

# Regional Plan Association

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June 15, 1979

## MEMORANDUM

TO: Board of Directors  
FROM: John P. Keith  
RE: "Segregation and Opportunity in the Region's Housing"

Attached is the typeset of Regional Plan News No. 104, "Segregation and Opportunity in the Region's Housing," for review and approval before printing. Please convey your suggestions to Boris Pushkarev, Vice President - Research and Planning, or to Ruth Plawner. Unless we hear from you to the contrary by Friday, June 29, we will assume you approve and proceed to publication.

This study is the product of a special housing project for Tri-State Regional Planning Commission, supported by grants from the Department of Housing and Urban Development and The Ford Foundation. The report was reviewed by a Board Housing Study Committee, chaired by Alexander J. Allen, and accepted by the Executive Committee last year with the understanding that the final edited publication be cleared by the full Board. The Housing Committee presented the report as being an important contribution to the public's understanding of housing segregation in the New York Region and said that it should be widely circulated.

Given the Board's concurrence, we will seek to arrange a special event to announce this report, probably in conjunction with other groups directly concerned with the issue, such as the National Urban League, National Committee Against Discrimination in Housing, NAACP, and the relevant government agencies. I would appreciate the Board's suggestions regarding such an event and ways to distribute the report.

/cc  
Enclosure

# Segregation and Opportunity in the Region's Housing

NOT FOR PUBLICATION

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INTRODUCTION

Equal opportunity in housing means the ability to choose one's place of residence according to the same rules as everyone else. The denial of this freedom of choice on racial or other grounds not only violates individual constitutional rights, but also produces destructive social tensions and alters the physical shape of the Region, with negative repercussions on the economy, the environment, and public costs.

A recent study by the Urban Institute states: "The persistence of housing segregation contrasts with the increase in integration that has occurred in other facets of life.... In the midst of these changes, segregation in private housing stands out as a seemingly unyielding obstacle...it underlies a host of economic and social problems: white flight to the suburbs, the fiscal decline of many central cities, and problems with quality public education...." \* And, as John F. Kain put it, "Black poverty would have less serious consequences for both individual blacks and for the wider society were it not for the serious limitations on black residential choice imposed by racial segregation." \*\*

This three-part study seeks to provide an information base for dealing with equal opportunity in housing in the Tri-State Region. The first part seeks to measure the extent to which the residences of blacks—the dominant racial minority—are segregated from those of the rest of the population. This segregation is traditionally considered to have several causes. One is analogous to the grouping of ethnic minorities in ethnic neighbor-

This report is an updated and condensed version of the study *Housing Segregation in the Tri-State Region*, submitted by Regional Plan Association to the Tri-State Regional Planning Commission in June, 1978. The study was carried out with financial support from the U.S. Department of Housing and Urban Development and The Ford Foundation. The publication of this report was financed by grants from The Ford and Taconic Foundations. The report was prepared by Boris Pushkarev and Ruth Plawner, in collaboration with Jeffrey M. Zupan and Robert Cumella, with programming services provided by Tri-State, and edited by Patricia Jones. The report was reviewed by a committee of Regional Plan Association's Board of Directors, including Alexander J. Allen, Chairman; Max Abramovitz, Edward T. Cleary, Seymour B. Durst, Charles V. Hamilton, Eleanor Mamelok, Verdell Roundtree, Walter B. Shaw and adopted by the full Board.

hoods. The extent of this voluntary grouping is difficult to measure, but opinion polls typically suggest that fewer than one-quarter of the residents of segregated black areas prefer to live in segregated areas. The lower income of black families is often cited as another major cause of segregation. Yet, similar to other studies, this study found that only some 6 percent of racial segregation in the Region's housing can be directly attributed to differences in income. Therefore, discriminatory housing attitudes and practices must be considered a major cause of racial segregation in the Region, though obviously there are others. Without barriers to the free choice of housing, blacks would live in large areas of the Region where they now do not.

While it is difficult to measure discriminatory attitudes, discriminatory practices and what is being done about them are the subject of the second part of this study. An effort is made to provide some numerical indicators of such practices and to describe the steps being taken by private, local, state, and federal agencies to prevent them.

Some 20 percent of the American population, on average, moves each year; so strong affirmative marketing, offering minority families housing of

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\* Ann Burnet Schnare, *The Persistence of Racial Segregation in Housing* (Washington, D.C.: The Urban Institute, 1978).

\*\* John F. Kain, "Race, Ethnicity, and Residential Location," *Department of City and Regional Planning Discussion Paper D75-3* (Cambridge, Mass.: Harvard University, 1975).

## SUMMARY

### I. TARGET AREAS FOR RELIEVING RACIAL SEGREGATION

To give some indication of the magnitude of racial segregation throughout the Region, the study first measures the degree to which each census tract differs from the regional average of racial balance, both in total numbers of families and according to income level. It would not be possible or necessarily desirable to achieve this average "balance" throughout the Region. Nevertheless, the concept of every census tract having the same proportion of black families can be used as a statistical yardstick to measure the degree to which the races are, in fact, separated.

1. Racial separation in the Region is very strong: less than 10 percent of all census tracts are racially "balanced," that is, have about the regional average proportion of black families (9 to 17 black families per 100 total families). Blacks are substantially under-represented in more than 70 percent, and substantially over-represented in about 20 percent of all census tracts. In 1970, nearly two-thirds of the Region's black families were confined to about 1.35 percent of the

suitable cost in the existing stock throughout the Region could, in a relatively short time, alter the present segregation patterns. Since there is an average of 13 black families for every 100 families in the Region, the concentration of black families in any one area would never be great enough to encourage racial "tipping," if they were able to buy or rent in all parts of the Region where moderate-cost housing now exists.

In addition to widening the opportunities for black families to move into existing housing, new low- and middle-income housing could be built. The third part of this study scales the amount of buildable vacant land within a 30-mile radius of New York City, where new medium-density, moderate-cost housing could be built. In contrast to existing housing, the contribution to equal opportunity that can be made by new housing is small. The annual increment of new housing in the Region is less than 1 percent of the existing stock. Still, an expanded supply of new housing may offer new choices of location and reduce pressures in the housing market that contribute to discrimination.

This study is based on 1970 data, and whether segregation in the Region increased or decreased since then cannot be determined with certainty until after the 1980 Census. However, preliminary 1976 data suggest that despite localized racial shifts, little change has taken place at the regional scale. Between 1970 and 1976, only 3.8 percent of the Region's black population shifted from central cities to the suburbs. Thus, the overall findings of the study remain valid despite the time lag.

**Region's residential land** in five major ghetto areas in central Brooklyn, Harlem, the south Bronx, Essex County and southeast Queens. The remaining third lived mostly at their fringes, or in some 50 smaller ghetto areas. For the Region to attain the theoretical condition of racial "balance," roughly two-thirds of all black families would have to switch housing locations with about one-tenth of all white families.

2. Only 6 percent of the racial imbalance in the Tri-State Region in 1970 could be explained by the income differences between black families and white families; 94 percent of the separation is not due to differences in income, but to other reasons, both voluntary and involuntary. These involuntary reasons include direct discrimination, conditions in the housing market, such as differences between area-wide average income and the income necessary to enter an area, taking into account rising housing prices, vacancy rates, and very importantly, the lack of information about housing opportunities in areas distant from the ghettos.

3. Fully 60 percent of the Region-wide imbalance in 1970 was due to the uneven distribu-

tion of black and white families among census tracts **within** counties, as opposed to uneven distribution **between** counties. This intra-county imbalance is largely unrelated to income. In fact, there are instances where the per capita income of suburban black areas is higher than that of neighboring white areas.

4. If income is taken into account on a county-wide scale, blacks are substantially under-represented only in Nassau, Suffolk, Bergen, Middlesex, Hudson and Morris Counties, in absolute numbers. In percentage terms, black under-representation is highest in remote areas such as Putnam County or the Housatonic Planning Region, but the contribution of these areas to the Region's total racial imbalance is small, because their total population is small.

5. At the census tract scale, accounting for income, blacks in 1970 were under-represented the most in western and southern Brooklyn; central Queens; eastern Bronx; lower Manhattan; Staten Island except for its north shore; the southern half of Long Island extending to Brookhaven; northern Hudson County, southern Bergen County, and a broad corridor through northwestern New Jersey roughly between State Routes 3 and 4; a similar corridor extending southward from Union County to Middlesex County, as well as some coastal portions of Monmouth.

Housing in this area is currently occupied by white families which belong to the same income groups as a large number of black families. To the extent that the cost of housing is related to family income, large numbers of black families could afford to live there. In fact, if each income group in each census tract in this area had the same proportion of black families as that income group has Region-wide (which is the definition of "income-adjusted racial balance"), about half the Region's black families would live there. Most of the other half would stay in poorer areas, while about one-tenth would move to richer ones.

Obviously, in real life these opportunities are diminished by the fact that housing costs are not directly related to current family income. Many poorer families living in the "target areas" moved into their housing years ago, when prices were lower and their incomes may have been higher. A family—black or white—moving into the area today may well need a higher income than that of the existing residents. Also, the rate at which black families could move in is governed by the turnover in existing housing, i.e., by the rate at which it becomes vacant or comes on the market. Nevertheless, an existing income distribution in scale with that of a large number of black families is an indicator of **probability** that housing in scale with their incomes could be found there.

Another important point is that the area in which white incomes are in scale with those of a large number of blacks is, geographically, very extensive, it encompasses about half the Region's population. If opportunities for black migration

could be opened **evenly** over this huge area, segregation would be greatly relieved. Blacks there would represent only a small fraction of the total population, far below any racial "tipping point." This is in contrast to the present pattern, where black migration is narrowly confined to the fringes of existing ghettos. There, integration does not last long: a racial "tipping point" is soon reached, and as whites move out, more blacks move in until the area is resegregated.

Aiding black families to find existing housing at acceptable prices throughout the entire Region—in cities as well as suburbs—requires, among other things, properly targeted and organized information and referral services, and a reorientation of real estate agencies toward an active desegregation role. Without such aid, it is difficult for blacks to locate housing opportunities in unfamiliar territory. New moderate-income housing could, of course, also be built in richer areas to change their income and racial composition, but its impact on equal opportunity would be modest.

## II. CURRENT FAIR HOUSING PRACTICES

1. Differences in racial composition among the Region's neighborhoods are only an indirect evidence of discrimination. An effort to measure the incidence of discrimination directly was undertaken by the National Committee Against Discrimination in Housing (NCDH) in 1977, under contract with the U.S. Department of Housing and Urban Development (HUD), in a nationwide audit of real estate market practices. One general conclusion is that, while discrimination tactics persist, they have become less overt.

Preliminary results from 140 paired tests within the Region indicate, for example, that in the New York portion of the Region prospective white home buyers were offered more listings 50 percent of the time, and white apartment renters more listings 40 percent of the time. In more than 50 percent of the cases in New York and 30 percent in New Jersey, black testers were not invited to inspect units which their white counterparts saw. Blacks were more frequently and more consistently required to provide financial information, but were invited to complete applications only one-third as frequently as whites. Tentative interpretation suggests that in 61 percent of the New York cases there was a finding of discrimination, while 33 percent proved inconclusive. There was more discrimination in the home buying market than in the rental market. In the home buying market, discrimination appeared to be strongest in New York City, followed by the New York suburbs and then by New Jersey. In the rental market, on the other hand, the only proven cases of non-discrimination were in Manhattan.

2. The real estate industry, particularly agents and brokers, clearly occupies a strategic position on the road toward equal opportunity in housing.

Yet, the attitude of the profession—dating back to the times preceding the civil rights legislation of the 1960's—has been one of promoting “homogeneous” neighborhoods. To change that orientation, both inducements and sanctions have been tried.

Inducements take the form of voluntary marketing agreements, with self-enforcement based on the industry's code of ethics. Even before national realty associations entered into such voluntary agreements with HUD in the past few years, successful cooperation between local fair housing organizations and realtor boards was established in the Hartford area and in Morris County. However, not all such ventures were successful. The one in New York State was canceled after two years. Many civil rights spokesmen remain highly skeptical of the approach, because it is often narrower than what is already mandated by law, and it lacks formal sanctions.

