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Notre Dame Conference on Federal Civil Rights Legislation and Adminsitration: A Report

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NOTRE DAME CONFERENCE ON FEDERAL CIVIL RIGHTS LEGISLATION AND ADMINISTRATION: A REPORT*

This Conference on Federal Civil Rights Legislation and Administration was the third held since 1960 at the Notre Dame Law School. It followed the second conference by approximately three years and involved most of the same participants. The continuity between these two meetings made all the more striking the contrasts between prevailing perceptions of the civil rights crisis then and now. The differences are symbolized by the Birmingham upheaval of 1963 and the Watts riot of 1965. In terms of both community conditions and federal priorities, the conferees recognized these distinctions:

(1) In contrast to the situation in 1963, legal remedies now exist for most of the traditional forms of rank discrimination practiced under color of law or official action in the South. The Civil Rights Act of 1964[1] and the Voting Rights Act of 1965[2] provide a more nearly complete set of tools for this purpose than one might have hoped at the beginning of 1963. To be sure, there are gaps — notably in the areas of personal security and administration of justice. The need for legislation in these areas has been fully recognized by the civil rights movement and by the Administration; presumably Congress will act to meet this need in some significant measure in its current session.

(2) Congressional action has shifted most federal civil rights priorities from legislation to administrative implementation. Passage of civil rights laws has generated expectations that are still far short of fulfillment. Persistence of this

* This is the report of the third Notre Dame Conference on Federal Civil Rights Legislation and Administration, held at the Law School February 17-20, 1966.

In order to permit discussion in some depth, the Conference limited itself to consideration of three topics—housing, employment and administration of the federal civil rights effort. The background papers in these three areas were prepared, respectively, by Robert J. Harris, John G. Feild and Carl A. Auerbach.

The conferees were guided once again by the working premise, laid down by Dean Joseph O'Meara at the 1963 Conference, that recommendations should not be limited by anyone's judgment of their political feasibility but should be proposed and considered on their substantive merits. This report undertakes to summarize those conclusions and recommendations on which there was general agreement. Although the areas of agreement were impressively large, it should not necessarily be assumed that every conferee would subscribe unqualifiedly to every statement in the report.

The conferees participated as individuals, not as representatives of their organizations. In addition to Dean O'Meara, they included: Paul Anthony, Southern Regional Council; Arnold Aronson, Leadership Conference on Civil Rights; Carl Auerbach, University of Minnesota Law School; Berl Bernhard, Attorney, Washington, D. C.; Wiley Branton, United States Department of Justice (observer); Thomas Broden, Jr., Notre Dame Law School; Leslie Dunbar, The Field Foundation; Vernon Eagle, The New World Foundation; John Feild, United States Conference of Mayors; Harold Fleming, The Potomac Institute; G. W. Foster, Jr., University of Wisconsin Law School; Eli Ginzberg, Conservation of Human Resources, Columbia University; Robert Harris, University of Michigan Law School; Vivian Henderson, Clark College, Atlanta, Georgia; Frank Horne, New York City Housing and Redevelopment Board; William Lewers, C.S.C., Notre Dame Law School; Melvin Mister, United States Conference of Mayors; George Nesbitt, Low Income Housing Demonstrations, Department of Housing and Urban Development (observer); John de J. Pemberton, American Civil Liberties Union; Daniel Pollitt, University of North Carolina Law School; John Silard, Attorney, Washington, D. C.; William Taylor, United States Commission on Civil Rights (observer).

This Conference, like its predecessors, was benefited by the opportunity to discuss its concerns with President Theodore Hesburgh and by the warm hospitality of the Notre Dame campus.

1 78 Stat. 241 (codified in scattered sections of 5, 28, 42 U.S.C.).

2 79 Stat. 437 (codified in scattered sections of 42 U.S.C.).

wide gap between law and achievement presents a serious danger of disillusionment as to the effectiveness — and, worse, the good faith — of the national government.[3] Accordingly, the 1966 Conference addressed itself to some of the basic questions of administrative policy and coordination that underlie these problems.

(3) The frontier of American civil rights aspirations has advanced from the legal guarantee of "nondiscrimination" to equal opportunity as a social and economic reality. As President Johnson said in his memorable speech at Howard University in June of 1965:

> [T]his is the next and the more profound stage of the battle for civil rights.
>
> We seek not just freedom but opportunity. We seek not just legal equity but human ability. Not just equality as a right and a theory but equality as a fact and equality as a result.[4]

Awareness of this imperative permeated the discussions of the Notre Dame Conference. There was constant recognition that federal civil rights guarantees could not be considered in isolation from each other or from the substantive federal programs that so largely determine the quality of American life. Open school enrollment means nothing to the family that is confined to the ghetto; open occupancy housing means nothing to the man whom job discrimination denies the means to acquire it; equal job opportunity means nothing to the individual who has been deprived of the necessary education and training to qualify for it. Similarly, equal job opportunity is an empty promise unless enough jobs of the right kind are available for those who need them; prohibitions against discrimination in housing are a sham in the absence of an adequate supply of decent and desegregated housing for low- and moderate-income families; the right to equal education is a cruel hoax in an underfinanced school system that practices poverty at the expense of the impoverished.

Civil rights in this "next and more profound stage" cannot be sealed in neat compartments. The huge programs of federal assistance and subsidy must be re-examined and redirected to meet the needs of our most deprived citizens — and they must be animated by affirmative efforts to combat discrimination and segregation. In short, the achievement of equal opportunity requires that both real opportunity and really equal access to it be provided simultaneously. The conclusions and recommendations of the Conference, summarized below, are directed toward such a twofold federal approach in the areas of housing, employment and administrative organization.

I. The Federal Role in Equal Housing Opportunity

Since the Notre Dame Conference of 1963, there have been ghetto revolts in Harlem, Bedford-Stuyvesant, Dixmoor, Rochester, West-side Chicago, North

3 In particular, Title VII of the Civil Rights Act of 1964 has thus far yielded results that are in meager contrast to the vast power of the federal purse which its sweeping language promised to invoke.

4 Address by President Lyndon B. Johnson, Howard University Commencement Exercises, June 4, 1965, in N.Y. Times, June 5, 1965, § 1, p. 14, col. 2.

Philadelphia, Jersey City, Elizabeth, Paterson and Watts, Los Angeles. And in the same period, what had been the Housing and Home Finance Agency, a congeries of constituent agencies, has been transformed into the Cabinet-level Department of Housing and Urban Development (HUD). A rising sense of urgency about housing segregation has come on the scene together with a federal department that can effect the first real measures for desegregation.

