



Fall 9-1-1974

Monetary Recovery As Preventive Relief In Fair Housing Actions By The Attorney General

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Recommended Citation

David Samuel De Jong, *Monetary Recovery As Preventive Relief In Fair Housing Actions By The Attorney General*, 31 Wash. & Lee L. Rev. 791 (1974).

Available at: <https://scholarlycommons.law.wlu.edu/wlulr/vol31/iss3/15>

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membership that a violation of §§ 8(a)(1) and 8(a)(3) should be found.¹⁰⁶ The Eighth Circuit's decision in *Inter-Collegiate* points out that the impact upon employees' § 7 rights was not substantial. Thus, without the requisite showing of unlawful motivation, the bargaining lockout and the hiring of temporary personnel should be viewed as a lawfully adopted means to bring economic pressure to bear upon the union.

THOMAS K. WOTRING

MONETARY RECOVERY AS PREVENTIVE RELIEF IN FAIR HOUSING ACTIONS BY THE ATTORNEY GENERAL

A quarter of a century ago, Congress declared that the nation's welfare required elimination of inadequate housing and timely realization of the goal of a decent home and a suitable living environment for every family.¹ However, for many years no federal legislation was directed against racial discrimination as a source of deficient housing conditions.² During that period of inaction, discrimination became

¹⁰⁶NLRB v. Brown, 380 U.S. 278, 283 (1965).

¹Housing Act of 1949 § 2, 42 U.S.C. § 1441 (1970).

²The 1960 census revealed that 46 per cent of the urban non-white population as opposed to 14 per cent of the urban white population were living in deficient housing. *Hearings on S.1358, S.2114, and S.2280 Before the Subcomm. on Housing and Urban Affairs of the Senate Comm. on Banking and Finance*, 90th Cong., 1st Sess. 5 (1967). A 1968 report painted a far more dismal picture, disclosing that two-thirds of urban non-whites lived in substandard dwellings and general urban blight. REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 257 (1968).

During the 1960's, discrimination in housing was increasingly mentioned at administrative and congressional hearings as the leading cause of the housing problem in the United States. At one such hearing, Sterling Tucker, Executive Director of the Washington Urban League, testified that housing discrimination kills incentive to achieve by normal means, produces generations of dependency and frustration, and sets the pattern for future slums. *Hearings on Housing in Washington Before the United States Comm'n on Civil Rights* 49 (1962) [hereinafter cited as *1962 Hearings*]. In congressional testimony, Secretary of Housing and Urban Development Robert Weaver noted that "[t]he rebuilding of our cities . . . cannot be successful unless we eliminate all types of discrimination including discrimination in housing." *Hearings*

more noticeable as the exodus of many whites to rapidly growing suburbs created concentrations of blacks in inner-city ghettos.³ Against this background, Congress in 1968 enacted the Fair Housing Act.⁴ This legislation, comprising Title VIII of a comprehensive civil rights package,⁵ was directed toward providing, "within constitutional limitations, . . . fair housing throughout the United States."⁶

on S.1026, S.1318, S.1359, S.1362, S.1462, H.R. 2516, & H.R.10805 (*Proposed Civil Rights Act of 1967*) Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary, 90th Cong., 1st Sess. 487 (1967). See generally Letter from President John F. Kennedy to the United States Commission on Civil Rights, Apr. 12, 1962, in 1962 *Hearings* at 12.

³Approximately 9 million whites left inner-cities for suburbs during the 1960's. *Hearings on De Facto Segregation & Housing Discrimination Before the Select Comm. on Equal Educational Opportunity of the Senate*, 91st Cong., 2d Sess. 2667 (1970). In the same period, only 170,000 blacks migrated to the suburbs. *Id.*

Blacks attempting to obtain suburban housing often encountered discrimination. This sometimes took the form of restrictive covenants despite such prohibitory Supreme Court decisions as *Shelley v. Kraemer*, 334 U.S. 1 (1948), and *Hurd v. Hodge*, 334 U.S. 24 (1948). One large developer-broker in the Washington, D.C., area retained control on all future transfers of title or possession of new homes. Its covenant read:

No part of the land hereby conveyed shall ever be used, or occupied by, or sold, demised, transferred, conveyed unto, or in trust for, leased, or rented, or given, to Negroes, or any person of the Semitic race, blood or origin, which racial description shall be deemed to include Armenians, Jews, Hebrews, Persians, and Syrians, except that this paragraph shall not be held to exclude partial occupancy of the premises by domestic servants

1962 *Hearings*, *supra* note 2, at 62. Other instances of discrimination were as refined, if not as overt. For example, associations of brokers and property owners teamed in Grosse Pointe, Michigan, to establish and maintain with mathematical precision a point system capable of screening and weeding out "undesirables." *Hearings in Detroit Before the United States Comm'n on Civil Rights* 476 (1960). A prospective purchaser was graded upon such criteria as looks, dress, accent, religion, education, reputation, and the degree to which his name, friends, and home were "typically American." *Id.* at 479-80.

