggested many additional questions which we hope will be the subject of additional inquiry.

The primary purpose of this study was to gather information concerning the attitudes of the Negro community toward the legal system which would be useful in making and evaluating administrative and legislative decisions concerning the enforcement of the Laws against Discrimination. The establishment of rigorous law-defined standards for measuring the validity of the data was not the primary purpose of the study. Obviously, the usefulness of the results is directly related to the user's view of the reliability of the information. Since users are largely law trained, there is some pressure to demonstrate that — as measured by lawyers' standards (whatever they are) — the data is reliable. This concern threatens to convert any substantive study into a methodological exercise. I believe it possible to persuade the law-trained mind that data which meets the

tests for validity and reliability established by sociology is itself immediately useful for some legal purposes without an "independent" evaluation.

The degree of reliability one expects of the data will depend on the use for which it is intended and the reliability of the basis for the decision without the data.

We intended to develop information for use in making and evaluating administrative and legislative decision concerning the enforcement of the anti-discrimination laws. This information is not intended as a substitute for a fact to be proved in litigation. No life, liberty, or property turns directly and solely on the information. Rather, its function is to paint the cultural backdrop against which the laws are to be administered. Necessarily, such a canvas must be painted with a broad brush, whether or not the brush is made of sociological stuff.

In the absence of sociological data, the administrators fill in their own picture of the cultural background of those for whom the law is intended. The administrators are largely white and, regardless of color, are of an economic class considerably above the community intended to be benefited by the laws. The likelihood that they will have personal knowledge of the behavior and attitude of this community is speculative. The administrators' personal experiences with the members of that community may well not be representative. Yet they will of necessity develop a perspective on the cultural attitudes of the relevant community based on their own personal experiences as a background for policy decisions. Sociological data in this area is a substitute or supplement to the personal hunch of the administrator. On this level, I am confident that if the sociological

tests for reliability of the data are met, immediate use can be made of the data without further independent evaluation. Since without the data the decisions are based on uninformed hunches or possibly unrepresentative experience, we, in the law, can here hardly turn down sociologically verified data.

PART II

AN ANALYSIS OF CASES CLOSED BY THE DIVISION ON CIVIL RIGHTS

DURING THE PERIOD FROM JULY 1, 1962 THROUGH JUNE 30, 1963

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Rutgers · The State University

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1. Acknowledgments

This study was made possible by Mr. George Phaus, Director, Mr. Jacob Levin, and Miss Marion Courtney, of the Division on Civil Rights.

2. The Activities of the Division Covered by this Report

This study embraces all of the enforcement cases closed by the Division from July 1, 1962 to June 30, 1963. This includes both formal and informal complaints. However, the study of the time for disposition of cases covers only formal complaints, as does the study of the types of remedies granted. During the period indicated there were four cases which went to a public hearing. These are considered separately.

3. The Cases Which Went to Public Hearing

No employment cases went to public hearing in the period studied. Three real property cases went to public hearing:

(a) Forest Hill Manor, in which a cease and desist order was issued in May, 1963;

(b) David v. Vesta Realty Co., in which a cease and desist order concerning discrimination in rental of apartment was issued in May, 1963, was appealed to the Bergen County Court, and reversed on grounds of unconstitutionality of the statute. An appeal from the County Court is pending;

(c) Birchwood at Brunswick, a housing case, consent order was issued in February, 1962.

One public accommodation case, Monachee Bar and Grill, was dismissed after hearing.

4. THE WORK LOAD OF THE DIVISION ON CIVIL RIGHTS

Cases Closed July 1, 1962-June 30, 1963

TABLE 1. Cases in which formal complaints were filed.[1]

	Total		Relief Granted[2]		No Relief Granted[4]		Racial Discrimination Total		Racial Discrimination Relief[2]		Other Discrimination Total		Other Discrimination Relief[2]	
	#	%	#	% all cases	#	% all cases	#	% all cases	#	% race cases	#	% all cases	#	% non-race
Employment	120	57	17	14	103	86	96	80	12	12.5	24	20	5	20
Housing	62	30	36	58	26	42	59	95	35	60	3	5	1	33
Public Acc.	28	13	17	60	11	40	22	79	15	70	6	21	2	33
	210	100	70	32	140	68	177	84	62	35	33	16	8	25

TABLE 2. Cases in which informal complaints were processed.

	Total		Relief Granted[2]		No Relief Granted[4]		Racial Discrimination Total		Racial Discrimination Relief[2]		Other Discrimination Total		Other Discrimination Relief[2]	
	#	%	#	% all cases	#	% all cases	#	% all cases	#	% race cases	#	% all cases	#	% non-race
Employment	28	56	8	29	20	71	23	82	7	30	5	18	1	20
Housing	12	24	6	50	6	50	10	83	5	50	2	17	1	50
Public Acc.	10	20	4	40	6	60	9	90	4	44	1	10	0	0
Total.....	50	100	18	36	32	64	42	84	16	38	8	16	2	25
Special Invest.	35		10	28	25	72								
TOTAL.....	85		28	33	57	67								

TABLE 3. Cases which went to public hearing.

	Total		Relief Granted[2]		No Relief Granted[4]		Racial Discrimination Total		Racial Discrimination Relief[2]		Other Discrimination Total		Other Discrimination Relief[2]	
	#	%	#	% all cases	#	% all cases	#	% all cases	#	% race cases	#	% all cases	#	% non-race
Employment	0	0	0	0	0	0	0	0	0	0	0		0	
Housing	3	75	3[3]	100	0	0	3	100	3	0	0		0	
Public Acc.	1	25	0	0	1	100	1	100	0	0	0		0	
	4	100	3	75	1	25	4	100	3	75	0		0	

TABLE 4. Total agency activity: Cases closed July 1, 1962-June 30, 1963.

	Total		Relief Granted[2]		No Relief Granted[4]		Racial Discrimination Total		Racial Discrimination Relief[2]		Other Discrimination Total		Other Discrimination Relief[2]	
	#	%	#	% all cases	#	% all cases	#	% all cases	#	% race cases	#	% all cases	#	% non-race
Employment	148	56	25	17	123	83	119	80	19	16	29	20	6	23
Housing	77	29	45	58	32	42	72	93	43	60	5	7	2	40
Public Acc.	39	15	21	54	18	46	32	82	19	59	7	18	2	29
	264	100	91	34	173	66	223	84	81	36	41	16	10	24
Special Invest.	35		10		25									
	299		101	34	198	66								

1. CRD initiated some 60 complaints concerning use of employment agencies during the period. All but 3 were dismissed. Those dismissed are not counted here.
2. Cases designated by CRD as "satisfactorily adjusted," or in which a stipulation of settlement or order was filed.
3. Two of the 3 cases were appealed to the courts.
4. Case dismissed for one of several reasons, including no probable cause, lack of jurisdiction, request of complainant, administrative reasons.

5. Analysis of the Data in Tables 1-4

(a) The agency is largely engaged in dealing with racial discrimination problems. Eighty-four percent of all cases involved racial discrimination.

(b) More than one-half of the agency's work load (56%) concerns employment discrimination, but in this area the agency gives relief in relatively few (17%) of the cases.

(c) The rate of relief is much higher in housing (58%) and public accommodations (54%), although it must be remembered that the definition of "relief" is that the agency considered the cases to have been "satisfactorily adjusted," or considered that a stipulation of settlement was acceptable. The over-all rate of relief is 34% which seems creditable, at least until the type of relief afforded is examined.

(d) The small numbers of cases which involved matters other than race preclude any meaningful comparison between the success of the agency in race and non-race matters.

(e) The similarity of the figures which deal with formal complaints and with informal complaints suggests that the study of the time for processing cases through the agency, which was conducted only with respect to formal complaints, may have some validity with respect to the entire operation of the agency. At any rate, formal complaints comprise two-thirds of the work of the Division (210/299 cases).

(f) The Division had, during the period under study, 10 field representatives of whom 5-1/2 investigated cases. Each investigator had, on the average, some 60 cases to dispose of during the year.

TABLE 5		Days from Alleged Discrimination until Complaint to CRD						
Type of Case	Total	1-10	11-20	21-30	31-40	41-50	51-60	60+
Employment	120	69	21	11	7	3	3	6
Housing	62	30	15	7	5	2	3	
Public Acc.	28	10	4	6	3	1	4	
TOTAL.....	210	109	40	24	15	6	10	6

TABLE 6. TIME AND MANNER OF DISPOSITION OF CASES BEFORE THE DIVISION, FORMAL COMPLAINTS DISPOSED OF July 1, 1962 June 30, 1963

-4-

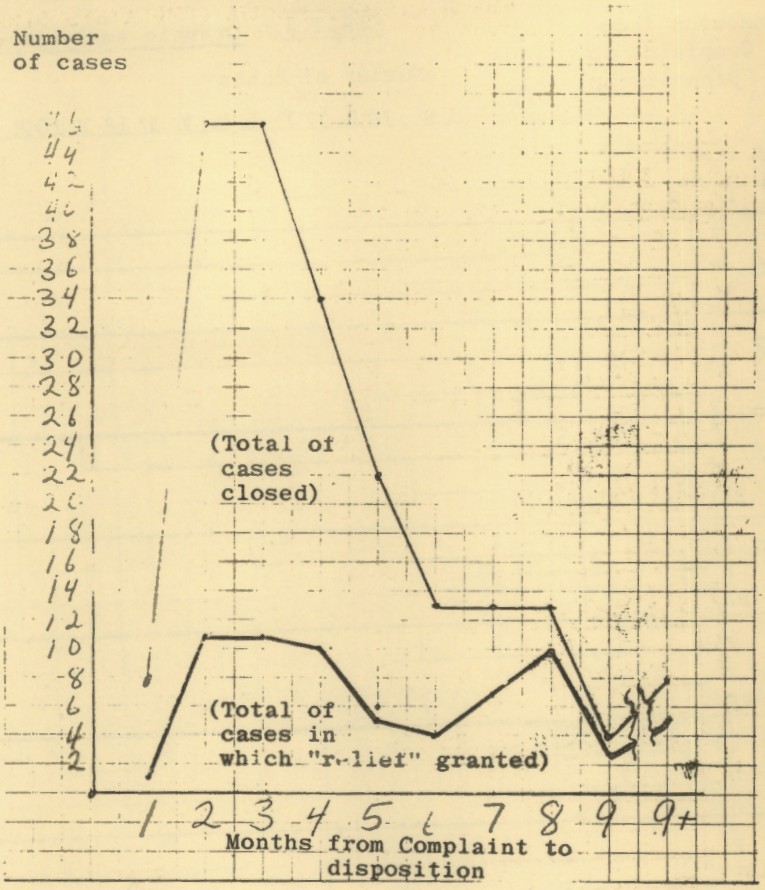
TABLE 6. TIME AND MANNER OF DISPOSITION OF CASES BEFORE THE DIVISION, FORMAL COMPLAINTS DISPOSED OF July 1, 1962- June 30, 1963

Months from complaint to disposition	EMPLOYMENT R ct	EMPLOYMENT NRct	EMPLOYMENT T ct	HOUSING R ct	HOUSING NRct	HOUSING T ct	PUB. ACCOM. R ct	PUB. ACCOM. NRct	PUB. ACCOM. T ct	TTct	TOTALS TR ct	%Tct	%Rct
1	1	5	6		1	1		1	1	8	1	4.3	.5
2	4 5	27 32	31 37	6	6 7	12 13	1	2 3	3 4	46 54	11 12	22 26	5
3	1 6	28 60	29 66	4 10	6 13	10 23	6 7	1 4	7 11	46 100	11 23	22 48	5 10.5
4	1 7	18 78	19 85	5 15	4 17	9 32	4 11	2 6	6 17	34 134	10 33	16 64	5
5	2 9	12 90	14 99	1 16	3 20	4 36	2 13	2 8	4 21	22 156	5 38	10 74	2.5
6	3 12	6 96	9 108				1 14	3 11	4 25	13 169	4 42	6 80	2
7	5 17	3 99	8 116		3 23	3 39	2 16		2 27	13 182	7 49	6 86	3
8		1 100	1 117	10 26	2 25	12 51				13 195	10 59	6 92	5
9				3 29	1 26	4 55				4 199	3 62	2 94	1
+9		3 103	3 120	4 33		4 59	1 17		1 28	8 207	5 67	4 98	2.5
no data				3 36		3 62				3 210	3 70	1 99	1
TOTALS	17	103	120	36	26	62	17	11	28	210	70	99	32.5
% Relief	14			58			60				33		

Explanation:

R- Relief (Stipulation of Settlement or "Satisfactory Adjustment"
NR-No Relief. Dismissed for some given reason, including no probable cause
T-Total
TT- cumulation of totals
ct- cumulative total in each category
TR-Total relief cases
%T-per cent of total cases
%R-per cent of total cases in which relief was granted

Chart 1. Graphic analysis of data from Table 6.



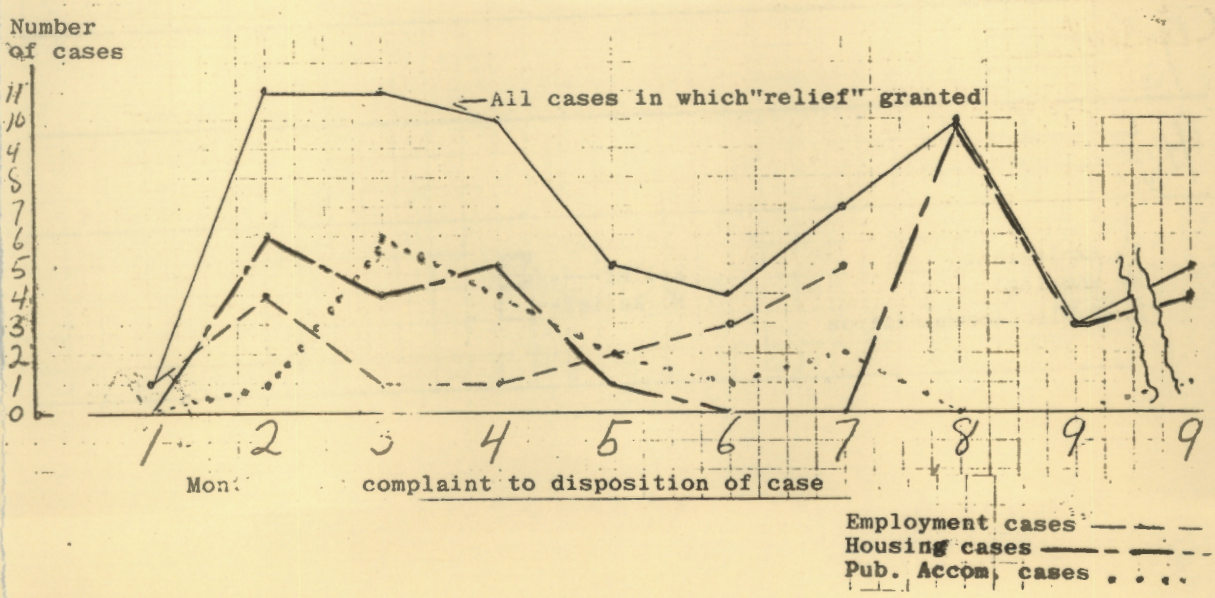


CHART 2. Graphic analysis of data from Table 6.