Accomplishments under the 1962 Executive order[5] on equal opportunity in housing have been feeble and few. Title VI of the Civil Rights Act of 1964,[6] which requires nondiscrimination in housing assisted by federal loans and grants, has produced little desegregation. If anything, the past few years have seen an acceleration of the nationwide trend toward racial and economic segregation, especially in the larger urban areas. The ineffectiveness of federal action in this field can be explained, in part, by the limited coverage of the Executive order and by the narrow interpretation and enforcement of title VI. But the basic difficulty lies deeper. Nondiscrimination alone, however vigorously enforced, will not undo the cumulative effects of segregation practiced consciously and unremittingly for decades by the housing and real estate industries and, until recently, massively supported by the federal government. The forces that produced the vast, squalid ghettos of the American city have achieved a dynamic of their own; left undisturbed, the ghettos will not only persist but will eventually occupy entire central cities. They can be eliminated only by governmental and private counterforces at least as powerful as those which created them.

This is not to say that antidiscrimination laws and programs are without value. They represent an official commitment to equal treatment in housing which is, at the very least, an important educational and standard-setting influence. Moreover, they open all-white residential areas to those Negroes who have the means, the initiative and the determination to seek the judicial or administrative remedies typically provided. At present, however, such individuals are only a small minority of Negro Americans. The majority are from low- and moderate-income families who have neither the means, the self-confidence nor the sophistication to use the tools of law to break down the invisible barriers that surround the ghetto. Antidiscrimination measures can be important as a first step, but they will yield only token results until the economics of the low-income housing market is changed and suburban cities cease to exclude low-income residents.

Questions may be raised about the degree to which existing population distribution reflects the preference of Negroes themselves. Relatively little is known about reported Negro reluctance to live in predominantly white neighborhoods. Attitude polls have indicated that many low-income Negroes see a neighborhood with a substantial number of Negroes as more desirable than one with few Negroes or none at all. There have been many well-intentioned white groups whose efforts to help Negroes move to white suburbia have foundered because of their inability to find enough Negroes interested in such a move.

It is hard to separate the strands that constitute the failure to look for housing in predominantly white areas. The self-segregation of some members of

5 Exec. Order No. 11063, 27 Fed. Reg. 11527 (1962).
6 78 Stat. 252, 42 U.S.C. §§ 2000d-d-4 (1964).

white ethnic minorities — Jews, Italians, Poles — suggests that there may well be a strand of attraction to one's own ethnic countrymen and the common institutions of the subculture — churches, lodges, stores. Groups that are either first- or second-generation immigrants to the metropolitan area find it difficult to venture far from the part of the city that served as port of entry unless the group is relatively affluent; for one thing, to go beyond the public transportation lines require a car — or two. For Negroes who have been relatively successful, the call of the suburbs may be muted by the availability of good used housing at bargain prices at the ghetto's fringe — housing abandoned by whites as they fled the expanding ghetto's advance. Overall there are the expectations, often exaggerated, of white hostility and rejection, both during house hunting and after moving in.

It is also hard to know how much weight to give the fact that the brokers and rental agents solicit Negro business for housing in neighborhoods that already have some Negroes, but steer Negroes away from neighborhoods that remain all white. The fact that Negroes have applied in large numbers for public housing and Mitchell-Lama subsidized middle-income housing in New York City suggests that there is an interest in integrated living where the housing is offered at a bargain price, where there is solid reason to believe Negro applicants are genuinely welcomed by the developer and where the whites who live in the development came there knowing they were going to have Negro neighbors.

It is not the intent of the Conference proposal that Negroes and other minority group members be compelled to live in desegregated areas. As matters now stand, most Negro families have no real option as to the residential area they will occupy. These proposals are meant to increase, not diminish, the choices available to them. Accordingly, in the Conference discussion the word "desegregation" meant — and means in this report — the elimination of the racial and economic practices that confine certain groups to restricted areas of residence. The Conference recognized that neither the time available nor the range of specialized knowledge among most of the conferees permitted development of a complete blueprint for the redirection of the many federal programs affecting housing patterns. It was, however, within the scope and competence of the Conference to address the basic goals that federal housing policy should pursue and to identify some of the programs that can contribute to achievement of those goals.

Recommended Goals of Federal Housing Policy

(1) The *sine qua non* of meaningful progress in housing is a federal policy commitment to the goal of residential desegregation and the operation of all pertinent federal programs so as to further this objective. No such policy now exists. In this field, as in most others, the federal commitment goes no further than nondiscrimination. The Administration's Demonstration Cities Bill,[7] now pending in Congress, declares one of the goals of that program to be the countering of segregation by race and income. But even if enacted and vigorously implemented, this provision will apply only to limited areas of blight in a limited

7 H.R. 12341, 89th Cong., 2d Sess. (1966).

number of central cities. What is needed is a comprehensive policy comprehensively administered by the executive branch.

(2) The suburban areas must be opened to low- and moderate-income Negroes. The sickness of our larger cities, of which the crowded Negro slums are symptomatic, cannot be cured by remedies that stop at jurisdictional lines of the metropolitan area. Planning for desegregation across such lines will not come quickly or easily. It will not come at all in most places in the reasonably near future unless the leverage of federal assistance is used to bring it about.

(3) The supply of standard low-income housing — located and marketed in such a way as to make desegregation possible — must be increased. Monumental as this task may seem, it must be remembered that federal assistance enabled the housing industry to create the sprawling, all-white suburbs that are the corollaries to the ghetto. Given the necessary political will, it is possible for federal policy to alter what it has helped create.

(4) Measures to increase the housing purchasing power of low-income families must be substantially augmented. Existing federal programs, such as public housing, rent supplements and FHA 221(d)(3) housing built with below market interest loans,[8] need to be applied on a larger and more imaginative scale. These, in turn, must be linked to social development programs that will enable those without skill to obtain training and employment, those too old or too young to work to be supported in dignity and those otherwise outside the economy to receive services and maintenance that will afford them a measure of self-respect.

(5) The substantive federal housing programs should be buttressed and supplemented by an effective program to detect, correct and, when necessary, punish discriminatory practices in the housing market. Depending on the circumstances, a variety of sanctions may be used, including cutting off federal financial benefits, administrative penalties, cease-and-desist orders and private civil litigation for injunctive relief and recovery of compensatory sums.

Metropolitan Area Planning

To achieve significant racial deconcentration, it will be necessary to effect more dispersion of low-income families, since all evidence suggests that Negroes will continue to be overrepresented at the bottom rungs of the income ladder for some decades to come. The present patterns in metropolitan areas tend to keep low-income families in the older neighborhoods of the central city. The suburban areas are zoned in a fashion that precludes the establishment of much private low-income housing. Typically, low-income public housing is not built by suburban jurisdictions, and only an inadequate amount of it is created by the central city.

