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THE PRESIDENT'S POWERS IN AREAS OF RACE RELATIONS: AN EXPLORATION

DANIEL H. POLLITT*

The American Negro is a disadvantaged minority literally from birth to death. The chances of a Negro's being born in a hospital under a doctor's care are many times less than are the chances of the white baby;¹ consequently, a far greater proportion of Negro babies fail to survive the rigors of birth. Should the Negro baby be born in a hospital, he is assigned to a segregated wing or ward from which Negro doctors may be excluded.²

Upon leaving the hospital, the Negro baby is taken to a "second hand" house whose former white owners have moved to a new location where parks, play areas, sidewalks, street lights, and other favorable facilities are found in greater abundance.³

When the Negro child is ready for school, he is assigned to a "Negro" school which is inferior to the "white" school in terms of equipment, space, pupil-teacher ratio and other educational criteria. Some states will spend from thirty to sixty per cent more for the education of the white child than for the Negro child.⁴

The Negro child will leave school at an earlier age and with less educational attainment than his white counterpart⁵ and will enter the job market at the lowest level. He will obtain an unskilled job with

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¹ E.g., the Tennessee Baptists recently rejected a resolution which would open Baptist hospitals in that state to Negroes. *Durham Morning Herald*, November 17, 1960, § A, p. 2, col. 3.

² See *Eaton v. James Walker Memorial Hospital*, 261 F.2d 521 (4th Cir. 1958).

³ "United States Census statistics tell much of the story of the inferior quality and quantity of housing for the nonwhite minority in the country. In 1950 nearly 70 percent of nonwhite families lived in dwellings that were dilapidated or had inadequate plumbing. This is nearly three times the proportion of white families then living under such conditions. A third of all nonfarm dwellings occupied by nonwhites had more than one person per room. Only one in eight of all such white-occupied dwellings were similarly crowded. . . .

"Statistics tell only part of the story. A substandard house in a good neighborhood is one thing. An inferior, overcrowded house in a slum or blighted area is another. What makes the bad housing of a large proportion of nonwhites so much worse than that of most whites is its heavy concentration within limited, deteriorating areas." U.S. COMM'N ON CIVIL RIGHTS, *WITH LIBERTY AND JUSTICE FOR ALL* 144 (1959).

⁴ The most recent figures for seven southern states are: Alabama, 93%; Arkansas, 72%; Florida, 91%; Georgia, 37%; Louisiana, 73%; Mississippi, 44%; and North Carolina, 94%. U.S. DEPT OF LABOR, *THE ECONOMIC SITUATION OF NEGROES IN THE UNITED STATES*, Bull. S-3, p. 57 (1960).

⁵ In 1959 the white person could expect to complete twelve and a half years of schooling; the Negro slightly less than eleven. *Id.* at 36.

a shovel or broom;⁶ and his sister will obtain employment as a "domestic."⁷ He will be the last hired and the first fired,⁸ and his yearly income will approximate half that of the white citizen.⁹ The Negro may be powerless to better himself economically, as many of the apprenticeship programs in the skilled trades are closed to him;¹⁰ and the union which represents his interest may altogether bar him from membership, or assign him to a segregated unit under the jurisdiction of an adjoining "white" local.¹¹

Should the Negro desire entertainment and recreation, he will find the better restaurants, night-clubs, theatres, and even the libraries, art galleries and museums closed to him;¹² and should he desire to go to the municipal parks, playgrounds, golf courses, tennis courts, beaches or swimming pools, he can expect not relaxation, but arrest,¹³ followed by litigation which, when successful, might well result in the closing of the public facility.¹⁴

Should the Negro attempt to get away from it all by travel, he will find few hotels or motels or restaurants which will accept his patronage.¹⁵ Should he travel by bus, he can expect to be told to sit in the rear; and if he insists upon his rights, he can expect only trouble.¹⁶ The

⁶ Over 71% of all Negro men are employed as either laborers, service workers or operatives. The comparable percentage for white men is 34%. *Id.* at 13.

⁷ Over 65% of Negro women work as domestics, service workers or farm laborers. The comparable figure for white women is 22%. *Ibid.*

⁸ During the 1958 recession about 14% of the Negro workers were unemployed and seeking work, compared with an average of about 6% of white workers. *Id.* at 7.

⁹ In 1958 the Negro man earned 58% the amount earned by the white man; the Negro woman earned 45% as much as the white woman. *Id.* at 15.

¹⁰ *Id.* at 26.

¹¹ See Rauh, *Civil Rights and Liberties and Labor Unions*, 8 LAB. L.J. 874 (1957); Note, 37 N.C.L. REV. 509 (1959).

¹² See GREENBERG, *RACE RELATIONS AND AMERICAN LAW* 79 (1959).

¹³ See, e.g., *Wolfe v. North Carolina*, 364 U.S. 856 (1960), dismissing an appeal from a state court conviction of Negroes for trespassing on a municipal golf course despite a federal court order prohibiting discrimination on the basis of race.

¹⁴ Following federal court orders enjoining segregation, Montgomery, Alabama, closed the city parks, *Gilmore v. City of Montgomery*, 176 F. Supp. 776 (M.D. Ala. 1959); Jacksonville, Florida, sold its golf courses, *Hampton v. City of Jacksonville*, 4 RACE REL. L. REP. 973 (1959) (4th Judicial Cir., Duval County, Fla., Nov. 24, 1959); Greensboro, North Carolina, sold its swimming pool, *Tonkins v. City of Greensboro*, 175 F. Supp. 476 (M.D.N.C. 1959); and Prince Edward County, Virginia, even closed its public schools.

¹⁵ There is judicial dicta in North Carolina that innkeepers must provide separate and equal accommodations for white and Negro guests. *McMillan v. School Committee*, 107 N.C. 619 (1890).

¹⁶ A Negro minister and wife, British subjects from Jamaica, unaccustomed to racial segregation and under the impression that it had been abolished in the United States, boarded a bus in Miami for New York, taking forward seats. A fellow passenger violently assaulted and beat the husband and slapped the wife. After reaching New York, the Negroes sued the bus company, claiming it had breached the duties owed to them as passengers. The federal court allowed recovery; the bus company knew the plaintiffs were not experienced with "southern tradition" and therefore should have been warned of the danger of sitting in the forward part of the bus. *Bullock v. Tamiami Trail Tours, Inc.*, 266 F.2d 326 (5th Cir. 1959).

waiting rooms at bus, rail and air terminals may be marked by "white" and "colored" signs, and the rest-rooms will be similarly designated. The terminal restaurants relegate him to a segregated area. Should he travel by air, he might arrive at his destination only to find that the limousine service refuses his business.¹⁷

If the Negro gets into trouble, he can expect to be indicted by a white grand jury, prosecuted by a white lawyer, tried by a white petit jury, and sentenced by a white judge to a prison term in a segregated jail.¹⁸

If the Negro attempts to improve his situation by associating with like-minded persons, his organization may be hounded by state legislative investigating committees¹⁹ and state attorneys general,²⁰ and perhaps even ordered dissolved.²¹ Should he go to the polls to cast a protest vote, he may in some areas have trouble in registering and might become the target of coercive tactics.²²

And even in death his body may be required to rest in a segregated burial plot.²³

Such is the picture of life in America for eleven per cent of its population. The picture is blurred and rough-hewn, and it does not truly represent all cases. Many Negroes, for example are born in hospitals, live in pleasant homes, enter the professions and business proprietorships, vote, and even are elected to minor office. The picture of today is far better than the picture of yesteryear. New job opportunities provide the means for better standards of living which increases the value put on education, which in turn creates new job opportunities.²⁴ The fact remains, however, that no Negro, whatever his individual capacities,

¹⁷ Virtually every issue of the *Race Relations Law Reporter* lists one or more cases on these points, indexed under either "Government Facilities" or "Transportation."

¹⁸ North Carolina requires the State Prison Department to "provide separate sleeping quarters and separate eating space for the different races and the different sexes . . ." N.C. GEN. STAT. §148-44 (1958). The Baltimore Circuit Court recently held that the Maryland statute requiring racial segregation in state training schools for juvenile delinquents violates the fourteenth amendment's equal protection clause. *Myers v. State Bd. of Pub. Welfare*, 29 U.S.L. WEEK 2023, July 19, 1960 (Baltimore Cir. Ct., July 1, 1960).

¹⁹ See *Scull v. Virginia*, 359 U.S. 344 (1959).

²⁰ See *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958).

²¹ See *Bates v. City of Little Rock*, 361 U.S. 516 (1960).

²² The United States Commission on Civil Rights documents the devices utilized in varying degrees to prevent Negro voting. *WITH LIBERTY AND JUSTICE FOR ALL*, *op. cit. supra* note 3, at 55-58.

²³ See N.C. GEN. STAT. § 65-38 (1960).

²⁴ Cf. 4 RACE REL. L. REP. 470 (1959): The Mississippi State Sovereignty Commission recently published a "Fact Sheet on the Economic Status of the Negro in Mississippi" which shows that there are 154,512 Negroes employed as laborers, domestics and service workers; but that there are also 12,061 professional and technical workers; 111,629 farmers and farm managers; 1,706 clerical and kindred workers; 1,839 sales workers; and 11,015 craftsmen, foremen and kindred workers.

can enjoy today the facilities and opportunities open to the white citizen. In short, first class citizenship for the Negro American is still a goal to be won.

During the 1960 Presidential campaign, both candidates promised remedial action if elected. President Kennedy pledged that he would eliminate many segregation practices with the stroke of a pen.²⁵ The discussion which follows is an exploration of some of the crucial areas²⁶ of racial inequality and the existing powers²⁷ of the President²⁸ to effectuate change.

THE MILITARY SERVICES

The American Negro dates his military service from colonial times and has been represented in each of our nation's conflicts, having particularly served well and in large numbers during the Civil War.²⁹

²⁵ The cry that "you can't legislate morality" has been belied time and again. Dr. Harold I. Lief, associate professor of psychiatry at Tulane University, reports that one of the most striking psychological facts demonstrated by school desegregation is that changes in behavior are in many places preceding changes in attitude. "This is the exact opposite of the old idea that one must change attitudes—perhaps through education—before one can hope to change behavior patterns, and it explains the many attitude changes to be found among teachers, school administrators, and parents who have accepted desegregation against their will only to become advocates of it in the process." PETERS, *THE SOUTHERN TEMPER* 42 (1958). No one would have imagined Mississippi voting funds to finance the erection of a thoroughly integrated Veterans Administration Hospital, but this is what happened when the VA threatened to build in Memphis, Tennessee. Harry Ashmore tells the story this way: "Well, we've got the tiger by the tail," Governor Coleman said. "We either accept an integrated facility, or we deny our Mississippi white veterans medical services they need." With only one dissenting voice the [State Sovereignty] Commission voted to donate state land for the hospital." ASHMORE, *AN EPITAPH FOR DIXIE* 131-32 (1958).

²⁶ Space prohibits the discussion of all suggestions by which the President could effectuate an anti-discrimination policy. The suggestions range from the proposal that the Alien Property Custodian condition the license of government-owned patents on a non-discriminatory employment pledge to the extreme that federal insurance benefits be withheld from banks which finance discriminatory housing facilities.

²⁷ The President has many powers. President Theodore Roosevelt entertained Booker T. Washington in the White House during a racial crisis in Atlanta. This is an example of executive action, personal in nature, which had profound effect. This article will confine itself to the "legal" as contrasted with the "personal" and "political" powers of the President.

²⁸ The term "President" is used in this article as including the executive departments and branches directly under presidential control. It does not include the so-called independent agencies such as the National Labor Relations Board (which continues to "certify" Jim Crow unions as exclusive spokesmen for the Negroes employed in the bargaining unit), such as the Federal Communications Commission, the Federal Power Commission, the Civil Aeronautics Board, etc., which presently fail to give weight to the discriminatory practices of an applicant when two or more persons apply for the license to operate a television station, build a pipe line, fly an air route, etc.

²⁹ While Union policy was generally opposed to placing Negroes in command position, a few individuals rose to that status in the Negro regiments organized in Massachusetts and Louisiana. OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE, *THE NEGRO OFFICER IN THE ARMED FORCES OF THE UNITED STATES OF AMERICA* 1 (1960).

Following the Civil War, Congress authorized four all-Negro units, staffed almost entirely by white officers. Segregation, thus established, continued until the end of World War II. During much of that conflict the Negro was allowed to serve only in the steward's branch of the Navy and as truckdrivers or heavy manual laborers in the Army. The wartime experience for them was tragic. In October, 1943, many Negro members of a Sea-Bee battalion were dishonorably discharged, mainly because they had protested against discrimination. In Camp Rousseau, California, in 1945, 1,000 Negro seamen went on a hunger strike in demonstration against "Jim Crow" practices and lack of promotion. In Guam, on Christmas day 1944, Negro sailors were attacked by white marines.³⁰

Despite the general policy of segregation, there were some Negro combat troops, and many instances of gallantry among them. More than 100 Distinguished Flying Crosses were recommended for Negro pilots during World War II. Officers and enlisted men in the all-Negro 369th and the 270th Infantry Regiments received numerous decorations and citations.³¹ In the winter of 1945, some 2,500 Negro soldiers from the supply services answered a call for volunteers for front-line duty; they were formed into platoons and assigned to white companies. The combat performance of these platoons effectively established the feasibility of integration at this level without difficulty. Three out of four white soldiers who served in this campaign said their attitude toward Negroes had changed after serving beside them in combat.³²

Why, then, was the Negro serviceman so often segregated to a "service" or "manual" position? The answer given in 1941 by a War Department spokesman to a group of Negro newspaper representatives was, "The Army . . . cannot be made the means of engendering conflict among the mass of the people because of a stand with respect to Negroes which is not compatible with the position attained by the Negro in civilian life. . . . The Army is not a sociological laboratory."³³ Contrast with this view that of President Harry S. Truman who was not one to believe that integration in the military services is a process which must be carried out gradually over a long period of time.