The most potent sanction used against licensed real estate agents is the suspension or revocation of their license, invoked in cases of fraud, incompetence or untrustworthiness. In New Jersey and Connecticut, State Real Estate Commissions, which have the licensing power, consist primarily of licensed real estate brokers, who have rarely invoked this sanction in cases of “untrustworthiness” stemming from racial discrimination.

In New York, the licensing power is vested in the Department of State's Division of Licensing, which contains a Civil Rights Unit. Its efforts have been focused on preventing induced panic selling and racial steering in transitional neighborhoods. In response to over 50,000 letters from homeowners requesting not to be solicited by real estate agents, the Department began issuing individual “cease and desist” orders; when complaints about blockbusting and racial steering from over 30 communities in New York City, Nassau and Suffolk continued, all solicitation of real estate listings was banned in Brooklyn and Queens in 1976, and in the eastern Bronx in 1977. Over a five-year period, fines averaging less than \$200 each have been assessed against 18 brokers; five licenses were suspended and 10 revoked.

3. Under Title VIII of the Civil Rights Act of 1968, there is an administrative procedure for dealing with discrimination in the housing market. Within the Region, individual complaints are processed by two regional offices of HUD, by the New York City Commission on Human Rights (NYCCHR), the New York State Division of Human Rights (NYS DHR), the New Jersey Division on Civil Rights (NJDCR) and the Connecticut Commission on Human Rights and Opportunities (ConnCHRO). The agencies can investigate a complaint, hold hearings, conciliate and persuade to help the complainant obtain the desired housing, obtain monetary relief for victims of discrimination and monitor future compliance. The State agencies can, in addition, issue formal injunctions, such as cease-and-desist orders.

Over the past five years these agencies taken together have been receiving over 30 complaints per month. The number has fluctuated with the general state of the economy. About 38 percent of the complaints have been resolved with some benefit to the victim, and the total number of complaints remains small. Among agencies, the rate of successful complaint resolutions in 1973-77 varied from a high of 51 percent for NYCCHR to 8 percent for HUD.

The complaints reflect all types of housing discrimination based on race or national origin, but pertain predominantly to discrimination against blacks. Of all the cases included, 90 percent involved blacks. Also, 95 percent of the HUD complaints involved discrimination either in renting, or in the terms of a transaction; only 5 percent involved sales. Direct transactions between buyer and seller of private homes (without the involvement of third parties) are only weakly covered by civil rights legislation.

The varying percentage of cases successfully resolved by different agencies reflects, in part, differences in administrative definitions between agencies; it also reflects the proximity of the agency to its constituents: the complaint process operates best at the lowest level of authority, where immediate local relief is available.

The complaints filed depend on how well-known and accessible the agency is to its constituents (either directly, or through private fair housing organizations), and how effective the complaint process is perceived to be. The attitude of “not dealing with the system,” the notion that recourse is futile, is widespread among minorities. The average processing time per complaint by HUD has been substantially reduced, from 10.9 months in 1974 to 3.3 months in 1977, with a concomitant increase in successful resolutions and number of complaints processed. The elapsed time, however, is often still too long for effective action. The process is cumbersome, lacks enforcement teeth, and seldom includes follow-up.

The State and New York City civil rights agencies are dealing with all kinds of discrimination—predominantly in employment. Racial discrimination in housing represents a small and declining share of their total case load: about 3.5 percent of 50,000 cases handled in 1973-77. The total budget of the four agencies within the Tri-State Region is estimated at \$41.2 million for the five-year period, of which possibly 5 percent was devoted to processing housing complaints. In constant-dollar terms, the budget of the civil rights agencies declined in New York State and in New Jersey, but increased slightly in New York City and substantially in Connecticut.

4. Housing discrimination complaints are also handled by county and municipal human rights commissions, where such exist. Some, such as those of Nassau County and New Haven, have authority similar to that of the State agencies, others have only informal means of resolving cases.

A key role in the process is played by private non-profit civil rights organizations and fair housing groups, which are a basic channel for referring complaints to the official agencies. The degree of enforcement, such as it is, largely depends on the activity of these grassroots organizations. Their financial resources have generally declined in recent years; some became defunct, while others have to devote most of their activity to contract work, such as consulting services for corporations.

5. Title VIII of the Civil Rights Act of 1968 also authorizes the Attorney General of the United States to bring suit when a "pattern or practice" of discrimination is believed to exist. Of more than 300 such suits filed in the United States by the end of 1977, only nine were in the Tri-State Region. Seven of these involved large real estate management firms with some 55,000 apartments. In most cases, the "patterns and practices" were first detected by fair housing or community groups and called to the attention of the Department of Justice after other remedies failed. Most of the nine cases ended in pre-trial settlements, with the defendants accepting court-ordered conditions to discontinue and remedy discriminatory practices.

6. Individuals or groups can institute private legal action both under the Civil Rights Act of 1968 and the Civil Rights Act of 1866. The number of such suits is limited because few victims of discrimination are willing to wait as long as two to three years for redress, to risk the time and the psychological strain, or are able to afford the upfront fees sometimes charged by attorneys, even on a contingency basis. However, in discrimination cases processed under the 1866 law, the courts can make damage awards and recover legal fees.

The Legal Defense Fund, one of the organizations providing free legal assistance, currently lists 73 cases in its dockets involving housing discrimination in the Region and vicinity. The Bergen County Fair Housing Council initiated over 30 suits since 1974. Most were settled out of court, with benefits to the plaintiff and punitive damages averaging some \$1,200 per case. Suffolk Housing Services filed at least six suits, with monetary awards, including attorney fees, averaging \$1,700 per case. In New Haven, the Center for Advocacy, Research and Planning initiated charges of racial steering against the largest realtor in Connecticut. Overall, however, only a few fair housing organizations in the Region are equipped to engage in litigation.

7. Because of the limited effectiveness of individual action, whether through administrative channels or through the courts, state human rights agencies have been leaning recently toward a "systemic" approach to combating housing discrimination. This approach has been tried in Connecticut and New Jersey over the past year under special federal grants.

In Connecticut, these projects include a study of the A-95 review process, the drafting of a model

zoning ordinance, and a systematic analysis of complaints to detect discriminatory patterns. In New Jersey, the Multiple Dwelling Reporting Rule (on the books since 1970) is being implemented. It requires landlords of apartment buildings with more than 25 units to report the racial composition of their tenants, furnishing a data base unlike any other in the Region, and like only one other in the nation, to detect local segregation patterns in an—admittedly small—sector of the housing market.

8. Overall, current fair housing practices in the Region are multifaceted and complex; their effectiveness is modest. The 1970's are still characterized by the vicious cycle of earlier decades: neighborhood integration—white exodus—resegregation. The geography of this continuing ghetto growth—instead of a gradual Region-wide integration—can be identified from the location of efforts to stem panic selling and racial steering and involves dozens of communities in Brooklyn, the eastern Bronx, southeast Queens, central Nassau and Suffolk counties, Bergen and Essex counties, the New Haven area, and many more.

9. A major effort of fair housing organizations has been directed at relieving discrimination in the form of exclusionary zoning. Beginning with the Mount Laurel decision, affirmed in 1975, individuals excluded from living in a community have "standing to sue," and based on such suits, the courts have invalidated the zoning ordinances of more than a dozen towns in New Jersey and one in New York. However, existing zoning has been affirmed in more municipalities than it was overturned. In the absence of a regional design for the location of medium-density and moderate-income housing, the courts have followed the market and dismissed exclusionary charges in cases where the communities are not "developing," that is, do not have extensive amounts of vacant land. This often precludes intensified development in areas which are most suitable for it. The third part of this study was undertaken as a pilot exploration for such a missing "regional design."

### III. OPPORTUNITIES FOR LOCATING MEDIUM-DENSITY HOUSING

The construction of new medium-density housing—which could accommodate, among others, families with low to moderate incomes and racial minorities—is severely constrained by local zoning. While this is not to say that such construction on all suitable land would be desirable, a first step in developing a regional strategy in this regard must be an inventory of vacant, buildable, accessible land, irrespective of its current zoning status.

A first approximation of the availability of such land was undertaken as a part of this study.

1. Within a 30-mile (48.3 km) radius of Columbus Circle, there are an estimated 76,200 acres (30,800 hectares) of land that are not devel-

oped, not in public parks and reservations, not wetlands, do not have a slope of 15 percent or more, and are not surrounded by development at densities of less than 4 dwellings per net acre (10 per hectare). This total excludes any such land in the boroughs of Manhattan, Brooklyn, Queens and the Bronx. About 59 percent of this suitable land is in New Jersey, 40 percent in New York, and 1 percent in Connecticut. The counties with more than 5,000 acres (about 2,000 hectares) of such land are, in descending order, Middlesex, Richmond, Nassau, Bergen, Hudson and Westchester.

2. If this land were developed at densities in the range of the development near it, namely 4 to 40 dwellings per net acre (10 to 100 per net hectare), it could, with proper subtraction for street space, accommodate 634,000 dwelling units, or a population in excess of 1.5 million.

This is not to say that only vacant land as defined above presents opportunities for the intensification of development in the vicinity of the Region's core. Such opportunities are further presented by the infilling of individual lots, not included in the above total, by the redevelopment of built-up land to higher densities, and by insertion

of medium-density development onto vacant land surrounded by low densities. The exploration of such opportunities was beyond the scope of this study. Also, the need for medium-density housing is not limited to the 30-mile (48.3 km) radius around Manhattan. It exists, for example, in Suffolk County, which also has some 21,000 acres (8,400 hectares) of vacant land in the defined category. In all these respects, the estimate of land available for medium-density housing is conservative.

On the other hand, it is liberal in the sense that site-specific investigation of the vacant land included would undoubtedly reveal many cases where it will not, in fact, be suitable for medium-density housing because of absence of sewers, poor access by public transit, difficult soil conditions, ownership patterns, priority of other land use, or pre-emption by recent development not recorded in the study. Such site-specific evaluation, using a larger set of objective criteria, remains to be undertaken at the regional scale. However, care must be taken that any actual development of these sites does not occur at the expense of existing housing in older cities. Desirably, it should siphon off development from the far periphery of the Region.

## RECOMMENDATIONS

To expedite progress toward equal opportunity in housing, these steps appear essential:

1. **Strengthening both public and private fair housing organizations at the county level.** Today, only the New York City, New Haven and Nassau County human rights agencies have tangible enforcement powers, and a few others in the Region are in the process of strengthening theirs. Private non-profit groups, the basic link between citizens and government in the fair housing field, are grossly underfunded and actually defunct or non-existent in many parts of the Region. These groups must have a full-time legal staff if progress is to be made in the enforcement of fair housing laws.

2. **Creating a Region-wide network of housing counseling, information and referral services.** Without an active outreach program of "affirmative marketing," which would direct black families toward available housing throughout the Region and not to transitional neighborhoods, most housing opportunities in most of the Region will remain unknown to blacks, and racial turnover will continue at the ghetto edge. The process of finding housing for those who seek it is also the only way to establish the real magnitude of the demand for integrated housing.

3. **An active enlistment of the real estate industry, both through collaborative agreements with civil rights organizations and housing referral services, and through potent sanctions, such as license revocation.** The experience of areas where local fair housing organizations are active shows that brokers and salespeople can be enlisted as

partners in the equal opportunity effort, and that unfair real estate practices can be restrained.

4. **Focusing the efforts of Region-wide agencies on strategy, coordination, development of a data base, and funding.** There is a question whether regional offices of a national department, such as HUD, should get involved at all in processing complaints about discrimination in particular houses or apartments. Their resources may be better employed by funding voluntary civil rights and housing counseling organizations at the county level. Providing these with a direction, a systematic data base, and monitoring the performance of real estate agencies would logically be a regional and national function, one that is presently lacking. A detailed analysis of the dynamics of racial movements during the 1970's should be undertaken after the 1980 Census.

5. **Continued development of a regional design for more compact urban settlement.** The current political resistance to more compact development at the local level cannot be considered a fixed constraint, given prospective realities of energy availability and fiscal and environmental limitations. An eventual transition from urban dispersal to urban reconcentration is linked to the attainment of equal opportunity in housing. In the meantime, the housing needs of existing cities must obviously be balanced against those of development on vacant land, even if it is compact. Under conditions of slow (or even negative) growth, priority must be assigned to achieving equal opportunity in the existing housing stock.