Major rearrangements of populations will require not merely citywide but metropolitan planning for race and income desegregation. In a number of recent federal grant programs, benefits have been conditioned on the development of state or areawide plans that meet certain minimal federal standards. The concept should be extended to provide that no federal grants will be available after

8 Housing Act of 1954, § 221(d)(3), 68 Stat 601.

a certain date to areas that are not subject to enforceable desegregation plans approved by the Secretary of HUD. Such plans should assure progress toward the goal of an adequate supply of desegregated, low-income housing distributed in the area so as to give low-income and nonwhite families an opportunity to live in grade school districts in which there are substantial numbers of persons of other groups.

No plan could be expected to achieve this goal at the outset, but a plan could control subsequent patterns of land use within the metropolitan area and thus guide its evolution in this direction. If all local government units in an area agreed on a common plan, it could be submitted by the metropolitan area itself; alternatively, each state could submit plans to cover those metropolitan areas (or parts of areas) within its boundaries. After the effective date of such legislation, federal grants would be withheld from those areas for which satisfactory plans did not exist and from those units of urban local government that failed to give HUD adequate assurances that they would comply with the plan for their area.

To facilitate the shift of populations within the metropolitan area and to encourage the formation of groups willing and able to serve as sponsors of subsidized housing projects, the Government should stimulate the formation of development foundations or nonprofit corporations in metropolitan areas and in appropriate rural contexts. These foundations — groups of private citizens using their own tax-exempt funds — could stimulate the formation of project sponsors, help the sponsors through the maze of paperwork to actual operating projects and assemble the land needed for future projects with a sense of strategy to further the purposes of the area plan.

As a practical matter, the development of such metropolitan plans would involve more than zoning; if low-income groups are to be distributed across the face of the metropolitan area, job opportunities, social and educational services and various community facilities must be located to reflect the new demography. Thus, the metropolitan planning chore with its social and land use aspects becomes immense.

The Conference recognizes that the use of federal financial power to create and enforce such requirements will be seen as a new — to some, a dangerous and objectionable — departure in state-federal relations. This objection deserves a hearing and, given prevailing political attitudes, will assuredly get it. The novelty of this proposal should not be exaggerated; it is by no means unprecedented. In recent years, machinery for requiring units of local government to cede some of their sovereign power to plan or refrain from planning has been developing before our eyes. The federal government's grant programs have on several recent occasions required some hitherto absent planning by the grant recipients.

Since 1954 the "workable program" requirement of the Urban Renewal Administration has called for a comprehensive community plan with zoning and subdivision regulations, housing and building code enforcement and plans for housing the relocatees of urban renewal. Although the workable program requirement has not been administered vigorously and it seeks to induce better

planning only within the local government unit, it sets the pattern for compulsory planning to meet federal standards.

A 1962 amendment to federal highway legislation applies pressure on states to compel their major cities to carry on area transportation planning.[9] The proposed Urban Development Act of 1966[10] provides financial incentives for communities to engage in metropolitan planning that meets certain federal criteria. Other acts require intergovernmental planning as a condition of federal aid for solid waste disposal and water and sewer facilities.[11]

The President's January message concerning a new Demonstration Cities Program and the bill subsequently introduced indicate further desire to use the same device — conditioning new federal grants on the recipient government's engaging in planning that meets federal criteria. Selected cities that do impressive total-planning jobs would benefit by having the federal government pick up a larger percentage of the cost of various HUD programs during a six-year demonstration period; it is not altogether clear whether the planning is to be metropolitan in scope and, if that is so, how the suburban areas are to be induced to participate.

It seems unlikely that suburban areas will give up their parochial powers and interests unless this is the price demanded for vital federal grants. Although suburbia can do without urban renewal grants, it is less capable of doing without some other kinds of HUD programs, such as the open space land program, the college housing program, the public works planning program, the public facilities loan program and the water and sewers program already mentioned. Indeed, if participation in metropolitan social and land use planning were the price of HEW grants as well as HUD grants real pressure would be brought to bear under the variety of existing health, education and welfare programs which benefit suburbia. The greatest feasible pressure would come if all government agencies making grants for changes in the physical and social environment were to condition these grants on participation in such a metropolitan plan, the design and enforcement of which would be approved by HUD or an interdepartmental group.

Housing Low-Income Families

Nonwhites have more than their numerical share of the crowded and substandard housing in this country, both in the large cities and in the countryside. Attitudes on both sides of the color line make residential desegregation exceptionally difficult for poverty-stricken Negroes. Their foremost problem in the housing field is quality, not integration. Watts, however, suggests the peril of creating vast standard or near-standard quality ghettos where low-income Negroes live in isolation without access to the neighborhoods and schools that speed entry into the middle class. Rather than choosing between such vital goals as decent housing and access to middle-class schools and neighborhoods, the national policy should embrace both.

9 Federal-Aid Highway Act of 1962, § 9, 76 Stat. 1148, 23 U.S.C. § 134 (1964).
10 S. 2977, 89th Cong., 2d Sess. (1966).
11 *E.g.*, Federal Water Pollution Control Act, 62 Stat. 1155 (1948), as amended, 33 U.S.C. §§ 466-466k (1964).

Everywhere, city and country, a three-pronged attack must be made on our tradition of housing the poorest segment of our population in crowded, substandard homes. We must build better homes, and we must enable the present slum and shanty dwellers to buy and rent them. We must also enforce standards of housing quality in order to increase the useful life of our housing inventory and prevent abuse of tenants who lack the bargaining power to protect themselves. Housing code enforcement tends to be farcical in a market where thousands of tenements cannot be razed because there are no other places to house the tenants. It can be vigorous and meaningful only if there is an adequate supply of standard housing and if code enforcement need not be directed primarily against structures too old to be rehabilitated at reasonable expense.

To create additional units of standard quality low-income housing, either by new construction or rehabilitation, will require government intervention, since there is not sufficient profit in this market at the present time to attract private industry. The HUD Low-Income Housing Demonstration Program is to be commended for its efforts to discover new methods of stimulating and subsidizing such housing. Increased efforts are needed, however. Several devices for this purpose are provided by existing federal housing legislation, but they are neither sufficiently large in scale nor well enough adjusted to actual needs to provide more than a fraction of the housing required by low-income families.