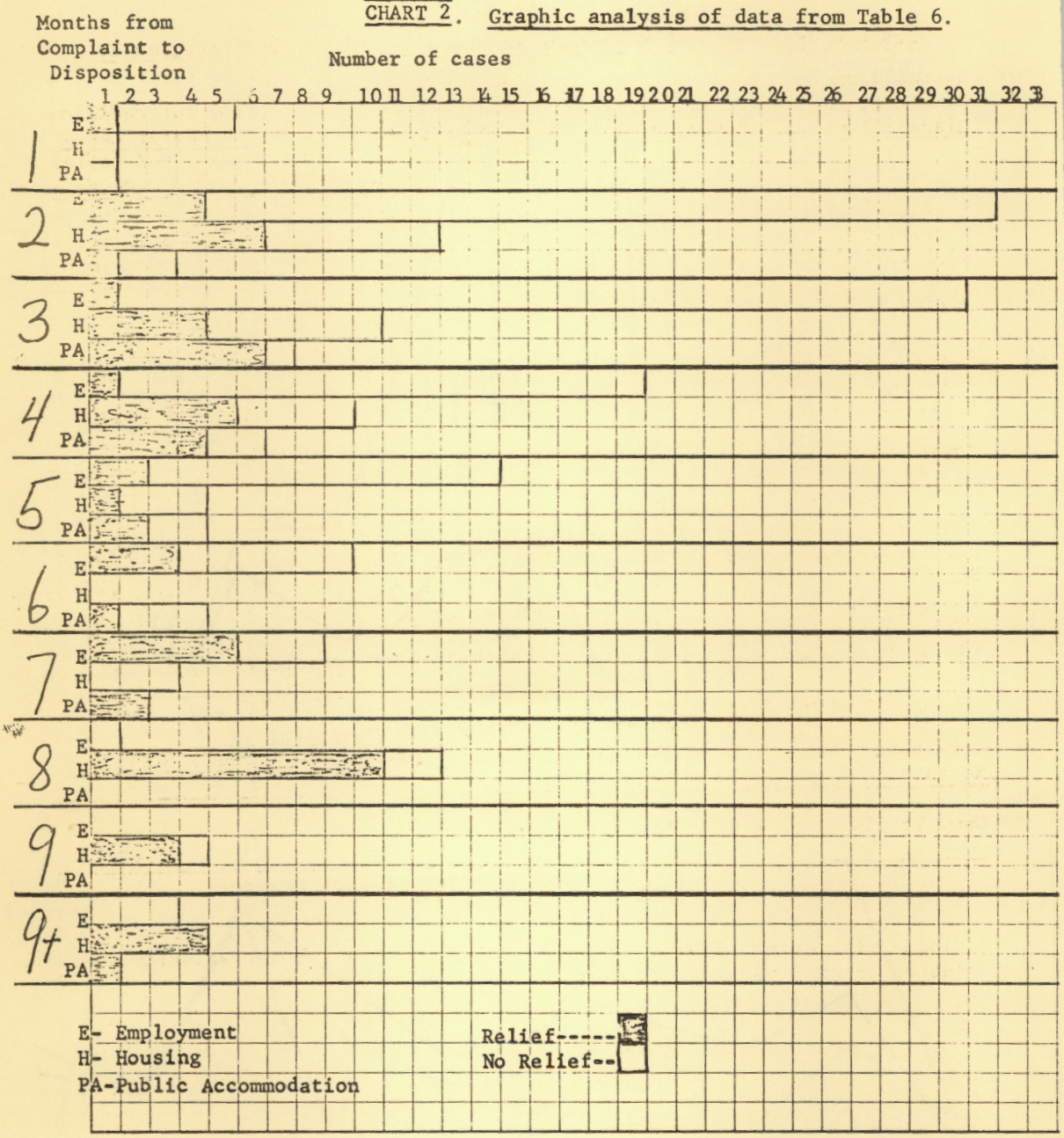


CHART 3

Graphic analysis of time factor in cases in which relief is granted.

Months from Complaint to Disposition	Total Cases Disposed Of		Total Cases in Which Relief Granted*		Time for Decision in Relief Cases	
	#	%	#	% All Cases	#	% Relief Cases
1	8	4.3	1	.5	1	1
2	46	22	11	5	11	16
3	46	22	11	5	11	16
TOTALS	100	48	23	10.5	23	33
4	34	16	10	5	10	14
5	22	10	5	2.5	5	7
6	13	6	4	2	4	6
TOTALS (3-6 mo.)	69	32	19	9.5	19	27
(1-6 mo.)	169	80	42	20	42	60
7	13	6	7	3	7	10
8	13	6	10	5	10	14
9	4	2	3	1	3	4
TOTALS (6-9 mo.)	30	14	20	9.5	20	28
(1-9 mo.)	199	94	62	29	62	88
More than 9 mo.	8	4	5	2.5	5	)11
No data	3	1	3	1	3	)
Cum. Totals	210	99	70	33.	70	99

* Closed with either a "stipulation of settlement," or "satisfactorily adjusted" according to the Division.

6. The Housing Cases

Total cases filed: 62

Filed cases - Race: 59

Relief: 36

TABLE 7. Cases involving real estate brokers, apartment operators, and developers. (60 cases of 62)

	Apartment	Real Estate Op.	Developer
Relief	18	16	
No Relief	15	10	1
	33	26	1

TABLE 8. Income of complainants as related to their success before the Division. (50 cases of 62)

	Relief			No Relief			Cum.
Income	Apt.	R.E.Op.	Total	Apt.	R.E.Op.	Total	Total
1,000-2,499	0	0	0	1	0	1	1
2,500-3,499	0	2	2	0	0	0	2
3,500-4,999	2	3	5	3	0	3	8
5,000-7,499	3	2	5	9	2	11	16
7,500-9,999	1	6	7	-	1	1	8
10,000+	6	4	10	2	3	5	15
No info.	3	2	5	3	3	6	11
TOTALS	15	19	34	18	9	27	61
Developer						1	1
							62

TABLE 9. Income Range, Type of Relief Sought and Granted, Housing Cases. (50 cases of 62)

Income Range	Total Cases	Cases with Relief		% Type of Case	
		#	%	Apt.	R.E. Op.
Under $7,500	27	12	43	70	30
Over $7,500	23	17	74	44	56
All cases with data	50	29	58	56	44

Analysis of data in Tables 7-9.

Of the 50 complainants for whom there is income information, 39 or 78% had incomes of more than $5,000 per year family income. This makes it clear that we are dealing with the upper income family in this area.

Relief was had in 29 of the 50 cases, for a rate of 58%, which is comparable to the over-all rate of relief (58%) in housing cases, and suggests that the data studied here is consistent with the over-all performance of the agency.

The rate of relief is much higher in cases involving real estate operators (relief in 17 of 23 for a rate of 74%) than in those involving apartments (relief in 12 of 27 cases, or 44%). As the following table will show, however, the relief in the real estate operator cases was much less substantial than in the apartment cases. The normal relief in the real estate agency situation involves a showing of listings to complainant. Normally, in the apartment situation, the relief includes a promise to offer an apartment to complainant.

Table 9 demonstrates that the rate of success is much higher (74% against 43%) for those with incomes of $7,500 or higher. This is largely because the higher income complainants were more frequently concerned with homes (56% as against 30% of the lower income groups) and the rate of relief was higher in the real property cases (74%) than in apartment cases (44%).

Breakdown of relief in housing cases.

HOUSING. Total: 36 Cases - 16 Involving Brokers, 18 Involving Apartments, 2 Others.

Apartment Cases:

10 Cases - Offers of apartment to complainant, but no other relief. In 5 cases, complainants accepted apartments.

1 Case - Letter of Intent to comply with law.

6 Cases - Stipulation of settlement or consent order.

1 Case - Relief not clear.

Broker Cases:

13 Cases - Broker offered to show listings to complainant, or offer for sale the house which had been denied.

1 Case - Letter to CRD indicating intent to behave legally in the future.

1 Case - Closing of Levittown case in which constitutionality of statute was sustained. Complainants purchased house.

1 Case - No explanation.

7. The Employment Cases (Formal Complaints Disposed Of)

TABLE 10. Type of complaints in employment cases.

Total cases filed: 120. Relief granted in 17, no relief in 103.

Grounds for Complaint	Relief	No Relief	Total
Race	12	83	95
Creed	3	7	10
National Origin	-	5	5
Age	1	-	1
No Info.	1	8	9

TABLE 11. Complainants classified by Age, Race, Relief. (R = Relief (NR = No Relief)

Age	Race			Non-Race			TOTALS		
	R	NR	Total	R	NR	Total	R	NR	Total
20-25	1	10	11	1	3	4	2	13	15
26-30	3	10	13	-	1	1	3	11	14
31-35	6	26	32	-	3	3	6	29	35
36-40	-	7	7	2	1	3	2	8	10
41-45	-	8	8	-	-	-	-	8	8
46-50	-	3	3	-	1	1	-	4	4
51-55	-	3	3	-	1	1	-	4	4
56	-	2	2	1	4	5	1	6	7
No data	2	15	17	1	6	7	3	21	24

TABLE 12. Complainants classified by Education, Race, Relief.

Education	Race			Non-Race			TOTALS		
	R	NR	Total	R	NR	Total	R	NR	Total
None	-	-	-	-	2	2	-	2	2
1-5	-	4	4	-	-	-	-	4	4
6-11	3	24	27	-	8	8	3	32	35
H.S. Grad.	4	20	24	2	-	2	6	20	26
Some Coll.	2	10	12	1	2	3	3	12	15
Coll. Deg.	1	6	7	-	-	-	1	6	7
TOTALS	10	64	74	3	12	15	13	76	89
No Info.	2	20	22	2	7	9	4	27	31
Cum. Total	12	84	96	5	19	24	17	103	120

TABLE 13. Industrial distribution of complaints.

Industry	Complaint v. Union			Complaint v. Employer			TOTALS		
	Race	Non-Race	Total	Race	Non-Race	Total	Race	Non-Race	Total
Mfg.	2	3	5	31	8	39	33	11	44
Distribution	-	1	1	3	1	4	3	2	5
Sales	-	-	-	9	-	9	9	-	9
Transportation	2	-	2	6	-	6	8	-	8
Construction	2	-	2	2	4	6	4	4	8
Service	2	-	2	15	6	21	17	6	23
TOTALS	8	4	12	66	19	85	74	23	97
Government				12	2	14	12	2	14
				78	21	99	86	25	111
No data on									9
									120

Analysis of data in Tables 10-13.

All complainants who received relief in race cases were between 20 and 35 years of age.

Of the 97 complainants for whom there is age data, 64, or 66%, were under 35, and 74, or 76%, were under 40.

Most non-whites going to the agency were under 40.

Agency jurisdiction is largely invoked by people with near high school degrees. Of the 89 cases for which there is data, 48, or 54%, were men with high school degrees or higher.

In the racial cases, of the 74 complainants, 43, or 57%, were high school graduates or better.

Of the non-racial classification, 5 of the 15 complainants, or 33%, were high school graduates or better.

The relief granted seems directly related to education.

In the race classification, 7 of 10, or 70%, of cases in which relief

was granted, were high school graduates or better.

In the non-race classification, all (3) of the cases in which relief was granted (total non-race cases - 15), or 100%, were at least high school graduates.

Of all cases in which relief was granted for which there is data (13), 10, or 80%, were high school graduates or had advanced training, yet this group accounted for only 54% of the complainants.

Of the relatively few cases in the employment area in which relief is granted, 17 of 120 for a rate of 14%, most of those cases for which data is available gave relief to the better educated (80% high school graduates), most economically desirable age group (20-35 years).

TABLE 14. Relief in Employment Cases.

EMPLOYMENT. Total: 17 Cases

14 Cases - Complainant offered employment or re-employment. In 9 of these, employment was accepted, and in 3 a stipulation of settlement was signed.

1 Case - Stipulation of settlement, but no offer of employment.

2 Cases - No relief identified on records studied.

8. The Public Accommodation Cases

TABLE 15. Profile of persons seeking and obtaining relief in Public Accommodation cases.

	Relief	No Relief	Total
Married	0	1	1
Single	16	10	26
Newark Res.	0	2	2
Female	2	4	6
Male	14	7	21
Race Cases	14	8	22
Non-Race	2	3	5

Analysis of data in Table 15.

The cases for which data was available involved only one married person of the 27 complainants. Most complainants were single males. Most (22 of 27) of the cases involved race.

TABLE 16. Relief in Public Accommodation Cases.

PUBLIC ACCOMMODATIONS. Total: 16 Cases

6 Cases - Change of policy of motel assumed because Negro field representative given room without identifying self as such. No further action.