# STUDY FINDINGS

## I. TARGET AREAS FOR RELIEVING RACIAL SEGREGATION IN HOUSING

### 1. Definitions

This section of the report shows the extent and the geographic pattern of racial segregation in residential areas of the Tri-State Region. For this purpose, two measures of segregation are used. One is based simply on population; the other is adjusted for income.

The first measure is the number of families per hundred by which black families are under-represented or over-represented in each census tract in the Region compared to the regional average of 13 black families per 100 total families. If, in a particular census tract, only 3 out of 100 families are black, then the imbalance is -10. If, on the other hand, 63 out of 100 families are black, the imbalance is +50.

Racial segregation is caused to some extent by differences in income. More black families tend to live in lower-income areas simply because their incomes are lower. The purpose of the second measure is to remove this influence of income by measuring over-representation or under-representation by census tract compared to the regional average in each of 15 income groups. For example, some 30 percent of the Region's families in the group with the lowest income (below \$1,000 in 1970) were black; if, in a particular tract, 100 families with such incomes are found but only 20 of them are black, then blacks are under-represented by 10 families for that income level. Adding the imbalances for each of 15 income levels and relating them to the total population of a tract yields the over- or under-representation corrected for income.

Several caveats concerning these measures are in order. One, they refer to 1970, since only the decennial censuses offer data on racial mix by income by census tract. Some population shifts have occurred in the past eight years as the ghettos have expanded, especially in transitional neighborhoods. Nevertheless, the overall geography of segregation in the Region remains basically stable. The method used here can be easily replicated

after the 1980 Census, to show the shifts in the intervening years. Second, only families and only those who reported their income to the Census are considered. Exclusion of unrelated individuals and of families who did not report their income understates the magnitude of segregation but, again, does not change the broad outline of the patterns. Third, the only minority whose segregation pattern is studied here are blacks; neither Orientals nor ethnic minorities, such as Puerto Ricans, are considered. This is so in part because of definitional and data difficulties, and in part because racial segregation of blacks is the largest part of the problem. While Spanish-American families, as defined by the Census, did comprise 5 percent of the Region's total population in 1970, their level of housing discrimination complaints was one-quarter that of blacks, as will be shown later.

### 2. Extent of Segregation

Map 1 shows the income-unadjusted and Map 2 the income-adjusted pattern of imbalance geographically. In each map, the Region's census tracts are grouped into the same five categories to facilitate comparison. In the first group, blacks are under-represented by 9 to 13 families per 100; these are areas that are almost exclusively white. In the second group, blacks are under-represented by 4 to 9 families per 100, indicating a moderate imbalance. The third group, denoted on the maps as "regional balance," has close to 13 black families per 100, and is defined by an under-representation of 4 to an over-representation of 4 families per 100. In the fourth group, blacks are over-represented by 5 to 37 families per 100; these are areas of moderate black concentration which are either in small patches in the suburbs or at the fringes of the major ghettos. The fifth group includes the ghetto core areas, where the over-representation of blacks ranges from 37 to 87 families per 100, i.e., up to 100 percent black. This upper limit is reached in a few census tracts. The Region's 4,373 census tracts are distributed among these five categories, as shown in Table 1.

Census tracts are defined in such a way that they have a similar population (just over 4,000

Table 1.  
Summary of Census Tracts Classified by Racial Imbalance

	Black Imbalance (families per 100)	Income-unadjusted	Income-adjusted
Exclusively white	- 9 to -13	66.4%	49.2%
Moderate deficit	- 4 to - 9	5.5%	20.9%
Balanced	- 4 to + 4	6.5%	9.7%
Moderate surplus	+ 4 to +37	10.7%	10.8%
Black ghettos	+37 to +87	10.9%	9.4%
<b>Total Tracts</b>		<b>100.0%</b>	<b>100.0%</b>

people); therefore, the percentages of census tracts shown in the summary correspond fairly closely to the percentages of the Region's population. Very strikingly, only 6.5 percent of the Region's census tracts can be considered "balanced"; that is, they contain about the Region's average proportion of black families. Adjusting for income, that share increases to about 10 percent.

The extreme degree to which the Region's black population is segregated from the white is illustrated by the following figures: 61 percent of all black families reside in five major ghetto areas or on their fringes, defined by an over-representation of more than 12 families per 100 (i.e., over 25 percent black). These census tracts cover 55.05 square miles or only 0.72 percent of the Region's land containing 1.35 percent of its residentially developed area. Thus, nearly two-thirds of the Region's black population is limited to 1-1/3 percent of the Region's residential land.

### 3. Where Blacks Live

The pattern of the five major ghetto areas in which two-thirds of the Region's blacks live shows clearly in Map 1. In order of population size, these are central Brooklyn, Harlem and the south Bronx (the latter two merge into one area at the regional scale), the Newark area and southeast Queens. Most of the remaining third of the Region's black population lives either at the fringe of these five areas or in some 50 scattered groups of census tracts, for the most part in older urban settlement.

The fringe of the major ghettos, characterized by census tracts with a moderate concentration of black families, extends in Brooklyn eastward toward Ozone Park and southward into Flatbush; in the Bronx into the Soundview area; in Essex County into the Oranges and Montclair. Some areas characterized by this intermediate shading on the maps, notably East Harlem and parts of the Bronx, have large Puerto Rican concentrations.

Among the smaller clusters of census tracts with an over-representation of black families, Corona and Far Rockaway in Queens and Eastchester in the Bronx are visible in New York City. There is also a small grouping along the North Shore of Staten Island.

In Nassau County, census tracts where blacks are over-represented appear near downtown Hempstead, in Roosevelt, Lakeview, Manhasset and New Cassel and in Suffolk County, in North Amityville, Wyandanch, Bay Shore, and a few clusters in Islip and Brookhaven. Westchester County shows much larger concentrations, principally in Mount Vernon, New Rochelle and White Plains, with smaller clusters in Port Chester, Yonkers, Ossining and Peekskill. Rockland County has three small clusters, in Nyack, Spring Valley and Suffern, while those in the Mid-Hudson counties—not shown on the map due to scale—are in Newburgh, Beacon and Poughkeepsie.

In Connecticut, the coastal cities of Stamford, Norwalk, Bridgeport and New Haven have groups of census tracts with sizable black populations; there is a smaller one in Waterbury.

In New Jersey, the major clusters outside Essex County are in Jersey City and in Paterson; smaller clusters occur in Englewood, Passaic and Hackensack; Elizabeth, Rahway and Roselle; Morristown, Plainfield, Somerville and New Brunswick; in Freehold, Long Branch, Shrewsbury and Neptune in Monmouth County.

### 4. The "Balanced" Areas

The areas where black and white families are "in balance," that is close to their regional average share, are, as evident from the summary table, very few. Most of them occur at the edges of the five large and 50 smaller black concentrations enumerated above.

By the income-unadjusted definition, notable clusters of "balanced" census tracts are found in New Haven and adjacent municipalities of Hamden, East Haven and West Haven; in the vicinity of White Plains; in Clarkstown (Rockland County) in and near Piscataway (Middlesex County); along the Atlantic Highlands (Monmouth County) and in Riverhead (Suffolk County). In New York City, they are mostly along Central Park West, and in scattered areas of Brooklyn, Queens and the Bronx. In the latter three boroughs, many of the "balanced" tracts became predominantly black since 1970. By the income-adjusted definition, the extent of the "balanced" areas increases, but the increase is principally in very high-income suburban areas, such as the North Shore of Nassau County, Scarsdale, New Castle, or New Canaan. The definition must be interpreted with caution, for very few black families (i.e., some domestics) are needed to put the rich areas into "balance" by the income-adjusted definition. In eastern Long Island, a large, thinly settled area between Brookhaven and Southampton shows up as being "balanced."

### 5. Where Blacks Could Live

The map of income-adjusted imbalances is of primary interest for showing the areas where black families are most under-represented given their income, which means where they would be most likely to find housing within their income brackets.

In New York City, the major such area in 1970 was Brooklyn west of Ocean Parkway, and along Sheepshead Bay toward Flatlands and Canarsie. The second one extended from Greenpoint to Astoria to Richmond Hill in Queens, including Middle Village and Whitestone. Lower Manhattan and the Bronx east of Westchester Creek, as well as most of Staten Island, were in this category.

On Long Island, the South Shore towns of Hempstead, Babylon, Islip and most of Brookhaven fall into this category.

In New Jersey, most prominent is Hudson County north of Jersey City (but also Bayonne), and a wedge of white, blue-collar municipalities that extends from Hudson County to the northwest, generally between State Highways Route 3 and Route 4, toward Clifton, Wayne and northern Passaic County. Towards the south, there is a similar wedge along the New Jersey Turnpike through eastern Union County and into Middlesex County, including South Brunswick and Madison.

In the northern part of the Region, the areas of heaviest black under-representation occur beyond the belt of affluent suburban settlement, in Orange and Putnam Counties, and in the Housatonic Valley. As noted earlier, 49 percent of the Region's census tracts belong in this category of heaviest black under-representation. Most of the opportunities for black families could be opened in the first category of "heaviest under-representation," although the large area of "moderate under-representation" is not to be overlooked.

The striking point is that the number of new black families needed to attain racial balance in either of these areas is not large—between 4 and 13 per 100 total families. It is far below any "tipping point" that is commonly feared by those residents of moderate-income white areas who resist integration. However, the only way to approach but not to exceed this number on a regional scale is to **open the opportunities for black immigration in all areas where black families are under-represented accounting for income.** It is the present unevenness of the migration—which leads to ghetto growth instead of integration. Defining the extent of the area where blacks could, potentially, find housing suitable for their income is the first step. The second logical step would be the establishment of referral services facilitating housing search in the "target areas" and a reorientation of the real estate industry toward an active desegregation role in these areas.

## 6. Differences by County or Planning Region

The pattern of racial imbalance, presented in the maps by census tract, is summarized in Tables 2 through 5 by county or Connecticut Planning Region. In the first two tables, the four counties in which blacks are over-represented county-wide are shown separately from the remaining 17 counties and six planning regions of the Tri-State Region.

Theoretically, if blacks were to be represented equally in all census tracts of the Region, two kinds of movements would be necessary: one, from the over-represented counties to the under-represented counties, and two, within each county, to equalize representation among census tracts. In Table 2, the first three columns simply show the 1970 relationship between black families and total families, while the fourth column, en-

titled Total Black Imbalance, shows the sum of these two hypothetical movements.

For the four counties where the proportion of black families is above the regional average, (Essex, Manhattan, Brooklyn and The Bronx) the "total imbalance" figure represents the sum of the black out-movements from the county, plus the movements within, that would be theoretically required to attain balance. For the remaining counties, this figure represents the corresponding sum of in-movements plus the movements within. Because inter-county figures are thus double-counted, the "imbalance" columns in Table 2 are not additive.

The "income-adjusted imbalance" column is similarly defined, except that the imbalances are calculated so that each census tract has the regional average of black families within each income level living in that tract.

The "percent imbalance" column, in each case, shows the black families that would hypothetically switch housing locations with white families, expressed as a percent of total families. By the income-unadjusted definition this index of racial separation varies from a high of 21 percent in Essex County to a low of 8.25 percent in neighboring Union County; adjusting for income, this share shrinks to between 20 percent in Essex and 5.7 percent in the high-income South Western Connecticut Planning Region.

In Table 3, the inter-county imbalances and the intra-county imbalances are shown separately. For public policy purposes, this distinction is of great interest.

To begin with, the difference between the income-adjusted and the income-unadjusted definition should be noted. Summing the inter-county imbalances (without double-counting) and those within counties, the total number of black families who would have to switch housing locations with white families to attain racial balance in the Region is approximately 400,000 without adjustment for income, and approximately 376,000 with such an adjustment. The difference is only 6 percent. In other words, **only 6 percent of the racial imbalance in the New York Region in 1970 could be explained by the income inability of black families to move into white neighborhoods; the remaining 94 percent of the racial separation is due to non-economic reasons.**

Furthermore, the proportion of black families affected by racial segregation is very large: with or without adjustment for income, roughly two-thirds of all black families in the Region would have to switch housing locations with white families, if Region-wide racial balance were to be attained; about one-tenth of all white families would be involved in such a hypothetical exchange.