Integration of the Armed Forces

In 1948 Executive Order 8891 declared it to be "the policy of the President that there shall be equality of treatment and opportunity for

³⁰ Puner, *What the Armed Forces Taught Us About Integration*, Coronet, June, 1960.

³¹ THE NEGRO OFFICER IN THE ARMED FORCES OF THE UNITED STATES OF AMERICA, *op. cit. supra* note 29, at 3.

³² REPORT OF THE PRESIDENT'S COMM. ON EQUALITY OF TREATMENT AND OPPORTUNITY IN THE ARMED SERVICES, FREEDOM TO SERVE, at 53 (1950).

³³ PETERS, *THE SOUTHERN TEMPER* 142 (1958).

all persons in the armed services without regard to race, color, religion or national origin." Such policy, the President directed, "shall be put into effect as rapidly as possible, having due regard to the time required to effectuate any necessary changes without impairing efficiency or morale."³⁴ By the same order, the President's Committee on Equality of Treatment and Opportunity in the Armed Services (headed by Georgia-born Judge Charles E. Fahy) was created. This committee recommended the elimination of segregated units and installation of a quota system in all branches of the armed services. After a survey in 1950,

the thing that most impressed the Committee about the Navy's experience was that in the relatively short space of five years the Navy had moved from a policy of complete exclusion of Negroes from general service to a policy of complete integration in general service. . . . The Navy had found that Negro and white sailors would work together, eat at the same messes and sleep in the same quarters without trouble.³⁵

The Army expedited integration with an order that Negro soldiers with critical specialties be transferred to white units requiring such specialties.³⁶

Civil rights organizations continue to receive complaints that military authorities of lesser rank frequently frustrate the policies set by their superiors,³⁷ but the order of the day is members of the Armed Forces eat, sleep, play, work, fight and die together without regard to race.

The Military Academies and ROTC Units

Contrary to earlier predictions, removal of racial quotas and other restrictions has not resulted in any imbalance of ratios of Negro enlisted personnel in the Services. In 1954 the percentage of Negroes in the enlisted ranks of the Army was 13.7%, in the Navy 3.6%, and in the Marine Corps 6.5%. Among Army re-enlistment data for 1954 it is found that the re-enlistment rate for eligible regular army Negro personnel is almost identical with that for all personnel in this category.³⁸ The Negro officer, however, is not found in such large proportion.

In 1954, approximately 3% of the Army officers were Negroes, and there were only a few Negroes (0.1% of the total officer force) serving in a commissioned capacity in the Navy and Marine Corps.³⁹ As the

³⁴ 13 Fed. Reg. 4313 (1948).

³⁵ REPORT OF THE PRESIDENT'S COMM. ON EQUALITY OF TREATMENT AND OPPORTUNITY IN THE ARMED SERVICES, FREEDOM TO SERVE 23, 33 (1950).

³⁶ *Id.* at 62.

³⁷ 2 EMERSON & HABER, POLITICAL AND CIVIL RIGHTS IN THE UNITED STATES 1450 (2d ed. 1958).

³⁸ OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE, INTEGRATION IN THE ARMED SERVICES 4 (1955).

³⁹ *Ibid.*

Fahy Committee points out, the two principal sources of naval officers are the Naval Academy and the Naval Reserve Officers Training Corps at fifty-five colleges and universities.⁴⁰ Unless Negroes are appointed to the Naval Academy and the NROTC, the paucity of Negro naval officers will continue. Currently, there are seven Negroes enrolled in the Naval Academy. Similarly, there are only eight Negro cadets at West Point; and only three Negroes are enrolled at the Air Force Academy.⁴¹ The disproportionately few Negroes at the service academies may be caused by the small number of qualified Negro applicants. It may also, however, be due to the fact that the greater majority of midshipmen and cadets are nominated by senators and members of the House of Representatives. As there are no Negro senators and only three or four Negro representatives, most of the congressional nominations (other than those made on the basis of open competitive examination) go to whites. The President, however, has the power to make a limited number of appointments, eighty-nine, for example, to West Point.⁴² He can use this appointive power to insure that qualified Negroes gain admission to the military academies.

Many Army officers come from the university ROTC programs. But there are at least three states where the Negro is barred by law from attending the state university and consequently from ROTC training. The President is directed by law to establish and maintain ROTC units, and he may likewise disestablish such units.⁴³ He can inform the universities and colleges where ROTC units exist and which refuse to admit Negro students that the ROTC units will be disestablished unless the discriminatory admission policies are abolished.

The National Guard

The National Guard is part of the United States Army,⁴⁴ and the composition of its units is required by law to be "the same as those prescribed by the Army."⁴⁵ The state units of the National Guard are financed almost in whole by the federal government,⁴⁶ and service in the National Guard is a statutory substitute for service under the Universal Selective Service Act in the regular Army.⁴⁷ The youth who enlists

⁴⁰ FREEDOM TO SERVE, *op. cit. supra* note 35, at 25.

⁴¹ THE NEGRO OFFICER IN THE ARMED FORCES OF THE UNITED STATES OF AMERICA, *op. cit. supra* note 29, at 22.

⁴² 10 U.S.C. § 4342 (1958).

⁴³ 10 U.S.C. § 4382 (1958).

⁴⁴ 10 U.S.C. § 261(a)(1) (1958).

⁴⁵ 32 U.S.C. § 104(b) (1958).

⁴⁶ The federal government pays 96.29% of the salaries of members of the North Carolina National Guard. THE NATIONAL CONFERENCE AND THE REPORTS OF THE STATE ADVISORY COMMITTEES TO THE U.S. COMMISSION ON CIVIL RIGHTS 298 (1959).

⁴⁷ 64 Stat. 828 (1950), 50 U.S.C. App. § 454(b) (1958).

in the National Guard is released from a tour of extended active duty in exchange for forty-eight evening drill periods a year and two weeks of summer training throughout the period of his military obligation.⁴⁸ The opportunity, however, is not available to the southern Negro, as the southern National Guard units are "lily white." This deprives the Negro of opportunities available to the white; and, as pointed out by the North Carolina Advisory Committee to the U. S. Commission on Civil Rights, "in times of racial tension, if the guard should be called out, it would be reassuring to Negro citizens to observe that members of their race were on duty. Thereby would be implanted the justified conviction that the sole mission of the guard is to uphold the law."⁴⁹

The President can change this situation at will. He designates the units of the National Guard;⁵⁰ and he prescribes the regulations and issues the orders necessary to organize, discipline, and govern the National Guard.⁵¹ Violation of a Presidential regulation results automatically in a forfeiture of federal benefits.⁵²

Facilities on Government-Owned Shore Stations and Military Posts

The Secretary of the Navy, on August 20, 1953, directed the complete elimination of all barriers to the free use of previously segregated facilities on government-owned shore stations of the Navy.⁵³ Similar regulations were issued by the Army and Air Force. The Commissaries, Post Exchanges, restaurants, swimming-pools, tennis courts, golf courses, all are now completely integrated. When there is a dance at the officers' club, Negro officers dance with their wives on the same dance floor with the white officers and their wives. What happens? Nothing. James McBride Dabbs, South Carolina planter, explains the reaction of civilians in this manner:

We mingle with Negroes at games on government reservations because enforcement there is taken out of our hands; we are on federal property, we have no responsibility. Take Shaw Air Force Base, near Sumter, South Carolina, where at integrated athletic contests white citizens' council leaders may be seen sitting by Negroes and chatting with them. . . .⁵⁴

In 1954, four months before the Supreme Court's school desegregation decision, the Secretary of Defense directed "that the operation of all school facilities located on military installations shall be conducted with-

⁴⁸ MILLIS, *INDIVIDUAL FREEDOM AND THE COMMON DEFENSE* 22 (1957).

⁴⁹ THE NATIONAL CONFERENCE AND THE REPORTS OF THE STATE ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS 299 (1959).

⁵⁰ 32 U.S.C. § 104 (1958).

⁵¹ 32 U.S.C. § 110 (1958).

⁵² 32 U.S.C. § 108 (1958).

⁵³ INTEGRATION IN THE ARMED SERVICES, *op. cit. supra* note 38, at 3.

⁵⁴ PETERS, *THE SOUTHERN TEMPER* 143 (1958).

out segregation on the basis of race or color."⁵⁵ As to the result, Mrs. Hazel Scudder, a native of Arkansas and superintendent of three grade schools on the post at Fort Benning, near Columbus, Georgia, said,

We lost three teachers. One objected to the new program, another felt her father would disapprove, and a third reported that her husband objected. We have seventy-two teachers, three fourths of them from the South. Some of those from the Deep South have changed their attitudes tremendously. Several have said that they like being here where this bridge has already been crossed. As for the children, there have been no problems at all. The parents have accepted it without question.⁵⁶

Off-Base Educational Facilities

The children of military personnel who are quartered on a military reservation generally attend an on-base school administered by the local school board. These on-base schools are always integrated. The children of military personnel who live off-base attend an off-base school administered by the local school board which is usually segregated, even though the Department of Health, Education, and Welfare provides the money to build and operate the "federally impacted" school system. In Pulaski County, Arkansas, for example, a school built with \$650,000 of national money and attended only by the children of service personnel originally refused to admit any Negro children.⁵⁷ One solution to this problem is for the Armed Forces to acquire the off-base school properties (by condemnation proceedings, if necessary) and then, by lease arrangement with the local school board, require that they be operated on an integrated basis.

Off-Base Recreational Facilities

For the Negro serviceman stationed in the South, the short bus ride from base to town is a trip to a different world. In Europe, in Asia, in the North, he goes on leave with his white companions. In the South he bids them farewell at the bus terminal and looks for the places of public accommodation marked "colored." An official document of the Defense Department comments, "It is paradoxical that the Negro citizen in uniform has frequently been made to feel more at home overseas than in his home town."⁵⁸ The way to alleviate this situation is shown by the actions of the commander of the air base outside Grand Forks, North Dakota. Receiving complaints that some of the town's restaurants had refused to serve Negro airmen, the commander met with the local chamber of commerce; he made it clear that all airmen are entitled to equal

⁵⁵ INTEGRATION IN THE ARMED SERVICES, *op. cit. supra* note 38, at 2.

⁵⁶ Quoted in PETERS, *THE SOUTHERN TEMPER* 144 (1958).

⁵⁷ GREENBERG, *RACE RELATIONS AND AMERICAN LAW* 366-67 (1959).

⁵⁸ INTEGRATION IN THE ARMED SERVICES, *op. cit. supra* note 38, at 7.

treatment and that places discriminating against any would be declared "off limits." Chamber members carried his words back to the community and complaints of discrimination stopped.⁵⁹

A commanding officer's authority to safeguard the "health and welfare" of his men has been held to justify putting a used car lot "off limits" to all military personnel after a lieutenant had complained of being defrauded.⁶⁰ The President, as commander-in-chief is thus clearly within his constitutional obligation should he decide to put all places of public accommodation which refuse to serve Negro servicemen "off limits" to all servicemen.

FEDERAL EMPLOYMENT

The success of integration in the Armed Forces—where men work, fight, and play together in crowded quarters and often under disagreeable conditions—would lead one to expect even greater and more successful integration in the federal Civil Service. The facts are otherwise.

An official bulletin of the Defense Department discusses the Negro civilian employee in these terms:

[T]he utilization of the individual Negro employee at his maximum potential often appears as a distant objective. . . . [M]easured against the Negro in military uniform, much remains to be done to accomplish full equity. . . . The situation is not resolved by pointing out that conditions are not measurably better elsewhere.⁶¹

A listing of recent "breakthroughs" in federal employment serves only to highlight the federal discriminatory employment practices.⁶²

Pine Bluff Arkansas: Two Negro guards are employed by the federal government at the Pine Bluff Arsenal.

Wilmington, Delaware: The first Negro is employed at the Delaware district office of the Internal Revenue Service.

New Orleans, Louisiana: A Negro is promoted to the job of general foreman in the office of the superintendent of the Postal Transportation Service.

St. Louis, Missouri: The Federal Reserve Bank of St. Louis begins hiring Negroes for clerical as well as service jobs.

Oklahoma City, Oklahoma: Veteran's Hospital employs Negro medical technician and promotes him to highest technician grade.

⁵⁹ Puner, *What The Armed Forces Taught Us About Integration*, Coronet, June, 1960.

⁶⁰ *Harper v. Jones*, 195 F.2d 705 (10th Cir. 1952); Note, 66 HARV. L. REV. 350 (1952); 20 FORDHAM L. REV. 321 (1951).

⁶¹ INTEGRATION IN THE ARMED FORCES, *op. cit. supra* note 38, at 7.