4 Cases - Bathhouse-swimming club cases in which respondent agreed to change policy and sign consent order.

2 Cases - Motel operator offered complainant facility. Agreed to stipulation of settlement.

1 Case - Right to use trailer park established.

1 Case - Complainant allowed to play on golf course.

1 Case - Letter of apology to complainant.

1 Case - Letter to CRD promising compliance.

9. The Informal Special Investigations

TABLE 17. Informal special investigation, cases closed 1962-1963

Type of Case	Relief	No Relief	No Data	Total
Newspaper adv. with discriminatory overtones	4			4
Credit forms with improper question	1			1
Employment forms improper	2			2
Discharge or refusal to hire	1	2	1	4
Health club, refusal to admit	1			1
Real estate		2		2
Local educational activity (gov't)		2	1	3
Local gov't agency, employment	1			1
Local gov't agency, housing			3	3
Local gov't agency, licensing		1		1
Inter-state agency, employment		1		1
State agency, employment		3		3
Apartment		1		1
Neighbors objected to hiring Negro R.E. agent			1	1
De facto segregation in schools			1	1
Real property owners' ass'n won't admit			1	1
Pub. Acc.		1		1
				31
No information				4
				35

Interesting Cases: Claim of de facto segregation referred to Commissioner of Education; racial discrimination in connection with relocation under urban renewal dismissed as premature; site of public housing project related to de facto segregation problem adjusted; white harassed by neighbors for hiring Negro real estate man (situation calmed down).

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10. Reported Sources of Information about the Division

In the employment cases, the Division asks the complainant how he learned about the Division. Of the 120 employment cases, replies to this question were received as follows:

Urban League	9
NAACP	7
New Jersey Employment Service	8
Newspapers	4
Department of Labor	4
Union	2
Previous complaint	3
Relative-friend	19
County Human Relations Council	1
American Civil Liberties Union	2
Public knowledge	8
Phone	1
Brochure	1
NLRB	1
	70

11. Relationship Between the Number of Contacts by Field Representatives and Time of Disposition of Cases Before the Division

44 of 210 cases involved more than 12 contacts

38 cases involved more than 8 contacts

82 cases involved more than 8 contacts

TABLE 18. Extensive contact cases by type of case.

	9-11 Contacts	12+ Contacts	Totals
Housing	13	22	35
Public Accommodation	3	8	11
Employment	22	14	36

TABLE 19. Length of time of disposition related to number of contacts.

Time	No. of Cases of 9 or More Contacts
Less than 90 days	8
90-120 days (4 mos.)	16
120-150 days (5 mos.)	8
151-180 days (6 mos.)	8
181-210 days (7 mos.)	6
More than 7 months	36
TOTAL	82

Summary: Of the 82 cases, 8 were decided within 3 months;
38 were decided within 7 months;
36 were decided in more than 7 months.

PART III

SURVEY OF NEGRO ATTITUDES TO LAW

by Leonard Zeitz

PART III

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1. DESCRIPTION OF STUDY AND FINDINGS

SURVEY OF NEGRO ATTITUDES TO LAW

Introduction

Under the joint sponsorship of the Urban Studies Center of Rutgers University and the School of Law of Rutgers University, an investigation of Negro attitudes to the law was undertaken. This study became an integral part of a course designated as "Social Legislation," and given by Professor Alfred W. Blumrosen at the School of Law in the winter of 1963-1964. The framework of the course was an investigation into and an analysis of the New Jersey Law against Discrimination, and its enforcement agency, the New Jersey State Division on Civil Rights. As part of the requirements for the course, the thirty second- and third-year law students were to administer a questionnaire designed to elicit attitudes to the law.* In October, a pre-test interview schedule was administered by myself and Mr. Arthur Frakt. Fourteen Negro male heads of household whose children attended the first and second grades of the Trinity Methodist Church Sunday School were interviewed, through the cooperation of Reverend Kimroth Jefferson. The interview schedule was revised in accordance with the findings of the pre-test, and an interview sample was selected from the Negro population of the Southside High School district in Newark. The method of selection

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* While I accept full responsibility for all flaws and errors in the interview schedule, I am indebted to the following people, all of whom made valuable corrections, additions and deletions: Dr. Harry Bredemeier, Dr. Bernard Goldstein, and Dr. William Phillips, all of Urban Studies Center, Professor Alfred Blumrosen of the Rutgers University School of Law, and Mr. Arthur Frakt, Research Assistant, Rutgers University School of Law.

for interview was to choose, by random selection methods, 1 out of 10 Negro males who were fathers of at least one child registered for the first grade within the past year in four elementary schools located within the Southside High School district. The Southside district was chosen because it was the area undergoing intensive investigation by the Urban Studies Center, and any data would be additional material for the Center; the four elementary schools were chosen because Urban Studies Center had instituted intensive interview schedules in other elementary schools of the same district, and this data might add dimensions to the over-all purposes of their investigations; male parents of first graders were selected because it was felt that as males they might be more subject to discrimination, and as parents of young children they might more likely have been subjected to discrimination in the three large rubrics, housing, education, and employment, in the recent past, and hence be more likely to have vivid memories of such occurrences.

Through the cooperation of Mr. Frank Titus and Dr. Donald Campbell of the Newark Board of Education, and the four Principals of Cleveland School, Eighteenth Avenue School, Belmont-Runyon School, and Avon School, a total number of 217 eligible males was selected. Since we assumed that the Negro population might be highly transient, and difficult to locate, we anticipated an attrition of as many as 60 or 70 potential respondents, and set our sights for an optimum of 150 interviews.

In November, 1963, a letter explaining the purposes of the interview was mailed out to the entire potential group, and by the beginning of December, 1963, each student was assigned five potential respondents, the remainder to be used as a reserve pool, either by

myself or by students whose respondents were not available for interview. By mid-February, 1964, all interviewing ceased, and the total number of interviews was 130.

Attrition

As was anticipated, the attrition rate was high. Of 217 potential respondents, 130 (60%) were interviewed. Of the remainder, 59 (27%) were definitely counted out for a variety of reasons, and 28 (13%) could not be interviewed before our cut-off date.

We were under no illusions as to the difficulties inherent in locating and interviewing respondents from a population that has often been characterized as shifting and transient, where family relationships were often highly unstable. Compounding our difficulties, many interviewers reported that quite often no names were to be found on mailboxes, and that, as often, neighbors were uncooperative. Many people have, of course, reported in the past that fear or suspicion of what may be a person representing "authority" leads the Negro to an uncooperative attitude in locating neighbors, family or friends.

Table 1. Reasons for Non-interview

	#	%
Refused	19	22
Not able to locate	35	41
Non-Negro	2	2
Deceased	1	1
In prison	1	1
Hospitalized	1	1
Not available by cut-off date	28	32
	87	100

A review of Table 1 reveals that there were three primary factors leading to non-interview, and that they substantiate previous indications that a poor Negro community may be highly transient and suspicious of "authority." Of the 35 people who could not be located, 8 were unknown to registered mail, and an additional 9 were known to have been

divorced or separated, or had abandoned their families. Of the remaining 18, 10 had given phone numbers to the schools. In two cases phones had been disconnected, but a check of the other 8 showed that either the numbers were given incorrectly, or the person who answered that number denied any knowledge of the potential respondent. The 8 people who had no phones could not be traced at all by our interviewers. It is intriguing to note that of 35 people not located, 18 people seem to have disappeared completely, neither registered mail showing that they have changed their addresses, nor have individual been able to account for them.

We have a possible indication of suspicion of our motives in the group of 19 people who refused to be interviewed. In ten instances, appointments were made and then broken, and subsequent communications with these peopoe revealed increasing evasiveness as to availability for interview, until finally the individuals refused outright.

The third large group were those whom we have designated by the catchall title "Were not available by cut-off date." This group is, in reality, composed of a number of sub-groups. Ten people broke interview appointments and were still being pursued at the time of the cut-off date. Eight people had been called upon (in several cases as many as four times), but had not been at home at the time of the calls. Four people did not respond to a follow-up postcard, and six people were not contacted after the receipt of the first letter.

It might be argued that the attrition data implies that those remaining for interview represent a more stable segment of the Negro population of Newark, and, therefore, has not really tapped the most transient strata of this population. There is some justification in

this charge, but it is not a totally accurate picture for the following reasons:

1) Instability or transience is not simply measurable as a single point in time, but must be plotted for a number of points of time on a continuum. It is possible, therefore, that those males who were present for interview were in the process of leaving, or might have just returned. The single point in time is only a reference point to indicate relative stability (e.g., the family is an intact unit as of this moment), and not a more absolute stability (e.g., the family has been intact for n amount of time and shows no evidence of fissiparous tendencies).

2) Internal evidence shows within the group of actual respondents that seven were traced to new residences by former spouses, and that, additionally, at least four men enjoyed some form of visitation rights in the household, and might conceivably be termed by some name other than head of household.

3) Comparison of the characteristics of our sample in 1963-1964 with the characteristics of the non-white population of Newark in 1960 does not reveal major differences, hence it is unlikely that any important characteristic within the Negro community of Newark has been too much under- or over-represented.

Demographic Characteristics of the Sample in 1964 and Comparison with Characteristics of the Non-White Population of Newark in 1960

Table 2. State of Birth of Sample 1964, and of Non-White Population of Newark, 1960[1] (in percentages)

	Sample 1964	Non White Population 1960
Born in New Jersey	35	44
Born outside New Jersey	62	47
Unreported	3	9
	100	100

As can readily be seen in Table 2, our sample is somewhat over-represented by migrants from other states. A large majority, 66 of the 79 were migrants from southern states. This might suggest that our sample is a comparatively unacculturated group, but it is a debatable conclusion since only 16% have lived in Newark for five years or less, 20% have lived in Newark from five to ten years, 22% have lived in Newark from ten to twenty years, 12% have been here for over 20 years, and an additional 28% have lived in Newark all their lives. It is hardly possible to suggest a time period for the acculturative process to bear fruit when all acculturation factors such as exposure to the mainstreams of culture, amount of ghettoization, etc. are unknowns, but it is at least likely that given ideal access to free social intercourse,

1. Figures for non-whites of Newark, 1960 are derived from United States Census of Population 1960; New Jersey: General Social and Economic Characteristics, U. S. Dept. of Commerce, Bureau of the Census.

the respondents in our sample have been in Newark long enough to have had some of their original cultural patterns modified or altered.

Table 3. Annual Family Income of Sample, 1964 and of Non-White Population of Newark, 1959[2] (in percentages)

	Sample 1964	Non White Population 1959
Under $5000	48	58
$5000 and over	41	42
Not reported	11	-
	100	100
Median income	$4800	$4491

Table 3. is somewhat obfuscated because of the number of respondents refusing to divulge their incomes to us, but the generalized figures are not inconsistent with national trends that suggest some financial gains for Negro families. Perhaps our best method of viewing this is to contrast the family median incomes which shows a differential of a little more than $300 over a five year period, and is in keeping with the general wage increases that labor has received over this period.

As for employment, 88% of our sample was employed and 12% unemployed, which is almost identical to the U. S. Census figures for non-white males of Newark, 14 years and older in the labor force: 87% employed, 13% unemployed. It is suggested therefore, that while those employed are making gains (although not necessarily commensurate gains with the white labor force), the substantial members of unemployed people remains

2. Figures for non-whites of Newark 1959 is derived from United States Census of Population 1960; New Jersey: General Social and Economic Characteristics, U. S. Department of Commerce, Bureau of the Census.

fixed. This would imply an increasing social distance between the "haves" and the "have-nots" within the Negro community itself. It is of course obvious that such a thesis is supportable only if the same people unemployed 5 years ago, are substantially the unemployed people of today.

Table 4. Occupation of Employed in the Sample 1964 and Occupation of Employed non-whites in Newark 1960[3] (in percentages)

	Sample 1964	Non White Population 1960
Professional, Technical	5	2
Managers, Officials, Proprietors	1	2
Clerical	8	6
Sales	1	2
Craftsmen, Foremen	30	10
Operatives	22	34
Service	10	10
Laborers	23	17
Not reported	-	17
	100	100

As in previous tables, table 4. is somewhat clouded because of a high percentage of unreported occupations. It is clear, however, that barring unforeseen reversals, that the first four, and the last two categories are substantially similar, and that the two categories of dissimilarity are Craftsmen, Foremen where our sample is over-represented, and Operatives where our sample is under-represented. Since it is

3. Figures for non-whites of Newark 1960 are derived from United States Census of Population 1960; New Jersey: General Social and Economic Characteristics, U. S. Dept. of Commerce, Bureau of the Census.

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unlikely that in migration or job advancement in the past 5 years could have totally accounted for these dissimilarities, other factors must be at play. It is possible that our sample is biased in terms of occupational status, or it is possible that in reportage our interviewers were at fault. The interviewers were instructed to probe for specific tasks, but failed to do so with any regularity, hence reportage of occupational status was quite often limited to a word or phrase, which the present writer was then forced to interpret as best he could in terms of census definitions of occupational status. Hence while it may be that the sample has an occupational bias, it is as likely that reportage flaws account for the differences.

Table 5. Educational Status of Sample 1964 and of Non-White Population of Newark 1960[4] (in percentages)

	Sample 1964	Non-White Population 1960
None	8	3
Did not complete H.S.	55	75
Completed H.S.	27	16
Some college or better	9	6
Not reported	1	-
	100	100

Since Table 5. census figures include females, we may account for discrepancies by their inclusion. It is probable that lower income females will be more likely to receive some education, but will have less

4. Figures for non-white population of Newark 1960 are derived from U.S. Census of Pop. 1960; New Jersey: Gen. Soc. & Econ. Characteristics, U.S. Dept. of Commerce, Bureau of the Census. It is to be noted that the census data refers to people 25 years of age and older, and includes females.

incentive to obtain a high school diploma or go to college because of job opportunities for young women; males from this group are probably more likely to need a greater amount of education in order to obtain employment.

Table 6. Living accommodations of Sample 1964 and of Non-White Population of Newark 1960[5] (in percentages)

	Sample 1964	Non-White Population 1960
owner occupied	12	13
renter occupied	88	87
	100	100

Table 6. suggests that there has been little or no difference in living accommodations patterns for Newark Negroes in the past 5 years. Whether this is due ot financial difficulties, accessibility or availability of property, or other reasons, is uncertain. As will be demonstrated later, however, it is certain that the sample group as a whole, does not conceive of itself as home-owners.

Table 7. Rent per month per household for the Sample 1964 and the Non-White Population of Newark 1960[6] (in percentages)

	Sample 1964	Non-White Population 1960
under $50.00	10	12
$50.00 to $79.99	38	43
$80.00 and over	46	45
Not reporting	6	-
	100	100
Median rent	$79.42	$77.00

5. Figures for non-white pop. of Newark 1960 are derived from U.S. Census of Housing 1960: New Jersey, U.S. Dept. of Commerce, Bureau of the Census.