**Most of the imbalance is among census tracts within counties, not between counties.** The intra-county imbalances, after adjustment for income, total about 228,000, as opposed to roughly

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**Table 2.**  
**Regional Racial Imbalance Indicators—Tri-State Region, Summary, 1970**

County or Planning Region	Families			Black Imbalance		Income Adjusted Black Imbalance	
	Black	Total	% Black	Total	%	Total	%
<b>Above Regional Average</b>							
Essex	64,203	235,513	27.26	49,576	21.05	47,194	20.04
New York	87,939	359,526	24.46	61,808	17.19	56,681	15.77
Kings	154,923	685,528	22.60	117,098	17.08	107,196	15.64
Bronx	87,429	390,657	22.40	56,278	14.41	47,425	12.14
<b>Total</b>	<b>394,494</b>	<b>1,671,224</b>	<b>23.61</b>				
<b>Below Regional Average</b>							
Queens	60,663	549,524	11.04	51,803	9.43	49,051	8.93
Union	14,031	144,834	9.69	11,949	8.25	9,873	6.82
Passaic	11,305	121,254	9.32	10,502	8.64	10,193	8.41
Hudson	13,555	159,438	8.50	14,307	8.98	16,713	10.48
Westchester	19,094	232,637	8.21	19,671	8.45	14,876	6.40
Greater Bridgeport	6,312	80,248	7.87	7,274	9.06	6,598	8.22
South Central	9,826	128,881	7.62	11,378	8.83	10,792	8.34
Monmouth	8,674	114,097	7.60	9,985	8.75	9,571	8.89
South Western	5,680	86,079	6.60	7,676	8.92	4,882	5.67
Orange	2,688	54,262	4.95	4,838	8.92	5,216	9.61
Rockland	2,512	53,035	4.74	5,113	9.64	3,911	7.38
Dutchess	2,387	51,072	4.67	4,682	9.17	4,375	8.57
Central Naugatuck	2,474	56,827	4.35	5,813	11.73	5,461	9.61
Richmond	3,133	73,666	4.25	6,896	9.36	6,389	8.67
Suffolk	10,224	266,172	3.84	26,968	10.13	23,921	8.99
Nassau	13,254	359,638	3.69	38,667	10.75	27,597	7.67
Middlesex	5,429	146,936	3.69	14,175	9.65	12,774	8.69
Somerset	1,424	50,122	2.84	5,392	10.76	4,209	8.40
Bergen	6,040	240,003	2.52	27,014	11.25	21,233	8.85
Valley	445	19,189	2.32	1,936	10.09	1,791	9.33
Housatonic	614	33,610	1.83	3,557	10.58	3,006	8.95
Morris	1,732	96,470	1.80	10,862	11.25	8,523	8.84
Putnam	20	14,187	0.14	1,741	12.27	1,585	11.17
<b>Total</b>	<b>201,516</b>	<b>3,132,181</b>	<b>6.43</b>				
<b>Region Total</b>	<b>596,010</b>	<b>4,803,405</b>	<b>12.41</b>	<b>399,826*</b>	<b>8.32</b>	<b>376,668*</b>	<b>7.84</b>

\*Subtotals for counties above and below regional average not additive because of double counting of inter-county imbalances.

Table 3.

## Inter-County vs. Intra-County Racial Imbalance Indicators—Tri-State Region, Summary, 1970

County or Planning Region	Black Imbalance				Income Adjusted Black Imbalance			
	Inter-County		Intra-County		Inter-County		Intra-County	
	Number	%	Number	%	Number	%	Number	%
<b>Above Regional Average</b>								
Essex	34,976	14.85	14,600	6.20	33,428	14.19	13,488	5.73
New York	43,322	12.05	18,486	5.14	36,244	10.08	20,121	5.60
Kings	69,849	10.19	47,249	6.89	51,501	7.51	55,074	8.03
Bronx	38,949	9.97	17,329	4.44	26,152	6.69	20,955	5.36
<b>Total</b>	<b>187,096*</b>	<b>11.20</b>	<b>97,644</b>	<b>5.84</b>	<b>147,325**</b>	<b>8.82</b>	<b>109,638</b>	<b>6.56</b>
<b>Below Regional Average</b>								
Queens	7,533	1.37	44,270	8.06	5,237	.95	44,612	8.12
Union	3,943	2.72	8,006	5.53	1,891	1.31	8,214	5.67
Passaic	3,743	3.07	6,759	5.57	4,036	3.33	6,309	5.20
Hudson	6,231	3.91	8,077	5.07	8,850	5.55	8,019	5.03
Westchester	9,776	4.20	9,895	4.25	4,605	1.98	10,646	4.58
Greater Bridgeport	3,647	4.54	3,627	4.52	3,184	3.97	3,527	4.40
South Central	6,168	4.79	5,210	4.04	5,816	4.51	5,143	3.99
Monmouth	5,485	4.81	4,500	3.94	5,044	4.42	4,691	4.11
South Western	5,001	5.81	2,675	3.11	2,305	2.68	2,720	3.16
Orange	4,046	7.46	792	1.46	4,656	8.58	612	1.13
Rockland	4,070	7.67	1,043	1.97	2,837	5.35	1,178	2.22
Dutchess	3,951	7.74	731	1.43	3,644	7.14	808	1.58
Central Naugatuck	4,578	8.06	1,235	3.67	4,405	7.75	1,128	1.98
Richmond	6,009	8.16	887	1.20	5,309	7.21	1,194	1.62
Suffolk	22,808	8.57	4,160	1.56	19,691	7.40	4,635	1.74
Nassau	31,377	8.72	7,290	2.03	20,344	5.66	7,937	2.21
Middlesex	12,806	8.72	1,369	.93	11,039	7.51	1,957	1.33
Somerset	4,796	9.57	596	1.19	3,639	7.26	660	1.32
Bergen	23,744	9.89	3,270	1.36	18,098	7.54	3,566	1.49
Valley	1,936	10.09	--	--	1,815	9.45	2	.01
Housatonic	3,557	10.58	--	--	3,061	9.11	--	--
Morris	10,240	10.61	622	.64	7,908	8.20	788	.82
Putnam	1,741	12.27	--	--	1,606	11.32	--	--
<b>Total</b>	<b>187,186*</b>	<b>5.98</b>	<b>115,014</b>	<b>3.67</b>	<b>149,020**</b>	<b>4.76</b>	<b>118,347</b>	<b>3.78</b>

\*Due to rounding total for counties above regional average does not equal total below regional average.

\*\* See note, Table 4.

148,000 for the sum of the imbalances between counties. One might say that, after adjustment for income, 60 percent of the racial separation in the Region is an intra-county issue.

As for the inter-county imbalance, this figure, after adjustment for income, is highest in Essex County, followed by Manhattan, Brooklyn and The Bronx, the four counties where black families are over-represented compared to the regional average.

Black families, after adjustment for income, are fairly close to the regional average in Queens, Union and Westchester counties. A very small in-movement of black families would bring them into balance at the regional scale, even though considerable internal shifts would be required for balance at the census tract level.

The greatest under-representation of black families at the inter-county scale, after adjustment for income, occurs in Nassau, Suffolk, Bergen and Middlesex, followed by Hudson and Morris counties, in that order. As a percent of total population, the inter-regional imbalances are highest in remote, predominantly white areas such as Putnam County or the Valley and Housatonic Planning Regions; however, in absolute number, their capacity to offer housing opportunities to black families without exceeding the regional average is small, because their total population is small.

Tables 4 and 5 used to derive the income-adjusted imbalance figures, are presented for reference. Table 4 shows the imbalances by county or planning region, as well as their sums by state sector, detailed by each of the 15 income groups used in the calculations. Table 5 shows what per-

cent of all families in each income group are black for the Region as a whole, for the three state sectors, and for each county or planning region.

## 7. Recent Trends

The basic source of data on racial and income composition by small area is the decennial Census of Population. Until the results of the 1980 Census are in, it will not be possible to say in detail what the racial trends of the 1970's were.

Nevertheless, some general impressions can be gained. The diffusion of blacks into the huge, white-only portions of the Region has been small. The main process has been one of an outward expansion of ghetto areas, accompanied by a depopulation of many of their inner portions. Many areas adjacent to ghettos in Brooklyn, Queens and the Bronx which showed up as having a white imbalance in the 1970 Census now have a black imbalance.

Similarly, the increase in the black population in the suburbs has been by no means uniform, but rather focused on the immediate vicinity of the suburban "mini-ghettos."

Such localized racial shifts notwithstanding, the overall racial geography of the Region has not changed greatly, as Table 6 suggests. The table compares 1970 data for selected central cities in 16 counties of the Region and their suburban areas with those for 1976, based on the Census Survey of Income and Education carried out that year. The data are comparable only in general terms, and should be interpreted with caution.

The proportion of blacks in New York City increased because of continuing white outmigra-

**Table 6**  
Percent of Central City Population and Outside Central City Population by Race, 1970 and 1976

County	In Central Cities						Outside Central Cities					
	1970			1976			1970			1976		
	White	Black	Other	White	Black	Other	White	Black	Other	White	Black	Other
NYC, Westchester, Rockland, Putnam	76.6	21.1	2.3	72.3	23.7	4.1	91.0	8.3	0.7	87.6	11.5	0.9
Nassau, Suffolk	—	—	—	—	—	—	94.9	4.7	0.4	93.6	6.0	0.4
Essex, Morris, Union	44.0	54.2	1.8	45.4	54.6	0.0	89.9	9.6	0.5	87.1	11.9	1.0
Passaic, Bergen	82.6	16.3	1.1	81.7	14.9	3.4	97.1	2.4	0.5	96.5	2.0	1.5
Hudson	77.8	21.0	1.2	79.2	17.5	3.3	97.2	1.9	0.9	96.3	1.7	2.0
Total, 16 Counties NY and NJ	75.4	22.4	2.2	71.8	24.3	3.9	93.6	5.9	0.5	91.7	7.5	0.8

Percent of Total 1970 and 1976 Population, by Race, in Central Cities and Outside Central Cities

Total, 16 Counties NY and NJ	51.9	83.5	84.2	48.7	79.7	84.6	48.1	16.5	15.8	51.3	20.3	15.4
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Sources: 1970 Census of Population; 1976 Survey of Income and Education.

tion, while their total number remained almost the same. In the New Jersey cities, the percentage of the black population remained stable or declined somewhat. As a proportion of the suburban population, blacks increased from 5.9 to 7.5 percent. Of all the blacks residing in the 16-county area, 16.5 percent lived outside central cities in 1970, and this share increased to 20.3 percent by 1976. The largest relative increase occurred in the northern suburban counties, primarily Westchester, followed by Long Island. In New Jersey, there was a minor increase in the suburban black population of Essex, Morris and Union counties, while that of Bergen, Hudson and Passaic appears to have declined.

The increase in Westchester County represents primarily an overspill from the Bronx, and that in the Newark suburbs, similarly, an overspill from that city. The overall process of racial change remains a familiar one: as blacks move into an area, whites, after a point, start moving out at an even faster rate, leaving behind vacancies which invite still more blacks, until an area that was briefly integrated becomes resegregated. The process is often aided by unscrupulous real estate practices, such as blockbusting and racial steering. As will be evident from subsequent discussion, much of the effort of civil rights agencies has been directed toward retarding this process of concentrated racial change.

## II. CURRENT FAIR HOUSING PRACTICES IN THE REGION

### 1. Introduction

This section of the report examines the nature and extent of racial discrimination in housing within the Tri-State Region through an overview of current fair housing practices. The "nature" of discrimination can be documented through the enforcement efforts of numerous agencies and reported acts of discrimination. The "extent" of discrimination is more difficult to measure. Although a number of observed data can be used as indicators, most of the measures to quantify discrimination are indirect, and none is comprehensive.