The federal public housing program subsidizes rental housing for families too poor to pay market rents, with a local governmental agency taking the role of landlord. The projects have tended to be large and ugly, rarely taking the form of small scattered sites. The Housing and Urban Development Act of 1965[12] authorizes a "leasing" arrangement, under which local housing authorities contract for units in private apartment houses and operate them as scattered-site public housing. The tenant pays the same amount as for conventional public housing.

The FHA 221(d)(3) below market interest rate projects benefit tenants whose incomes are too high for public housing and too low to command new private housing that is unsubsidized. The sponsors of such projects must be limited-dividend corporations or nonprofit entities, such as churches or unions. The subsidy takes the form of an FHA guarantee of a below market rate mortgage (three percent) for almost the entire cost of construction.

The Housing Act of 1965 also authorizes a permanent rent supplement program. Congress denied appropriations for it in 1965 but in 1966 made a modest appropriation for the remainder of the fiscal year. Under the program, nonprofit and limited-dividend sponsors will enter into forty-year contracts with HUD for the construction of rental projects for occupancy by low-income tenants — in some cases mixed with or adjacent to middle-income housing. No tenant will be required to pay rent higher than twenty-five percent of annual family income, the difference between that amount and fair market rent being made up by rent supplement funds.

The inadequacy of these programs is attributable to three major deficiencies: (1) both the specific subsidies and the overall funding of the programs are too

12 79 Stat. 451 (codified in scattered sections of 12, 15, 20, 38, 40, 42, 49 U.S.C.).

limited; (2) the programs are ill designed to assist large families in certain income categories; and (3) legislative deference to local governments enables them to veto subsidized housing entirely — as suburban areas typically do — or to confine it to sites in the existing ghettos.

The contrast between the dimensions of existing programs and the extent of national need is best illustrated by rent supplements. The Housing Act of 1965 authorizes 150 million dollars for this purpose over a four-year period. It has been responsibly estimated, however, that to furnish every American family with minimal quality housing that meets welfare authorities' standards would require rent supplements of two billion dollars annually. Clearly, the scale of federal subsidies must be vastly increased, either through the programs just described or through the comprehensive pattern of the Demonstration Cities Program.

Differences between families should be taken into account in the public housing program. There should be provision for a local housing authority to house families too poor to pay the minimum rent requirement. Families with incomes that rise slightly above the presently prescribed limit for public housing should be required to pay more rent rather than forced to leave the project. Subsidies should be large enough so that the public landlord, like the private one, can provide some essential social services. More effort should be made to build joint public housing-221(d)(3) projects. This would permit some blurring of class lines and open the possibility of a family's remaining in the project as it earns substantially more income.

The kind of family in sorest need has five or more members and a yearly income under 3,000 dollars. Public housing projects usually are not designed for such families; there is a statutory limit on average unit-construction cost which has the effect of discouraging creation of large units. There are indications that large, standard units will be difficult to acquire for the public housing leasing program at prices within its budget. The rent supplement requirement of twenty-five percent of family income works a similar injustice by ignoring the distinction between families of two and families of large size. Congress should revise the unit-cost limitation on public housing, and programs of federal assistance to private builders should contain a subsidy to encourage the creation of more multibedroom units.

Somewhere between the true subsidy programs and the mortgage insurance and guaranty programs — which stimulate but do not subsidize building — lie the programs in which the federal government guarantees below market mortgages or makes such loans directly. Such programs, conducted on a limited scale now, need to be vastly increased to permit more low-income families to purchase homes on long-term credit. Especially in the rural context, such home-purchasing credit would permit many nonwhites, and whites as well, to enter markets from which they presently are almost entirely excluded.

The Conference discussion contemplated federal standard-setting, federal grants and federal technical assistance as the appropriate devices to cause governmental units below the federal level to enforce housing codes, assist low-income families in house hunting and create more public housing. The results of this

activity, however, should be monitored, and where local government defaults direct federal action should be taken. To this end, the federal government should conduct continuing surveys of the need for and the supply of low-income housing, the extent to which home-hunting services are available and the amount of substandard housing and overcrowding in the various markets of the country. Where other levels of government fail to meet these needs, programs should be initiated on the federal level to provide code enforcement, subsidized low-income housing and home-hunting services wherever they are needed.

Some of the elements of a federal land policy appropriate for this purpose might include: (a) a halt to indiscriminate disposition of federal land suitable for residential purposes; (b) provision for federal stockpiling of unimproved land in areas likely to become residential in future years; (c) assurance that, as new job-creating facilities are established by the federal government or by federal contractors, housing for the new employees will be made available in a manner consistent with the national housing goals; and (d) planning and assistance for new towns that are desegregated by race and income.

Some have argued that subsidizing the housing purchasing power of the poor will raise the quality of their housing even if the subsidy is not tied directly to increased supply or a high vacancy rate. The theory is that the next wealthiest tier of families are kept from buying better houses by their inability to sell their present homes, and if the poorer families could buy these homes, a chain reaction would set in with wave after wave of ever-wealthier families moving out and up. If it were not necessary to tie subsidies directly to increased supply, income subsidies would have advantages over rent subsidies. Income subsidies give the beneficiaries more freedom of choice and avoid such unpleasant problems as a poor family's inability to furnish the rather spacious quarters the rent supplement provides.[13]

There is a special need for large-scale action in the nation's rural areas. Between 1960 and 1964 the number of Negro farmers declined by thirty-five percent, accounting for thirty percent of the total decline in farm population. Many of those displaced lost the shacks in which they lived along with their three-dollar-a-day jobs as cotton pickers. Some moved to cities; others moved into small towns and villages scattered throughout the rural areas. For these families and individuals forced off the farms by mechanization and increasing crop yields per acre, the lofty language of civil rights legislation has a hollow ring. Lack of training, education and financial resources denies these former tenant-farmers not only decent housing but all basis for confidence in the future.

Although adequate remedies are not yet in sight, the Conference welcomes the trend of new programs which the Department of Agriculture has recently been evolving. The Cabinet-level Rural Development Committee now has authority to guide and coordinate a Rural Community Development Service with a rapidly expanding budget, a Rural Areas Development Program, a Rural

13 An effect similar to that of subsidies results from any measures which decrease the costs of construction and rehabilitation, such as improved technology, better and more uniform building and zoning codes and reform of unjustified union rules concerning building materials.

Renewal Program and the Farmers' Home Administration's activities.[14] This developing structure has great potential for assisting Negroes and other disadvantaged persons in rural America. The new Public Works and Economic Development Act[15] and the Appalachia program[16] are also tools for aiding the development of rural areas. Programs to strengthen and build new rural and nonfarm communities, training programs to expand job opportunities and new subsidy and loan programs to enable low-income rural families to build or purchase homes are all essential components of rural development. Thus far, efforts have been piecemeal and poorly coordinated. The time for pilot programs is past. Action on a scale commensurate with the need is now urgently required.