(fn. 6 typed on next page)

As with ownership pattern, we find that our sample is almost identical with the census data on rents of 4 years previous. The median rent shown an approximate $2.50 increase in the past 4 years, which probably understates general rent increases, but is not inconsistent with the fact that 21% (28) of our sample lived in public housing where rent increases reflect changed socioeconomic conditions rather than the market value of apartments.

Other aspects of housing are not comparable because of the Census inclusion of single persons, aged living by themselves, couples without children, and widows. Other housing data, however, on our sample includes the following: only 3% live in three-room apartments (none live in smaller apartments), 35% have four rooms, 34% have five rooms, and 28% have six or more rooms. While this might suggest adequate or even spacious accommodations, family size precludes any such conclusion. Indeed 56 persons (43%) in our sample reported that they felt themselves to be over crowded in their residences. In this sample of 130 households, there was a reported population of 780, which gives an average of 6.0 persons per household unit. Only 3% had one child living with them, 21% had 2 children, 24% had three children, 20% had four children, 12% had five children, and 20% had 6 or more children, all residing with the couple. Additionally, 16 other relatives or friends were incorporated into the household units of our sample.

That this large family pattern will continue to prevail would seem evident from the age of our sample. The median age is 34.5, 26% are between the ages of 20 and 30, and 41% between the ages of 31 and 40. An

6. Figures for non-white pop. of Newark 1960 are derived from U.S. Census of Housing 1960: New Jersey, U.S. Dept. of Commerce, Bureau of the Census.

additional 15% is between the ages of 41 and 45. If we assume that there is little likelihood of a man becoming a father after the age of 45, then only 16% are statistically (although not biologically) excluded, and 82% are still likely to become fathers again.* Another indicator of the extent of the large family pattern found in our sample is that 47 children were reported as living outside the sample household for a variety of reasons. If we add them to the number of children in the household, we find that the average number of children is 2.6 per household, with a minimum of 80% of the males still capable of procreating.

As was anticipated, the sample leaned towards the Baptist church, 48% being members of this denomination; 12% were Methodist, 13% simply listed themselves as Protestant, 8% belonged to "store-front" churches, 2% were Jehovah's Witnesses, one respondent said he planned to join the Black Muslims, and was so listed. An additional 9% said they had no religious affiliation and 7% refused to answer the question. Church attendance is frequent: 30% attending weekly or more frequently, and another 30% attending approximately monthly. Only 14% reported that they never attended church services. In response to the question, "Apart from church going, how important would you say religion is to you?", a majority (62%) said it was very important and 24% said it was fairly important. Another 12% thought it was not important. Comments such as the following were frequent for those finding religion very important:

> "I try to go where God is. [Probe] I want to live a God-fearing life and never have no trouble."

---

* 2% did not give their ages.

"It's what keeps a man going. Faith. Faith in an after life and in God's changing men's hearts."

". . . it's my hope for the future."

For those finding religion fairly important, typical comments were:

"It's not my whole life like those fool gospel types but it gives a man and his family a sense of decency and dignity - and values."

"For my wife it's important. For me, I'd rather loaf Sundays. I guess it's good for the kids."

Those who thought religion not important tended to be more terse:

"I got my own troubles."

"I just goes my own way."

Affiliation with a large number of voluntary organizations has often been equated with white middle-class behavior.[7, 8] If this is indeed the case then our sample is conspicuously lacking in middle-class memberships.

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7. Wright, Charles R. and Herbert H. Hyman, "Voluntary Association Memberships of American Adults: Evidence From National Sample Surveys," American Sociological Review, vol. 23, 1958, pp. 284-294.

8. Reissman, Leonard, "Class, Leisure, and Social Participation," American Sociological Review, vol. 19, 1954, pp. 76-84.

Table 8. Organizations and Affiliation of the Sample (in members)

Action Groups (CORE, NAACP, etc.)	15
Church Groups (excl. church membership)	21
Labor unions	60
Social groups (bowling, cards, etc.)	14
Fraternal groups (Masons, Elks, etc.)	14
Professional Groups	5
Special interest (stamp collectors, etc.)	9
Political clubs	4
P.T.A.	4
None	43
No Answer	2
Total organizations and affiliations	146

As can be seen by Table 8, one of three respondents belongs to no organization. The largest single group is affiliated with labor unions, but since unions are hardly in the nature of voluntary organizations, we find that our respondents belong to a total of 86 voluntary groups. If we take an average for only those belonging to such groups, the average number of groups per respondent belonging is 1.01, whereas if we include the entire sample (excluding the two non responses), the average drops to 0.67, well under one voluntary affiliation per respondent.

The voluntary group with the largest membership is church groups of one sort or another, not surprising in view of the large numbers of religiously oriented respondents. What is a bit surprising is the paucity of membership in Negro action groups. About 12% (15) of our sample is affiliated with such groups, but only two of these respondents are active, and 13 are nominal members, contributing money on occasion, and with little more than token enthusiasm. Other groups which reflect

middle-class membership such as P.T.A., political groups and fraternal orders are not heavily represented in our sample.

The above is a simple sketch of the demographic characteristics of our sample and a comparison with the non-white population of Newark as recorded in the Census data of 1960. The data suggests the relatively low socio-economic status of the sample, which is in accord with published figures for the non-white population of Newark.

Comparison of Newark's Non-White Population with other New Jersey Concentrations of Non-Whites

If the sample which substantially represents Newark's non-white population is also to be considered representative of the state, then it is necessary to contrast Newark's non-white population with other non-white centers in New Jersey. I have selected those urban centers with the largest concentrations of non-whites.

Table I. Urban Places with Largest Concentration of non-white population, 1960[1]

Newark	137,949
Jersey City	36,740
Camden	27,776
Trenton	25,645
Atlantic City	21,336
Paterson	21,153
Elizabeth	11,789
Total	282,388

It must be noted immediately that Newark's non-white population accounts for 49% of the total non-white population in these 7 urban centers. It is evident, then, that there must be some immediate difference between Newark's non-white and other New Jersey non-whites simply on the basis of most intense urbanization. Other obvious differences occur: Trenton and Camden are in the southern part of the state, Atlantic City is on the coast, the others are in the northern part; Trenton is the state capitol, Atlantic City is a resort city, the others are industrial centers; the southern cities are influenced

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1. 1960 Census of Population

heavily by proximity to Philadelphia, and the northern cities fall into the orbit of New York City. With these substantial differences in mind, we can now contrast the seven centers by certain characteristics obtainable from the 1960 Census of Population[2] and of Housing.[3]

Table 2. Comparison between Newark's Non-White Population and the non-white population of six selected New Jersey Urban Centers, 1960, by selected characteristics (in percentages).

Characteristics	Nwk	Atlantic City	Camden	Elizabeth	Jersey City	Paterson	Trenton
Place of birth							
Born outside N.J.	47	50	39	48	44	48	51
Income							
Under $5000	58	69	63	56	59	60	56
$5000and over	42	31	37	44	41	40	44
median income	$4491	$3314	$4220	$4585	$4456	$4335	$4602
Male Labor force 14 years of age and older							
employed	90	88	93	92	92	89	90
unemployed	10	12	7	8	8	11	10

2. Figures for non-white population of Newark 1960 are derived from U.S. Census of Pop. 1960; New Jersey; Gen. Soc. & Econ. Characteristics, U.S. Dept. of Commerce, Bureau of the Census. It is to be noted that the census data refers to people 25 years of age and older, and includes females.

3. Figures for non-white pop. of Newark 1960 are derived from U.S. Census of Housing 1960: New Jersey, U.S. Dept. of Commerce, Bureau of the Census.

Characteristics	Newark	Atlantic City	Camden	Elizabeth	Jersey City	Paterson	Trenton
Living Accommodations							
Owner occupied	13	32	46	22	18	13	46
renter occupied	87	68	54	78	82	87	54
Rented apartment							
Under $50	12	28	26	11	18	8	14
$50 to $79.99	43	50	50	46	58	39	36
$80 and over	45	22	22	43	24	53	50
median rent	$77	$62	$62	$76	$66	$81	$80
Education							
none	3	2	1	3	4	4	3
did not complete high school	75	76	84	73	75	79	74
completed H.S.	16	15	11	19	15	13	16
some college or better	6	7	4	5	6	4	7
Occupation of Employed							
Professional, technical	2	2	3	2	3	2	3
Mgrs, Officials, propriators	2	4	2	2	2	1	2
Clerical	6	5	7	4	6	5	6
Sales	2	1	2	1	1	1	1
Crafts, Foremen	10	9	13	10	10	11	10
Operatives	34	19	34	39	36	39	33
Service	10	38	14	12	12	6	15
Laborers	17	12	17	19	21	19	20
Not reporting	17	10	8	11	9	16	10
	100	100	100	100	100	100	100

Of the seven characteristics examined, we find virtually full agreement in five: place of birth, income, employment, education, and type of occupation; there is disagreement in two characteristics: living accommodations and rents paid for apartments. It is therefore clear that the differences that do emerge are essentially ecological, that is they relate the individual to his geographic locale, whereas the similarities that occur in such important demographic characteristics as employment rate, type of occupation, and educational level are of a more fundamental type and, suggest a basic similarity between the Negro population of Newark and the Negro population of the other urban centers in New Jersey.

If we pursue the matter further we may note that there are virtually no differences between Newark's Negro population and the Negro populations

of Elizabeth, Paterson, and Jersey City; slight differences between Newark's Negro population and the Negro population of Trenton, and these are only ecological differences; some differences between Newark's Negro population and the Negro populations of Camden and Atlantic City, and most of these are ecological by nature. (As an example, for occupation of employed non-whites, Atlantic City has far fewer operatives in proportion and far more service employees in proportion than has Newark, but Newark's occupational breakdown is consistent with the breakdown for all the other urban centers. The difference, therefore, must be unique to Atlantic City's set of circumstances, and may be identified in terms of this city's preponderance of hotel and restaurant jobs as befits such a resort center.)

The statistical method known as the chi-square test was used to further determine whether or not Newark's non-white population was similar to other non-white urban center populations. To accomplish this, I chose, for the sake of greater accuracy, to contrast Newark with the total of the other urban centers and with each individual urban center. Without reproducing the figures, the following was ascertained:

Table 3. No differences and significant differences for Newark, contrasted with 6 urban centers in N. J. by selected characteristics.

Characteristic	Newark - 6 urban Centers	Newark-Individual Centers
1. Place of Birth	No difference	Significant difference-Camden
2. Income	No difference	Significant difference-Atlantic City
3. Employed males	No difference	No difference
4. Living accommodations	No difference	Significant difference-Atlantic City " " Camden " " Trenton

Characteristic	Newark - 6 urban Centers	Newark-Individual Centers
5. Rent for Apts.	No difference	Significant difference-Atlantic City Significant difference-Camden
6. Education	No difference	No difference
7. Occupation of Employed	No difference	No difference

It is evident that while these are minor differences between Newark's non-white population and the non-white populations in some of New Jersey's other urban centers, overwhelmingly, these populations are similar. Since our sample was representative of Newark's non-whites, then by extension this sample is also representative of New Jersey's non-white population living in Urban centers. Since the overwhelming majority of New Jersey's non-whites reside in these centers, then the sample may be considered to be representative of the majority of the state's non-whites.

, Education, Problems of Employment/and Housing

The previous demographic characteristics cited give us a base from which to make comparisons and from which to relate our sample to other groups, but which would hardly prepare us for understanding attitudes to the law. In order to accomplish this latter, a number of questions was asked in the three generalized rubrics, employment, education, and housing. These questions were designed to elicit, hopefully, problems where recourse to legal procedure might be applicable, or where racial discrimination might be a factor.

Employment. In response to the question, "Do you have any special training for a job that you haven't used?" 39 (30%) said "yes," and 90 (69%) said "no." Pursuing those who said "no", we asked, "Have you ever thought of trying for some special training?" Of the 90 for whom this question was applicable, 34 (38%) answered "yes", and when asked, "Have you done anything about it?" 11 (32%) of these 34 answered "yes". Parenthetically, responses to the last questions were interpreted most liberally, hence when a respondent reported, "Well, my wife and I talked about it," we considered this to be a "yes" response.

Thus we see that many in our sample, while being largely untrained or unskilled, nonetheless make little effort to remedy this situation. We find a reeinforcement of this pattern of generally low skills in the fact that 73 (56%) belong or have belong or have belonged to a labor union, and that only 8 (11%) of these 73 report that their union offered special training courses. This contrasts with their responses to the question, "Looking at the job situation in the U.S. today, how do you think you will do in the job market in the future?" Sixty-two respondents (47%) thought they would do much or a little better and 53 (41%) thought they would do the same or worse. For those who were "optimists," 42% gave as their reasons either their present skills and competences or felt they would receive additional training while 29% reported a civil rights progress that would be beneficial; for the "pessimists", 58% reported lack of skills and training or dead-end jobs, while only 8% felt that civil rights failures made their job situations dim.

In summary, the sample population has generally low job skills and little opportunity to develop new skills. There was a basic distinction between "optimists" and "pessimists" in future job opportunities. Those who were optimistic tended to link opportunities for increased training with civil rights progress (respondents were not confined to one reason), while those who were pessimistic were aware of their lack of skills, but made little or no association with any civil rights failure.

Education. Education was seen by our sample as of extreme importance. An overwhelming 92% would have liked more education than they had received. 7% thought that they had had enough and only 1% would have preferred much less schooling. (The last represents a single extreme case of Philistinism. This respondent felt that his two years of formal education cut that many years from his money earning potential, and hoped that his children would enter the job market with the same alacrity as he had.) The two most frequent reasons given for wanting additional education was "better jobs" (43%), and "more money (17%), while substantial numbers felt it was important for success (7%) or for future security (7%). Other considerations were important too: 10% felt that education broadened one's outlook, and 8% felt it gave one status. Only 2% reported that it helped to defeat discrimination.*

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* Responses to later questions in the interview suggest that this figure is far too low. The specific questions pertaining to this response, and the possible explanation for the seeming paradox will be discussed below.