⁶² LOTH & FLEMING, INTEGRATION NORTH AND SOUTH, A PROGRESS MEMORANDUM 72-77 (1956).

Charleston, West Virginia: The Social Security office hires two Negroes—a woman clerk, and a man as a claims investigator.

A recent study of Negro employment in federal agencies located in Atlanta, Georgia,⁶³ shows that only 226 of the 2,369 Negro employees (less than 10%) were employed in "white collar" jobs. Only twelve of the twenty-seven agencies with "white-collar" positions hired Negroes; and 194 of the 226 Negro "white-collar" federal employees (over 80%) were in the bottom four of the fifteen grades of job classification.⁶⁴ The "white collar" positions held by Negroes are described as Nursing Assistant, Soil Conservationist, Mail and File Clerk, Tabulating Machine Operator, Laboratory Animal Caretaker, Biological Aid, Messenger, Biologist, and Clerk-Typist. This situation exists in a community with six Negro colleges which in 1958 alone granted 573 graduate and undergraduate degrees. The most recent report of the President's Committee on Government Employment concludes, "That there is discrimination in federal employment is unquestionably true."⁶⁵

Discrimination in federal employment exists despite statutes and Executive Orders to the contrary.

In principle at least, equal opportunity for federal employment has existed since the Civil Service Act of 1883, which provided for open competitive examinations, with vacancies to be filled from the three highest scorers, "with sole reference to merit and fitness."⁶⁶

In 1940, Congress amended the Civil Service Act to expressly prohibit discrimination on the basis of "race."⁶⁷

In 1941, President Roosevelt established a Committee on Fair Employment Practices, and Negroes were hired by the government at all levels in great numbers.⁶⁸

After the war, however, Negroes in federal jobs found themselves in a precarious position, especially as the non-discriminating temporary war-time agencies and the F.E.P.C. were discontinued. In 1948, President Truman issued Executive Order 9980 ordering each department to consider only "merit and fitness" in appointing and promoting per-

⁶³ Characteristics of Negro Employment in Federal Agencies in Atlanta, Georgia, Press Release of the President's Committee on Government Employment Policy, October 24, 1960.

⁶⁴ At grade five the jobs begin to involve responsibilities of a technical, professional, or administrative nature. Trends in the Employment of Negro-Americans in Upper-Level White-Collar Positions of the Federal Government, Press Release of the President's Committee on Government Employment Policy, September 28, 1960, p. 2.

⁶⁵ THIRD REPORT OF THE PRESIDENT'S COMMITTEE ON GOVERNMENT EMPLOYMENT POLICY 17 (1959).

⁶⁶ 22 STAT. 403, § 2 (1883).

⁶⁷ 63 Stat. 972 (1949), 5 U.S.C. § 1074 (1958).

⁶⁸ 2 EMERSON & HABER, POLITICAL AND CIVIL RIGHTS IN THE UNITED STATES 1447 (2d ed. 1958).

sonnel. He further established a Fair Employment Board within the Civil Service Commission to police his regulations and report to him whenever a recommendation concerning employment practices was not "promptly and fully carried out."⁶⁹ The effect of this policy was that by 1952 one third of the federal agencies had, for the first time in their history, hired Negroes as supervisors over integrated work groups or in executive or professional capacities.⁷⁰

In 1955 President Eisenhower abolished President Truman's Fair Employment Board of the Civil Service Commission and created in its place the President's Committee on Governmental Employment Policy. In his order creating this Committee, President Eisenhower stated that it is the policy of the United States that equal opportunity be afforded all qualified persons, consistent with law, for employment in the federal government. He added that "this policy necessarily excludes and prohibits discrimination against any employee or applicant for employment in the Federal Government because of race, color, religion, or national origin."⁷¹

Why, despite this long and unbroken policy against racial discrimination in federal employment, does such discrimination exist? Several lessons from the past are pertinent. First, the committee, board or agency charged with the task of ending discriminatory employment practices never has been assigned sufficient manpower. With government employment in excess of two million, President Eisenhower's committee was composed of part-time men⁷² with a full-time staff of exactly three persons, one of them a stenographer.⁷³ A President bent on ending discrimination in federal employment must create a task-force commensurate with the job to be done.

Second, the entire system for ending discrimination depended on action initiated by the rejected employee. The procedure began with a complaint, and the complaint was normally filed with the agency against whom it was levelled. Moreover, the burden of proving that the rejection was based on race rather than on some other factor was laid on the complainant, who had no facts and no way of getting them.⁷⁴ A President bent on ending discrimination could himself initiate action. For example, he could keep records of the percentage of qualified Negro applicants referred to a given agency by the Civil Service Commission

⁶⁹ 13 Fed. Reg. 4311 (1948).

⁷⁰ 2 EMERSON & HABER, *op. cit.* *supra* note 68, at 1448.

⁷¹ Executive Order No. 10590, 20 Fed. Reg. 409 (1955).

⁷² The chairman, Archibald J. Carey, Jr., never left his law practice in Chicago. The vice-chairman, Branch Rickey, maintained his principle interest in the Pittsburgh Pirates.

⁷³ PETERS, *THE SOUTHERN TEMPER* 253 (1958).

⁷⁴ Regulations and Procedures of the President's Committee on Government Employment Policy, reprinted in 1 RACE REL. L. REP. 786, at 788 (1956).

and of the percentage of qualified Negro applicants hired by the agency; he could then put the burden of explanation upon the agency if and when the two percentages became disproportionate.

Third, those charged with enforcement of the Government's non-discriminatory policy did not believe it immediately possible of attainment. President Eisenhower's Committee asserted that its "most important responsibility" was "to conduct a long-range program of education and persuasion" with the purpose of eliminating, not discriminatory employment practices, but "those fears and prejudices that give rise to acts of discrimination."⁷⁵ Contrast with this "long range" educational program to allay fears the Military crash program to eliminate segregation. The Army made no bones about its objective, and expedited its program by assigning qualified Negro soldiers to billets in white units even when equally qualified white soldiers were available.⁷⁶

Finally, there have never been any sanctions for violation of the Government's policy. President Eisenhower's committee has found individual and identifiable acts of employment discrimination; but if any one was discharged, or even reprimanded, it remains a secret. Contrast the statement of the top official of the Bureau of Internal Revenue when there were charges that revenue officials discriminated against taxpayers favoring integration: "[W]e don't allow personal feeling to enter into our work. Anyone found doing this kind of thing would be summarily dismissed. They all know that."⁷⁷

In sum, a President can eliminate discrimination in federal employment, just as discrimination was ended in the military services, by appointing a task force, adequately staffed, with authority to initiate action designed to seek out and punish those who violate government policy from the inside.

There is no legal or moral excuse for discrimination in federal employment, and in fact, not even a good rationalization to defend it. Even in private employment in many industries and occupations, there has been a high incidence of job integration. Moreover, federal employment is the least social of any activity (when the whistle blows, the whites and Negroes go their separate ways); it cuts across class lines and is usually found in the urban centers where acceptance of integration is greatest. Integration of the federal civil service would provide a limited, but projected and readily visible laboratory experiment in every southern state and provide an actual experience in a genuinely integrated situation. Its success (and the experience in the military

⁷⁵ PRESIDENT'S COMM. ON GOVT. EMPLOYMENT POLICY, *THE POLICY OF NON-DISCRIMINATION IN EMPLOYMENT IN THE FEDERAL GOVERNMENT* 1.

⁷⁶ FREEDOM TO SERVE, *op. cit. supra* note 35, at 62.

⁷⁷ PETERS, *THE SOUTHERN TEMPER* 265 (1958).

services indicates it cannot fail) would strengthen the government's hand when it moves into other areas.

FEDERAL CONTRACT EMPLOYMENT

Not only does the federal government discriminate against Negroes in its own employment policies, but it permits private firms holding federal government contracts to do the same. This is most unfortunate, as goods and services furnished pursuant to federal government contracts constitute a major part of our economy.⁷⁸ The end of discrimination in these private firms doing business with the government would have a decisive impact on the employment picture of the United States as a whole. In hundreds of cities the federal contractor is the major employer, and his hiring policies set the pattern for an entire area. As in direct federal employment, discrimination by employers holding government contracts is contrary to our national policy.

In 1941 President Roosevelt established a Fair Employment Practice Committee and called for "full participation in the national defense program by all citizens regardless of race, creed, color, or national origin." Federal agencies were instructed to include in their contracts a provision requiring the contractor not to discriminate.⁷⁹ Since 1943 all government contracts have contained a "non-discrimination" clause.

During the Korean crisis, President Truman attempted to revitalize the non-discrimination provision by establishing a Committee on Government Contract Compliance, with instructions to study the problem and to recommend to agency heads measures to eliminate discrimination. The committee reported that the non-discrimination clause was "dead and buried under thousands of words of standard legal and technical language," that workers were unaware of its existence, and that government contracting agencies lacked machinery to receive and investigate complaints or to enforce compliance.⁸⁰

In 1953 President Eisenhower established the Government Contract Committee (popularly known as the Nixon Committee) with the Vice-President as its chairman, the Secretary of Labor as its vice-chairman, and with prominent industrial, labor, and civic leaders among its membership. President Eisenhower's Executive Order⁸¹ contains the following statements:

⁷⁸ Nearly 3,000,000 persons are employed by private business under contract with one government agency—the Department of Defense. *REPORT OF THE SPECIAL COMM. OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, THE FEDERAL LOYALTY-SECURITY PROGRAM 4* (1956).

⁷⁹ Executive Order No. 8802, 6 Fed. Reg. 3109 (1941).

⁸⁰ *REPORT OF THE PRESIDENT'S COMM. ON GOVT. CONTRACT COMPLIANCE, EQUAL ECONOMIC OPPORTUNITY 3* (1953).

⁸¹ Executive Order No. 10479, 18 Fed. Reg. 4899 (1953).

[I]t is in the interest of the Nation's economy and security to promote the fullest utilization of all available manpower

[I]t is the policy of the United States Government to promote equal employment opportunity for all qualified persons . . . because such persons are entitled to fair and equitable treatment in all aspects of employment on work paid for from public funds

[I]t is the obligation of the contracting agencies of the United States Government and government contractors to insure compliance with, and successful execution of, the equal employment opportunity program of the United States Government

The private firm or corporation now doing business with the government agrees by contract to the following:

not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

The contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.⁸²

The contractual provision is definitive and exhaustive; every aspect of the employment relationship is covered. Yet discrimination against Negroes continues almost unabated. It is no secret that General Motors, one of the country's largest holders of government contracts, pursues such a policy in the South, for in 1957 the manager of its Atlanta assembly plant was quoted in the *Wall Street Journal* as saying, "When we moved into the South, we agreed to abide by local custom and not hire Negroes for production work. This is no time for social reforming in that area, and we're not about to try it."⁸³

The extent of discrimination by government contractors is best illustrated by the Nixon Committee's "Examples of Progress," taken verbatim from its most recent report:

Kaiser Aluminum Company—Baton Rouge, La.—As a result of a complaint filed by an individual, there was a general review of the company's employment policies by the cognizant contracting agency. The company hired 4 Negroes as supervisors and increased the number of Negroes in semiskilled jobs from 5 to 26.

⁸² *Ibid.*

⁸³ Quoted in PETERS, *THE SOUTHERN TEMPER* 261 (1958).

Bethlehem Steel Corporation—Sparrows Point, Md.—The plant employed more than 700 women employees in plant and white-collar positions. A complaint alleged that no Negro women were employed in the plant since World War II. As a result of consultations with ranking officials of the Department of the Navy, two Negro women were hired as clerical employees.

General Dynamics Corporation (Convair Division)—Fort Worth, Tex.—This company employs between 25,000-30,000 employees, including 200-300 Negroes in unskilled and semiskilled positions. There were no Negroes in any white-collar positions. After Committee negotiations in September, 1959, two Negro women were hired for clerical positions—one in the industrial relations department and the other in the accounting department.⁸⁴

Racial discrimination in government contract employment exists today, not for lack of policy or lack of orders—both are well defined and clear cut. Discrimination exists because no one has taken action. The Nixon Committee lays heavy stress on education: making movies, sponsoring conferences and "equal opportunity" days, producing spot announcements, car cards, brochures, and newsletters.⁸⁵

The President can end government contract employment discrimination by taking action along any or several of the lines suggested by President Truman's committee as it left office:⁸⁶

1. *Disqualification from future contracting.* The Truman committee recommended that each agency establish administrative disqualifying procedures directed against irresponsible bidders whose past performance had been detrimental to the Government's interest. This sanction has never been used.

2. *Termination of Contract.* Each contract contains a standard provision that the government may terminate the whole contract or any part thereof if the contractor fails to perform under any provision and does not rectify the failure within a specified period of time. The committee called this the most potent sanction. No contract has ever been terminated for failure to comply with the anti-discrimination clause.

3. *Liquidated damages.* The committee suggested that liquidated damage provisions might be inserted in contract agreements and that the violating contractor be required to pay a lump sum penalty for his violation. Liquidated damage provisions have been upheld by the courts many times where injury or the extent thereof is difficult to assess.

⁸⁴ COMMITTEE ON GOVT. CONTRACTS, SIXTH REPORT TO PRESIDENT EISENHOWER 10-14 (1959).