Past efforts to measure housing discrimination have involved any of three approaches: a price-income correlation, an index of segregation, and a survey of attitudes within the real estate industry. The price-income correlation relies on a comparison of prices paid for similar housing by minority and white home seekers of the same economic status. The underlying assumption is that racial barriers reduce housing opportunities for minorities and, in effect, raise the prices they must pay to find suitable housing. Such variables as housing quality, neighborhood character, vacancy rates, and personal preferences make it difficult, however, to compare housing units.

The second approach focuses on the existing patterns of residential segregation based on the

racial mix of individual neighborhoods or census tracts. An index of segregation or dissimilarity can be constructed according to the uneven distribution of blacks and whites over any given area. The first part of this report follows this approach, documenting the dramatic extent to which blacks are segregated from whites in residential areas of the Tri-State Region. However, discrimination is only one of the barriers responsible for this pattern. Other barriers can include voluntary segregation, housing market characteristics such as vacancy rates, and lack of knowledge on the part of black home seekers about areas distant from their present residence.

The third method involves a survey of real estate industry attitudes and perceptions, which is most effectively accomplished by "auditing" or "testing" the actual behavior of brokers. Auditors are usually volunteers from fair housing organizations or staff from human rights agencies who visit real estate offices posing as home seekers. They are paired in teams of black and white "applicants" and make similar requests for housing type and location. Discriminatory conduct is demonstrated in such a test when there is a "difference in quantity, content, and quality of information and service given to clients by real estate firms and rental property managers which could only result from a difference in the clients' race..."\*

A survey of nationwide real estate market practices using this method was conducted in 1977 for HUD by the Washington-based NCDH. Preliminary results have been extracted from these national data to highlight current real estate practices in the New Jersey-New York metropolitan area. Early findings confirm what fair housing advocates have long suspected—racial discrimination in the Region still exists but the techniques have become increasingly subtle. "Discrimination has gone underground."

### 2. Patterns of Discrimination

Concern for fair housing grew out of the civil rights movement of the 1960's. After a decade of federal commitment to equal housing and after years of other public and private efforts to eliminate discrimination, some progress has been observed by fair housing groups, but, as the recent HUD survey of the real estate industry demonstrates, brokerage services are still not delivered equally.

Two issues are generally agreed upon. First, no one claims that racial discrimination in the sale, rental, marketing or financing of housing has been eliminated. Continued self-policing "codes of ethics" and adoption of "voluntary agreements" by the real estate and lending industries themselves attest to that fact.

Second, government officials and fair housing groups agree that the nature of discrimination has

\* National Neighbors, *Racial Steering: The Dual Housing Market and Multi-racial Neighborhoods* (1973).

changed. This is true for both the private market and for the public efforts in which municipal governments come under attack for their exclusionary land use policies and misdirected spending of federal funds. Former tactics of overt discrimination have become more covert. The current trend has been summarized by Lee Porter, Director of the Bergen County Fair Housing Council:

Of course things have changed in the last decade. Many whites now accept blacks in their schools and at their jobs, but not in the house next door, or even down the block. Ten years ago, a broker confronted with a black customer looking for a home in a white community would simply slam his listing book closed in his face and say, 'Nothing is available, everything is sold.' Today, you just don't get to see the book or the house.

While some evidence of discrimination comes from ad hoc testing by fair housing groups in response to individual complaints, a more comprehensive picture is provided by the 1977 HUD-sponsored survey of real estate practices. This study consisted of more than 3,200 visits to real estate offices in 40 randomly selected metropolitan housing markets, including two test sites in the Region: the Bergen-Clifton-Passaic metropolitan area; and Greater New York, consisting of New York City, Long Island, and Rockland, Putnam and Westchester Counties.

### 3. Survey of Real Estate Practices

The HUD data have been programmed to measure differences in treatment accorded to black and white testers during 140 audits of real estate agencies, equivalent to 280 separate visits. Tests were conducted by the Bergen County Fair Housing Council in New Jersey and the Open Housing Center in New York. About three-fourths of all home buying tests in New York took place in Queens, Nassau and Westchester; more than half of all the rental tests were in Manhattan. In New Jersey, most of the audits were in Bergen County.

According to this survey, in which teams of black and white "home seekers" responded to local newspaper advertisements, discrimination is not overwhelmingly "blatant." But comparison of the audits does indicate that real estate agents extend their services differently to black and white clients. In this respect, there has been little change since an unpublished sampling of real estate attitudes in 1970\* first concluded that information on housing availability is less accessible to non-white than white families who use the services of a realtor. Since brokers' practices are not fully standardized, it is possible to advertise homes selectively by listing only those which can be shown openly, or to conceal preferred listings from prospective buyers by maintaining dual lists.

\* Anne M. Montero, "Suburban Real Estate and Open Housing: Promise and Performance" (unpublished study for NCDH, 1970).

Persistence of these practices and other disparities in treatment emerged in the 1977 HUD-sponsored survey. On the surface, it appeared that there was much equal treatment of clients regardless of race. During the audits, both black and white home seekers, particularly in the case of apartment rentals, were asked to discuss preferences and were given similar instructions regarding security deposits, rent and applications. In fact, many black applicants for houses received more courteous treatment in such superficial matters as office hospitality. The survey indicated, however, that when the transaction came down to serious business, the preferential treatment was actually reversed. The director of the New York audits noted there was not a single broker who did not engage in some kind of differential treatment, minor as some these differences were.

Information about housing availability supplied by brokers and salespeople to their non-white clients remains limited in quantity and quality. The white member of the team was not only told more frequently that something within the requested neighborhood, size, and price range was available, but was offered more such listings. Differential treatment was less pronounced in the New Jersey rental tests, but still in New York, 12 times out of 30, more apartments were available to the white applicant than the black applicant.

In terms of financing, there was a noticeable difference in attitude toward black and white home buyers. While it is considered customary business practice for brokers to inquire into an applicant's income and credentials, blacks were more frequently and more consistently required to prove their financial stability.

From the preliminary data it is not possible to determine whether, for instance, the testers were serviced by the same agents and salespersons within each real estate office, or whether they were offered the same housing and neighborhood. Therefore, it remains unclear whether racial steering was a factor in the types of listings and neighborhoods offered by realtors. Yet, regardless of location, the evidence first, that more listings were available and second, that they were available more often for prospective white home buyers, is an indication that racial barriers exist. Correlating the results within the two study areas, differential treatment was more pervasive in the home buying market than in apartment rentals, and the tests reflect such differences more conclusively in the New York area than in the New Jersey area.

### 4. The Real Estate Industry

The search for housing depends largely on the services offered by the real estate industry.

Any real estate transaction requiring the services of a broker, agent, or salesperson is subject to the provisions of the Federal Fair Housing Law. But HUD, the agency with primary responsibility for enforcing the law, has no formal powers to

**Table 7**  
**Summary of Real Estate Agency Audits in the New York Area in 1977**

Area of Audit	Number of Audits	Findings of Discrimination	Findings of No Discrimination	Inconclusive Tests
<b>Sales Audits</b>				
New York City	14	11	—	3
Nassau-Suffolk	20	14	—	6
Rockland-Westchester	16	10	—	6
<b>Total Sales Audits</b>	<b>50</b>	<b>35</b>	<b>—</b>	<b>15</b>
<b>Rental Audits</b>				
New York City	25	10	5	10
Nassau	1	1	—	—
Rockland-Westchester	4	3	—	1
<b>Total Rental Audits</b>	<b>30</b>	<b>14</b>	<b>5</b>	<b>11</b>

Source: Open Housing Center.

gain compliance. In 1972, an Office of Voluntary Compliance was established within HUD. The emphasis of that office has been to develop voluntary fair marketing agreements among the housing industry, the community and the government—in essence, an attempt to promote self-enforcement of fair housing regulations.

#### Voluntary Agreements

Over the past few years, the National Association of Realtors, the National Association of Homebuilders, and the National Association of Real Estate Brokers have signed agreements with HUD to promote affirmative marketing. Even before the national agreements were completed, selected local or county realtor boards in Connecticut and New Jersey had entered into agreements. When such agreements are negotiated at the national level, they are not automatically accepted by all chapters or boards, but once adopted at the local or county level, members are expected to abide by the rules.

Not all voluntary agreements have been successful. The New York State Division of Human Rights entered into its plan with the State Association of Realtors in 1973, but the agreement was canceled two years later when both sides recognized its ineffectiveness. The NCDH, among other critics, has been skeptical about the effectiveness of affirmative marketing plans between HUD and the housing industry, first, because they are adopted “voluntarily” and second, because they are sometimes less comprehensive than what is already provided by law.

There is a stronger mechanism for ensuring fair housing compliance by the real estate industry. Brokers and salespeople are required to obtain licenses in the states in which they practice.

#### Licensing Requirements

Real estate licensing laws originated during the 1920's, serving a purpose similar to that ex-

pressed in a summary of the New York State Licensing Law: primarily for the protection of the public against the dishonest practices of unscrupulous, and the costly blunderings of incompetent real estate agents.

Fraud, untrustworthiness or incompetence in real estate services are considered violations of these laws and may result in fines and license revocation.

While licensing laws cover only the actions of licensed brokers and salespeople, the state human rights laws provide broader coverage to all representatives of the real estate industry. Even with civic associations, human rights agencies, realtor boards and fair housing groups working together, the licensing requirement has not been used as a strong anti-discrimination incentive.

#### Legal Sanctions of Regulatory Agencies

The New Jersey Real Estate Commission failed to respond to numerous inquiries about its fair housing activities. Both the State human rights agency and a fair housing council admitted that they infrequently refer racial discrimination matters to the Commission. During the 1960's, the Commission did receive some complaints, but in most cases there was insufficient evidence to sustain any charges. Fines were occasionally imposed but in only one known case, in 1968, were three licenses suspended and revoked.\*

The Connecticut Real Estate Commission has concentrated on the prevention of discriminatory practices rather than specific testing or monitoring of brokers' activities. Periodic field inspections of realtors include examining their records and distributing state and federal fair housing posters, literature and marketing materials. One staff member estimated that approximately 60-70

\* Cioffi-Neiberg Case, New Jersey Real Estate Commission, 1968.

complaints have alleged discrimination over the past five or more years.

In New York, both the structure and function of the licensing agency are different. Unlike the Commissions in New Jersey and Connecticut—which are dominated by licensed realtors—the Division of Licensing Services within the **State of New York Department of State** is charged with licensing anyone from barbers to detectives to brokers. In 1965, a Civil Rights Unit was created in the Division to investigate complaints of discrimination in sales, rentals, blockbusting and other violations.

The record of its hearings is summarized in Table 8. Most of the cases involved racial “steering” or “conduct by a real estate agent which influences residential choice on account of race.” Typically, this involves negative statements about integrated neighborhoods made to whites, even as blacks are encouraged to move there.

The respective state agencies with licensing responsibility—the Department of State in New York and the Commissions in Connecticut and New Jersey could play a large role in promoting equal housing opportunities. So far, only New York has begun to assume this role.

#### 5. Fair Housing Enforcement Efforts

Racial discrimination is illegal under a number of national civil rights acts, state human rights laws and local ordinances. The background of these laws and the agencies which enforce them are discussed under the section dealing with the Legal and Administrative Framework. This part of the report is concerned with the enforcement of the most widely used law in the fight against discrimination, Title VIII of the Civil Rights Act of 1968, known as the Federal Fair Housing Law. Three basic remedies are provided by this law: the first is an administrative procedure for which HUD has primary responsibility; the other two involve judicial sanctions invoked either through legal action by the U.S. Attorney General or through a private lawsuit in federal court.

#### Administrative Remedies

The method by which HUD and state and local agencies resolve individual discrimination complaints is referred to as an administrative procedure. HUD cannot institute legal proceedings against anyone suspected of discriminatory practices or serve injunctions to cease illegal activities. Under Title VIII, HUD has only the informal powers of “conference, conciliation and persuasion” to deal with cases of discrimination.

**Filing a Complaint.** Anyone who feels that discrimination has occurred in the sale, rental, finance or advertising of housing, may file a complaint, in writing or in person, with the nearest HUD office. Complaints may also be registered by simply writing “Fair Housing, HUD, Washington, D.C., 20410,” or by calling a toll free number, 800-424-8590, established specifically to receive housing complaints.