Another strong response to education is seen in that of 84 respondents who had not completed High School, 62 (74%) felt that they wanted to reach this status, but as in the case of the unskilled, only 3 (5%) had ever done anything about it.

The respondents were asked what they disliked about the schools that they attended, and what they disliked about the schools that their children attended. Table 9 compares to the two groups of complaints.

Table 9. Comparison of Parents' Dislikes with Their Schools and with their Children's Schools

Dislikes	Parents	Children
Teachers	6	7
facilities	8	14
segregation	10	19
counselling	2	3
transportation	4	1
overcrowding	-	19
tough neighborhood	4	-
other	1	1
nothing wrong	86	70
don't know	-	1
no answer	3	10
never went to school	11	-

Of immediate note is that 49 (37%) respondents found nothing wrong either with their schools or with their children's schools. More people, however, complained about their children's schools than about their own school, and when "complainers" reported their dislikes they averaged more complaints about their children's schools (1.31 dislikes per "complainer") than about their own schools (1.17 dislikes per "complainer.")

Of specific interest to us is the fact that the number of complaints about de facto segregation in the children's schools is almost double the number of complaints of a similar nature about the parents' schools. Since the parents are to a great extent, rural southerners, the above suggests an increased awareness as a result of either the more liberal northern climate, and/or the more liberal times we live in. To these conjectures, may be added the fact that as education is increased, awareness of education problems is increased. In our overall sample, a little less than 1 out of 2 respondents complains about their children's schools, but we also find that only 1 of 11 with no education records a complaint, while 4 of 5 with a high school or better education, records such a complaint. Awareness of educational problems increases as amount of education increases.

In summary, there is a strong recognition of the importance of education coupled with an inability to seek for a higher, sought after educational level. The value of education is primarily viewed as a practical means of obtaining more money. Significant numbers do not view their schooling or their children's schooling as in any way inadequate, but significant numbers also find such inadequacies, and many complain of de facto segregation in their children's schools. Awareness of educational problems increases as amount of education increases.

Housing. Persistent report of the sub-standard dwellings and run-down neighborhoods which Negroes inhabit are essentially confirmed by Table 10.

Table 10. Apartment problems and neighborhood Problems as reported by Sample.

Apartment		Neighborhood	
Complaint	#	Complaint	#
Too crowded	56	Too crowded	56
Rent too high	56	Noisy	66
Poorly heated	41	Dangerous	68
Dirty or unsanitary	31	Run-down	69
Little space	29	Shopping poor or hard to get to	16
Broken or cracked walls, floors or ceilings	42	Shopping too expensive	35
Poorly ventilated	23	Transportation poor	14
Mice, rats, or other vermin or insect pests	54	Other	11
Other	6	None	24
None	26		
No answer	1		
Total Complaints	338	Total Complaints	335

Only 5 respondents had no complaint either about their apartments or their neighborhoods. Those finding reason for complaint averaged 3.28 apartment complaints and 3.13 neighborhood complaints. The largest sources of complaints about apartments were crowded conditions, high rents, and vermin infestation, all of these being reported by 4 of 10 respondents; the largest source of complaints about neighborhoods were noise, danger*, and general run-down conditions, all of these being reported by 5 of 10 respondents.

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* - Many complained of a lack of police protection and reported incidents of callousness and apathy on the part of the police. One pithy response was, "It takes so long, you'd think they was coming from Trenton."

The respondents were asked, "Considering all things, how easy would you say it is for you to get a good apartment in a good neighborhood? How about a house?" Approximately 2 out of 10 thought it would be easy or very easy to obtain either an apartment or a house, approximately 7 out of 10 thought it would be hard or very hard to obtain an apartment, and 6 out of 10 thought it would be hard to obtain a house. In both instances, substantial numbers said they did not know how easy or hard it would be. A probe as to what factors contributed to ease or difficulty of obtaining such residence revealed few responses singling out race as a factor. Only 8% mentioned race in connection with an apartment, and 11% mentioned race in connection with a house. Overwhelmingly, economic factors were seen as most important, and as many people as those who saw race as a factor saw the size of their family as a factor.

In response to a question about future chances for better housing, there was much optimism, 62% feeling they would do better or much better, and 26% feeling they would do about the same, a little worse, or much worse. Of the "optimists," 23% viewed their gain as related to a decrease in discrimination, 50% saw a building boom as a sign of hope,* and 28% felt they would have more money, or indirectly have more money through more training and education. Of the "pessimists," 15% felt that discrimination persisted, 32% complained of lack of money, 12% objected to public housing, 9% would have liked public housing but earned too much, and 9% thought any building increase was not for them.

In summary, the sample views their apartments and their neighborhoods with a good deal of dislike. Action to ameliorate conditions

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* - Incorporated in this 50% figure is a 17% figure representing those who specified the increase in public housing.

are rarely mentioned other than the hope of moving away to a better neighborhood or apartment. The sample views their housing problem as more likely to be directly related to their income status, or to other social factors (i.e., amount and type of building programs), rather than to their race. The sample tends to view their general educational, occupational, and residential level with a good deal of dismay. Up to this point in the interview, the question of race has not been brought up directly, and only a minority relate race to their difficulties or see improved racial relations as the key to their optimism about the future. Problems of housing and employment are related to low scholastic attainment or other lack of skills, and emphasis is placed upon a hope for the future for their children in terms of educational attainment. Approximately 20% feel that in order to make good, their children need a high school education and an additional 72% feel that college education is needed.

Attitudes to Discrimination and the Division on Civil Rights

Up until this point in the interview, no specific questions of race have been brought up by the interviewer. The rationale for this lies in the highly complex question of interviewer - respondent rapport. It was felt that a direct or frontal assault by a group of white middle-class interviewers* would cause a group of essentially lower-class Negroes to retreat or withdraw into a psychological shell. The schedule was created, therefore, with an effort to discuss problems which might be related to race to be brought up at first by the respondent, either timidly or tentatively, or perhaps, later hostilely or aggressively as a response to the supposed obtuseness of the questions. After the large

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* - Of the 31 interviewers, 2 were Negro but as law students were certainly middle-class.

rubrics of housing, education and employment had been discussed, and anxieties or complaints listed or reviewed, the interviewer switches to a direct approach, and asks, "Have you ever had any of these things happen to you because of your race? Have any of these things happened to members of your family or to friends because of their race?" Table 11. is a summary of the responses.

Table 11. Alleged discriminatory acts practiced against ego and against ego's family or friends

	Number of Alleged Disc. Acts	
Discriminatory Acts	Against Ego	Against fam/friends
Not hired for a job	34	16
Fired from a job	7	8
Not given promotions on a job	20	8
Turned down for special training	9	4
Not permitted to join a union	9	6
Refused admission to a school or college	4	4
Stopped from renting an apartment	19	11
Stopped from buying a home in Newark	3	6
Stopped from buying a home in the Suburbs	1	13
None	57	85
Don't Know	1	3
No Answer	3	12

It is of immediate interest that 44% claim no discrimination against themselves and 85% report none against family or friends. Where, however, discrimination is alleged, family and friends average 2.5 cases per person and ego averages 1.5 cases per person. It is likely therefore, that where alleged discrimination against ego is perceived, it will be perceived with intensity throughout ego's "community,"

and where alleged discrimination is not perceived against ego, it will not be perceived at all in his "community." We have been careful to state alleged discrimination to ward off those who would point out that proof is lacking, but we are also tempted to wonder whether we may not refer to alleged non-discrimination for those 48 persons who report none for themselves and for their family and friends. We suggest this last because 18 of these 48 persons (37%) indicated that discrimination was baguely all-pervasive or indicated that they would prefer not to touch on the subject, but when probed, all 18 simply denied any instances of discrimination.

Of the cases of alleged discrimination practiced against ego, 74% fall under the rubric, employment, 4% under education, and 22% under housing, whereas alleged employment discrimination occurs in 55% of the cases against ego's family or friends, 4% occur in education and 40% occur in housing. The above would substantiate the general low income position of our respondents who have hardly been in the position to seek good apartment or homes, whereas many of the cases they have heard about involve people with more revenue than themselves, and discrimination in housing becomes more important.

Since our study is concerned with the New Jersey Division of Civil Rights, the interviews were careful to ascertain where the alleged discrimination occurred, and we can report that 159 (89%) of the 179 cases occurred in New Jersey, predominantly in the Newark area. Having established this vital point, namely that the preponderance of alleged incidents occurred in this area and hence fell under the jurisdiction of the Division, the next question asked was, "What did you (they) do about it?" Table 12. summarizes the responses.

Table 12. Action taken in alleged cases of discrimination (in percentages)

	Ego	Family or Friends	Total
Did nothing	87	67	81
Went to a lawyer	-	3	1
Went to an action group	-	7	2
Went to Div. on Civil Rights	-	7	2
Other	4	3	4
Don't Know	-	3	1
No Answer	9	10	9
	100	100	100

As can be seen, the overwhelming majority responded by doing nothing. Probes elicited these typical comments:*

"You can't do nothing. Just hope men will change."

"Mister, I don't go where I'm not wanted."

"You can't prove nothing, so why try."

"I just don't want no trouble."

The Division on Civil Rights as a source of amelioration, or for that matter, any potential source for action, receives negligible support in this community and the above responses typify the prevailing attitudes which may be seen as psychological categories. Some, still fearing the dominant whites, "want no trouble," others assume a hopeless position and won't try, others are belligerent "ostriches" burying their heads in their ghettoes, and still others hope perhaps through some magical devices, that men will become better. That there is an awareness, for a majority at least, of their problems is clear, but what is equally clear is the profound intertia gripping our sample. Their attitude

* To indicate how typical these statements were, 24% responded with answers approximating the first statement, 29% the second statement, 19% the third, and 17% the fourth statement.

toward legal remedies for ending discrimination is reminiscent of their attitude towards their low educational attainments, poor vocational skills, and sub-standard residences: a recognition of the problem but an all-pervasive inertia in doing something about the problem.

In reading the above, two caveats must be kept firmly in mind. First, we are not primarily concerned with whether the discrimatory act was real or merely alleged, but with the action taken by the perceived victim. Second, when we speak of an all-pervasive inertia, we are not suggesting that the Negro get up and help himself, but that the present predicament of the Negro is compounded by his enforced inertia, which suggests that middle-class solutions are not necessarily applicable to lower-class people.

Because we anticipated that many would maintain that they had not been discriminated against, we asked the following hypothetical questions: (1) "If you ran into discrimination in housing, education, or employment, who would you turn to first?" and (2) "If you ran into any discrimination would any of these people be of any help to you?" (The second question was followed by a list of people who were to be rated as "Always helpful," "Sometimes helpful," "Never helpful," "Don't Know.")

Table 13 summarizes the first hypothetical question.

Table 13. Who would you turn to first if you ran into discrimination (in approximate percentages)*

Div. on Civil Rights	9
Lawyer	10
Minister	1
Action Group	8
Don't Know	24
Nothing	7
Other	21
No Answer	20
	100

* Percentages are approximations because they varied slightly but not significantly within the 3 rubrics, and are not exact.

It will be noted that none of the direct sources of amelioration receive any substantial support. The Division does no better than lawyers in general or action groups in general. While the people who would do nothing dwindles to a handful, those who are uncertain or who refuse to answer account for about 40 percent of the responses. Of the action groups, NAACP was mentioned 23 times, CORE 9 times, and Urban League twice. In the "other" category, these varied from rubric to rubric, thus the Housing Authority was suggested by six respondents, the Board of Education or other school personnel by 17 respondents, and unions or the Labor Board by 14 respondents. In the "other" category, were also "politicians". Some specifically named Newark officials, others merely said "City Hall". It is of note that in each of the three rubrics, "politicians" were suggested more frequently than the Division.

In the second hypothetical question, a ranking order was created by giving a +2 value for "Always helpful," +1 for "Sometimes helpful", -2 for "Never helpful," and -1 for "Don't Know." The ranking order and scores were as follows:

1.	Minister	+92
2.	Lawyer	+85
3.	NAACP	+83
4.	Judge	+47
5.	Div. on Civil Rights	+13
6.	Social Worker	+ 2
7.	CORE	+1
8.	Urban League	-17
9.	Family Member	-39
10.	Police	-133

It will be seen that the Division is a poor fifth. On examining the separate scoring columns, the Division is fifth in Always Helpful (+2) and ninth in Sometimes Helpful (+1). The Division acheives the best results in Never helpful (-2), being placed in this category by only 10 respondents, but fares worst in Don't Know (-1), being placed here by 59 respondents. This would lend some credence to the claim of the Division that funds are lacking to properly publicize itself. We shall return to this in a moment.

In comparing the two sets of responses on hypothetical discrimination with one another, and contrasting them with alleged past discrimination, we find ourselves hemmed in by a network of contradictions. For example, "politicians" receive a fair amount of acclaim in rectifying grievances in the first hypothetical question, and only one or two responses (omitted) in the second. Since in neither case were they mentioned by the interviewer, why are they voluntarily mentioned in one and not the other? Again, ministers, lawyers, and NAACP are well-received in one set of responses, but negligibly mentioned in the other set. We are forced to resort to a highly tentative explanation which reenforces our earlier statements. We suggest that the wording "who would you turn to first?" implies action on the part of our sample which paralyzes their responses, whereas the wording "who would be of help to you?" implies a passivity on the part of the respondents and confers the action upon others, who then may be mentioned in a ranking order.

Whether or not this is a correct interpretation is of course debatable. Two indisputable facts emerge very clearly. The first is that the police are seen, at least in their active roles, as antipathetic (at best) to the interests of the Negro. Mention of the police brought forth a deluge of responses ranging from callousness and apathy through brutality and extortion. Few indeed perceived the police in a favorable light. More people said they were never helpful than the total of those

who said they were always or sometimes helpful.