A passing grade was 50 points. However, those of Polish descent had to score 55 points; southern Europeans including those of Italian, Greek, Spanish or Lebanese origin had to score 65 points and those of the Jewish faith had to score 85 points. Negroes and orientals were excluded entirely.

Id. at 477.

The degree to which housing discrimination existed is manifested by a 1962 survey of housing opportunities in Washington, D.C., for African diplomats. The Bureau of Social Science Research sent letters to 214 luxury apartment buildings; only nine owners indicated clearly that they would accept the diplomats as tenants. 1962 *Hearings*, *supra* note 2, at 161.

⁴42 U.S.C. §§ 3601 *et seq.* (1970).

⁵Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73 (codified in scattered sections of 18, 28, 42 U.S.C.).

⁶42 U.S.C. § 3601 (1970).

Its broad-reaching provisions, applicable to most types of dwellings,⁷ prohibit racial, religious, and ethnic discrimination in sales and rentals of housing.⁸

Title VIII provides for three general methods of enforcement. First, the victim of discrimination may commence an administrative proceeding by filing a complaint with the Department of Housing and Urban Development.⁹ If the agency believes that a statutory violation has occurred, it will attempt to obtain compliance through conciliation.¹⁰ Second, the victim may institute a private civil action to enforce his rights.¹¹ A court may grant as relief "any permanent or

⁷The prohibitions of Title VIII are not applicable to the following types of housing:

(1) most single family houses sold or rented without the use of real estate personnel and without discriminatory advertising; or

(2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence; or

(3) dwellings owned or occupied by a religious group for a non-commercial purpose and offered to persons of the same religion without regard to race, color, or national origin; or

(4) private clubs not open to the public which, incident to their primary purpose, provide their own lodging on a non-commercial basis to members.

Id. §§ 3603(b), 3607 (1970).

⁹*Id.* § 3604. Title VIII also forbids discrimination in the financing of housing and in the providing of brokerage services. *Id.* §§ 3605, 3606.

¹⁰*Id.* § 3610.

¹¹*Id.* § 3610(a).

¹²*Id.* § 3612. Where coercion or intimidation has been used to interfere with rights guaranteed by the Fair Housing Act, the victim may instead bring a proceeding under 42 U.S.C. § 3617 (1970), thereby avoiding under § 3612(a) a 180 day statute of limitations as well as a possible continuance while conciliation efforts are in progress. Enforcement of § 3617 is by "appropriate civil action."

A private civil action for relief from housing discrimination may also be filed under 42 U.S.C. § 1982 (1970), which was part of § 1 of the Civil Rights Act of 1866. Section 1982 provides: "All citizens of the United States shall have 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."

Although § 1982 "lay partially dormant for many years," the Supreme Court held in *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968), that the section still provided, under the enforcement clause of the Thirteenth Amendment, a valid independent federal statutory ban against all racial discrimination, private and public, in the sale and rental of property. *Id.* at 437. In finding that the enactment of the more specific Title VIII had no effect upon the general terminology of § 1982, the Court specified the most important differences between the statutes:

In sharp contrast to the Fair Housing Title . . . , [§ 1982] deals only with racial discrimination and does not address itself to discrimination on grounds of religion or national origin. It does not deal specifi-

temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than \$1,000 punitive damages"¹² Third, in prescribed circumstances the Attorney General may bring a civil action against the discriminator to obtain relief for the individual victims.¹³

Use of the administrative proceeding may be disadvantageous because of statutory requirements that direct many complaints through state and local channels.¹⁴ Of the two remaining types of

cally with discrimination in the provision of services or facilities in connection with the sale or rental of a dwelling. It does not prohibit advertising or other representations that indicate discriminatory preferences. It does not refer explicitly to discrimination in financing arrangements or in the provision of brokerage services. It does not empower a federal administrative agency to assist aggrieved parties. It makes no provision for intervention by the Attorney General. And, although it can be enforced by injunction, it contains no provision expressly authorizing a federal court to order the payment of damages.