Neither the HUD Office in Washington nor the regional offices provide any immediate and direct relief. A complaint that is filed with the central office in Washington will simply be referred to the appropriate regional office, where some kind of action must be taken on the complaint within 30 days. “Taking action” may include referring the complaint to a state agency for resolution, or simply notifying the complainant of HUD’s intention not to resolve the complaint.

Under the law, HUD is not required to resolve all the complaints it receives. Only those which the Assistant Regional Administrator for Fair Housing and Equal Opportunity feels can be conciliated are actually accepted for processing. These represent only a small fraction of all discrimination cases, many of which are never reported to the authorities or are disqualified for administrative technicalities.

State human rights agencies also offer complaint procedures similar to HUD’s, though they have a generally better reputation among fair housing specialists. While the process can be equally tedious, the state agencies at least have power to issue restraining orders which can pre-

**Table 8**  
New York Department of State: Results of 34 Hearings Held Between 1973-1977

	No. of Hearings	No. of Fines Issued	\$ Amount of Fines	No. of Licenses Suspended	No. of Licenses Revoked	No. of Cases Dismissed
Nassau County	11	8	\$1,900	5	—	—
Queens	4	8	750	—	—	1*
Suffolk County	1	—	—	—	6	—
Manhattan	15	2	750	—	4	12
Brooklyn	3	—	—	—	—	3*
	<u>34</u>	<u>18</u>	<u>\$3,400</u>	<u>5</u>	<u>10</u>	<u>16</u>

\* Charges involved non-solicitation violations rather than racial steering.

Source: Hearing orders issued by the Department of State.

vent an apartment from being rented to someone else during the often lengthy course of an investigation. Compared to a conciliation rate of less than 10 percent for all cases received by HUD, the state agencies have successfully conciliated almost 40 percent of their total caseload.

In 1973-1977, an estimated 1,965 housing discrimination complaints were reported to the five major agencies with administrative enforcement responsibility in the Region. Table 9 summarizes total complaints filed, by subregion and by jurisdiction.

Civil rights advocates are critical of both the low rate of successfully resolved complaints and the slow, cumbersome procedure of resolving complaints. Insufficient staff, funding, and enforceability have been identified by those contacted at the state agencies, HUD and fair housing organizations as the leading obstacles toward making their programs more effective.

In some ways the complaint process has been improved over the past five years, although this method is still far from adequate. Available free of charge to the person who alleges discrimination and files a claim, it provides an alternative to the more expensive and difficult experience of litigation. Especially in recent years, HUD and some of the state agencies have been obtaining damages for "pain and suffering" for complainants. But monetary relief for housing is not distributed at the rate it is available for cases of employment discrimination. While processing time has been significantly reduced, individual complaints still take from three to 12 months to be determined. Records for the state agencies indicate that their backlogs, too, are being reduced, but this accomplishment reflects more careful screening and

therefore lower intake of potential complaints, rather than greater expediency.

Within the Tri-State Region, close to 100 investigators, or field representatives as they are called by some agencies, are involved in complaint processing activities. However, of all complaints processed by the three state agencies and the City Commission, exceeding a total of 50,000 complaints, only 3.5 percent represent housing discrimination cases that are based on race and national origin and that were filed within the Tri-State Region.

#### Complaint Processing by Jurisdiction

HUD. Since 1973, 236 of HUD's 276 complaints, 85.5 percent of the total, were filed by black home seekers. Less than 9 percent of all complaints were reported by Hispanics and nearly 6 percent represented such "other minorities" as Orientals, Filipinos and others who filed complaints on the basis of national origin.

Two out of three complaints involved discrimination in rental housing, while only 5 percent of the total alleged discriminatory sales practices. These rental housing complaints were almost equally distributed against private owners or superintendents and management companies or local housing authorities. Complaints against real estate brokers accounted for 18 percent of the 276 allegations.

A summary of the determinations made by HUD in the 276 complaints studied reveals that 217 cases, 78.6 percent, were closed without relieving the situation that generated the complaint. Only 24 cases in the Region were successfully conciliated through HUD's administrative procedure, less than 9 percent of the total complaints filed in five years. According to the U.S.

**Table 9**  
Estimated Number of Housing Discrimination Complaints Reported and Resolved, by Agency and Area, 1973-1977

Agency	No. of Complaints Received	% Successfully Resolved
NYCCHR	351	51%
NYS DHR	791	40%
NJDCR	388	38%
ConnCHRO	207	37%
HUD	228 *	8%
<b>Region</b>	<b>1,965</b>	<b>37.5 (737 complaints)</b>

\* Excludes 48 complaints referred to state and local agencies, of which 6 were successfully conciliated.

Area	No. of Complaints Received	Complaints per 1,000 Minority Households
New York City	911 (127 + 433 + 351) **	1.61
New York Suburbs	369 (11 + 358)	5.52
New Jersey	429 (429 + 388)	2.59
Connecticut	256 (49 + 207)	7.89
<b>Region</b>	<b>1,965</b>	<b>2.36</b>

\*\* Figures in parentheses indicate complaints received by HUD, the respective state agency, and the local agency, in that order.

Civil Rights Commission, this rate is average for the nation as a whole and reflects not a lack of merit in the complaints, but a problem with the administrative process itself. The Commission blames "an understaffed agency that cannot process complaints with sufficient speed, and, more importantly... a cumbersome conciliation process that lacks enforcement teeth."\*

For the few cases that have been successfully resolved, HUD has exerted little effort to monitor compliance with the consent agreements. One administrator in the Fair Housing and Equal Opportunity Office indicated that HUD's responsibility ends when the determination is issued. Whether fair housing violations persist or court action begins, what follows the determination is considered beyond HUD's jurisdiction.

**Human Rights Agencies.** The annual caseload of complaints filed with state human rights agencies far exceeds the yearly number registered with HUD. Over the past five years, state agencies handled nearly 1,400 housing complaints within the Region based on racial discrimination. Besides the state agencies, there are also local and county human rights commissions which process complaints. Some, like the Jersey City Commission on Human Rights, merely refer complaints elsewhere; others, like the Nassau County Commission on Human Rights, have full enforcement powers similar to the state agencies.

**New York City Commission on Human Rights.** Between 1973 and 1977, the Human Rights Commission in New York City handled more than 2,400 complaints in all areas of discrimination of which 351 were housing complaints. Housing cases represented 22 percent of all cases in 1973, decreasing to barely 10 percent in 1977. During that time the total number of complaints rose by 45 percent, mostly in the area of employment.

**New York State Division of Human Rights.** In the five-year period examined, more than 27,000 complaints were filed with the Division in New York State. Less than 3 percent of those—or some 800 cases—represented housing discrimination complaints filed because of race and national origin. Nassau and Suffolk Counties accounted for 16 percent of these complaints, New York City for 55 percent, and the upstate counties for 29 percent.

The rate of reporting housing discrimination cases to the New York State Division of Human Rights dropped from 208 complaints in 1973 to 150 in 1976. Not only have general housing complaints decreased as a proportion of all cases filed, but housing cases specifically based on race showed a noticeable decline. These trends are due to the sharp rise in employment discrimination cases filed and to the increased reporting of housing discrimination based on sex and marital status.

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

The rate of successful conciliations in housing discrimination complaints was close to 40 percent, benefiting more than 300 people directly with housing and monetary relief, and indirectly with affirmative marketing programs.

**New Jersey Division on Civil Rights.** The downward trend of reporting housing discrimination complaints to the New York State Human Rights agency is also apparent from the intake statistics at the New Jersey Division on Civil Rights. Of the total 8,276 complaints filed in the State between 1973 and 1977, nearly 10 percent involved cases of housing discrimination. In contrast, employment complaints accounted for 74 percent of all cases.

Less than 400 housing discrimination cases in the nine counties were based on race, color, or national origin. These complaints represent almost 5 percent of all cases handled throughout the state. Over the five-year period, approximately 38 percent of these—nearly 150 complaints—were successfully conciliated by the Division.

**Connecticut Commission on Human Rights and Opportunities.** According to the Connecticut Commission's latest annual report, "complaint resolution is by far the most sought-after service that the agency has to offer." Of the 11,992 complaints registered with the Commission, only half of the cases invoked the agency's enforcement power and required formal affidavits to be processed. The other half were classified as fact-finding complaints, which usually require less effort to resolve. Housing complaints, which comprised nearly 8 percent of all complaints in 1975 dropped to nearly 7 percent by 1977. Employment complaints, in contrast, accounted for about 80 percent of the cases registered in 1977.

Approximately 77 cases, 37 percent of the Connecticut housing complaints, resulted in a finding of "satisfactory adjournment" in favor of the complainant. Of the remainder, 40 percent were determined to have insufficient evidence to support the charges, slightly under 20 percent were administratively dismissed and 5 percent are pending.

**Fair Housing Budgets.** Based on the 1,737 complaints handled by human rights agencies in the Tri-State Region, Table 10 estimates the amount of money expended for complaint resolution, by jurisdiction, 1973-77.

Though none of the agencies allocates a specific portion of its budget to housing activities, the cost of complaint processing can be estimated from the ratio of housing complaints to total complaints filed. Using this method, it cost HUD, the State and City Agencies in the order of \$880,000 per year to deal with the Region's housing discrimination complaints. In 1977, HUD offices in New York and New Jersey spent roughly \$402,000, about 49 percent of their fair housing budget on complaint processing.\*\* By comparison,

\*\* Budget estimates as reported by HUD's Office of Fair Housing Enforcement and Contract Compliance.

**Table 10**  
**Estimated Expenditures for Complaint Resolution by the Three State**  
**and the New York City Human Rights Agencies, 1973-1977**

	Total Complaints All Areas of Discrimination	Housing Complaints Based on Race, Color, National Origin No.	%	Total 5-year Budgets (\$000)	Estimated Expenditure for Housing Complaint Processing *
New York City Commission on Human Rights	2,469	351	14.2	\$ 9,170	\$1,303,633
New York State Division of Human Rights	27,577	791	2.9	\$20,184	\$ 578,944
Connecticut Commission on Human Rights* & Opportunities	11,992	207	1.7	\$ 5,477	\$ 94,541
New Jersey Division on Civil Rights	8,276	388	4.7	\$ 6,386	\$ 299,392
<b>Total</b>	<b>50,314</b>	<b>1,737</b>	<b>3.5</b>	<b>\$41,217</b>	<b>\$2,276,510</b>

\* Derived from a cost per complaint calculation as a proportion of total agency budgets.

Source: Regional Plan Association, based on Agency Budget Reports.

the four human rights agencies together spent some \$478,000 annually to carry out their housing complaint investigations.

Among all the agencies, HUD provides the most detail on the nature of the complaints. These data are summarized, by year, in Table 11.

In sum, the system of responding to individual complaints has not been a highly effective method of relieving discrimination. In addition to the administrative procedures of HUD and the state agencies, there is judicial recourse: first, the Department of Justice can initiate a "pattern and practice" suit, and second, individuals may bring a private civil suit against anyone violating the Fair Housing Law. Title VIII of the Civil Rights Act of 1968 authorizes the Attorney General of the United States to bring suit when a pattern or practice of discrimination is believed to exist, and when a group of people is denied the right to equal opportunities.

#### Judicial Remedies

Similar to the deterring effect that licensing regulatory agencies can have, the mere initiation of court action can lead to a correction of the fair housing violation. The attorney for the Bergen County Fair Housing Council claims that the worst court action has a more powerful effect than the best administrative case. The Westchester Urban League reported from its experience that simply threatening court action without going to trial sometimes results in prompt housing offers, thereby avoiding what can amount to a considerable investment in time, expense and unfavorable publicity.

Litigation as a tool to remedy discrimination bears not only the perceived threat of "judicial power" but a provision for the recovery of legal fees and, under the Federal Fair Housing Law, punitive damages up to \$1,000. More importantly, the "pattern and practice" suit affords a broader attack on persistent discriminatory practices than individual suits. The Department of Justice enters into these types of cases when a violation is considered to raise an issue of "public concern" or when there is evidence of consistent discrimination.