The second clear fact that we have is that in both the active and passive responses, the Division does not seem to enlist very much favorable reaction. This brings us to the proposition that the Division is under-publicized. Careful questionning elicited the fact that 92 (71%) knew of the Division and 38 (29%) had never heard of it. A check of the sources of information about the Division from the 92 respondents who knew of it, revealed that 35 had learned of it through newspaper or magazines, and 31 through radio or TV. Since we may assume that all of our respondents are privy to one or all of these mass media, and since 37 persons (35 of whom had also never heard of the Division) had never heard of CORE, it is likely that it is not a question of lack of publicity that hinders the Division, but rather the manner in which information is disseminated. If we consider the case of CORE, it is certainly evident that this organization has received much comment in mass media. The inescapable conclusion is that such publicity as can be disseminated by standard mass media does not reach approximately 30% of the people for whom it is intended.

Even the publicity that the Division now receives is of uncertain value. Of the 92 respondents who knew of the Division 40% thought it was good or very good, 35% thought it was just fair, bad, or very bad, and 25% either did not know or refused to answer. Of 71 respondents who knew of the Division without probing, only 4% thought it could not improve because it was very good, 38% thought it could improve a lot, 30% thought it could improve a little, 2% thought it could not improve because it was very bad or thought it would get worse, and 26% either did not know or refused to answer. Another indication that the Division's publicity has not been successful is the report of 19 respondents who knew about specific cases the Division was handling. Of these cases,

as many (six) were concluded unsuccessfully for the complainant as were concluded successfully, and 7 cases had either not yet been concluded, or the outcome was unknown to the respondent. Certainly, a score of 1 of 3 successful cases for the complainant is hardly likely to create a benign aura around the Division.

Of crucial significance in understanding the inertia of our sample may be seen when we asked the 38 respondents who denied knowledge of the Division, if they would use such an implement if it were available to them. We stated this in ideal terms ". . . where if the complaints could be proved, the discrimination would have to stop, would you use it?" A majority, 55%, said they would use it, but 26% said they would not use it and 19% did not know or refused to answer. Thus, even when an ideal situation is presented, about one quarter will not avail themselves of it and one fifth are hesitant or uncertain.

In preparing the interview, Negro leaders and other leaders interested in civil rights were questioned about the Division. Where complaints were mentioned they were recorded, and the most frequent complaints were presented to the respondents who knew of the Division for their opinion. The six statements were:

1) They take too long
2) They don't take enough interest in you
3) They passed the law just to make it look good
4) To make a complaint you have to spend lots of time
5) They don't have the power to help
6) They don't have enough people working for them.

Totalling and percentaging for all six statements we have the following:

Mostly True	28%
Sometimes True	15%
Not True	25%
Don't Know	32%
	100%

While "Mostly True" slightly outweighs "Not True", responses vary from statement to statement. It is heartening to report that 40% thought that statements 2 and 3 were untrue. On the other hand there was strong belief that 1, 4, and 6 were mostly true, and statement 5 also elicited a large number of mostly true responses.

Summary. The Negro community as represented by our sample has responded, for lack of a better word, with apathy towards past discrimination. The possibilities of future discrimination do not elicit strong response for duly delegated authority, namely the Division on Civil Rights. Community inertia is seen as a probable factor in non-use of the Division, but the failure of the Division to enlist the endorsement of that segment of the population that knows of it, suggests some failure on its part as well. We are faced then with both horns of the dilemma, a community requiring help and not knowing how to seek it (or preferring to seek it passively) and the implement of the community (the Division on Civil Rights) wishing to help but being relatively powerless through bureaucratic red-tape, past failures, and inability to reach the needy in the community.

Attitudes to Law and to Legal and Political Personnel

Because we were interested in understanding the efficacy, from the Negro's point of view, of the laws pertaining to civil rights, it was thought advisable to try to determine, if only slightly, the sources of benign and malign power as perceived by the Negro. To do this, we asked these questions:

Which political party do you think is best for civil rights in Newark? Essex County? New Jersey? U.S.A?

Which of these whites do you feel has done the most for the Negroes?

Why? Which one has done the least? Why?

Which of these Negroes do you feel has done the most for the Negroes? Why? Which one has done the least?

Which Negro group do you feel has done the most? Why?

Which group has done the least? Why?

As for political parties, there was strong expression for the Democrats, who led the Republicans in all four specified areas ranging from five to one to six to one pluralities. Strong Democratic strength had been anticipated; what was not anticipated, however, was that in all four areas there was considerable negative or uncertain expression ranging from 38% in New Jersey to 44% in Essex County. Approximately 15% of the sample (20 persons) found no political party satisfactory, another 15 to 20% did not know which party was best, and 5% did not answer the question. Hence the five to one lead Democrats maintain over Republicans represents only 55 to 60% of our sample. At this point we confess to an error: not anticipating such results, we neglected to ask about voter registration, so that what we have may be indicative of the Negro mood but not at all representative of the Negro <u>voter's</u> mood.

Tables 14. and 15. summarizes our sample's attitudes to various whites in politics and various active Negro leaders, or supposed Negro leaders. Our selection of leaders, of course, is subject to the charge of arbitrariness, but we assume we have tapped the leadership, in most cases at least.

Table 14. Attitude of Sample to White Leaders and Civil Rights

Ranking Order	Doing Most	Doing Least	Ranking Total (+ 1 most, - 1 least)
President Kennedy	78	10	+68
Atty Gen. Kennedy	26	6	+20
Senator Case	9	2	+ 7
Chief Justice Warren	9	3	+ 6
Governor Rockefeller	7	9	- 2
Senator Williams	1	5	- 4
Governor Hughes	4	13	- 9
Senator Goldwater	-	19	-19
Other*	8	4	
None	11	21	
Don't Know	7	25	
No Answer	4	17	

Table 15. Attitude of Sample to Negro Leaders and Civil Rights

Ranking Order	Doing Most	Doing Least	Ranking Total (+1 most, -1 least)
Martin Luther King	70	4	+66
Roy Wilkins	27	3	+24
James Farmer	12	2	+10
Adam Clayton Powell	17	10	+ 7
Ralph Bunche	9	3	+ 6
Thurgood Marshall	4	1	+ 3
Father Divine	9	14	- 5
Willy Mays	3	11	- 8
Malcolm X	11	41	-31
Other**	4	2	
None	7	36	
Don't Know, No Answer	6	14	

* - Of the eight "other" responses for whites doing most, 3 were for President Johnson, one for Pres. Eisenhower, one for Pres. Roosevelt, one for Mayor Wagner of N.Y., one for Mayor Addonizio of Newark, and one for Adlai Stevenson. Of the 4 "other" responses for whites doing least, two were for Pres. Truman, one for Pres. Eisenhower, and one for Governor Wallace of Alabama.

** - On next page

Simply contrasting the total figures we find that our sample declares pro or con for the Negroes on the list 257 times and for the whites 213 times, or put in another way, announce its preference or dislikes for Negroes 17% more than it does for whites. Whites do slightly but not significantly, better than Negroes in the totals, 67% being favorable to whites, and 65% being favorable to Negroes. It is unfair, however, to compare the lists in terms of totals because the white list represents politically elected or appointed officials, whereas only three of the Negroes (Powell, Bunche, and Marshall) are in a political sense, representatives of government. The inclusion of an athlete (Mays) and two very unique religious figures (Father Divine and Malcolm X) vitiates comparison. Note please that if these names were removed, no Negro would receive unfavorable ranking, as contrasted with half the whites receiving such a ranking, and that 85% of the opinions for Negroes would be favorable.

President Kennedy clearly dominates the white list, but since interviewing began the week after his assassination, we were unable to ascertain his true status in the sample. In four cases, indeed, respondents cited his assassination as proof of his efforts on behalf of the Negro, and said that the killer had done the deed to prevent further

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**-Of the 4 "other" responses for Negroes doing most, 3 were for Jackie Robinson, and one was for "that fellow who was killed in Alabama "[Medgar Evers?]. Of the 2 "other" responses for Negroes doing the least, both were for Councilman Irvine Turner of Newark.

integration. The office of President may in itself carry some aura because three respondents "wrote in" President Johnson's name long before his position was well defined and well known. Attorney General Kennedy is apparently well-received in our sample, but the two announced Republican presidential candidates, Mr. Rockefeller and particularly Mr. Goldwater, received little or no support. The low ranking of Gov. Hughes in a strongly Democratic sample is somewhat surprising, and may reflect pressures other than Civil Rights in New Jersey. When asked why respondents had made their choices, either positive or negative, it was hoped that factors in selection would be strongly weighted towards the legal, e.g., passage or support of specific legislation, Court decisions, etc. With the exception of comments about Mr. Warren, however, most of the comments were of a generalized nature: "He tries hard," "He's a good man," "He works for Negroes". This was true of negative statements as well: "He ain't done nothing," "That man is just all talk," "He's plain against integration." Thus anticipated results implying an understanding of the nature of power, and of legal and legislative processes were negligible, whereas the bulk of the comments were essentially ephemeral statements as to the "goodness" or "badness" of an individual.

Just as Mr. Kennedy dominates the list of whites, so too does Mr. King on the list of Negroes. Once again, however, the comments are of a generalized nature: "He has done the most, he's a fighter". "He makes good speeches", "He's a fine, fine man." While there is much generalization in the Negro group, there is far less than for the whites, and appraisals tend to be somewhat more clearly stated and more specific: "I think he's a crook but he get us jobs." "Powell is a minister but I think he's godless, and Father Divine, well, people - white people laugh at him and think all Negroes love him and don't really understand Christianity. It gives us a bad name." Specific comments are not always unfavorable: "He laughs at whites and spits in their face."

"He talks mean to whites, but sweet to blacks. You asked me so I'm telling you! He got the right idea. Fight back and don't take no lip." While there is a certain specificity, nonetheless mention of legal remedies, laws, the Civil Rights Bill receive little or no attention, even where Roy Wilkins or Marshall are cited. Another slight difference between the two lists is that quite often when Negroes are cited unfavorably there is a belief not only in their insincerity (as occurs for the white list) but a belief in their dishonesty: "Oh he does good all right - good for himself."

The Negro group singled out most frequently for favorable comment is the NAACP, but rather than its legalistic or other active roles our respondents single it out for praise because: "Well, its been around a long time." "I hear about it a lot [probe] I don't know exactly what, but what I hear is good [probe] I can't say. It's just good." Neither CORE nor Urban League is mentioned often, but when they are, they receive more praise than criticism, and again of a general nature. The Black Muslims are attacked as doing the least good (5 favorable, 59 unfavorable comments), and the reasons for this are essentially that they are hate-mongers, that their methods are wrong. This last is of some importance. Those who criticize the Black Muslims attack them for their <u>methods</u> rather than for their general aims and ideals. It is interesting to note that Malcolm X fares better than the group he represented, since he received 11 favorable comments and 41 unfavorable comments.

Our respondents were asked to select the best way(s) for Negroes to get their civil rights. Table 16 is a summary.

Table 16. Best Way for Negroes to get their Civil Rights

	#	%
Picketing	24	18
Getting a good education	70	54
Strengthening the laws we have now	42	32
Making new laws	33	25
Joining Civil rights groups	30	23
Praying to change men's hearts	33	25
Other	13	10
None	6	5
Don't Know	7	5
No Answer	2	2
Total ways to get Civil Rights	251	199*

* % based on number of respondents

More than half the sample felt that the way to gain civil rights was through their own education. This contrasts with previous statements as to why they wished to get more education than they had had. Two possible (and not mutually exclusive) answers suggest themselves. First, the earlier question was near the beginning of the interview, at a time when only the respondents might bring up the subject of racial discrimination, and when many might have hesitated to broach the subject. As the interview proceeded, it was clear that the interviewers were interested in racial issues which suggested "permissiveness" and invited additional comments. Second, previous responses suggested that education meant good jobs and more money, and it is possible that many of our respondents viewed these gains as being necessary before they would

be accepted by whites. If this is so, then our respondents suggest the following: obtaining an education affords more money which allows one to meet whites on a footing of equality, hence civil rights will be gained.

The idea of exerting political pressure through civil rights organizations or through picketing is not popular with more than one-fifth to one-quarter of our sample and supports previous suggestions about their "non-joining" tendencies. Indeed, the suggestion of prayer to change men's hearts meets with a slightly more favorable response. If prayer is a slightly better means than organized pressures, we once more are faced with the fact that many in our sample are suffering from an imposed inertia that substitutes magical device or wishful thinking for direct political and legal action.

Roughly one-third of our sample views our laws as adequate if strengthened and another one-quarter would like to see new, stronger laws enacted. This would imply a certain dynamism, and a respect for legal process but there is no overwhelming response to these two methods, and indeed 16 persons (12% of the sample) selected both methods.

A large number of respondents chose none of the itemized methods. They total 28 persons or 22% of our sample, and they range from 2% who refused to answer, 5% who did not know, 5% who thought there was no way to get civil rights, and 10% who chose other methods. These last are primarily represented by people who said "fight back" or "mind my own business," attitudes of belligerence or apathy we have met with earlier in the sample. Thus, one-fifth of the sample either rejects or is uncertain about any of the acceptable and institutionalized general channels for gaining civil rights.

Because personnel administering, enacting and interpreting laws are so important we asked a battery of questions about lawyers, judges,

court systems, policemen, and "People in politics." The respondents were asked to choose from a list of thirty descriptive words and phrases, the words that best described the average lawyer, judge, policeman, and "People in politics." Table 17 is a summary of the 10 most frequently selected words for each of the four different personnel.