Antidiscrimination Provisions

An effective antidiscrimination program in low-income housing must be supported by the power of the federal purse — a commitment that goes beyond nondiscrimination to affirmative desegregation — and a system of compliance reporting that eliminates agency dependence upon complaints filed by victims of discrimination. The antidiscrimination aspects of the program should be vested in the agency that has the primary granting authority and the deepest involvement in housing. In this way, responsibility will be welded to power, and a single Cabinet member can be identified as having responsibility for the success or failure of federal efforts to achieve residential desegregation. Therefore, the basic responsibility for antidiscrimination enforcement and education should rest with HUD. Its educational efforts will need the support and prestige of the White House in encouraging housing industry leaders to take affirmative steps.[17]

All housing transactions reachable under the commerce clause, whether federally assisted or not, should be covered by a federal ban on racial and ethnic discrimination and enforced by civil litigation, cease-and-desist orders, administrative penalties and, when applicable, termination of federal programs of housing assistance. Because complaint-oriented cease-and-desist order regimes have so little impact on structural patterns of segregation, this aspect of the program is useful primarily to do justice between individual complainants and respondents. It should prohibit not only housing discrimination and such prediscrimination practices as giving and taking and noting ethnic preferences, but also some practices peculiar to multiple-listing real estate associations and those agencies of local government which can affect the racial policies of the housing industry. Multiple-listing associations should be forbidden to accept discriminatory listings or to discriminate in selecting their members. Local governments should be forbidden to exert pressure inducing entrepreneurs to discriminate.

The victim of discrimination should have the option of either suing in federal district court for injunctive relief and a fixed penalty sum or seeking an adminis-

14 Exec. Order 11122, 28 Fed. Reg. 11171 (1963).
15 79 Stat. 552 (1965) (codified in scattered sections of 5, 42 U.S.C.).
16 Appalachian Regional Development Act of 1965, 79 Stat. 5 (codified in scattered sections of 40 U.S.C.).
17 For further discussion of the administration of fair housing provisions, see section III of this report *infra*.

trative remedy from HUD. To bring court suits within reach of low-income victims of discrimination, there should be provisions for court-appointed counsel and recovery of a compensatory sum and all litigation expenses if the victim is victorious. The administrative remedy should take the form of cease-and-desist orders and, since there is nothing comparable to back pay awards available in housing cases, an administrative penalty paid to the victim.

HUD should have the responsibility for insuring that all nonexempt housing entrepreneurs keep and retain designated records and that they file compliance reports periodically, providing an ethnic census of the dwellers in designated structures. It should also be HUD's responsibility to make field checks of compliance, to encourage the filing of complaints, to investigate conditions suggesting noncompliance, and to initiate administrative hearings in those cases where an apparent violation cannot be corrected adequately by negotiations. HUD should not only handle complaints reflecting the grievances of individual victims but also engage in major public litigation designed to alert the industry to the existence of the law and to the necessity of obedience.

Administrative litigation, whether for termination of federal housing benefits, cease-and-desist orders or administrative penalties, should be conducted by HUD before an independent adjudicatory board and that board's corps of hearing examiners. HUD attorneys should be authorized to seek provisional relief in federal district court in conjunction with the proceedings before the board. They should also have authority to intervene in private litigation where a party seeks to enforce the federal ban on housing discrimination.

The leverage to change patterns of discrimination lies in the data collected through the compliance reporting system and the ability to terminate the flow of federal benefits to obstructionist cities, housing authorities and entrepreneurs. Title VI of the Civil Rights Act of 1964 takes a step in this direction, but it does not spell out the fundamental principle that housing subsidies must be used to promote residential desegregation — it is not sufficient for the recipient simply to refrain from discriminating. The present state of affairs, for example, permits the Public Housing Administration to tolerate "freedom of choice" plans in totally segregated public housing projects, despite the mass of evidence that such tolerance amounts to subsidizing the perpetuation of segregation.

In addition to the general ban on discrimination, federally assisted transactions should be subject to requirements that affirmative efforts be made to achieve racial desegregation. A distinction should be made between transactions which are federally subsidized and those in which the assistance does not amount to a subsidy.[18] Projects which are assisted but not subsidized should be held to obligations of affirmative action as regards advertising and merchandising. Subsidized projects should be subject to additional obligations with respect to site selection, sponsor selection, occupant selection, project design and pricing. A subsidy should not flow until a site has been approved by HUD, and no site should be given approval if another site would enable the project to reach the

18 Insurance and guaranty of market-rate mortgages and direct lending at market rates are not regarded as subsidies for these purposes.

same market while achieving significantly more ethnic integration of project occupants.

Neither a subsidy nor other benefits should flow until HUD and the persons controlling the projects involved have concluded detailed agreements concerning the manner in which affirmative integration efforts are to be conducted. These agreements should provide HUD with sufficient information and control to guarantee performance of the obligations, and in the case of projects being filled for the first time, the agreements should permit review and such intervention as necessary at several stages during the selection of initial occupants. The principal means of enforcing these obligations of affirmative action should be through the power to withhold, suspend or terminate federal housing benefits and the related power to debar an enterprise and its principals from future participation in programs involving the flow of such benefits. Court and agency litigation should be available for use in the exceptional case where use of the economic sanction is not feasible.

II. The Federal Role in Equal Employment Opportunity

Twenty-five years ago the federal government embarked upon its first systematic effort to eliminate racial discrimination in private employment. President Roosevelt's historic Executive Order 8802, issued June 27, 1941, was applicable to holders of government war contracts.[19] It was followed by a sequence of similar orders issued by each president who succeeded him. In the intervening years, the legislatures of thirty-one states and over one hundred cities directed governmental policy within their jurisdictions toward an increasing legal commitment to equality of opportunity in employment for all citizens. In July, 1964, Congress broadened the federal interest in equal employment opportunity from only those employers holding government contracts to all employers in interstate commerce with twenty-five or more employees.[20]

Regrettably, the present status of this combined federal, state and local effort was not reached by any steady or rational accumulation of experience. The approach taken to the critical social problem of employment discrimination by Title VII of the Civil Rights Act of 1964[21] is a good example of mankind's obstinate refusal to learn by its experience.