Id. at 413-14 (footnotes omitted). For a detailed comparison of the two statutes, see Smedley, *A Comparative Analysis of Title VIII and Section 1982*, 22 VAND. L. REV. 459 (1969) [hereinafter cited as Smedley].

¹²42 U.S.C. § 3612(c) (emphasis added). The court may also award to a prevailing plaintiff court costs and reasonable attorney fees if he cannot afford them.

¹³42 U.S.C. § 3613 (1970) provides:

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this subchapter [title VIII], or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance, he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts and requesting *such preventive relief*, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice or denial of rights, as he deems necessary to insure the full enjoyment of the rights granted by this subchapter.

(Emphasis added.)

Additionally, Title IX (42 U.S.C. § 3631 (1970)) of the Civil Rights Act of 1968 provides criminal penalties for willfully injuring, intimidating, or interfering with any person attempting to exercise his right to fair housing. Use of this title has been infrequent during the first six years of the Act. Professor Smedley cites two difficulties associated with criminal penalties for fair housing violations. First, the Government must be able to prove the elements of willful discrimination beyond a reasonable doubt. Second, the defendant, entitled to a jury trial, is unlikely to be faced with 12 men wishing to impose fine or imprisonment on him for any type of housing discrimination. Smedley, *supra* note 11, at 472.

¹⁴HUD will relinquish a complaint to a state or local agency if the jurisdiction provides the aggrieved with rights and remedies substantially similar to federal law. 42 U.S.C. § 3610(c) (1970). Additionally, if an administrative proceeding is unsuccessful, the victim of discrimination is not permitted to bring a civil action in federal court

enforcement, action by the Attorney General, as opposed to a private civil action, offers noticeable advantages to both the aggrieved and the court system itself. The Attorney General has greater monetary and manpower resources with which to conduct litigation than the discrimination victims. Additionally, he can reduce the volume of litigation by representing the interests of numerous potential plaintiffs against a common defendant.¹⁵ Unfortunately, the relative advantages of an action by the Attorney General are clouded by uncertainty as to the type of relief that may be sought in such a suit.

While it is clear that the Attorney General may move under 42 U.S.C. § 3613 for injunctive or declaratory relief,¹⁶ the availability of monetary recovery on behalf of discrimination victims is uncertain. Section 3613 permits the Attorney General to request "*such preventive relief*, including an application for a permanent or temporary injunction, restraining order, or other order . . . , as he deems necessary to insure the full enjoyment of the rights" granted by Title VIII.¹⁷ Since no specific terminology enables the Attorney General to seek any type of monetary recovery, the authority for such relief would have to be derived from a broad construction¹⁸ of the equitable phrase "or other order."¹⁹

as long as a remedy exists under state or local fair housing law. *Id.* at § 3610(d). Another possible drawback to the administrative proceeding is that the aggrieved has only 30 days upon its unsuccessful termination to bring a private civil action. *Id.* However, two courts have permitted an aggrieved to commence a private civil action while the administrative proceeding is still in progress. See *Miller v. Poretsky, EQUAL OPPORTUNITY IN HOUSING* ¶ 13,587 (D.C. Cir. Feb. 21, 1973); *Johnson v. Decker*, 333 F. Supp. 88 (N.D. Cal. 1971).

¹⁵While private individuals may seek to represent a class, the problems associated with class actions are numerous and beyond the scope of this article. For an annotation on class actions as a method of seeking relief from racial discrimination, see Annot., 8 A.L.R. Fed. 461 (1971).

¹⁶See, e.g., *United States v. Bob Lawrence Realty, Inc.*, 474 F.2d 115 (5th Cir.), cert. denied, 414 U.S. 826 (1973) (injunctive relief); *United States v. Hunter*, 459 F.2d 205 (4th Cir.), cert. denied, 409 U.S. 934 (1972) (declaratory relief).

¹⁷42 U.S.C. § 3613 (1970) (emphasis added), the text of which appears in note 13 *supra*.

¹⁸The Supreme Court has on one occasion given the Fair Housing Act a broad construction. See *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 212 (1972). Civil rights statutes traditionally enjoy a liberal construction. See, e.g., *Daniel v. Paul*, 395 U.S. 298 (1969) (public accommodations title of Civil Rights Act of 1964); *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968) (housing discrimination bar in Civil Rights Act of 1866).