**Pattern and Practice Suits.** The Department of Justice has instituted nine lawsuits in the Tri-State Region; three in New Jersey and six in New York federal district courts. These involved some of the largest real estate management firms in the Region which operate more than 55,000 apartments in more than 300 buildings. Also among the cases were a civic association whose neighborhood referral service allegedly refused to sell homes to blacks in Rosedale, Queens, and a developer who promoted land sales in the Pocono Mountains and was charged with discriminating against blacks and Hispanics in soliciting clients throughout New Jersey.

As with many discrimination legal battles, all but two cases (which are still in progress) have reached pre-trial settlements. In signing a consent decree following settlement, the defendants need not admit having violated fair housing statutes, but they are obligated to accept certain court-ordered conditions. These usually include (1) an educational program—training employees with re-

**Table 11**  
**Profile of Annual Housing Discrimination Complaints Filed with HUD on the Bases**  
**of Race, Color and National Origin in the Tri-State Region**

	1973	1974	1975	1976	1977	Total 1973-77
<b>Total Cases Filed</b>	<b>61</b>	<b>36</b>	<b>28</b>	<b>56</b>	<b>95</b>	<b>276</b>
<b>Racial Basis</b>						
Black	56	33	24	47	78	236
Hispanic	3	4	4	9	5	24
Other Minority	2	0	1	1	12	16
<b>Type of Discrimination</b>						
Rental	47	22	17	44	57	187
Sale	1	5	2	3	3	14
False Representation	13	9	9	9	35	75
<b>Respondent</b>						
Superintendent/Owner	31	21	9	21	24	106
Management/Housing Authority	17	5	12	29	45	108
Real Estate Agency	9	9	6	5	21	50
Financial Inst./Newspaper	4	1	1	1	5	12
<b>Complaint Resolution</b>						
Administrative Dismissal ("No Probable Cause" Finding)	23	16	12	34	27	112
Complaint Withdrawn	17	9	5	6	26	63
Successful Conciliation	1	—	—	9	8	18 *
Pending	—	—	1	—	31	32
Referred to State/Local Agency	20	11	10	6	1	48
<b>Length of Procedure (Months)</b>						
Shortest Case	1	1	1	1	1	1
Longest Case	36	35	18	7	9	36
Average Case	10.0	10.9	4.6	3.5	3.3	6.3

\* 6 additional cases successfully conciliated according to HUD records were processed by state and local equivalent agencies.

Source: HUD Region I and II Complaint Logs.

spect to fair housing; (2) a signed statement prohibiting future steering, discriminatory terms, or false representation that apartments are not available; (3) fair marketing plans—to display equal opportunity logos, to advertise in newspapers and on radio stations which serve primarily blacks and Puerto Ricans; and (4) a record-keeping requirement—to submit periodic reports to the court regarding rental policies and racial composition of applicants.

In gaining compliance with such court-ordered provisions, legal sanctions are not much more effective than the administrative procedures. While further court action serves as a potential threat if discriminatory practices continue, the reporting requirement and other terms of the consent agreement have not been strictly enforced.

**Private Lawsuits.** The Fair Housing Law allows anyone to institute private court action where an administrative proceeding has been inadequate. Also, under the 1866 Civil Rights Act, an individual may file suit privately, with no limitation in the amount of damages that can be awarded and providing for attorney's fees to be recovered on a contingency basis.

But many cases never reach the courts, for several reasons. First, there is the feeling of frustration with the system, which prevents people from reporting discrimination problems. Second, not all victims of discrimination are willing to risk the time, commitment and psychological strain necessary to defend and publicize the complaint. Third, complainants are unable to afford the up-front fees sometimes charged by attorneys, even in contingency based cases. Fourth, private attorneys are not always willing to handle such cases and the few public defenders are in great demand.

Judicial remedies are used in response to randomly reported discrimination wherever attorneys are available and affordable, or whenever informed individuals seek out this type of recourse. Legal aid centers, advocacy groups and civil rights organizations are among some of the non-profit groups which provide technical and legal assistance in private suits. While most fair housing groups are not equipped to engage in litigation, many help coordinate community efforts and do investigative background work, as well as testing to prepare cases.

The effectiveness of judicial remedies varies with the terms of the consent decree, and, according to fair housing advocates, the type of court in which cases are filed. Fines in the amount of \$5,000 have been issued in several private actions during the past few years, but generally awards for punitive damages in discrimination cases have not equaled those granted in other civil actions. As a deterrent, the possibility of court action is slightly more threatening than the idea of administrative proceedings, though in the case of licensed brokers, neither is as compelling as the right of state regulatory agencies to remove licenses.

Although the power to issue injunctions can result in some tangible relief (preventing housing from being sold or rented to someone else), a private lawsuit which takes as long as two to three years is an impractical remedy for someone in need of a place to live.

Private civil actions in the Region have usually been filed under federal rather than state jurisdiction. This is partly because precedents for interpreting fair housing laws have been set in the federal courts and partly because those who handle litigation perceive the federal courts as offering better remedies.

Important interpretations have resulted from federal court decisions dealing with patterns of discrimination. The "broad standing to sue" provision under the Civil Rights Acts of 1866 and 1968 has been constructed to enable both black and white residents to initiate charges of discrimination. In *Trafficante v. Metropolitan Life Insurance Company*, the Supreme Court established that discrimination—in addition to its detrimental effect on minorities—deprives whites from interracial association. The *Zuch v. Hussey* case provided the basis against racial steering and block-busting, noting that white as well as black home seekers are in a position to recognize unequal treatment. These have been used repeatedly as a basis for individual and class action suits in the Region.

## 6. Discriminatory Land Use Policies

A broad form of racial discrimination involves restrictive land use policies which deny lower-income and minority families access to suburban communities. Here, the concern is not with individual cases but with the discriminatory effects of government regulations at the municipal or county level. Objections to exclusionary zoning often challenge the lack of housing opportunities on economic grounds—not only for minorities, but for low- or moderate-income households in general. Fair housing groups in the Region have cited the lack of low-cost housing and of multifamily units as obstacles to achieving equal housing opportunity in the suburbs. Exclusionary land use policies are reformed not only when zoning ordinances are overturned but when additional units are actually built to create open housing.

## Restrictive Zoning Regulations

Although the issue of restrictive land use is beginning to surface in the federal courts, the strongest precedents have been established in the state courts. The trend began with New Jersey's Mount Laurel decision, which has been hailed as the country's most significant zoning challenge. The plaintiffs in the case, *Southern Burlington County v. Township of Mount Laurel*, included lower-income residents, former residents who were no longer able to afford housing in the town, residents of nearby cities who aspired to live in the suburbs, and organizations representing racial minorities.

The breakthrough decision, affirmed in 1975, gave these individuals "standing to sue" and invalidated the zoning law which in essence prohibited multifamily housing. By requiring the municipality to accept its fair share of the regional housing need, the court prescribed an affirmative land use regulation with a housing plan to accommodate diverse economic and social needs.

Action to implement the decision has been slow—"courts don't build housing," an editorial in *The Trenton Times* stated two years after the case was settled. "So far Mount Laurel has generated more fees for lawyers and planners than pay checks for carpenters."\* Still, this decision provided the impetus to gradually break down exclusionary suburban barriers. Several important legal actions in New Jersey have followed this direction. More recent court cases have rules that **developing areas**—in contrast to those already developed—must provide a specified share of low-cost housing.

The pattern of zoning litigation in New Jersey is clear. Developing communities are responsible for establishing affirmative zoning laws to generate a variety and choice of housing. No state has gone as far as New Jersey in this respect, although a New York test case has recently demonstrated a similar attitude toward increasing housing choice and allowing zoning for multifamily housing. In Connecticut, attempts to end "multi-acre zoning in rich towns" have been less successful than elsewhere in the Region.

Besides reflecting the restrictive land use policies at the municipal level, much residential segregation today can be traced to the early federal programs of FHA mortgage insurance programs, below-market-interest loans and other housing subsidies. Even now, although under Title VI of the Civil Rights Act of 1964 racial discrimination in any federally-funded program is prohibited, the disbursement of federal community development funds to municipalities, as well as other grants and projects, have been known to be discriminatory. Any project or program found by HUD to be in violation of the Civil Rights Act is subject to termination of funds, but this course of action

\* Editorial, *The Trenton Times*, April 14, 1977.

has been virtually non-existent in all parts of the country.

### Monitoring Federal Funds

The Community Development Act of 1974 also provides a sanction to withhold grants from municipalities whose housing assistance plans are inadequate in their concern for low-income and minority persons. If measures to end economic segregation of lower-income groups are not taken voluntarily or according to the regulations, HUD theoretically has the authority to block disbursement of grant monies pending compliance with fair housing provisions.

However, in order to achieve compliance, continuous performance monitoring is needed. Even with the officially designated public and private review agencies assuming this watchdog function, there is still leeway for communities to escape the "strings" attached to grants. Not all municipalities apply for grants in the first place, and some of those that do are willing to drop out of the program and forego the funding if pressure is applied.

### 7. Legal And Administrative Framework

National interest in civil rights initially focused on voting rights, then employment and education, and finally, during the height of the civil rights movement, on housing. Not until the 1960's did fair housing emerge as an area of widespread public concern. Even then, the thrust came mostly from voluntary organizations like the National Association for the Advancement of Colored People (NAACP) and the Urban League and from government agencies, especially HUD and state human rights agencies.

Only recently—under public pressure and increased government emphasis—has the private housing industry through trade and regulatory agencies of realtors, mortgage lenders, and home-builders adopted fair marketing regulations.

#### Legal Basis

**National Scope.** Equal opportunity in housing has been a remote goal of the federal government since the 19th century. Under the **Civil Rights Act of 1866** an individual who has been discriminated against may take the case directly to federal court, where damages and court costs can be awarded and an injunction ordered to prevent the desired housing from being sold or rented to someone else while the case is pending. This Act has no administrative enforcement by HUD or any other agency. The 1866 law remains the only tool available to adjudicate discriminatory cases involving privately owned single-family homes. Its protection of property rights extends coverage to all types of housing, privately owned or publicly assisted.

In 1962, upon recommendation of the U.S. Commission on Civil Rights, President Kennedy issued **Executive Order 11063**. This order prohibited discrimination in the sale, rental or use of federally assisted or operated housing and applied

to all federal departments which distributed grants and insured loans. However, banking regulatory agencies and conventionally financed housing were not covered by the order and most public housing was built before the order took effect. Although the order had little actual impact, it did represent the first national commitment to fair housing by the Executive Branch of the federal government.

The **Civil Rights Act of 1964** supported the initiative of Executive Order 11063 and broadened its provisions. Title VI of the Act became the strongest statement of national policy against discrimination by recipients of federal funds:

no person in the United States shall on the ground of race, color, or national origin be excluded from participation in, be deprived benefit of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

HUD is authorized to gain compliance with the Act by terminating or refusing grants to agencies, municipalities or states found to be discriminating in any program for schools, roads, hospitals, as well as housing. The implications of Title VI were especially significant in the selection of tenants for subsidized housing, and the selection of urban renewal and other project sites. However, both Executive Order 11063 and Title VI failed to cover conventionally financed housing—the bulk of the housing stock.

The most far-reaching effort on the part of the federal government came with the enactment of the **Civil Rights Act of 1968**. Title VIII of that Act, known as the Federal Fair Housing Law, prohibits discriminatory actions based on race, color, religion, national origin and sex. Title VIII extends coverage beyond that of earlier acts to include residential property in all private, conventionally financed buildings with five or more units. Buildings with two, three and four units are also covered if they are not owner-occupied. However, most single-family houses are not subject to this law unless the sale or rental involves brokerage services or advertising.

In some ways, the protection offered by the New York State Human Rights Law, the New Jersey Law Against Discrimination and the Connecticut Public Accommodation Law is more extensive than that of the Federal Fair Housing Law. Exceeding the authority provided by federal law, the three state laws empower administrative agencies to hold hearings and issue restraining orders which can require a respondent to immediately cease and desist any unlawful activities. This means that a landlord or real estate broker can be enjoined from selling or renting a unit to anyone other than the complainant until the pending case is resolved. Serving such temporary or permanent injunctions during the course of the often long investigation adds an important sanction to the scope of administrative powers which otherwise have little enforceability. Fair housing groups cite

this extra power as a primary reason for filing complaints with state agencies rather than with HUD.