⁸⁵ PETERS, *THE SOUTHERN TEMPER* 259 (1958).

⁸⁶ The following discussion is based on GREENBERG, *RACE RELATIONS AND AMERICAN LAW* 189-90 (1959).

4. *Injunctive relief.* The government might sue for specific performance of the nondiscrimination clause. The courts will grant equitable injunctive relief when the harm is not measurable in monetary damages.

5. *Certificate of compliance.* The contractor could be required to file a certificate of compliance to obtain payment. Execution of a false certificate is a crime punishable by a fine up to \$10,000, or imprisonment up to five years, or both.

It is not believed that the Government need resort to criminal sanctions to achieve its stated policy. The establishment of a "preferred list" (those companies which hire on merit without regard to race) should accomplish the desired result and would be far more educational than all the movies, spot announcements, and car cards produced by the Nixon Committee.

The Government, as a buyer, has the buyer's normal privilege of choosing his suppliers. There is no reason why the Government should not choose to deal with that supplier which operates all its offices and plants without discrimination. The Bureau of Labor Statistics and the Bureau of Employment Security maintain copious data on the nation's work force and can with minimum difficulty prepare and publish current information on the number of Negroes in a given area in various categories of the work force. These data could be taken into account in determining which of several competing suppliers should get the Government contract. The test would be the record of actual employment measured against the nature of the available work force. This would, in effect, require the company seeking government business to cooperate with the Government by a positive program of utilizing Negro talent and skills. It would be asked to assume partnership with the Government in achieving a national goal.

OTHER FEDERAL EMPLOYMENT PROGRAMS AND POLICIES

In addition to direct employment into the federal civil service and to employment by private industry doing business under contract with the Government, the United States of America sponsors at least three other programs which influence employment patterns: vocational rehabilitation, apprenticeship programs, and the state public employment programs operated under the guidance of the United States Employment Service. As these programs are conducted with federal funds and under federal supervision, they fall within the command of the fifth amendment to the United States Constitution prohibiting discrimination on racial grounds.⁸⁷ As the President of the United States takes an oath of office

⁸⁷ *Bolling v. Sharpe*, 347 U.S. 497 (1954).

to support the Constitution, he is honor bound to stamp out federally financed and controlled discrimination where it exists.⁸⁸

Vocational Rehabilitation

The Office of Vocational Rehabilitation of the Department of Health, Education, and Welfare finances and oversees an extensive program to restore handicapped persons to useful activity. In 1959 the total amount of federal grants in this public rehabilitation program was \$55,928,771⁸⁹ and the number of persons benefited was 80,739.⁹⁰ In May of 1958, the Office of Vocational Rehabilitation issued an order that no state shall be eligible to participate unless its vocational rehabilitation program "will be applied without regard to sex, race, creed, color, or national origin of the individual."⁹¹ A spot check should be made to see if this regulation has been put into practice.

Vocational Education

The United States Office of Education of the Department of Health, Education, and Welfare, finances and administers vocational education programs, at a cost, in 1959, of \$40,888,412.⁹² Entrance into one of these programs is essential if one is to lift himself out of the unskilled labor category. As of today, most of these programs, especially the skilled-trade apprenticeship training, exclude Negroes—the United States Office of Education has not yet seen fit to follow the lead of the Office of Vocational Rehabilitation in affording funds only to those programs which operate without regard to race.⁹³ The President, of course, can direct the Office of Education to do so.

The United States Employment Service (USES)

The states conduct employment reference services financed by the federal government and operated under the general supervision of the Secretary of Labor.⁹⁴ The state employment services "place" employees, offer employment counseling, provide special services to veterans, youths and the handicapped, give occupational testing, and provide technical materials concerning personnel management.⁹⁵

⁸⁸ Cf. *Ex parte* La Prade, 289 U.S. 444, 458 (1933). Compare *Ex parte* Young, 209 U.S. 123, 159 (1908).

⁸⁹ U.S. DEPT. OF HEALTH, EDUC., AND WELFARE ANN. REP. 231 (1959).

⁹⁰ *Id.* at 217.

⁹¹ 45 C.F.R. § 401.14(a) (2) (1960).

⁹² U.S. DEPT. OF HEALTH, EDUC. AND WELFARE, *op. cit. supra* note 89, at 143.

⁹³ A New York statute suggests (but does not require) that apprenticeship agreements contain a provision forbidding racial discrimination; and the Cleveland Board of Education has prohibited discrimination in apprenticeship programs operated in the city schools. See GREENBERG, RACE RELATIONS AND AMERICAN LAW 155 (1959).

⁹⁴ 48 Stat. 114, 115 (1933), as amended, 29 U.S.C. §§ 49(d), 49(g) (1958).

⁹⁵ 20 C.F.R. § 604 (1949).

The employment services refuse to process discriminatory job orders by the federal government agencies and reject the "Caucasian-only" type of job orders in those states where local law forbids job discrimination; but elsewhere and otherwise it fosters and aids the discriminatory employment policies of private employees, even those under government contract.⁹⁶ The situation is illustrated by the practice in North Carolina.⁹⁷ In 1960 the budget of the North Carolina Employment Security Commission was \$5,555,960.00, all supplied by the federal government. The stated policy of the federal government is the employment of all persons on the basis of merit, uninfluenced by consideration of race, religion or national origin. By the statute establishing the Employment Security Commission, the North Carolina General Assembly specified a similar policy: "All positions shall be filled by persons selected and appointed on a non-partisan merit basis." Yet as of July, 1960, in the state office of the Commission at Raleigh there were only ten Negro employees: one maid, two elevator operators, five janitors, and two janitor messengers. In the district offices, Negroes are appointed to process "non-white applicants." The processing of a job order goes something like this: If the order specifies white employees, the order is handled by offices manned by and servicing whites; if the order specifies Negro employees, the order is handled by the Negro-manned division. In the absence of specifications of race, the Commission may request the employer to indicate a preference if it has doubts on the matter. These doubts are generally resolved without consultation by "local knowledge of customary hiring requirements" and "knowledge of usual community practice."

The Secretary of Labor, through his control over the federal funds allocated to the state employment bureaus, recently has denied the services of these agencies to farmers seeking temporary seasonal help unless the farmer maintains minimum standards of employment practices.⁹⁸ The justification for this order was that the federal government should not subsidize the employment of labor at sub-standard wages. The Secretary of Labor might also withhold the facilities of the state employment bureaus from employers who specific "white only," on the theory that such government assistance should be withheld from those who violate the federal (and state) policy of "merit" employment.

⁹⁶ GREENBERG, *op. cit. supra* note 93, at 165.

⁹⁷ The following discussion is based on a report of the North Carolina Advisory Committee to the U.S. Civil Rights Commission, December 27, 1960.

⁹⁸ 41 OPS. ATTY. GEN., July 2, 1959, following 29 U.S.C.A. § 49(k) (Supp. 1960).

EDUCATION

The most compelling unfinished business is school integration. In 1954 the Supreme Court held in *Brown v. Board of Education*,⁹⁹ that "separate educational facilities are inherently unequal" and that state compelled segregation deprives Negro students of the equal protection guaranteed them by the fourteenth amendment. In 1955, after hearing argument on effectuation of its decree, the Supreme Court remanded *Brown* and companion cases to the trial courts where they had originated with instructions to require the appropriate school boards to admit the Negro children "to public schools on a racially nondiscriminatory basis with all deliberate speed . . ."¹⁰⁰ In 1958, in the Little Rock case, the Supreme Court held that "chaos, bedlam and turmoil" in the school room did not justify the postponement of school integration.¹⁰¹ Thus, the law is clear.

Six years after the Supreme Court decision holding segregated schools illegal, the picture is somewhat as follows: in the states of the old Confederacy, fewer than 800 Negro children attend classes with whites. In North Carolina, some 934 Negro school children have applied for transfer from Negro to white schools under the pupil assignment law. Of these applications, some fifty-one have been granted. As of the most recent reports, some seventy-seven Negro students (including forty-two children of military personnel who fall into special categories), out of the 324,234 Negro students in North Carolina, attend school with white children. The North Carolina Advisory Committee to the U. S. Commission on Civil Rights reviewed these facts and concluded that "if, as the [Supreme] Court has held, segregation and discrimination are synonymous, discrimination on account of race in public schools is general in North Carolina."¹⁰²

What, if anything, can the President do to give life and content to the constitutional promise of equality in educational opportunities? Four powers are available: the power of litigation, the power of the purse, the power of education, and the power of moral suasion.

The Power of Litigation

The Supreme Court declared a constitutional right; yet throughout most of the South the entire burden of exercising that right has fallen on Negroes, while the public treasuries of southern states are put at the service of those denying it—it is an uneven fight.

⁹⁹ 347 U.S. 483, 495 (1954).

¹⁰⁰ 349 U.S. 294, 301 (1955).

¹⁰¹ *Cooper v. Aaron*, 358 U.S. 1 (1958).

¹⁰² Report of the North Carolina Advisory Committee to the U.S. Civil Rights Commission, October 30, 1959.

Despite the refusal of Congress to enact Part III of the various proposed Civil Rights Acts (which would specifically authorize the United States to initiate court action to achieve an end to unequal and discriminatory education) there is some legal authority permitting the United States to initiate such action.¹⁰³ Moreover, even if the United States cannot initiate such actions, it might well intervene in actions instigated by others pursuant to the statute authorizing the Attorney General to send any officer of his department to "attend to the interests of the United States in any suit pending" in any court, federal or state.¹⁰⁴ Resistance to the Supreme Court's decision is an assault on the Constitution and hence the federal executive should take all authorized measures to bring it to an end.

The Power of the Purse

The federal government now finances in large part the segregated school system of the South. More than two billion dollars a year of federal funds go for educational purposes to the nation's colleges, universities, and other institutions of higher learning.¹⁰⁵ At the primary and high school level, the federal government in 1959 paid approximately \$150,000,000 to local school districts under programs whereby the government supports "federal impact" areas, *i.e.*, areas with large numbers of federal installations and federal employees. These school districts had an estimated total enrollment of 9.5 million children, or about one-fourth of all children attending public elementary and secondary schools.¹⁰⁶

The Commission on Civil Rights investigated this problem and three of the six commissioners recommended that, at least in the area of higher education, "federal agencies . . . be authorized and directed to withhold funds in any form to institutions of higher learning, both publicly supported and privately supported, which refuse, on racial grounds, to admit students otherwise qualified for admission."¹⁰⁷ Commissioner George M. Johnson went further in saying that federal educational funds should be withheld from schools at all levels until there "be some indication of good faith compliance with the constitutional requirement of desegregation with all deliberate speed."¹⁰⁸

¹⁰³ SEC v. United States Realty & Improvement Co., 310 U.S. 434 (1940); *In re Debs*, 158 U.S. 564 (1895).

¹⁰⁴ REV. STAT. § 367 (1875), 5 U.S.C. § 316 (1958).

¹⁰⁵ U.S. COMM'N ON CIVIL RIGHTS REP. 233 (1959).

¹⁰⁶ U.S. DEPT. OF HEALTH, EDUC., AND WELFARE ANN. REP. 178 (1959).

¹⁰⁷ U.S. COMM'N ON CIVIL RIGHTS REP. 329 (1959).

¹⁰⁸ *Id.* at 556.

The Power of Accurate Information

The Federal government, and more particularly, the United States Office of Education, should attempt to set the record straight on the integration problem. Parents have fears: Will integration lower the academic level of the school? What about communicable diseases? And how about inter-racial marriages? School boards have problems: Is it an all or nothing proposition? How have other communities coped with the problem and what lessons are to be learned from experience elsewhere? Teachers and school administrators must face the day-to-day actuality of integration: Will the admission of Negro children result in insults and tumults on the playgrounds? And what about the trip home after school hours on the bus when pent-up energies are released? There are answers to these questions which can be supplied by the Office of Education. There ought to be analyses, widely disseminated, of the plans adopted in various places and of their successes or failures, factual studies of the academic effects of integration, and professional discussion of the technical problems of school administration during the integration process. The Office of Education now subsidizes studies on almost every aspect of education, but the most crucial problem of all, integration, until now has been completely ignored. It is time for a beginning.

The Power of Moral Leadership

It is well to re-examine the situation immediately following the Supreme Court decision of 1954. Harry Ashmore, then editor of the Arkansas Gazette, described it as follows:

Most Southern newspapers, while deploring the decision as premature, counseled calm and indicated reluctant acceptance. A good many churchmen spoke out approvingly from their pulpits, and the organized denominations formally endorsed the decision as morally correct. While no one on the white side of the color bar regarded May 17, 1954, as the day of jubilo, and the leaders of both races recognized that monumental practical problems lay ahead, there was almost a feeling of relief. For better or worse, the other shoe had finally dropped.¹⁰⁰

The day after the 1954 decision Governor Francis Cherry of Arkansas announced that "Arkansas will obey the law. It always has." In Florida, Senator Spessard Holland said, "No matter how much we don't like it, we must not have false ideas of the seriousness," while Representative Charles E. Bennett said, "I think the federal government should be required to take all necessary steps to make the states carry out the ruling." Governor Boggs of Delaware told his state board

¹⁰⁰ ASHMORE, AN EPITAPH FOR DIXIE 26-27 (1958).

of education that it would be the policy of the state "to work toward adjustment to the United States constitutional requirements," and Maryland's Governor McKeldin said his state "prides itself upon being a law-abiding state, and I am sure our citizens and our officials will accept readily the United States Supreme Court's interpretation of our fundamental law. Similar statements were heard from Kentucky, North Carolina, Oklahoma, Tennessee, and West Virginia.¹¹⁰

Where segregationist opposition was checked firmly, as in Baltimore, Washington, D.C., and Clinton, Tennessee, plans for de-segregation moved forward. Where the first tentative steps of opposition to the Supreme Court were unimpeded, or even encouraged, by high officials, the steps grew longer and bolder until a situation was created where members of school boards feared to end segregation without benefit of protective federal-court order. "When responsible men default, irresponsible men take power."¹¹¹

A ringing expression of national indignation, the creation of a feeling of inevitability about compliance with Supreme Court orders, would mark the effective beginning of a new day in school desegregation. Only the President can sound the alarm and end the conflagration now raging.