¹⁹The phrase "or other order" appears in § 3613 among a list of various types of equitable relief. It reasonably follows that the entire statute, delineating available relief in actions by the Attorney General, is equitable in nature. See *United States v. Long, EQUAL OPPORTUNITY IN HOUSING* ¶ 13,631 (D.S.C. Jan. 14, 1974), at 14,094. Other

A federal district court in *United States v. Long*,²⁰ recognizing the question of monetary recovery as one of first impression,²¹ scrutinized the language of the statute, applied a broad construction of "or other order," and held that the phrase authorized pecuniary awards.²² The

courts interpreting analogous states have recognized the equitable nature of sections containing the phrase "or other order." See *United States v. Moore*, 340 U.S. 616 (1951) (Housing and Rent Act of 1947); *Porter v. Warner Holding Co.*, 328 U.S. 395 (1946) (Emergency Price Control Act of 1942); *United States v. McLeod*, 385 F.2d 734 (5th Cir. 1967) (Civil Rights Act of 1957).

²⁰EQUAL OPPORTUNITY IN HOUSING ¶ 13,631 (D.S.C. Jan. 14, 1974).

²¹Several other district courts have approved consent decrees providing monetary recovery for victims of housing discrimination in actions brought by the Attorney General. See *United States v. Colonial Village, Inc.*, Civil No. 252-73-A (E.D. Va. 1973); *United States v. Moore*, Civil No. 1172 (S.D. Ga. 1973); *United States v. Goldberg*, Civil No. 70-1223-Civ-PTF (S.D. Fla. 1972); *United States v. Magnolia Manor, Inc.*, Civil No. 4681 (S.D. Miss. 1971); *United States v. Lakratt Corp.*, Civil No. 69-1662 (E.D. La. 1969). The precedential value of such decrees is questionable, for rarely do they face the scrutiny of the court.

The court in *Long* found some precedential value in *United States v. West Peachtree Tenth Corp.*, 437 F.2d 221 (5th Cir. 1971). In that case, the Fifth Circuit rejected the defendants' contention that the courts were limited to awarding injunctive relief under § 3613, holding that the phrase "or other order" includes the power to grant any affirmative relief. *Id.* at 228. However, *West Peachtree* was not an action for monetary recovery and the court gave no indication whether it considered such awards permissible as a type of affirmative relief.

Subsequent to the decision in *Long*, two other federal district courts have considered the validity of monetary recovery under § 3613. In *United States v. West Suburban Bd. of Realtors*, EQUAL OPPORTUNITY IN HOUSING ¶ 13,641 (N.D. Ill. Feb. 6, 1974), the Attorney General sought "monetary damages" as supplemental relief in a civil contempt proceeding commenced upon violation by the defendants of a consent decree. The court granted the relief requested by the Attorney General but did not comment on what types of monetary recovery were permissible. See notes 28-36 and accompanying text *infra*. However, the court held that the 180 day statute of limitations applicable to private civil actions commenced under the Fair Housing Act also limited actions by the Attorney General. See note 50 *infra*.

"Damages" were also sought by the Attorney General in *United States v. Pelzer Realty Co.*, EQUAL OPPORTUNITY IN HOUSING ¶ 13,656 (M.D. Ala. June 5, 1974), a case remanded by the fifth circuit for issuance of a decree. The court denied monetary recovery solely because damages were not pleaded nor proven in the original proceeding. As a result, the defendants could not properly litigate the issue of damages and were also deprived of an opportunity to request a jury trial. See notes 74-76 and accompanying text *infra*.

²²EQUAL OPPORTUNITY IN HOUSING ¶ 13,361, at 14,093-94. However, uncertainty as to the validity of monetary recovery was so great that the district court stayed implementation of that portion of its order and certified the issue for interlocutory appeal to the U.S. Court of Appeals for the Fourth Circuit pursuant to 28 U.S.C. § 1292 (1970). Section 1292 provides in pertinent part:

(b) When a district judge, in making a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is

defendants in *Long* were a Charleston, South Carolina, real estate agency and its controlling partner. On the basis of considerable incriminating evidence, they were found to have engaged in discriminatory conduct violative of the law.²³ To assure equal housing opportunity in the future to all persons, the court issued an injunction and order requiring adoption and implementation of a wide range of affirmative measures.²⁴

One of the measures ordered by the court was that the defendants permit the Government to examine records for the purpose of compil-

substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: *Provided, however*, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

Denying the defendants a jury trial on the issue of monetary recovery, the district court also certified this question for interlocutory appeal. See notes 74-76 and accompanying text *infra*.