The Equal Employment Opportunity Commission (EEOC), established under title VII, has been in operation since June, 1965. The record is clear; its impact on employment discrimination has been negligible. The Commission itself reported at the end of the year that it had eliminated discrimination in complaints involving only 127 complainants and 41 respondents since its enforcement machinery became operative on July 2, 1965.[22] There is no basis for hope

19 6 Fed. Reg. 3109 (1941).
20 Civil Rights Act of 1964, tit. VII, § 701, 78 Stat. 253, 42 U.S.C. § 2000e (1964). A similar numerical limit was set for unions, and sex was added to nondiscrimination coverage. Civil Rights Act of 1964, tit. VII, § 703, 78 Stat. 255, 42 U.S.C. § 2000e–2 (1964).
21 78 Stat. 253 (codified in scattered sections of 5, 42 U.S.C.).
22 Equal Employment Opportunity Comm'n Newsletter, Dec.-Jan., 1966, p. 2. col. 1.

that this disheartening situation will improve with time. The defects and shortcomings of title VII are now manifest and should be corrected by Congress at the earliest opportunity. The present EEOC is hopelessly mired in a complaint-based system of enforcement; it has insufficient investigative powers and resources; its limited enforcement powers are complicated and ineffective; it has no legal or administrative ability to undertake manpower development or economic opportunity programs that will support its enforcement activities.

In 1963, the predecessor of this Notre Dame Conference considered the need for federal fair employment legislation — well before title VII was conceived. The recommendations of that conference were summarized as follows:

> The [fair employment] law should be administered by the Department of Labor (not by a new commission), and should cover all phases of the employment process of firms engaged in or affecting interstate and foreign commerce. The law should reach also employment, of all descriptions, carried on by state or local governments and by private institutions for work financed in whole or in part by federal funds.
>
> We recommend further that, by several means, the law should rely on administrative regulations rather than quasi-judicial methods for enforcement. We think that this can be realized by incorporating the administration into the Department of Labor, and bringing the whole structure of the Department into responsibility for the work.[23]

The basic elements of this approach were incorporated in the Humphrey Bill,[24] approved by the Senate Committee on Labor and Public Welfare in 1964. But in the absence of presidential leadership and adequate congressional assessment of past administrative experience, these principles and the practical study which they reflected were brushed aside. Congress enacted title VII, which not only fails to improve upon existing state fair employment legislation but embodies all of its worst features.

The developments of the past three years have not diminished the validity of the 1963 conference recommendations. On the contrary, the Conference is unanimous and emphatic in its judgment that the promising new programs launched by President Johnson to stimulate the economy, to upgrade the nation's manpower and to eliminate poverty demand a revamping and consolidation of the federal equal employment opportunity programs so as to take maximum advantage of prospective economic breakthroughs.

Since there seems to be little likelihood of achieving *fair* employment without *full* employment, the Conference urges:

(1) Implementation of the Employment Act of 1946,[25] which committed the federal government to creating and maintaining "conditions under which there will be afforded useful employment opportunities, including self-employment, for those able, willing, and seeking to work, and to promote maximum employment, production, and purchasing power."[26]

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23 *Notre Dame Conference on Congressional Civil Rights Legislation—A Report,* 38 NOTRE DAME LAWYER 430, 445 (1963).
24 S. 1937, 88th Cong., 1st Sess. (1963).
25 60 Stat. 23, as amended, 15 U.S.C. §§ 1021-24 (1964).
26 60 Stat. 23, as amended, 15 U.S.C. § 1021 (1964).

(2) Expansion of the coverage of the minimum wage law and an increase in the minimum wage to a level above the poverty line.

(3) Consideration of greater federal support for expanded on-the-job training programs that would include disadvantaged persons not currently eligible.

(4) Implementation of the recommendations of the Secretary of Labor's Task Force on the Employment Service,[27] which provides major improvements in job development and placement services on a national, area and local basis.

Having considered the plight of those being displaced and dispossessed by the farm economy, the Conference endorses programs aimed at rural and small town areas and at major central cities that have received almost insupportable numbers of disadvantaged migrants from the rural areas. These should include economic development, training programs and more effective management of the government's impact on such areas through plant location and closing practices of its major contractors as well as its own agencies. The on-the-job training programs mentioned above have special relevance for the hard-core unemployed moving into the central cities.[28]

The Conference makes the following specific recommendations for more effective federal action to enlarge equal employment opportunity:

(1) The operational concept of a federal equal employment opportunity policy should be extended in a way that will tie training and manpower development programs to comprehensive antidiscrimination efforts. This could be done most effectively by giving the Secretary of Labor the power to regulate personnel agencies, unions and employers — including state and local governments — with respect to equal opportunity.

(2) The existing EEOC should be given the status of an adjudicatory panel with power to issue cease-and-desist orders and with responsibility to protect respondents' rights against arbitrary action by the Secretary of Labor.

(3) The Secretary of Labor should designate an Assistant Manpower Administrator for Equal Employment Opportunity to direct the existing Contract Compliance Program[29] and other compliance aspects of a new title VII embodying the recommendations of this conference.[30]

(4) Under the proposed arrangement, nondiscrimination regulations would be issued by the Department of Labor and would be made part of its continuing inspection processes. Where noncompliance was found, a cease-and-desist order could be sought from the EEOC.

(5) A special "Equal Opportunity Manpower Development Fund" of twenty-five million dollars should be authorized and made available to the Man-

27 U.S. DEP'T OF LABOR, REPORT OF THE EMPLOYMENT SERVICE TASK FORCE (1965).

28 The Conference recognizes that, even under optimum conditions of full and fair employment, some Americans will be unable to earn an adequate livelihood. Because of denial of education and training, a disproportionate number of Negroes are in the category of the chronically unemployed and unemployable. Consideration of this problem was beyond the scope of this Conference. For an impressive analysis and set of recommendations, see 1 NATIONAL COMM'N ON TECHNOLOGY, AUTOMATION AND ECONOMIC PROGRESS, TECHNOLOGY AND THE AMERICAN ECONOMY (1966).

29 Civil Rights Act of 1964, tit. VI, 78 Stat. 252, 42 U.S.C. §§ 2000d-d–4 (1964).

30 For further discussion, see section III of this report *infra*.

power Administrator of the Department of Labor to initiate special motivation and training projects designed to support equal opportunity.

(6) Specific provision should be made for utilizing state and local equal employment opportunity agencies which meet federal standards and for making grants to them to conduct investigations and carry out the affirmative manpower development and utilization programs of the Department of Labor envisioned in this approach.

(7) Provision should be made for the establishment of a permanent conference of state and local equal employment opportunity agencies so as to maintain a coordinated and advisory relationship between the Department of Labor and these grant-receiving agencies. Funds for the conference should be provided on the basis of a fifty percent federal share.