HOUSING

"It would be an affront to human dignity for any one group of Americans to be restricted to wearing only hand-me-down clothing or to eating the leftovers of others' food. Like food and clothing, housing as an essential of life, yet many nonwhite families have no choice but secondhand homes." So speaks the United States Commission on Civil Rights.¹¹² Jackie Robinson adds, "For many charity begins at home. So do hate, hostility, and delinquency, especially when the home environment is a slum, lacking adequate space, lacking facilities, but not lacking for high rentals"¹¹³

The problem of housing grows acute, as Americans steadily leave the farm for the town; especially the housing of minority groups as the whites flee to the suburbs and more and more Negroes move into the already crowded "Black Belts" of the old city.

This leads to the most tragic part of the vicious circle. The effect of slums, discrimination and inequalities is more slums, discrimination, and inequalities. Prejudice feeds on the conditions caused by prejudice. Restricted slum living produces demoralized human

¹¹⁰ PETERS, *THE SOUTHERN TEMPER* 60-61 (1959).

¹¹¹ ASHMORE, *op. cit. supra* note 109, at 44.

¹¹² U.S. COMM'N ON CIVIL RIGHTS REP. 534 (1959).

¹¹³ *Id.* at 386.

beings—and their demoralization then becomes a reason for “keeping them in their place.”¹¹⁴

The official United States policy is “a decent home and a suitable living environment for every American family.”¹¹⁵ To achieve this goal, Congress enacted long ago that Negroes shall enjoy “the same right in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.”¹¹⁶ The Supreme Court has sought to achieve this goal by striking down racial zoning ordinances,¹¹⁷ by prohibiting judicial enforcement of racially restrictive covenants, *i.e.*, agreements not to sell to Negroes,¹¹⁸ and by holding damage suits for breach of the restrictive covenant agreements impermissible as indirect methods of enforcement.¹¹⁹ The role of the Administrative branch of the federal government is equally important, as the programs described below make possible much of the building in the United States.

The Federal Housing Administration (FHA)

The FHA is the oldest of the federal housing agencies. It was created in 1934¹²⁰ to relieve lending institutions of the risk involved in private home mortgages. If the borrower defaults, the FHA makes good the loss. Since its creation, the FHA has insured more than thirty-three billion dollars worth of mortgages involving millions of homes.¹²¹ But unlike Congress and the Supreme Court in the actions noted above, the FHA has done little to end segregated housing.

For the first sixteen years of its life, FHA actually encouraged the use of racially restrictive covenants. Its official *Underwriting Manual* warned field agents against insuring mortgages on property that would be used by “inharmonious racial groups,” and the *Manual* contained a model restrictive covenant which FHA strongly recommended for inclusion in all sales contracts.¹²²

Since the 1948 Supreme Court restrictive-covenant decisions,¹²³ however, the FHA has done an about face. In 1948 the FHA elim-

¹¹⁴ Testimony of New York Justice Polier before the Civil Rights Commission. *Id.* at 392.

¹¹⁵ Housing Act of 1949, 63 Stat. 413 (1949).

¹¹⁶ REV. STAT. § 1978 (1875), 42 U.S.C. § 1982 (1958).

¹¹⁷ *City of Richmond v. Deans*, 281 U.S. 704 (1930); *Harmon v. Tyler*, 273 U.S. 668 (1927); *Buchanan v. Warley*, 245 U.S. 60 (1917).

¹¹⁸ *Hurd v. Hodge*, 335 U.S. 24 (1948); *Shelley v. Kraemer*, 334 U.S. 1 (1948).

¹¹⁹ *Barrows v. Jackson*, 346 U.S. 249 (1953).

¹²⁰ 48 Stat. 1246 (1934), as amended, 12 U.S.C. § 1702 (1958).

¹²¹ “Government guarantee of mortgages, which has cost the taxpayer nothing so far, has done more than anything else to make possible a million or more new houses a year.” *The Insatiable Market for Housing*, *Fortune*, February, 1954, p. 102, 218.

¹²² U.S. COMM’N ON CIVIL RIGHTS REP. 464 (1959).

¹²³ See cases cited note 118, *supra*.

inated the model restrictive covenant from its literature.¹²⁴ In 1950 it announced publicly that it would no longer insure mortgages on property whose deeds contained restrictive covenants.¹²⁵ In 1951 it was announced that all repossessed FHA-insured housing would be rented and sold on a non-segregated basis.¹²⁶ In 1952 FHA attempted to encourage the building of "minority housing" and local insuring officers were given annual goals in order to spur them to encourage private loans to minority groups; but this program was abandoned shortly after it began.¹²⁷ In 1954, FHA officials began to encourage "open occupancy" projects through private conferences. By 1957 there were forty-one projects with FHA insured mortgages totaling \$53,000,000.¹²⁸ Finally, in 1957, the FHA entered into agreements with states that have enacted anti-discrimination housing laws whereby the FHA refuses to do business with any home builder or developer who has been found to have violated a state's anti-discrimination housing law.¹²⁹ Elsewhere, however, the FHA continues to finance the "private" developers who, like Mr. Levitt of the various Levittowns, advertise that none of their homes will be sold to Negroes.¹³⁰

The Public Housing Administration (PHA)

The PHA administers the low-rent public housing program authorized by Congress since 1934.¹³¹ By 1958 more than two million people lived in more than 2,000 low-rent housing projects in forty-four states, the District of Columbia, Puerto Rico, and the Virgin Islands.¹³²

Public housing usually is owned by local housing authorities. The role of the federal government is to lend the local authority the money to get the project underway and to guarantee payment on private loans made to the local authorities. The bonds and notes issued to private lending agencies are tax exempt, and federal control of these local housing projects is thorough and significant. The PHA will not issue a loan until it reviews and approves various aspects of the proposed project such as site, rentals, size and cost of construction contracts, and budgets.¹³³ A default in any of the approved conditions of the loan gives the PHA option to repossess the property.¹³⁴

¹²⁴ U.S. COMM'N ON CIVIL RIGHTS REP. 464 (1959).

¹²⁵ *Ibid.*

¹²⁶ However, it has no anti-discrimination clauses in its contracts with the brokers who act as its sale and rental agents. *Id.* at 469.

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ *Id.* at 465.

¹³⁰ *Id.* at 466.

¹³¹ 48 Stat. 1246 (1934), as amended, 12 U.S.C. § 1702 (1958).

¹³² U.S. COMM'N ON CIVIL RIGHTS REP. 473 (1959).

¹³³ GREENBERG, RACE RELATIONS AND AMERICAN LAW 287 (1959).

¹³⁴ 49 Stat. 626 (1935), as amended, 42 U.S.C. § 501 (1958).

The PHA takes no stand on integration, insisting only that Negroes be given "separate but equal" treatment on the basis of number and need.¹³⁵ The result is that in 1958 approximately 35% of the local projects (including those in Washington, D.C., Baltimore, Wilmington, and St. Louis) had an "open occupancy" policy; the others were segregated.¹³⁶ The comments of some of the state advisory committees to the Civil Rights Commission are interesting:¹³⁷

Wilmington, Delaware: The housing projects are integrated and there have been few if any serious racial incidents.

Chicago, Illinois: Public housing programs have tended to become segregated as a result of the site selection process. No public housing project has been built in a white or racially mixed area since 1954.

Lexington, Kentucky: There are currently 1,200 apartments in the public housing projects. These 1,200 apartments are allocated evenly between the races, i.e., 600 apartments for colored and 600 apartments for whites. There is complete segregation in the project.

Las Vegas, Nevada: The city of Las Vegas Housing Authority has maintained the policy of segregation in some of the authority's projects. This is done as they feel that integration of all their projects would be dangerous to the program as a whole.

Urban Renewal Administration (URA)

The Urban Renewal Administration was established in 1954 to help the cities eliminate slum and blighted areas. The essence of the scheme is that the Federal government pays two-thirds of the cost of acquiring slum areas; the existing buildings are then razed, and the property is sold to private developers for the erection of new neighborhoods. Before a city can take advantage of this program, it must submit a plan of operations, complete with details as to need, size, future land use, and care provided for existing occupants. As of June, 1959, the URA had approved projects in 877 localities.¹³⁸

In the first 347 areas approved for renewal aid the proportion of Negro to white occupants was approximately 55% to 45%.¹³⁹ The slum areas were integrated, especially in the South where Negro housing has traditionally been interspersed among white dwellings.¹⁴⁰ In the North, the occupants of the sites approved for renewal projects were largely Negro, and the "slum clearance" programs became "Negro

¹³⁵ U.S. COMM'N ON CIVIL RIGHTS REP. 475 (1959).

¹³⁶ *Id.* at 476-77.

¹³⁷ *Id.* at 477-80.

¹³⁸ *Id.* at 481.

¹³⁹ *Id.* at 484.

¹⁴⁰ LOTH & FLEMING, INTEGRATION NORTH AND SOUTH, A PROGRESS MEMORANDUM 78 (1956).

clearance" programs as well. Almost a third of the Negroes displaced by renewal projects have moved into public housing (usually segregated), so one result of these two federal programs (Urban Renewal and Public Housing) has been to initiate or accentuate segregated neighborhood patterns.

The reports of the state advisory committees to the Civil Rights Commission tell a graphic story:¹⁴¹

Kansas: Urban Renewal will tend to create more pressures and problems for minority group members. A large percentage of the people to be relocated are in minority groups. When relocated they will more than likely be relocated in segregated areas, thus reenforcing the segregation pattern and creating greater pressure in those areas to "break out."

New York: The fact is that the Title I (Urban Renewal) program is geared to producing luxury or semi-luxury housing or nonhousing reuse of the land, therefore, in effect, depriving the vast majority of the displacees from the benefits of this federal government program. Although renewal programs are meant to clear slums, their net result has too often been the transfer of slums to adjoining areas.

Philadelphia, Pennsylvania: Mayor Richardson Dilworth has declared: "Urban renewal cannot and will not work within the framework of a racially restricted housing market."

Pittsburgh, Pennsylvania: A study of a mixed area already overburdened by a heavy Negro influx from a section undergoing redevelopment showed sharp increases in conversion to smaller units accompanied by increases in overcrowding. Areas thus overcrowded soon deteriorate thus requiring additional redevelopment.

In January of 1960, The United States Housing Administrator notified purchasers of land in urban renewal programs that they will be denied the right of future participation in the event they violate local laws forbidding racial discrimination in housing.¹⁴² There is no requirement that private contractors who acquire land (purchased and cleared at government expense) in states lacking anti-discrimination housing laws adopt a non-discriminatory policy of sale and rental.

The Veterans Administration (VA)

The G.I. Bill of Rights¹⁴³ authorizes the Veterans Administration to make loans outright to veterans for the construction of homes and to guarantee loans issued by private sources. The extent of this program

¹⁴¹ U.S. COMM'N ON CIVIL RIGHTS REP. 489-92 (1959).

¹⁴² 5 RACE REL. L. REP. 562 (1960).

¹⁴³ 58 Stat. 291 (1944), as amended, 38 U.S.C. §§ 1801-24 (1958).

is illustrated by the fact that in 1954 and 1955 nearly thirty per cent of all new urban dwelling units were built with the help of VA loan guarantees.¹⁴⁴

The VA policy is to make its services and programs available to all qualified veterans without inquiry into the race, creed, or color of the applicant. Moreover, the VA deprives the private lender of his right to convey defaulted property to the VA if the property is encumbered by a restrictive covenant.¹⁴⁵ The loss of this option has the effect of causing the lender not to make loans on racially restricted property. The VA reported to the Civil Rights Commission that "so far as we know, no loan has been guaranteed on a property covered by the proscribed restriction."¹⁴⁶ In addition, the VA regulations provide that, in the event racial restrictions are ever imposed upon the property, the private lender can declare the entire mortgage debt due and payable immediately, and failure to do so results in loss of VA support.¹⁴⁷

Under its regulation for direct loans, the VA will not deal with the purchaser of a house with a restrictive covenant,¹⁴⁸ and putting a restrictive covenant on the property after the initial loan is transacted results in a default of the mortgage obligation which requires the owner to either pay the whole sum immediately or turn the property over to the VA.¹⁴⁹

The VA will suspend from its program any builder who violates the housing anti-discrimination housing laws of New York, New Jersey, Washington or Oregon. Violation of these state laws is considered "an unfair or prejudicial marketing practice" under the terms of the G.I. Bill. The United States Civil Rights Commission comments that if such discrimination is covered by the federal law when it occurs in these four states, it is difficult to see why discrimination is not an "unfair or prejudicial marketing practice" in the other states as well.¹⁵⁰

Army Sale and Furnishing of Utilities

The Secretary of the Army is authorized to sell or lease to private contractors within the immediate vicinity of Army posts "surplus utility services" such as water, sewage service, electricity, sanitary services, fuel, heat and the like.¹⁵¹ These facilities are sold or leased to housing developments even though the developers refuse to sell or lease the

¹⁴⁴ U.S. COMM'N ON CIVIL RIGHTS REP. 497 (1959).