Table 17. Ranking order of the ten most frequently used descriptions of lawyers, judges, policemen and men in politics (frequency in parentheses)

Lawyers		Judges		Policemen		People in Politics	
1. intelligent	(90)	1. intelligent	(90)	1. brutal	(51)	1. intelligent	(66)
2. hard-working	(60)	2. honest	(55)	2. hard-working	(39)	2. rich	(57)
3. capable	(54)	3. capable	(52)	3. greedy	(35)	3. well-dressed	(47)
4. honest	(46)	4. well-meaning	(51)	4. corrupt	(34)	4. powerful	(46)
4. well-dressed	(46)	4. powerful	(51)	5. lazy	(31)	5. long-winded	(43)
6. decent	(42)	6. hard-working	(50)	6. intelligent	(30)	6. greedy	(42)
7. rich	(41)	7. dignified	(47)	7. capable	(28)	7. hard-working	(39)
8. well-meaning	(38)	8. rich	(46)	8. well-meaning	(26)	8. sly	(34)
9. practical	(31)	9. decent	(45)	9. honest	(25)	8. capable	(34)
9. courteous	(31)	10. old	(43)	10. sly	(23)	10. well-meaning	(33)
				10. stupid	(23)	10. corrupt	(33)

In the opinion of the writer, while the findings are substantially accurate, given a second interview, he would have modified the word list. Many interviewers reported that many of the respondents did not understand all of the words ("egotistical" caused much difficulty) and others became disquieted by the size of the list. If we were repeating the interview, we would have simplified the words and reduced the list from 30 to perhaps 20 words. In spite of this inadequacy it is hardly likely that the overall impressions would change, namely that lawyers and judges are relatively well regarded and policemen and people in politics are regarded with a mixture of likes and dislikes. The fact

that law students conducted many of the interviews might have biased the findings bur a comparison of the interviews administered by the writer and the interviews administered by the students shows no differences of any significance and reduces the possibility of interviewer bias. We have suggested previously that our sample suffers from some form of inertia, and that they would like help but cannot move towards it, hence examination of those who might administer such aid is vital. Lawyers and judges certainly stand in a favorable position in the eyes of the Negro, and could no doubt be very effective in administering aid. On the other hand, policemen, while occasionally applauded, would seem to be generally of little use in the Negro view. As for the people in politics, they are seen as intelligent, powerful, capable figures (hence to be respected or listened to) but are also greedy, sly, corrupt (hence to be watchful of and discreet with). If it is of any consolation to the police force, they receive more votes for honesty than do people in politics. In summary, personnel of the legal, administrative machinery are not weighted equally.

To further amplify attitudes towards legal and political personnel, 20 negative statements, 5 each about lawyers, court systems, police, and politicians, were submitted to our respondents, who were asked to decide whether the statements were mostly true, sometimes true, not true, or whether they did not know. The twenty statements are as follows:

Lawyers are only out for money.

Lawyers win cases when they know someone important.

Lawyers settle things themselves without letting their clients know.

New Jersey State Library

Lawyers talk double talk; you can't understand them.

Lawyers take too long in settling things.

Crooks get off and honest people have a hard time.

A poor man doesn't stand a chance against a rich man.

If you're a Negro, the jury decides against you before the trial.

Judges are political appointees and not the best men for the jobs.

It costs too much in time and money to go to court.

If a crime is committed, the police look for a Negro.

Policemen turn their backs when big shots do things.

Policemen are too ready to start hitting.

Policemen don't take an interest in your troubles.

Policemen are easy to bribe.

People in politics play favorites

People in politics ignore the problems of the citizens.

People in politics make laws so that they'll look good on paper.

People in politics are only interested in getting elected.

People in politics talk about doing things, but hardly ever come across.

Since the statements are weighted negatively, it was decided that for analysis, the "Mostly true" responses would be compared to the "Not true" responses, omitting "sometimes true" and "don't know." Table 18. is a summary of totals.

Table 18. Summary of "Mostly true" and "Not true" responses about lawyers, court systems, policemen, and politicians (in percentages)

	Lawyers	Court System	Policemen	Politicians
Mostly true	45	60	67	70
Not true	55	40	33	30
Total percentage	100	100	100	100
Total responses	(338)	(337)	(344)	(320)

Contrasting the two polar positions, it would seem evident that once again, lawyers are respected, whereas policemen and politicians are conceived of in negative terms. The high respect meted out to judges in the word description list does not hold for the court system at all. Indeed the percentage of unfavorable responses towards the court system would probably have been higher if it were not for one statement that specifically related to judges. Response to this statement was 39% "mostly true" and 61% "not true." If this statement were omitted, then the percentage of "mostly true" responses would rise to 63%.

If we look at individual statements, we find that the only statement about attorneys that is considered more likely to be mostly true than to be not true is: "Lawyers take too long in settling things." Of the statements about the courts, excluding the direct reference to judges, the only statement more likely to be considered not true than mostly true is: "If you're a Negro, the jury decides against you before the trial." All the statements about the police and about politicians are more likely to be considered mostly true than not true.

A fruitful analysis is a consideration and contrast of the two statements receiving the most polar responses in each series. The four statements in each series that receive the largest percentage of "not true" responses are:

Lawyers settle things themselves without letting their clients know. (61%)

If you're a Negro, the jury decides against you before the trial.(59%)

If a crime is committed, the police look for a Negro. (42%)

People in politics ignore the problems of the citizens. (47%)

The four statements in each series that receive the smallest percentage of "not true" responses are:

Lawyers take too long in settling things. (46%)

A poor man doesn't stand a chance against a rich man. (21%)

Policemen turn their backs when big shots do things. (22%)

People in politics play favorites. (11%)

The picture would seem to be clear. The Negroes tend to deny that their dissatisfactions with the legal and political processes are due to their race, but rather insist that their frustrations are based upon their socio-economic statuses. That is to say, our sample responds to these questions by saying that they are poor and powerless individuals being ground down by an exploitative and corrupt mechanism which they are impotent to resist. There is overwhelming support for the supposition that if one were a big shot or a rich man, politicians would do one favors, policemen would not hinder one's activities, and court cases would be won with ease. We neither affirm nor deny these suppositions. What we find so striking is the rejection of racial discrimination as a cause of impotence, and a naive faith in individual power. By individual power we refer to the belief that many of our respondents hold, namely that organization is not an effective means towards acquiring desired ends, and that the key to acheiving desired ends or manipulating power lies in the "goodness" or "badness" of individuals.

To summarize, legal and judicial personnel are viewed as helpful and worthwhile people. Unfortunately these people are viewed as somewhat out of the mainstream of the legal and political process, whereas

policemen and politicians are seen as directly involved in these processes, and who gear their activities towards aiding and abetting the rich and the powerful, at the expense of the poor and the weak. Political and legal redress for wrongs is viewed as being part of a patronage system, rather than as a culturally approved part of a system of legal institutions. Thus, the Negro, seeking restitution or redress of wrongs, would prefer to deal on an individual level with a powerful patron, than to deal with the more formal and culturally created legal institutions.[9]

Attitudes towards Potentially Helpful Personnel

Five hypothetical situations were presented to the respondents with a varied list of personnel who might be involved in such situations. The respondents were asked whether in each situation whether there would be a big difference, a little difference, or no difference if the personnel were white or Negro. The five situations were having an auto collision with a white driver, buying a home in the suburbs, attempting to have a landlord repair a sub-standard apartment, enrolling a child in an all-white high school, and failing to obtain employment because of alleged discrimination. The respondents were then asked to select the situations in which they would call on the Division on Civil Rights to help.

Three aspects of interest immediately emerge. The first of these is that in every instance, wherever personnel are selected as making a big difference, the frequency of response is greater for the white personnel than for their Negro counterparts. As examples, in the auto accident situation, 32 respondents say white witnesses would make a big difference and 20 respondents say Negro witnesses would make a big difference; in the home-buying situation, 52 respondents say white neighbors would make a big difference, 28 respondents say Negro neighbors would make a big difference; in the apartment situation, 17 respondents

9. For an analysis of the political machine and its role in helping the poor see, Merton, Robert K, Social Theory and Social Structure, pp. 71-81, The Free Press, Glencoe, Illinois, 1949.

say white landlords would make a big difference, 11 respondents say a Negro landlord would make a big difference; in the high school transfer situation, 17 respondents say a white H.S. principal would make a big difference, 11 respondents say a Negro principal would make a big difference; in the employment situation, 23 respondents say a white manager would make a big difference, 21 respondents say a Negro manager would make a big difference. It is evident that in analyzing the power structure, our respondents view the whites as being more important than their Negro counterparts.

The second finding is summarized in Table 19.

Table 19. Importance of Personnel in Five Hypothetical Situations (in percentages)

	Big Diff.	Little Diff.	No Diff.	Don't Know
auto accident	13	13	56	18
home buying	23	14	42	21
apartment repairing	7	11	65	17
H.S. transfer	9	16	60	15
job discrimination	10	16	58	16

There is ample indication that while some of the personnel are considered to make a bigger difference than others, none of the personnel mentioned (and they include judges, juries, attorneys, District Attorneys, H.S. principals, social workers, neighbors, ministers, labor leaders, policemen, to name but a few), receive enough support to change the situation. Indeed, in every case but the home buying situation, the total responses indicates that all the personnel mentioned make no difference in the Negro's receiving a "fair shake." Once again we see that all the institutionally approved forms of aid are viewed by our sample as of little value in direct help. One cannot help but wonder what the outcome would have been, had we included "politician" in our lists of personnel.

The third finding pertains specifically to the Division on Civil Rights and is summarized in Table 20.

Table 20. Use of Division in Hypothetical Situations (in percentages)

auto accident	12
home buying	39
apartment repairing	21
H.S. transfer	42
job discrimination	41
none of them	28
don't know	12
no answer	14
	209*

* % based on number of respondents

Less than one-half of the respondents would use the Division at all, at least hypothetically. No more than 4 of 10 would use the Division in any specific situation (It is some credit to our sample that only 1 in 10 would use the Division in an auto accident, and 2 in 10 would use it for apartment repairs, both situations in which the Division is, of course, not empowered to act.). More important, perhaps, than hypothetical users are the hypothetical non-users. Almost 3 of 10 would not use it at all; a little more than 1 of 10 do not know whether they would use it, and a little more than 1 of 10 refuse to answer the question.**

** Of parenthetic interest is the reaction of our respondents to the hypothetical situations. Several grew very angry, some cursed bitterly (one even threw a punch at this writer), while others became "Uncle Toms." One relatively articulate respondent suddenly began to answer the same way: "Man, these is hard questions. Why you asking this poor dumb lil ol' nigger?"

In summary, we have additional information accumulating that institutionalized devices and personnel who would be of aid to the Negro in a quest for civil rights, find themselves stymied by an inability of the sample to comprehend the contributions these people and institutions could make on their behalf, the amount of power and the recognized channels that they represent.

Summary and Conclusions

We have amassed a substantial amount of evidence which presents the Negro of Newark, as represented by our sample, as relatively poor, relatively under-educated, suffering from inadequate housing, having little job skills, and suffering from a fair amount of alleged discrimination. In spite of recognition of their plight in terms of discrimination, poor housing, low educational and vocational attainment, the vast majority do not view amelioration or improvement as being specifically related to institutionally sanctioned channels of action such as the Division on Civil Rights, nor, for that matter, do they seem capable of utilizing other ameliorating personnel such as lawyers, teachers, social workers. Our sample, representing the poor, hence representing the majority, of the Negroes of Newark prefers to sit back passively and to hope for improvement either in a general change of heart of men or through patronage connections. This is in distinct contrast to the behavioral patterns of the white middle class, and for the minority of Negroes who do use culturally acceptable legal institutions, such as the Division.

If this situation continues to obtain, the future position of the Negroes will no longer simply be one of race, but of class distinction. Those who are now middle class or are "middle-class oriented" (and they are a distinct minority at present) will utilize all the accepted middle class modes, and will gain their deserved civil rights. The majority will continue to react apathetically or passively, and will be by-passed. Those who will thus fall further and further behind will be viewed, not as members of an inferior race, but as lower class types, incapable of "pulling themselves up by their own bootstraps." Since an overwhelming majority of Negroes belongs in this category, and since this contrasts vividly with the small percentage of whites behaving similarly, one might almost suggest an inherent racial difference.

We cannot accept such a view. First, the fact that some Negroes do rise suggests that they are not inherently inferior. Second, as reputable a physical anthropologist as Washburn estimates that about 30% of the genes in the Negro gene pool has been contributed by whites, hence "inferiority" might be a product of those genes. Third, the history of the Negro in this country, overwhelmingly supports the conclusion that the Negro's present position is a product of unfavorable and hostile environment, rather than any racial inferiority.

What can be done? Our argument is simple: lower-class people can not be aided by middle-class devices. Rather than giving aid, we find that institutions which sit back and wait for the needy to take the first step, only widen the distances that separate them, and accidentally exacerbate the conditions. It is necessary for the Division (and for all other ameliorative agencies and personnel) to seek out the needy and to offer their help concretely. We adhere to the position that the Negro who simply is aware of his problem has taken the first step, and that it is now the responsibility of the community, with its multitude of resources, to come to him. We are now presented with an opportunity to strike a severe blow at racial discrimination, if we are ready to throw aside our middle-class prejudices, and to make middle-class institutions flexible instruments, sensitive to the needs of the lower class. We are fervently hopeful that the following statement by one of our respondents will indeed be proved incorrect:

"Well, I'm an optimistic guy, so I think better [in employment, housing, education] all around, but I look at what's going on and I don't understand my optimism. [probe]. Oh, all the white hatred, I'm not talking about you. You're an individual, but so many hate us. Now, this thing you're doing [the interview] is strictly bull-shit. You'll write it up and a few professors will say, 'how sad', then go back to doing nothing and letting the haters kill us."

2. Comparision of Users of the Division on Civil Rights and Sample, Newark.

One of the questions asked of our sample was whether they had ever been discriminated against in nine situations pertaining to housing, employment, unions, and education. Of the total of 130 respondents, 69 (53%) reported 106 instances of alleged discrimination, the overwhelming majority of these incidents having occurred in New Jersey. In spite of this number, not one of our respondents reported any of these cases to the Division of Civil Rights. This fact, coupled with the seemingly low number of cases annually reported to the Division, led us to compare the "users" and the "non-users" in order to determine whether any pattern of predictability could be determined.

The method of procedure was to analyze the demographic data obtainable from the informal complaints processed and closed by the Division, during the period from July 1, 1962 to June 30, 1963.* Five Rutgers University law students, Mr. Herbert Belkin, Mr. Michael De Marrais, Mr. Laurence Hecker, Mr. Eugene Lewis, and Mr. Robert Molnar, transferred the data to IBM cards for analysis.

Unfortunately, the Division does not record demographic material consistently, hence our comparison suffers somewhat from the number of omissions. We have used four demographic characteristics available

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* This material was made available to us through the cooperation of Mr. Jacob Levin of the CRD.

from Division material that are comparable with what we have recorded for respondents. They are: age, educational status, income, and number of children in the household. Because of record omissions, we find the following percentages of recorded data of the total processed cases in each of the four variables: age 68%, number of children 41%, educational level 40%, and income 27%. It is wise, therefore, to keep in mind the omissions (in 3 of 4 instances more than half of the total), since any comparisons made will reflect only a portion of the cases processed by the Division.