(8) Individual complaints filed with the Secretary of Labor should either be referred to appropriate state or local agencies or processed by the Assistant Manpower Administrator for Equal Employment Opportunity, who would be authorized to seek cease-and-desist orders from the EEOC. Complainants, employers, labor unions or employment agencies that maintain they have not had satisfactory action by the Secretary could appeal his orders to the independent five-member Commission for such review, amendment or further action as it might direct.

III. Federal Civil Rights Organization and Administration

In his address at Howard University in June 1965, President Johnson described the infirmities besetting the Negro as a "seamless web," causing, resulting from and reinforcing each other.[31] Federal efforts to overcome these infirmities must also be a seamless web, with component parts that reinforce each other.

As things now stand, the Attorney General of the United States is responsible for overseeing the administration and enforcement of title VI of the Civil Rights Act of 1964. The President proposed that he also be given operating responsibility for the Community Relations Service. The Secretary of Labor and the Chairman of the Civil Service Commission, respectively, coordinate the policies against discrimination in employment by federal government contractors and subcontractors and by the federal government itself. Various agencies and departments are responsible for other civil rights and civil rights-related functions. The Vice President continues to bear the President's designation as his principal adviser on civil rights matters.

The existing arrangements for central policy formulation and coordination of the various federal civil rights programs do not reflect sufficient awareness of their interdependence. The programs to eliminate racial discrimination in education, housing and employment will either succeed together or fail separately. Only the President himself has the official responsibility to see civil rights problems as "all of a piece" and act upon this insight. The Conference

31 Address by President Lyndon B. Johnson, Howard University Commencement Exercises, June 4, 1965, in N.Y. Times, June 5, 1965, § 1, p. 14, col. 5.

is concerned that existing arrangements seem inadequate to assist the President in performing this duty. Some additional coordinating authority, responsible directly to the President and independent of the operating agencies and departments, is essential. The nature of this coordinating authority is necessarily a matter for exclusive determination by the President.

The Guidelines for the Enforcement of Title VI

The Guidelines for the Enforcement of Title VI of the Civil Rights Act of 1964,[32] issued by the Attorney General on December 27, 1965, are based upon a conception of the use of title VI which thwarts congressional intent and threatens to destroy the effectiveness of title VI. The Conference was heartened by the widespread formal commitments of recipients of federal financial assistance that they will comply with the title VI prohibition of discrimination because of race, color or national origin under any program or activity receiving assistance. When the wisdom of title VI was debated, it was predicted that there would be extensive refusal to make agreements to comply with its basic requirements. This forecast has been proven false. Furthermore, in parts of the South, a meaningful start has been made toward converting the agreements to comply into actual compliance in some programs and activities receiving federal financial assistance.

"Equality as a fact and equality as a result," however, remains only a hope with respect to many federally assisted programs and activities in many parts of the country. The most conspicuous example is the sluggish pace of school desegregation in much of the South. Another example is the paucity of effort to secure compliance with the objectives of title VI under federally assisted housing programs and activities throughout the nation.

The federal government currently faces a serious crisis of credibility with respect to its intention to enforce title VI by terminating assistance or refusing to grant or to continue assistance to programs and activities under which, in fact, persons are being subjected to discrimination because of race, color or national origin. The Attorney General's Guidelines have exacerbated doubts that the Administration has the political will and determination to give title VI its intended effect. In essence, they transform the refusal to grant an application for federal assistance or the termination of assistance being rendered from the normal methods of securing compliance into last resorts or "ultimate sanctions," as the Guidelines put it.[33] Instead of the administrative action specifically provided for in title VI, the Guidelines look to court enforcement, *i.e.*, the bringing of lawsuits, as the normal method of enforcement. Cutting off federal assistance becomes an "atom bomb" which must not be used.

To justify this position, the Guidelines state that section 602 of title VI requires the department or agency concerned to "consider alternative courses of action consistent with achievement of the objectives of the statutes authorizing the particular financial assistance" before invoking the "ultimate sanc-

32 Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964, 31 Fed. Reg. 5292 (1966).
33 *Ibid.*

tions."[34] But section 602 will be read in vain for any such requirement![35]

The alternative courses of action mentioned by the Attorney General include: (a) judicial enforcement:

> (1) a suit to obtain specific enforcement of assurances, covenants running with federally provided property, statements or [*sic*] compliance or desegregation plans filed pursuant to agency regulations, (2) a suit to enforce compliance with other titles of the 1964 Act, other Civil Rights Acts, or constitutional or statutory provisions requiring nondiscrimination, and (3) initiation of, or intervention or other participation in, a suit for other relief designed to secure compliance. . . .[36]

and (b) administrative action:

> (1) consulting with or seeking assistance from other Federal agencies (such as the Contract Compliance Division of the Department of Labor) having authority to enforce nondiscrimination requirements; (2) consulting with or seeking assistance from State or local agencies having such authority; (3) bypassing a recalcitrant central agency applicant in order to obtain assurances from, or to grant assistance to complying local agencies; and (4) bypassing all recalcitrant non-Federal agencies and providing assistance directly to the complying ultimate beneficiaries. . . .[37]

Although the Guidelines request the heads of the twenty-one departments and agencies with title VI responsibilities to consider the "possibility of utilizing such administrative alternatives," they direct them not to reject the "possibility of court enforcement . . . without consulting the Department of Justice."[38] In

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34 *Ibid.*

35 Civil Rights Act of 1964, tit. VII, § 602, 78 Stat. 252, 42 U.S.C. § 2000d–1 (1964):

> Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be affected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient, as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

36 31 Fed. Reg. 5292 (1966).

37 *Ibid.*

38 *Ibid.*

his letter transmitting the Guidelines to the heads of the twenty-one departments and agencies concerned, the Attorney General expressed the opinion that the "alternative methods of enforcement" (court enforcement and the administrative action described above) could "in many instances . . . be more effectively used to secure compliance" with title VI requirements than taking steps to cut off federal assistance.[39] The Guidelines, however, do not delineate these particular instances; they direct a general policy that federal assistance "will be refused or terminated to noncomplying recipients and applicants who are not amenable to other sanctions."[40]

When it enacted title VI, Congress did not intend that the effort to secure a judicial prohibition of discrimination should be a condition precedent to cutting off federal assistance to programs or activities conducted in disregard of title VI requirements. This is not what the long struggle for title VI was all about. Litigation has not proved to be a suitable weapon to effectuate speedy, wholesale desegregation. Congress thought that the threat to cut off federal assistance would be. Litigation policy must serve to make this threat credible.