¹⁴⁵ 38 C.F.R. § 36.4320(h) (5) (1956).

¹⁴⁶ U.S. COMM'N ON CIVIL RIGHTS REP. 497 (1959).

¹⁴⁷ 38 C.F.R. § 36.4308(e) (1956).

¹⁴⁸ 38 C.F.R. § 36.4515(e) (1956).

¹⁴⁹ U.S. COMM'N ON CIVIL RIGHTS REP. 498 (1959).

¹⁵⁰ *Id.* at 499.

¹⁵¹ 10 U.S.C. § 2481 (1958).

housing to Negroes stationed or employed at the nearby base.¹⁵² "It is the Army's view generally that a product or service is being sold. The Army does not make it a policy to police the use."¹⁵³

A California court recently enjoined an FHA guaranteed builder from refusing to sell to Negroes with these words: "When one dips one's hand into the Federal Treasury, a little democracy necessarily clings to whatever is withdrawn."¹⁵⁴ A President who shares this sentiment can direct the housing authorities to require all participants in their programs to agree to an "open occupancy" policy and to enforce this policy with (1) a regulation barring all violators from future participation in federally financed housing operations and (2) a provision in each contract giving the government the right to declare the entire mortgage debt due and payable upon breach of the agreement. A policy of "open occupancy" is meaningless if the housing development is located deep in either a "Negro" or "white" residential district where members of the other race doubt their welcome. The President could direct the Public Housing Authority and Federal Housing Authority, when asked to approve the "site" of a public housing project or of an FHA insured apartment development, to give priority to those located in "mixed" neighborhoods or on the fringe areas of a racial neighborhood. The President could also direct the housing authorities to give careful study to the experimental "scatteration" programs of local public housing authorities, *i.e.*, programs wherein one or two large, institutional-type projects are shunned in favor of many small projects scattered throughout a metropolitan area. The President might also direct the attention of the federal housing authorities to the experimental programs in Sacramento, New Haven, and elsewhere wherein public housing was assigned to a "benign" quota basis and to the public housing experiment in Pittsburgh wherein white applicants were solicited through advertisements directed at university students, faculty, foreign language and other white groups whose members may be eligible on the basis of income.¹⁵⁵

Federal action or inaction alone is far from the sole cause of racial patterns in housing, and Presidential action alone cannot end them, although this contribution is not to be minimized. The lower level of Negro income and the scarcity of housing (both public and private) dampen the effect of any legal rule designed to assure equal access to living accommodations; but the Presidential attitude and action set a

¹⁵² See *Hackley v. Art Builders*, 179 F. Supp. 851 (D. Md. 1960).

¹⁵³ Letter from Office of the Deputy Director of Real Estate, Office of the Chief of Engineers, on file at the University of North Carolina Law School Library.

¹⁵⁴ *Ming v. Horgan*, 3 RACE REL. L. REP. 693, 697 (Super. Ct. County of Sacramento, Cal., No. 97130, June 28, 1958).

¹⁵⁵ GREENBERG, RACE RELATIONS AND AMERICAN LAW 291-92 (1959).

standard for the nation which over the long run probably would be effective.¹⁵⁶

VOTING

The studies of the Commission on Civil Rights reveal that many Negro citizens find it difficult and often impossible to vote. "This is accomplished," states the report, "through the creation of legal impediments, administrative obstacles, and positive discouragement engendered by fears of economic reprisal and physical harm."¹⁵⁷ The details are spread on the pages of many publications.¹⁵⁸ Suffice it to repeat here the conclusion of the Commission on Civil Rights that there is a moral gap "between our principles and our everyday practices. It spills over into and vitiates other areas of our society. It runs counter to our traditional concepts of fair play. It is a partial repudiation of our faith in the democratic system. It undermines the moral suasion of our national stand in international affairs."¹⁵⁹

The Civil Rights Act of 1957¹⁶⁰ authorized the Attorney General to institute civil suit in the federal court to prevent the denial of voting rights. The Civil Rights Act of 1960¹⁶¹ provides that if in any such suit the court makes a finding that the denial of voting rights is "pursuant to a pattern or practice," the court may appoint "voting referees" to register qualified persons denied this right by local election officials. The further denial of the right to vote to these persons so registered by the court appointed voting referees constitutes contempt of court and is punishable accordingly.

The vigor with which the President directs that these Civil Rights Acts be applied will significantly affect the extent to which voting-denial practices will continue. In this connection it is well to note what has been in the past an important hurdle to implementation of the Civil Rights Acts.

General supervision of the Civil Rights Act and its implementation rests in the Civil Rights Division of the Department of Justice. Department of Justice organization, however, customarily requires that such cases be processed through the office of the United States Attorney in the district where the prosecution is to be brought.¹⁶² It is to be remembered

¹⁵⁶ *Id.* at 311.

¹⁵⁷ U.S. COMM'N ON CIVIL RIGHTS REP. 134 (1959).

¹⁵⁸ The most recent and most complete account is that of the Commission on Civil Rights. *Id.* at 55. See also 1 EMERSON & HABER, POLITICAL AND CIVIL RIGHTS IN THE UNITED STATES 142 (2d ed. 1958); GREENBERG, RACE RELATIONS AND AMERICAN LAW 133 (1959).

¹⁵⁹ U.S. COMM'N ON CIVIL RIGHTS REP. 135 (1959).

¹⁶⁰ 42 U.S.C. § 1971(c) (1958).

¹⁶¹ Public Law 86-449, 86th Cong., 2d Sess., Title 6, set forth in 5 RACE REL. REP. 240 (1960).

¹⁶² 28 U.S.C. § 507(b) (1958).

that the United States Attorney in a given district is a local lawyer appointed by the President, subject to confirmation by the Senate, for a term of four years. To him is entrusted the task of prosecuting civil rights litigation. This often places him in the unenviable position of having to take a public stand in court against the ingrained prejudices and mores of his own community. There have been outstanding examples of United States Attorneys', whatever their personal beliefs, courageously and vigorously assuming this position. There are others who have not done so. Witness the following examples given by President Truman's Committee on Civil Rights.¹⁶³

[I]n a case in which a local constable had brutally killed a Negro, the local United States Attorney was asked for his views, after an F.B.I. investigation had been made. He expressed grave doubts as to the advisability of proceeding under Section 52 (the Civil Rights Act). In the same letter, he expressed his personal belief that Section 52 was unconstitutional, quoting liberally from the arguments of the dissenting justices in the *Screws* case.

In another case involving the killing of a Negro by a deputy sheriff, the Civil Rights Section sought the advice of the United States Attorney on July 30, and referred him to the F.B.I. report of its investigation in the case. On September 13, the Section again asked for the advice of the United States Attorney. On October 10, it repeated its request for the third time. . . . On October 17, he advised that he had received the report and he thought the matter should be closed. He gave no reason for his opinion. The Civil Rights Section closed the case, apparently because the Civil Rights Section attorney in charge reported that "X will not go on anything."

A President who wishes to push forward in the voting area must staff the Civil Rights Division with a sufficient number of able, energetic and enthusiastic lawyers and give it authority to by-pass the office of the local United States Attorney whenever this is necessary to save the local repute of that office.¹⁶⁴

It should be noted that the Eisenhower administration left a valuable heritage to the new administration in connection with the action commenced in Haywood County, Tennessee.¹⁶⁵ There, Negroes registered to vote in the 1960 election. This was the first attempt of Negroes to vote since reconstruction days. The reaction of the white business community was swift and to the point. A list of all registered Negro voters was circulated to the banks, the town merchants, the country land

¹⁶³ REPORT OF THE PRESIDENT'S COMM. ON CIVIL RIGHTS, TO SECURE THESE RIGHTS 119-25 (1947).

¹⁶⁴ "U.S. attorneys don't object to this at all. As long as they don't have to carry the ball, they don't very much mind if civil rights cases are filed in their district." Letter of Civil Rights Division, Dept. of Justice, on file in University of North Carolina Law School Library.

¹⁶⁵ *United States v. Beaty*, Civil Action No. 4065 (W.D. Tenn., Sept. 13, 1960).

owners and a boycott was commenced literally to starve out the Negro would-be voters. Credit was cancelled, share-croppers were evicted from fields they had farmed for up to half a century, and the grocery stores refused service even when the Negro came with cash-in-hand. Whites who refused to join the boycott were themselves boycotted. The Department of Justice was equally prompt and to the point. Suit was filed under the Civil Rights Act of 1957 which makes it illegal for any person to "intimidate, threaten, coerce . . . any other person for the purpose of interfering with the right of such other person to vote."¹⁶⁶

If the United States will continue swift action to prevent economic retaliation for exercise of the franchise, the local communities can be counted on to take care of the dynamiting, shot-gunning, and other terroristic measures sometimes used to keep Negroes from the polls.

TRANSPORTATION

The year long Montgomery bus boycott illustrates that Jim Crow travel is "resented more bitterly than most other forms of segregation."¹⁶⁷

The Supreme Court has tried to end this discrimination. In 1941 the Court held that railroad passengers may not be denied pullman service even though it would be financially ruinous for the railroads to carry separate Negro pullmans.¹⁶⁸ In 1946 the Court held that state law could not require a bus company to force an interstate Negro passenger to move to the rear and give up his seat to a white passenger.¹⁶⁹ In 1950 the Court held that Negro passengers might not be excluded from a railroad dining car.¹⁷⁰ In 1956 the Court held that state-imposed segregation in inter-city bus travel is unconstitutional,¹⁷¹ and in 1958 it made a similar ruling.¹⁷² In 1960 the Court held that Negro interstate bus passengers had a lawful right to service at the "white" lunch counters of bus terminals.¹⁷³

The lower federal courts have issued similar rulings in suits brought to end segregation in air transport¹⁷⁴ and in air terminal restaurants.¹⁷⁵ The federal agencies have cooperated. In 1955 the Interstate Commerce

¹⁶⁶ 71 Stat. 637 (1957), 42 U.S.C. § 1971(b) (1958).

¹⁶⁷ MYRDAL, *AN AMERICAN DILEMMA* 635 (1944).

¹⁶⁸ *Mitchell v. United States*, 313 U.S. 80 (1941).

¹⁶⁹ *Morgan v. Virginia*, 328 U.S. 373 (1946).

¹⁷⁰ *Henderson v. United States*, 339 U.S. 816 (1950).

¹⁷¹ *Gayle v. Browder*, 352 U.S. 903 (per curiam 1956).

¹⁷² *Evers v. Dwyer*, 358 U.S. 202 (1958).

¹⁷³ *Boynton v. Virginia*, 364 U.S. 454 (1960).

¹⁷⁴ *Fitzgerald v. Pan American World Airlines*, 229 F.2d 499 (2d Cir. 1956). "Even to the orthodox there was doubtless something slightly incongruous about requiring a Jim Crow compartment on a Lookheed Constellation." WOODWARD, *THE STRANGE CAREER OF JIM CROW* 103 (1957).

¹⁷⁵ *Nash v. Air Terminal Serv.*, 85 F. Supp. 545 (E.D. Va. 1949).

Commission ordered the end of Jim Crow rail transportation and ordered railroad terminals to take down "white" and "colored" signs in the waiting rooms.¹⁷⁶ The Civil Aeronautics Administrator in 1956 ordered that no "Federal aid Airport Program funds will be made available for the development of separate facilities."¹⁷⁷

Despite these Court orders and agency regulations, the Negro in many areas of the South¹⁷⁸ is assigned to segregated coaches, told to sit in the rear of buses, assigned to "Colored" or "Colored Intra-State" bus and rail terminal waiting rooms, rest rooms and restaurants and told to drink "Colored" water from segregated fountains. The reason: outright defiance of the federal law.

Following the Interstate Commerce Commission order requiring the end of discrimination in waiting rooms (which followed by nine years the Supreme Court decision outlawing segregation of interstate bus travel) the Southeastern Greyhound Lines company sent out a series of instructions to all personnel which reads in parts as follows:

2. Intrastate passengers may be courteously requested to comply with the law of that particular state, but if passenger refuses to comply, then no further action should be taken.

3. Existing signs and separation of waiting rooms and restaurants will be maintained as at present, but station personnel must not take any steps to enforce segregation in the use of these facilities.

I know you can be depended upon to handle this delicate situation with tact and understanding . . .¹⁷⁹

Others were not so tactful. Governor Kenon of Louisiana announced his intention to enforce segregation on carriers. The Mississippi Public Service Commission announced a similar intention, and, when carriers took down the segregation signs in Jackson, the city put up fresh ones. In one Mississippi city the police arrested Negroes who entered the "White" station waiting room, kept them in jail overnight, and released them next day if they pleaded not guilty.¹⁸⁰ Just recently, in the summer of 1960, a federal court decided a case involving the arrest of Negroes

¹⁷⁶ NAACP v. St. Louis-San Francisco Ry., 297 I.C.C. 335 (1955).