In order to make comparison more meaningful, we have omitted from analysis, the 61 persons in our sample who report no cases of discrimination.

The number of cases closed by the Division in the period mentioned above, was 210. Of these, 177 were complaints of discrimination against race, and these cases were used for analysis. Our sample was solely made up of married Negro males. A number of cases of racial discrimination reported to the Division, however, were made by females (25%), and of the males, we can only ascertain that 21% were recorded as married, and 54% were males who might be married or single. We base our belief that many males in the unascertainable category were indeed married or at least purported to be married but were not recorded as such, because of the substantial numbers who reported having children. We cannot believe that so many as one-third of these males would blithely indicate that they had sired a total of 68 illegitimate children. In presenting our data, therefore, we will have four categories: sample, females, married males, and males of uncertain marital status.

The following are the tables for which we have comparable data.

Table I. Comparison of Sample with Division Users by Type of Complaint (in percentages)

		Users of Division			
	Sample	Females	Married Males	Males-uncertain marital status	Division Total
Employment	62	80	92	28	55
Housing	19	13	5	54	33
Employment and Housing	13	-	-	-	-
Education	6	-	-	-	-
Public Accommodation	-	7	3	18	12
Total in #'s	(69)	(45)	(37)	(95)	(177)

Table II. Comparison of Sample with Users of Division in Certain Demographic Characteristics (in percentages)

		Users of Division			
Characteristics	Sample	Females	Married Males	Males-uncertain marital status	Division Total
Age					
20-25	6	25	9	17	17
26-30	23	16	18	20	18
31-35	31	38	34	41	39
36-40	13	12	9	5	9
41-45	15	6	18	9	11
46-50	7	3	3	2	2
51-55	1	-	6	4	2
56- and over	3	-	6	4	2
No Answer	1	-	-	-	-
Total in #	(69)	(32)	(34)	(55)	(121)
modal age	31-35	31-35	31-35	31-35	31-35
median age	32.67	31.00	32.67	31.13	31.79
Education					
none	3	-	-	-	-
1-5 yrs	10	7	3	9	6
6-11 yrs	45	24	44	33	34
H.S. grad.	31	34	40	25	35
Some college	4	21	3	33	15
College or better	6	14	10	-	10
Don't Know	1	-	-	-	-
Total in #	(69)	(29)	(30)	(12)	(71)

Table II. Continued

	Sample	Females	Married Males	Males-Uncertain marital status	Division Total
Income					
Under $1000	1	-	-	-	-
$1000-$2499	1	25	-	-	-
$2500-$3499	13	25	-	-	2
$3500-$4999	33	-	-	20	17
$5000-$7499	26	50	50	32	34
$7500-$9999	16	-	-	20	17
$10000 and over	3	-	50	29	28
No Answer	7	-	-	-	-
Total in #	(69)	(4)	(2)	(41)	(47)
Median income	$5068.22	-	-	$7401.79	$7107.40
No. of Children					
1	3	23	50	38	38
2	20	18	21	38	27
3	29	23	21	12	18
4	23	23	4	6	10
5	9	12	4	-	4
6	7	-	-	6	3
7	7	-	-	-	-
8	1	-	-	-	-
Total in #	(69)	(17)	(24)	(32)	(73)
Ave. no. children	4.01	2.82	1.92	2.13	2.22

A review of Table I. shows certain variables that are not properly comparable. At the time the study was undertaken, we did not ask questions about public accommodations, and the Division had not handled any education cases. It was considered proper therefore to omit public accommodations* and education cases, in order to make comparisons. In our sample, 9 respondents maintained they had been discriminated against both in housing and employment, and have therefore been placed in both categories, raising the total to seventy-four "respondents."

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* Parenthetically, not one of the Division public accommodations complainants had any other demographic characteristic recorded, hence Table II represents complainants in either housing or employment only.

Revised Table I. Comparison of Sample with Division Users by Two Types of Complaint (in percentages)

		Users of Division			
Complaint	Sample	Females	Married Males	Males-uncertain Marital Status	Division Total
Employment	70	86	94	35	62
Housing	30	14	6	65	38
Total in #'s	(74)	(42)	(36)	(78)	(156)

As can be seen in revised Table I., the large majority of both the sample and the Division users complain about employment discrimination. Figures, however, vary from category to category, and the males of uncertain marital status shift the emphasis from employment to housing in a clearly statistically significant manner. We can only guess at the marital status of these Division users, and since this would be fruitless, we can only conclude by saying that there is no significant difference between the total complainers in our sample and the total Division users in terms of the type of cases complained about, but that there do appear to be significant internal differences when our complainers are contrasted with males of uncertain marital status.

When we turn to Table II., however, various demographic characteristics do appear to have some bearing on the behavior of those who feel themselves to be discriminated against. We may immediately discard age as of such importance. Both in terms of modal age and median age, the sample and the Division users are people in their early thirties; and the slight differences in the three categories of Division users is of no consequence. For all practical purposes, we may rule out age as a reason for either our sample to fail to complain, or for Division users to complain about discrimination.

The three remaining variables, education, income, and number of children all do seem to have a bearing upon whether or not one is likely to make a complaint to the Division. A glance at Table II reveals that

whereas 6 of 10 Division users are H.S. graduates, only 4 of 10 respondents are H.S. graduates; whereas 1 of 4 Division users has had some college education, only 1 of 10 respondents has reached this educational level. Another sharp area of divergence is annual family income. Division users have a median income which is slightly better than $2000 more per year than our respondents. Furthermore, almost one of 3 Division users have incomes of $10,000 and over, and almost one-half of the Division users have upwards of $7500 annual incomes, whereas in our sample only 3 of 100 attains better than $10,000 annual income and slightly under 1 in 5 receives $7500 or more. The final variable where differences are sharp is the number of children per household. The number of children in the families of our respondents is almost double that of the Division users. Among the Division users, it is most likely that the household will contain one or two children, however, among the respondents in our sample, it is most likely that the household will contain 3 or 4 children.

Table III. Statistical Significance of Variables Comparing Sample Complainers, and Division Users

Variable	chi^2	dif.	p.	significance*
Typed of Complaint - employment/housing	1.618	1	< 0.20	not significant
age - 26-30/31-35/ 36 and over	3.691	2	< 0.10	not significant
income - under $5000/ $5000 and over	8.449	1	> 0.01	significant
education - less than H.S. grad/H.S. grad or more	4.800	1	> 0.05	significant
no. of children - 3 or less/ 4 or more	16.136	1	> 0.01	significant

* significance at 0.05 level

In reviewing the three variables which shed light on the differences between those who perceive discrimination and do nothing about it institutionally, and those who perceive discrimination, and appeal to the

Division on Civil Rights, we are inclined to place most emphasis upon educational attainment and income level. Persons who feel that size of family is important argue that those with large families to support are fearful of losing their jobs or of other reprisals, hence make no complaints. It is a logical absurdity to assume that a man with one child to care for is more willing to "take a chance" than a man with three children to care for. If we agree with Bacon's dicta that "He who hath wife and child give hostage to fortune", then it must be equally true for the small, as well as for the large family man. We take the position that size of family is a function of educational and income attainment, rather than an independant variable. In other words, there is a correlation between relative poverty and low educational attainment and large families, and a reverse correlation between relative wealth, high educational status and small families. This being the case, then high educational attainment and relatively high income are the two variables that correlate with people likely to utilize the Division. This group more closely approximates the white middle class than it does the majority of the Negroes of Newark who are represented by our sample. Since Division users reflect a minority of New Jersey's Negroes in terms of socioeconomic status, and our sample reflects a majority of Newark's Negroes in terms of socioeconomic status, then it must be evident that the Division operates to the benefit of only a very small portion of the Negroes, and neglects the large majority whose socio-economic class behavior is inconsistent with utilization of culturally sanctioned legal institutions.

3. Potentially Violent Respondents

We have amassed a considerable body of data that suggests that legal channels of action do not represent ideal solutions for the Negro in his quest for equal treatment and an end of discrimination. Since this conclusion would appear to be inescapable from the data compiled, another problem presents itself, namely, if law does not represent an ideal solution, how much of a solution is represented by "lawlessness?" That is, if law may be equatable with non-violence, is there a group or a type in our sample who might use violent means to achieve desired ends, and can this group be isolated and identified?

In an effort to isolate such a group, we selected the 52 respondents who said that a policeman would never be helpful in a case of discrimination, and compared their statements and demographic characteristics with the remainder of the sample.

To our surprise, we found few salient characteristics that were different, and where such characteristics were identified, we found them running in a contra-indicated direction. We may classify our findings as "surprising" and "not surprising." We based this dichotomy on the assumption that those who did not like the police force, i.e., the "lawless" would be poorer, less educated, suffering more unemployment, less optimistic about the future, less integrated religiously, and not perceiving as much discrimination as the "lawful."

Those findings that are not surprising are as follows: those who are antipathetic to the police tend to have more religiously unaffiliated than those who do not single out the police for abuse; the "lawless" tend to see their apartments in a better light than do the "lawful." That is the extent of the <u>not surprising</u> results, and neither of them is significant statistically.

On the other hand, the surprising findings are as follows: There is no difference between "lawless" and "lawful" in terms of birthplace, annual income, or rate of employment. The "lawless" tend to be slightly better educated than the "lawful"; they tend to belong to more organizations; they tend to view their own and their children's schools more critically; they tend to see slightly more discrimination directed against them and against people they know; they tend to view their neighborhood more critically; they tend to be more optimistic about the future in terms of jobs and of better housing. Finally, no more are pro- or anti-Malcolm X or the Black Muslims than the remainder of the sample; and while in this group more people support other than institutionalized methods for gaining their civil rights, more people in this group also support strengthening laws and creating new laws, than in the remainder of the sample.

It is evident then, that "lawlessness" is not related to antipathy towards the police, and there is some evidence to suggest that those supporting such a critical evaluation of law enforcement officers are merely reporting an unpleasant fact which they hope will be corrected.

In a continued effort to isolate "lawless" people, we then analyzed the 22 respondents who said that neither lawyers, judges, nor the Division on Civil Rights would ever be helpful in a case of discrimination.*

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* These respondents were selected if they chose any of the three or any combination of the three as "never helpful."

When we examine this group we find some important differences and similarities. Place of birth, educational status, and income are about the same for the two groups, but those who like neither lawyers, judges, nor the Division have an unemployment rate of almost 3 out of 10 contrasted with the remainder which has an unemployment figure of 1 in 10.

When asked what are the best means of gaining civil rights, we find the following:

Table 1. Best Way of gaining Civil Rights

(in percentages)

	Anti- Judge, Lawyer, Division on Civ. Rts.	Remainder of Sample
Changing Laws or creating new laws	27	33
"Fighting Back"	32	6
None	14	3
Total in #'s	(22)	(108)

Thus, while more than five times as many respondents in the remainder of the sample favor "lawfulness" as opposed to "lawlessness", those antipathetic to legal personnel tend to favor "lawless" means. Also significant are the number of people in this group who view the situation as hopeless, where no solutions are worthy of consideration, as opposed to a negligible percentage in the remainder of the sample.

Other indicators of this group's antipathy towards institutionalized behavior, is seen in their political attitudes.

Table 2. Which Political Party is best for civil rights?

(in percentages)

	Newark		Essex County		New Jersey		U.S.A.	
	"Anti"	Remainder	"Anti"	Remainder	"Anti"	Remainder	"Anti"	Remainder
Major Party	36	64	36	59	41	66	50	74
None	41	11	41	11	41	10	36	8
DK, NA	23	25	23	30	18	24	14	18
Total in #'s	(22)	(108)	(22)	(108)	(22)	(108)	(22)	(108)

It is evident that this group does not support the major political parties; only when viewing the entire U.S. do as many as one-half these respondents support either of the major parties.

Another indicator of a "lawless" quality within this group is the behavior of the 8 respondents who had never heard of the Division and upon being given a description of an ideal Division, were asked if they would use it. Only 1 of 8 (12%) said "yes", 5 said "no" (62%) and 2 were uncertain (26%). This contrasts with the 30 respondents in the remainder of the sample who were asked the same question and who said "yes" in 67% of the cases, "no" in 17% of the cases, and "don't know" or "no answer" in 17% of the cases.

In reviewing the comments of the five respondents mentioned above who rejected the idealized Division, we believe their comments are instructive. They reflect previously reported attitudes of hostility or withdrawal from "trouble:"

"It's just a whiteman's lie."

"Nothings gonna help. You crazy whites isn't gonna stop till we is all dead."*

"I don't believe in stirring up trouble."

"Man, I just play music." [respondent is a jazz saxophonist]

"Mister, I'm my own man. I make do with what I have."

* This respondent, when asked to review the descriptive word list said, "Just put down the words that mean rotten, mean, and cheating. [probe] For them all."

Within this group, more people are opposed to Malcolm X and to the Black Muslims than are favorably disposed, but while the percentage of anti's in this group is the same as the percentage of anti's in the remainder, we find that the percentage favorably disposed doubles for both Malcolm X and the Black Muslims.

Summary. An effort to correlate a potentially lawless group with those who dislike the police, has failed. What we do find, however, is a small, hardcore group of potentially lawless people (17% of the sample) correlated with negative attitudes towards lawyers, judges and the Division on Civil Rights. This small group tends to reject any and all culturally sanctioned remedial agencies including political parties, Negro action groups, and legal personnel. They substitute, instead, either a desire to "fight back" to obtain their rights or concede that their rights cannot be obtained within any present frame of reference. Since they do not represent any organized group, nor is their support for any belligerent group overwhelming, we suggest that they are a group only by virtue of statistics, and that they represent a large number of unorganized Negroes who are in an anomic or normless state as a result of historic circumstance. Their rebellion against law and legal process is not a positive desire for change, so much as it is a negative reaction to a hostile environment. Their "lawlessness," therefore, is totally individualistic, and has not as yet been channelized into a force capable of directing hostile manifestations. The aimlessness of this group is perhaps the saddest finding in the entire study, and we implore legislative bodies and all other ameliorating agencies and personnel to direct their energies in the direction of this group before purposelessness dissipates and a violently belligerent agency reconstructs the direction of the anger in this group.