The Conference urges, therefore, that litigation be used first and foremost to compel desegregation in those instances where federal assistance has not been applied for or has been rejected. It must be made clear that the only issue facing those who discriminate is whether desegregation will occur with or without federal assistance. Next, every effort should be made to ensure that federal assistance is not extended to applicants for one-time or noncontinuing assistance who do not comply with title VI requirements or to noncomplying initial applicants under new or existing programs of continuing assistance. If there is noncompliance under federally assisted ongoing programs, steps should be taken quickly to terminate such assistance in accordance with title VI procedures. It may sometimes be advisable to resort to court proceedings at the same time that such steps are being taken. The completion of title VI procedures, however, should not await the outcome of court proceedings, as the Guidelines now require. Indeed, title VI proceedings were intended to make litigation unnecessary.

The Conference does not contend that resort to judicial enforcement, particularly to lawsuits made possible only by title VI itself (*i.e.*, lawsuits to obtain specific enforcement of assurances, covenants running with federally provided property and statements of compliance or desegregation plans filed pursuant to agency regulations) will never be an adequate substitute for title VI proceedings to cut off federal assistance. The cases in which judicial enforcement may be an adequate substitute should, however, be specified with great care and particularity.

The Conference is persuaded that if the threat of cutting off or withholding federal assistance requirements is made credible, compliance will be secured and there will be little, if any, need to cut off or withhold any federal assistance. Only in this way, too, will it become possible to use federally assisted programs and activities as positive instruments to promote racial desegregation.

39 Letter From Attorney General Nicholas Katzenbach to the Heads of Twenty-one Departments and Agencies With Title VI Responsibilities, Dec. 27, 1965, p. 2, copy on file in the *Notre Dame Lawyer* Office.

40 *Ibid.*

The Equal Employment Opportunity Commission

Problems of overlapping jurisdiction now confront the Secretary of Labor and the contracting agencies, on the one hand, and EEOC, on the other, in their efforts to combat discrimination in employment. To solve these problems, the Conference recommends that the functions given to EEOC by title VII, as presently written, should be transferred to the Department of Labor.[41]

At the same time, title VII should be amended in several respects. (1) Title VII should empower EEOC to perform the adjudicatory functions now entrusted to the United States district courts,[42] including the issuance of orders enjoining respondents from engaging in unlawful employment practices and ordering appropriate affirmative action, such as the reinstatement or hiring of employees, with or without back pay. Such adjudication should be subject to review in the United States Courts of Appeals. (2) The Secretary of Labor should be authorized to petition EEOC for an order enjoining a respondent from engaging in unlawful employment practices and for appropriate affirmative action, including the reinstatement or hiring of employees with or without back pay in any case where his efforts fail to obtain voluntary compliance with title VII requirements. (3) The Secretary of Labor, rather than the Attorney General, should be authorized to petition EEOC for appropriate orders eliminating patterns or practices of resistance to the full enjoyment of any of the rights secured by title VII. (4) The present authorization of court actions by persons claiming to be aggrieved by alleged unlawful employment practices should be continued.

The Secretary of Labor now has operating and coordinating responsibilities for important aspects of eliminating discrimination in employment. The Conference recommendation would add to these responsibilities so as to maximize the effectiveness of the overall equal opportunity program. It would make available for the enforcement of title VII — as presently written — all the resources of the Labor Department's regional and local offices and make it easier to enlist the cooperation of state and local fair employment practices agencies. The Conference recommendation would also expedite the adjudication of alleged unlawful employment practices by entrusting the function to the existing, specialized EEOC rather than to courts of general jurisdiction.

A Federal Equal Housing Opportunity Act

The Conference urges congressional passage of a law directing federal housing programs and related federal assistance to the goal of affirmative desegregation and prohibiting discrimination because of race, color or national origin in the conduct of housing transactions.[43] The administration of the new law should be entrusted to HUD and its compliance provisions should be carried out by a Division of Equal Housing Opportunity headed by an Administrator. The Administrator would direct compliance functions and serve as a watchdog on behalf of civil rights over all the activities of HUD. In addition, HUD should

41 See section II of this report *supra*.
42 Civil Rights Act of 1964, tit. VII, §§ 706, 707, 78 Stat. 259, 42 U.S.C. §§ 2000e–5, –6 (1964).
43 See section I of this report *supra*.

create a Board of Adjudication within the Department composed of hearing examiners appointed for five-year terms.[44] This Board should perform the adjudicatory functions corresponding to those the Conference would entrust to EEOC under the title VII amendments proposed. The decisions of the Board of Adjudication should be administratively final — in the sense that they would not be reviewed by the Secretary of HUD — but subject to review by the United States Courts of Appeals. The Board should be large enough so that it is practicable for it to assign panels to hear cases in the localities in which unfair housing practices are alleged to have occurred.

The Secretary of HUD now has great powers to take affirmative steps to counteract the racial segregation of housing. To make him responsible for the administration of a Federal Equal Housing Opportunity Act, but not for the adjudication of alleged unfair housing practices, will make possible the kind of reinforcement of civil rights programs that is badly needed.

The Conference also urges that the new law authorize court actions by persons claiming to be aggrieved by alleged unlawful housing practices. Such persons should be authorized to recover damages for mental anguish and civil penalties prescribed by the act. Finally, the President's Committee on Equal Opportunity in Housing should be abolished and its functions transferred to HUD.

Community Relations Service

The Conference fears that, in the long run, the conciliation functions of the Community Relations Service (CRS) may conflict with the law enforcement duties of the Justice Department and that both, as a result, may be compromised. Therefore, the transfer of CRS to the Justice Department, as provided by the President's reorganization proposal, should not be regarded as permanent. At the present, however, the Conference has no recommendation regarding the most appropriate location for CRS. New laws and programs in the civil rights field and in areas substantively affecting opportunities for minorities are under consideration by Congress. Many existing laws and programs are still in their infancy. CRS itself has yet to be put to a full test. The question of the location of CRS should be considered open for review as it gains additional experience in the performance of its functions.

A National Conference on Civil Rights

Representatives of federal, state and local civil rights agencies, private civil rights organizations, charitable and educational foundations and interested private citizens must be enabled to meet to exchange information and discuss civil rights problems, policies and strategies. The Conference urges the United States Commission on Civil Rights to make such provision by organizing a National Conference on Civil Rights composed of such representatives and private citizens. This conference should meet periodically in sections devoted to particular problems and annually in general session, and the Commission should furnish it with a professional secretariat.

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44 Administrative Procedure Act § 11, 60 Stat. 244 '(1946), as amended, 5 U.S.C. § 1010 (1964).