#### Administrative Structure

**Federal Agencies.** The chart below describes the federal agencies which are responsible for observing fair housing laws in the Tri-State Region. In addition to the responsibilities of HUD and the Department of Justice, the Fair Housing Law of 1968 requires all federal agencies to promote their programs affirmatively. This refers to the Department of Defense in locating military housing, the Federal Housing Administration (FHA) and the Veterans Administration (VA) in insuring mortgage loans, and the General Services Administration (GSA) in selecting sites for government offices.

The four federal financial regulatory agencies which charter, regulate, and monitor lending activities of banks and thrift institutions have come under increased public pressure to promote equal opportunity standards. A national survey conducted by the agencies in 1974 showed that mortgage applications of blacks were rejected at a rate of nearly two to one to those of whites, despite identical incomes.\*

**State Agencies.** On the state level, it was also during the 1960's that human rights agencies became active in the area of housing. Initial fair housing efforts, like those on the federal level, were confined mostly to investigating and resolving complaints.

More recently, state agencies have extended their authority to issue rules and gather data to enforce fair housing statutes more systematically. This effort is still young and has been possible, so far, only where Federal money was made available through special grants.

In Connecticut and New Jersey, for example, one new strategy involves strengthening the federal A-95 Review Procedure, which requires inter-

governmental review of applications for federal funds. This represents the first attempt by state agencies to look comprehensively at the civil rights impact of all new government-supported projects. The demonstration program in Connecticut included two additional components besides A-95 reviews: the development of a model affirmative zoning ordinance and a thorough analysis of complaints received by the Commission to help identify patterns of discrimination.

The strategies currently being developed by the New Jersey and Connecticut human rights agencies are significant because they focus on detecting patterns that are built into the housing delivery system. While it is too early to observe direct results, it is clear that they provide a preventive approach for rooting out discrimination that is broader than any case by case complaint resolution method.

On a performance scale rating the efforts of selected state agencies across the nation, an NCDH evaluation found the overall standards in New Jersey and Connecticut to be above average. Compared to other agencies, the New York human rights commission has not developed a systematic fair housing program and was ranked less favorably.

**Local Agencies.** Besides the half dozen HUD offices and well over a dozen branches of the state human rights agencies, there are also at least 60 local and county human relations or civil rights commissions scattered throughout the Region. These have varying degrees of responsibility and most have little actual power. Their efforts are primarily aimed at resolving complaints informally or referring them to a state agency where stronger enforcement tactics are available. All of the agencies contacted revealed only limited requests for fair housing services and few receive as many as 40-50 discrimination complaints per year.

**Private Organizations.** In contrast to the generally low profile which local and county public

\* NCDH, *Trends in Housing*, May-June 1976.

#### Federal Agencies With Fair Housing Responsibilities

Chart 1

agencies have maintained, private voluntary organizations have been a major force in promoting equal housing opportunities. They not only advise where housing is available and exert "community influence" to make the housing accessible, but they also know where to channel problems for the best remedies. Their only direct means of enforcement is pressure, and their dominant resource is commitment.

Although the dedication of voluntary organizations continues to be strong, the total private sector commitment to this cause has dwindled. Volunteers and foundations are turning to more contemporary issues—environmental concerns, for one, have been singled out as a leading competitor for public interest. Civil rights spokespersons perceive a general attitude that once the laws are on the books, everything else will resolve itself. Fair housing laws are on the books, but their mere existence has not generated widespread compliance.

There are nearly 200 voluntary groups which claim to have an interest in fair housing activities in the Region. Many of them are affiliated with religious, ethnic and labor organizations and are not exclusively concerned with the provision of housing services. Of all these private organizations which perform some fair housing functions, only eight have been recognized as members of the nationwide fair housing clearinghouse, the National Committee Against Discrimination in Housing (NCDH). Unlike some voluntary organizations for whom housing services are a marginal concern, these eight non-profit organizations operate full-time housing centers on an area-wide, usually metropolitan scale.\* Their efforts to relieve discrimination, according to NCDH Research Director Ernest Erber, range from a social work remedial approach to a broader system-changing program designed to open housing opportunities.

Most of these groups originated during the 1960's, with a common goal of making housing in all parts of the Region accessible to minorities. Where they are located and how they operate is determined by their leadership, availability of funding, the local housing market, and the effectiveness of nearby enforcement agencies. Although all of the organizations spend some of their time monitoring, counseling and providing information and referral services, the extent to which they pursue these activities varies. With some exception, notably in New Jersey's Essex and Hudson Coun-

ties, the work of fair housing groups covers most of the Region.

Where there are no equivalent local agencies, or where they are ineffectual, fair housing councils have adopted a strong "direct negotiation" approach in mediating between brokers, landlords and home seekers. This approach has been effectively used by groups in Bergen, Morris and Nassau Counties. Where there is a shortage of available low-cost housing, particularly in the suburban areas of Suffolk and Morris Counties, fair housing councils have addressed themselves to the problems of getting new housing built, focusing on exclusionary zoning and the way federal grants are spent.

All of the organizations contacted reported that the number of requests for housing information and assistance have nearly doubled over the last several years. Voluntary groups in the Region currently aid between 500 and 800 people per year, with most offering help to "anyone in search of housing." Not all housing problems involve charges of racial discrimination, but these have been rising along with other complaints. Though most fair housing groups began by serving "walk-in" clients who either read newspaper accounts, heard radio advertisements or were referred by friends, the constituency of fair housing groups today is increasingly affiliated with "corporate counseling" programs to assist corporate employees in need of housing, especially in the suburbs.

The single greatest constraint for all of the voluntary groups has been a lack of resources. Virtually none of the groups operates with more than five paid staff members or 10 volunteers. Most of the organizations have at some point received government support or special grants, and all of them receive contributions either from individuals, corporations, churches or foundations. Yet funding remains inadequate and sporadic for a level of organization whose work has been effective in both responding to individual complaints and helping to open housing opportunities that did not previously exist.

### III. OPPORTUNITIES FOR LOCATING MEDIUM-DENSITY HOUSING

#### 1. Vacant Developable Land

Table 12 provides an estimate of vacant and developable land in areas of prevailing medium residential densities within a 30-mile radius of Columbus Circle, tabulated by county or planning region and summarized by state. At the regional scale, this table provides an index of the opportunity for locating medium-density housing consistent with the existing residential fabric. The areas shown lend themselves to further, more specific analysis, incorporating such factors as transit service, sewer availability and zoning practices. Some tabulations beyond 30 miles were also

\* The Open Housing Center in New York City; Westchester Residential Opportunities in White Plains; Westchester Corporate Personnel Housing Program (with offices in White Plains, Mt. Vernon, Port Chester, Yonkers); Open Island/Nassau County Commission on Human Rights in Mineola; Suffolk Housing Services in Lake Grove; Fair Housing Council of Bergen County in Hackensack; Morris County Fair Housing Council in Morristown; The Connecticut Housing Investment Fund, with offices in Wilton, Waterbury, Stamford, Bridgeport, New Haven.

**Table 12**  
**Estimated Vacant and Developable Land, in Acres, in the New York Region**  
**Within a 30-Mile Radius of Columbus Circle by Prevailing Net Residential**  
**Density (Dwelling Units Per Residential Acre)**

County or Planning Region	Acres at Prevailing Net Residential Densities			
	Total	4-10	10-20	20-40
Middlesex	16,320	15,405	582	333
Bergen	6,765	3,149	3,495	122
Hudson	5,498	122	1,728	3,648
Union	4,423	2,733	1,690	—
Essex	3,949	3,021	128	800
Passaic	3,878	3,027	454	397
Monmouth	2,208	2,208	—	—
Morris	1,882	1,882	—	—
Somerset	276	218	58	—
<b>New Jersey Total</b>	<b>45,199</b>	<b>31,765</b>	<b>8,134</b>	<b>5,300</b>
Richmond	13,965	9,312	4,627	26
Nassau	9,325	8,806	493	26
Westchester	5,260	4,339	646	275
Rockland	1,273	742	531	—
Suffolk	646	646	—	—
<b>New York Total</b>	<b>30,469</b>	<b>23,845</b>	<b>6,297</b>	<b>327</b>
South Western	532	474	58	—
<b>Connecticut Total</b>	<b>532</b>	<b>474</b>	<b>58</b>	<b>—</b>
<b>Region</b>	<b>76,200</b>	<b>56,084</b>	<b>14,487</b>	<b>5,627</b>

Note: One acre equals 0.405 hectares

**Table 13**  
**Potential Dwelling Units At Prevailing Net Residential Densities \***

County or Planning Region	Total	4-10	10-20	20-40
Middlesex	106,137	91,660	6,984	7,493
Bergen	63,422	18,737	41,940	2,745
Hudson	103,542	726	20,736	82,080
Union	36,541	16,261	20,280	—
Essex	37,511	17,975	1,536	18,000
Passaic	32,392	18,011	5,448	8,933
Monmouth	13,138	13,138	—	—
Morris	11,198	11,198	—	—
Somerset	1,993	1,297	696	—
<b>New Jersey Total</b>	<b>405,860</b>	<b>189,002</b>	<b>97,608</b>	<b>119,250</b>
Richmond	111,515	55,406	55,524	585
Nassau	58,897	52,396	5,916	585
Westchester	39,757	25,817	7,752	6,188
Rockland	10,787	4,415	6,372	—
Suffolk	3,844	3,844	—	—
<b>New York Total</b>	<b>224,800</b>	<b>141,878</b>	<b>75,564</b>	<b>7,358</b>
South Western	3,515	2,820	695	—
<b>Connecticut Total</b>	<b>3,515</b>	<b>2,820</b>	<b>695</b>	<b>—</b>
<b>Region</b>	<b>634,175</b>	<b>333,700</b>	<b>173,867</b>	<b>126,608</b>

\* Excludes street space assumed to be 15 percent at 4-10 du/acre, 20 percent at 10-20 du/acre and 25 percent at 20-40 du/acre

produced. A rough impression of the location of the vacant developable land can be gained from Map 3.

## 2. Mapping Methods

Interpretation of the data requires an understanding of how they were obtained. The first and most lengthy step involved the production of a new developed land map. Land already developed was determined from a set of Tri-State aerial photographs at the scale of 1 inch equals 2,000 feet (1:24,000). Separate overlays for residential and non-residential uses were produced for each United States Geological Survey (USGS) quad sheet, reduced photographically, and combined into two rectified mosaics. An up-to-date map of land reserved for "public recreation and reservations" was provided by Tri-State. The three overlays were merged photographically at the scale of 1:125,000. Land not covered by this composite was defined as vacant.

To exclude areas not suitable for development, excessively steep areas and wetlands were determined. The criterion for slope was 15 percent. It is recognized that this is somewhat arbitrary; some residential areas are built on sites with slopes exceeding 15 percent. It is reasonable, however, to assume that for cost and environmental reasons, development on these sites should generally be excluded, pending local investigation. Slope information is unavailable on any consistent regional basis and required county by county data collection.

Wetlands required similar hand-crafted analysis. Areas containing standing water, including lakes, sizable swamps and marshlands were counted. Since wetlands do not have the same permanence as slope, the ages of various sources are a limiting parameter. Both the slope and the wetlands information was appropriately reduced or enlarged from source data to match the composite 1:125,000 scale. Slope and wetland overlays were aligned with the previously described composite map to indicate land vacant and developable. The Tri-State square mile grid was superimposed on this map. The vacant and developable land was then calculated for each square mile. The attached summary table was produced by classifying square miles by their prevailing residential density. This was done for three medium densities shown.

A map of net residential density (dwelling units per residential acre) by census tract at the same scale, 1:125,000, was used to classify each square mile by the dominant density, or by the density of development in the general vicinity.

## 3. Development Potential

The potential dwelling units that could be built within this vacant developable acreage at these densities are shown in Table 13. The dwelling units were derived using the mid-point of each of the density ranges and adjusting for land consumed by streets, as noted.