¹⁷⁷ Airports Policy and Procedure Memorandum No. 41, April 6, 1956. It also ordered the end of segregation and discrimination in the facilities at the airports in Washington, D.C. and in Anchorage and Fairbanks, Alaska. 14 C.F.R. §§ 570.126, 580.126 (1952).

¹⁷⁸ There has been much progress. In Arkansas, all railroads complied with the ICC order and removed segregation signs. In Jacksonville, Florida, airport facilities were desegregated and taxicabs began transporting Negroes. In Durham and Greensboro, North Carolina, the city buses ended segregation, as was true in many Texas cities. LOTH & FLEMING, *INTEGRATION NORTH AND SOUTH*, A PROGRESS MEMORANDUM 84 (1956).

¹⁷⁹ Quoted in GREENBERG, *RACE RELATIONS AND AMERICAN LAW* 124 (1959).

¹⁸⁰ *Id.* at 126.

for refusing to move to the rear of a Birmingham, Alabama, city bus.¹⁸¹

The law is clear; the violation is plain; What can the President do about it? There are several obvious remedies.

First, the Interstate Commerce Act makes violation of Interstate Commerce Commission orders illegal, punishable by a fine of \$5,000 for each day of violation.¹⁸²

Second, the Civil Rights Act of 1960¹⁸³ makes it a crime punishable by a fine of not more than \$1,000 or imprisonment for not more than one year, or both, for anyone to "prevent, obstruct, impede, or interfere with, the due exercise of rights or the performance of duties under any order, judgment or decree of a court of the United States."

Third, relegating Negroes to a segregated area is a denial of their civil rights,¹⁸⁴ and when done under color of state law, is a federal offense punishable by a fine of \$1,000 or a year in jail.¹⁸⁵

In 1956 the Department of Justice called a conference of United States Attorneys in the southern states to consider what measures would be appropriate for the department to take in securing observance of the United States Constitution and laws by common carriers of passengers.¹⁸⁶ It appears that no departmental action ensued. A new President could well call another such conference with an eye toward his constitutional obligation to "take care that the laws be faithfully executed."¹⁸⁷ A problem so near solution is ripe for a decisive push.

HEALTH AND HOSPITALIZATION

The federal government is in the business of providing health care and hospitalization, and the business is extensive in terms of both program content and expenditures. The federal government provides these services directly as well as indirectly through a system of state grants-in-aid.

Directly, the federal government provides hospitalization and health care for veterans. In addition, the United States maintained in 1959 over sixteen hospitals, twenty-six outpatient clinics, and ninety-nine outpatient offices for American seamen, civil service employees injured in performing their work, and retired members of the uniformed services

¹⁸¹ *Boman v. Birmingham Transit Co.*, 280 F.2d 531 (5th Cir. 1960). See also, *Henry v. Greenville Airport Comm'n*, 279 F.2d 751 (4th Cir. 1960), a case enjoining a South Carolina municipal airport from assigning Negro passengers to the "waiting room for colored folks."

¹⁸² 24 Stat. 384 (1887), as amended, 49 U.S.C. § 16(8) (1958).

¹⁸³ Pub. L. No. 86-449, 86th Cong., 2d Sess., set forth in 5 RACE REL. L. REP. 237 (1960).

¹⁸⁴ *Boman v. Birmingham Transit Co.*, 280 F.2d 531, 533, n.1 (5th Cir. 1960).

¹⁸⁵ 18 U.S.C. § 241 (1958).

¹⁸⁶ N.Y. Times, Nov. 20, 1956, § 1, p. 1.

¹⁸⁷ U.S. CONST. art. II, § 3.

and their dependents.¹⁸⁸ The United States maintains the National Institutes of Health in Bethesda, Maryland, which conduct and support medical research and have a 516 bed research hospital.¹⁸⁹ The United States maintains the only hospital in the country devoted exclusively to the treatment and rehabilitation of patients with leprosy.¹⁹⁰ It maintains two hospitals for the treatment of narcotic addicts.¹⁹¹ It maintains Freedmen's Hospital in Washington, D.C., which serves as the clinical teaching resource for medical students at Howard University.¹⁹² The United States' doctors in 1959 examined over two and a half million aliens prior to and upon arrival in the United States.¹⁹³ The United States provides health services for Indians, and four major hospital modernization projects were authorized in 1959 alone.¹⁹⁴ These are some of the major direct federal government health programs.

The indirect health and hospital programs—through grants-in-aid to the states—are just as varied and even more extensive.

Under the Hill-Burton Act¹⁹⁵ the Department of Health, Education and Welfare grants funds to the states for the construction of hospitals. Since this program began in 1948, over 4,625 projects have been approved for federal assistance, with the average annual cost amounting to 104 million dollars.¹⁹⁶

The United States makes grants to the states for mental health programs;¹⁹⁷ for maternal and child health services;¹⁹⁸ to provide services for crippled children;¹⁹⁹ for aid to the blind;²⁰⁰ and for programs designed to control tuberculosis, cancer, heart disease, water pollution and venereal disease.²⁰¹

The general outline of these programs is that the appropriate state agency files a request for federal funds and attaches thereto a comprehensive plan of operations. The Secretary of the Department of Health, Education and Welfare examines the state plan, and if he finds it adequate, makes the appropriations. With this degree of federal control and responsibility, it is surprising to find that most of the federally financed and approved health and hospitalization programs in the South

¹⁸⁸ U.S. DEP'T. OF HEALTH, EDUC., AND WELFARE ANN. REP. 96 (1959).

¹⁸⁹ *Id.* at 78.

¹⁹⁰ *Id.* at 97.

¹⁹¹ *Ibid.*

¹⁹² *Id.* at 100.

¹⁹³ *Id.* at 102.

¹⁹⁴ *Id.* at 104.

¹⁹⁵ 60 Stat. 1041 (1946), as amended, 42 U.S.C. § 291 (1958).

¹⁹⁶ U.S. DEP'T. OF HEALTH, EDUC., AND WELFARE ANN. REP. 109 (1959).

¹⁹⁷ 70 Stat. 709 (1956), 42 U.S.C. § 273 (1958).

¹⁹⁸ 49 Stat. 629 (1935), as amended, 42 U.S.C. § 701 (1958).

¹⁹⁹ 49 Stat. 631 (1935), as amended, 42 U.S.C. § 711 (1958).

²⁰⁰ 49 Stat. 645 (1935), as amended, 42 U.S.C. § 1201 (1958).

²⁰¹ U.S. DEP'T. OF HEALTH, EDUC., AND WELFARE ANN. REP. 140 (1959).

are operated on a segregated basis. The southern Negro is denied hospitalization and health services or provided with these services on a segregated basis.

Most Southern states have provided by law that at least certain public hospitals (usually institutions for mental illness and, less often, tuberculosis) either shall be solely for Negroes or for whites or shall be segregated.²⁰² Beyond this, segregation is a matter of custom. The extent of the segregation (and denial of services) is illustrated by the progress noted in recent years:²⁰³

Miami, Florida: Jackson Memorial Hospital (Dade County Hospital) adds Negro doctors and staff members to treat Negro patients.

Volusia County, Florida: Negro doctors permitted to treat their patients in County Hospital for first time.

Kentucky: The United Mine Workers of America completed seven hospitals in Kentucky (as well as one in Virginia and two in West Virginia) to be operated on an integrated basis.

Louisville, Kentucky: Marine Hospital admits Negro patients.

Mississippi: Negro doctors join the staff of a Mississippi hospital to treat Negro patients. Another hospital begins treating Negro children.

St. Louis, Missouri: St. Louis institutes a system in which emergency cases are treated at the nearest city hospital without regard to race.

Charlotte, North Carolina: Mercy Hospital, Catholic, begins admitting Negro patients following the request of Bishop Vincent Waters to superintendents of Catholic hospitals to open their facilities to Catholic Negroes.

Denial of hospitalization because of race is intolerable in a society where every child is exposed to the story of the Good Samaritan. Segregated hospitalization is scarcely less so. Moreover, it is unnecessary. Southern experience, albeit limited, proves that integrated hospitals can operate. The hospitals operated by the United Mine Workers are operated on an integrated basis. The Charlotte Rehabilitation and Spastics Hospital is one of a number of private southern hospitals which are nonsegregated. Veterans Administration hospitals do not segregate, and it is to be remembered that the Mississippi State Sovereignty Commission put up money to acquire an integrated VA hospital rather than have none at all.²⁰⁴

²⁰² The statutes are collected in GREENBERG, *RACE RELATIONS AND AMERICAN LAW* 373 (1959).

²⁰³ LOTH & FLEMING, *INTEGRATION NORTH AND SOUTH, A PROGRESS MEMORANDUM* 81-82 (1956).

²⁰⁴ See note 25, *supra*.

The Secretary of Health, Education, and Welfare need not approve medical grants to states whose plans of operation authorize or countenance segregation or denial of service on the basis of race. There is precedent for withholding such funds for such operations: the Secretary denied funds to Arizona because its plan of operations concerning aid to permanently and totally disabled persons discriminated against Indians living on Indian Reservations.²⁰⁵

The Hill-Burton hospital construction program presents a more knotty problem, as the act contains a racial formula which approves separate-but-equal assistance.²⁰⁶ This statute, however, was enacted prior to the Supreme Court's decision that separate-but-equal educational facilities are inherently unequal, discriminatory and unconstitutional.²⁰⁷ Mr. Chief Justice Marshall pointed out over 150 years ago that a "law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument."²⁰⁸ The Secretary of Health, Education, and Welfare might well request the Attorney General for an opinion concerning the continued vitality of the Hill-Burton "separate but equal" formula.

RECREATION

Recreational opportunities are essential for the healthy body and tranquility of mind. The role of physical education in the public school curriculum, the increasing public expenditures for playgrounds, parks, golf courses, and so forth, are symptomatic of the public interest in gainful leisure activities. The exclusion of any group from any recreational activity is a matter of public, and federal, concern.

State-owned enterprises are forbidden to discriminate by the fourteenth amendment and this includes parks, golf-courses, swimming-pools, tennis courts, and other recreational facilities.²⁰⁹ Court decisions since 1955 have opened some park and recreation areas to Negroes and stimulated voluntary action in other states and communities. Kentucky and Maryland ordered state parks and recreation sites desegregated.²¹⁰ Miami Beach opened its two golf courses to Negroes in 1955, as did a

²⁰⁵ *Arizona v. Hobby*, 221 F.2d 498 (D.C. Cir. 1954).

²⁰⁶ 60 Stat. 1041 (1946), as amended, 42 U.S.C. § 291(e) (1958).

²⁰⁷ "In the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs . . . are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment." *Brown v. Board of Education*, 347 U.S. 483, 495 (1954).

²⁰⁸ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 180 (1803).

²⁰⁹ The cases are collected and discussed in 2 EMERSON & HABER, *POLITICAL AND CIVIL RIGHTS IN THE UNITED STATES* 1419 (2d ed. 1958); GREENBERG, *RACE RELATIONS AND AMERICAN LAW* 91 (1959).

²¹⁰ LOTH & FLEMING, *INTEGRATION NORTH AND SOUTH, A PROGRESS MEMORANDUM* 87 (1956).

number of North Carolina cities. In Houston, Dallas and Fort Worth, Texas, the golf courses were opened to Negroes; and in San Antonio and Corpus Christi the swimming pools were made available to Negroes. In Austin, all public facilities were desegregated.²¹¹ Generally, however, the Negro in the South is still denied access to public recreational areas, and a court order forbidding discrimination is apt to result in closing the facility. Montgomery, Alabama, closed its parks;²¹² Jacksonville, Florida, sold its golf course;²¹³ Greensboro, North Carolina, sold its swimming pool;²¹⁴ and the legislatures in Arkansas and Florida recently authorized the closing or sale of all public recreational areas.²¹⁵ Danville, Virginia, even closed its library.²¹⁶

The President has no direct concern with "local" recreation facilities; but he does have a concern with the recreational areas financed and/or operated by the National Park Service, the National Forest Service, and the Army Corps of Engineers. These federal areas of recreation take on additional importance with the closing of "local" facilities and the new leisure accompanying increased industrialization and automation in the South.

The National Parks

More than fifty-eight million people annually visit one or more of the 181 park areas owned by the United States.²¹⁷ These include National Parks (Yellowstone, Hot Springs, Shenandoah, Mammoth Cave, etc.), National Parkways (Natchez Trace, Blue Ridge, etc.), Monuments and Historical Sites (Abraham Lincoln Birthplace, Fort McHenry, Appomattox Court House, etc.), and Recreational Areas (Cape Hatteras National Seashore, Bull Shoals Reservoir, etc.). Management and control of the National Park Service is lodged in the Secretary of Interior²¹⁸ with authority to make rules and regulations for their proper use and management.²¹⁹

The Secretary of Interior has made rules and regulations prohibiting segregation. All "concessioners" are required to agree not to discriminate because of race, religion, color, or national origin in both employment and service.²²⁰ Violation of these regulations subjects the offender

²¹¹ *Id.* at 88-90.

²¹² *Gilmore v. City of Montgomery*, 176 F. Supp. 776 (M.D. Ala. 1959).

²¹³ *Hampton v. City of Jacksonville*, 4 RACE REL. L. REV. 973 (4th Judicial Cir., Duval County, Fla., Nov. 24, 1959).

²¹⁴ *Tonkins v. City of Greensboro*, 175 F. Supp. 476 (M.D.N.C. 1959).

²¹⁵ 4 RACE REL. L. REP. 772, 773 (1959).

²¹⁶ 5 RACE REL. L. REP. 528 (1960).

²¹⁷ 1959 SEC'y OF THE INTERIOR ANN. REP. 329.

²¹⁸ 39 Stat. 535 (1916), as amended, 16 U.S.C. § 2 (1958).

²¹⁹ 39 Stat. 535 (1916), as amended, 16 U.S.C. § 3 (1958).

²²⁰ Section 21 of the "Standard Concession Contract," 36 C.F.R. § 1.60 (1960).

to a fine of not more than \$500 or imprisonment for not exceeding six months, or both fine and imprisonment.²²¹ The non-discrimination provisions are enforceable by the Park Rangers, who have authority to arrest for violation of the Secretary of Interior's rules and regulations.²²² There have been no reports of overt segregation or discrimination on the National Parks.

The Bureau of Land Management (in the Department of Interior) is authorized to sell, grant or lease public lands for recreation and public purposes. All sales, grants and leases contain a clause that any act of discrimination against a person in the use of the land or its facilities because of the person's "race, creed, color, or national origin" shall automatically result in reverting the title of the land to the United States.²²³ Nothing, if properly policed, could be more automatic, swift, or certain.

The National Forests

There are more than 151 national forests located in forty of the United States. In total, they aggregate approximately a third of the land area of the United States.²²⁴ The national forests have parkways and trailways, hotels, motels, camp-sites, and even summer homes. The national forests contain a wide variety of recreational resources—camp grounds, picnic sites, thousands of miles of fishing streams and most of the nation's big game. They are visited annually by millions of Americans.²²⁵

The National Forests are under the supervision and control of the National Forest Service, a division of the Department of Agriculture. In 1958, after correspondence with the Urban League and the NAACP, the Secretary of Agriculture adopted regulations modeled after those of the National Park Service.²²⁶

Federal Reservoir Areas

The United States, through the erection of multi-purpose dams, has created many reservoir areas. Some of these are the Bull Shoals and Table Rock areas in Arkansas; the Allatoona, Buford and Clark Hill areas in Georgia; the Arkabutla, Enid, Grenada, and Sardis areas in Mississippi; the John H. Kerr area in North Carolina; and the Clark Hill Reservoir area in South Carolina.²²⁷ These areas are widely used

²²¹ 36 C.F.R. § 1.91 (1960).

²²² 33 Stat. 873 (1905), 16 U.S.C. § 10 (1958).

²²³ 43 C.F.R. § 254.10 (1954).

²²⁴ UNITED STATES GOVERNMENT ORGANIZATION MANUAL 1960-61, p. 266.

²²⁵ In 1935 there were 58,000,000 visitors. 11 ENCYCLOPEDIA AMERICANA 481.

²²⁶ Copies of correspondence are on file at the University of North Carolina Law School Library.

²²⁷ 36 C.F.R. § 311.1 (1960).

for swimming, boating, fishing, hunting, camping and picnicking, with attendant boat houses, restaurants, lodging, and the like. These reservoir areas are under the control and management of the Department of the Army Chief of Engineers. On January 27, 1958, he issued instructions that all licenses granted for concessions shall include the following non-discrimination conditions: "That the licensee shall not discriminate against any person or persons because of race, religion, color, or national origin in the conduct of its operations."²²⁸

Federal Beach Erosion Projects

The Chief of Engineers of the United States Army is authorized and directed by Congress to investigate and study effective means of preventing the erosion of the shores of coastal and lake waters.²²⁹ The Chief of Engineers is authorized to enter into contracts with states and their subdivisions for the construction of works necessary for protection against erosion. One purpose of these projects is to promote and encourage "the healthful recreation of the people." With approval of Congress, the Chief of Engineers can pay up to one-third of the cost. The projects approved by Congress generally contain a provision that the beach, when reconstructed and "nourished," will be devoted to "public use."²³⁰

Many beaches along the coasts and lakes have been repaired under this program. There are twenty-six projects underway or just completed.²³¹ Some of these projects are those at Rehoboth Beach, Delaware, Harrison County, Mississippi, and Waikiki Beach, Hawaii. Despite the federal support, the beaches in the South are generally off-limits to Negroes. In protest, Negro organizations planned a mass "wade-in" movement for the summer of 1960, a project which failed to materialize. One reason, perhaps, is that when a group of Negroes went to the beach at Biloxi, Mississippi, they were attacked by a white mob with the encouragement of local law enforcement officials.²³²

The Department of Justice promptly filed suit in the United States District Court against the sheriff, the mayor of Biloxi, the chief of police, and others. Allegations were made that Biloxi had contracted to accept federal funds for a beach erosion project containing a "public use" proviso; and that the defendants "enforced and are enforcing a policy, practice, custom and usage of preventing and interfering with the free use of the Harrison County Beach by a certain part of the

²²⁸ Copies on file at the University of North Carolina Law School Library.

²²⁹ 46 Stat. 945 (1930), 33 U.S.C. § 426 (1958).

²³⁰ 60 Stat. 1956 (1946), as amended, 33 U.S.C. § 426(e) (1958).

²³¹ Letter from office of Deputy Director of Real Estate of Office of the Chief of Engineers on file at the University of North Carolina Law School Library.

²³² Southern School News, September, 1960, p. 14, col. 3.

public, namely, persons of the Negro race." The relief requested was that the public officials in Biloxi be ordered to comply with the "public use" provision, *i.e.*, ordered to refrain from preventing use of the beach by Negroes.²³³ If this suit is successful, the President can direct the Department of Justice to bring similar suits against all the governmental units which bar Negroes from their federally financed public beaches.

The various executive departments have found the techniques for ensuring equality of access to the federally owned and financed recreational areas: on the spot enforcement of minor criminal prohibitions; automatic forfeiture of franchises upon a discriminatory refusal of service or employment; injunctive relief through the courts to compel compliance with the national policy. A close and constant audit for violations of this policy would make the federal recreational programs a model for world display.

SUMMARY AND CONCLUSION

We have disadvantaged people in this country. Both fair play and national self-interest dictate that they be helped to become useful and that their potential for talent be put at society's service. The presidency is the center of American energy. What the President says and does will mark the direction in which and the speed with which the country moves to perfect its racial relations. Racial relations is our oldest domestic trouble. It has the claim of age and priority for thorough, decisive action.

Questions of technique, direction, emphasis, and the like are left to others more qualified.²³⁴ Suffice it here to summarize potential action in ten areas of activities.

1. The Military Services.

Integration is a fact, with nothing but favorable consequences, in the enlisted ranks of the Armed Forces. The number of Negro officers, however, remains disproportionately few. The President can remedy this situation, at least in part, by his appointive power to the military academies. The National Guard units in southern states, component parts of the Armed Forces, are a matter of national concern as membership is limited on a racial basis. The President, as commander-in-chief, can change this situation with a military directive.

The Negro soldier in the South is treated like a soldier in his "on base" recreational pursuits; "off base" he is treated like a Negro. The

²³³ *United States v. Harrison County* (D.C. Miss., C.A. No. 2262).

²³⁴ See, *e.g.*, REPORT OF THE SOUTHERN REGIONAL COUNCIL, THE FEDERAL EXECUTIVE AND CIVIL RIGHTS (1961).

President, as commander-in-chief, has an obligation to protect the morale of all soldiers and can remedy the situation of "leave" recreation by declaring offending privately owned places of public accommodation "off limits" to all troops.

The Negro soldier living outside Army posts sends his children to separate and unequal schools. The President can remedy this by either enlarging the on-post integrated schools or by "federalizing" the off-post schools attended solely by the children of military personnel.

2. Federal Employment.

The federal policy of employment is equality of opportunity based on merit without regard to race. The federal practice of employment is discrimination and racial segregation. The President, as the Chief Executive, can effectuate federal policy in civil service employment by the task-force technique utilized by President Truman in ending segregation in the Armed Forces.

3. Federal Contract Employment.

Here again, Federal policy and federal practice bear no resemblance. For the past twenty years every contractor agreed with the Government to hire, promote, train, and discharge on a "merit" basis without regard to race; and for the past twenty years this contractual obligation has been openly flouted. The President, as the nation's chief purchasing agent, can give preference in awarding government contracts to the businesses whose operations reflect a merit employment program.

4. Other Federal Employment Programs.

The federal government, through a series of grants-in-aid, finances vast vocational education programs, many of which are operated on a racially discriminatory basis. These grants can be conditioned on a non-discriminatory pledge, as are the present grants made to states to support local vocational rehabilitation programs.

5. Education.

Seven years after the Supreme Court declared segregated public education unconstitutional, a minute fraction of southern Negroes attend school with whites. The public treasury of the southern states and municipalities are open to those resisting the judicial efforts of Negro children to secure their constitutional rights. The President can, through the Office of Education, prepare and disseminate information on the techniques, experiences and consequences of integration and thereby allay fancied fears; the President can, through the federal research agencies, deny grants to those institutions of higher education

which close their doors to qualified Negro applicants; the President can, through the office of the Department of Justice, intervene in court proceedings on the side of the Negro applicant who contests his assignment to a Negro school; and the President can, by virtue of his own office, public utterances and private actions, set a standard of conduct which the nation might wish to emulate.

6. *Housing.*

Segregated housing is a problem, both North and South, which cuts across economic lines. For many years the Government has subsidized a large part of the nation's building programs and during the initial period was responsible for discriminatory housing practices by its insistence on "restrictive covenants" as a condition for a federal mortgage guarantee. A consequence of the Urban Redevelopment and Public Housing programs was the initiation of segregated neighborhoods where none before existed: integrated blighted areas were razed, and the occupants moved into public housing projects segregated on a racial basis. In recent years, the housing agencies have reversed the process. Repossessed federally-insured buildings are sold on an "open occupancy" basis; the VA refuses to finance the purchase of a house with a "restrictive covenant"; the FHA refuses support to the large builder who violates state anti-discrimination housing laws. The President, by directive to the housing agencies, can accentuate this progress.

7. *Voting.*

Recent congressional enactments were designed to give new content to federal protection of the franchise. The current law suit in Haywood County, Tennessee, to enjoin concerted economic sanctions against the Negroes there who registered to vote is a new administrative device to protect the franchise. Vigilant utilization of the new statutory remedies and administrative devices is the route to government with consent of all the governed.

8. *Transportation.*

Segregation in interstate and local rail, air and bus transport has now been held to violate the federal laws and Constitution, yet in some areas Negroes are relegated to segregated waiting rooms and told to ride in the rear. Enforcement or existing criminal statutes, and preference in competitive route applications to the carrier which does not discriminate, plus the withholding of federal funds to segregated facilities, are steps available to a President desiring to effectuate the law of the land.

9. *Health.*

The federal government makes grants-in-aid to the states for hospital

construction, mental health programs, maternal and child health services, aid to the blind, and a host of other programs designed to control such diseases as tuberculosis, cancer, heart disease, and the like. Experience in integrated Veterans Administration, United Mine Worker and private hospital situations demonstrates that segregation is not necessary. Nonetheless, many states and localities in the South (and in the North) refuse Negroes hospital treatment or offer it on a segregated basis. The denial of federal funds to Arizona a few years back when Arizona refused aid to disabled Indians residing on Indian Reservations is precept and example for future action designed to ensure that when the hand dips into the federal till, a little democracy clings to it when withdrawn.

10. Recreation.

The extensive government recreational programs and facilities—operated by the National Parks Service, the National Forest Service, and the Corps of Army Engineers—are all controlled by regulations prohibiting discrimination in employment and use. There are no known accusations that these regulations are honored in the breach.

With one or two significant exceptions, action from the White House during the past eight years has been minimal, if not negative, in the areas of racial relations. President Eisenhower has refused to voice his sentiments on the school segregation situation; he has kept Negroes off the White House guest list; his constant refrain was that "morality" cannot be legislated. Contrast the story told about Andrew Jackson when South Carolina attempted to "nullify" a federal tax law and interfere with the judicial and administrative branches of the federal government.

Old Hickory was quick to react. He told a South Carolinian Congressman "You may tell the Nullificationists for me that if they spill a drop of blood, I will hang the first one I can get my hands on to the first tree I can find." Senator Hayne from South Carolina expressed some doubt that Jackson would go that far. "I tell you, Hayne," the congressman replied, "when Jackson talks about hanging you can look for rope."²³⁵

The road ahead lies somewhere between these two extremes. The pace will be marked by the President's personal feelings and political judgment. But no President has a right to be above a national moral battle. His personal prestige and weight must be thrown into the scale. Lesser men take heart from his example, and his courage travels by osmosis.

²³⁵ "Executive Action in the School Crisis," address by Marion A. Wright before Senator Kennedy's National Conference on Constitutional Rights at Park Sheraton Hotel, New York, New York, October 11, 1960.