²³EQUAL OPPORTUNITY IN HOUSING ¶ 13,361, at 14,091-93. The defendant agency rented apartments and houses in fifteen separate complexes and subdivisions. Of the properties, eleven were rented exclusively to whites and four were rented primarily to blacks. *Id.* at 14,084. Additionally, the defendant partner was the developer for a large apartment complex in which more than 90 per cent of the tenants were black. *Id.* at 14,087. The Government's complaint charged that this arrangement constituted a pattern and practice of resistance by the defendants to the full enjoyment by black persons of the right to equal housing opportunity. The complaint also alleged that the rental pattern denied to a group of persons rights guaranteed by the Fair Housing Act, raising an issue of general public importance.

The court heard testimony which revealed that the agency coded and separated applications to indicate race. Blacks were often told that the agency had no vacancies, even when on every occasion apartments were available in white neighborhoods. Credit checks and security deposits were required of almost all black applicants, but only a small percentage of white applicants were treated similarly. Advertising of available properties in black neighborhoods indicated that the units were available to "any qualified buyer," but no such label was used in advertising for the agency's other properties. The partner, in fact, even admitted to having instructed his employees to avoid sales to blacks in white areas.

²⁴*Id.* at 14,094-96. The court enjoined the defendants, including their employees and agents, from engaging in any conduct which denied equal housing opportunity to any person because of his race, color, religion, or national origin. The defendants were required to formulate in writing nondiscriminatory objective guidelines for the renting of dwellings. Moreover, the court stipulated that the defendants instruct employees and agents in carrying out the order and notify the public of their nondiscriminatory policy. Finally, the defendants were directed to submit periodic reports in order to effectuate the decree.

ing a list of possible victims of discrimination.²⁵ The Government could then notify these victims of alternative courses of action including "the right to submit to the court and attempt to establish a claim for monetary compensation for racial discrimination . . . to be heard by a Special Master,"²⁶ pursuant to Rule 53 of the Federal Rules of Civil Procedure.²⁷ Unfortunately, the court did not specify what types of monetary recovery it found allowable as "compensation" under § 3613.

²⁵*Id.* at 14,096.

²⁶*Id.* at 14,096-97. Another alternative enabled discrimination victims to renew their applications for apartments. If they met the rental standards applicable to all tenants, they would be given priority for any available dwelling and paid moving expenses within a 50 mile radius. Discrimination victims were also advised of the alternative of proceeding individually against the defendants for damages under the Fair Housing Act and/or the Civil Rights Act of 1866. See notes 11-12 and accompanying text *supra*.

²⁷FED. R. CIV. P. 53 provides in pertinent part:

(a) **Appointment and Compensation.** Each district court with the concurrence of a majority of all the judges thereof may appoint one or more standing masters for its district, and the court in which any action is pending may appoint a special master therein. As used in these rules the word "master" includes a referee, an auditor, an examiner, a commissioner, and an assessor. . . .

(b) **Reference.** A reference to a master shall be the exception and not the rule. . . . [I]n actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

(c) **Powers.** The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only

(e) **Report.**

(1) *Contents and Filing.* The master shall prepare a report upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. . . .

(2) *In Non-Jury Actions.* In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

Monetary recovery can generally be divided into three types.²⁸ The first, restitution, a remedy traditionally associated with unjust enrichment, is often given a more expansive definition today.²⁹ It is commonly thought of as a remedy by which a defendant is made to disgorge ill-gotten gains or to restore the status quo by returning to the plaintiff something that in the court's view properly belongs to him.³⁰ In housing discrimination situations, restitution in private actions has included return of deposit³¹ and possibly reimbursement for such costs as moving and storage expense.³² A second type of monetary recovery, actual damages, attempts to compensate a plaintiff and is based upon his losses rather than the defendant's gains.³³ Actual damages are involved in most housing discrimination cases, since most resulting injuries cannot be vindicated by restitution. Within this classification falls compensation for emotional injury,³⁴ the claim that has most often been raised in private housing discrimination suits,³⁵ and for such emotional injury as loss of bargain.³⁶ Punitive damages, frequently awarded in private actions to victims of housing discrimination, constitute a third general type of monetary recovery.

On close examination, restitution appears available in actions by

²⁸See D. DOBBS, REMEDIES 1-2 (1973). Dobbs mentions nominal damages as a fourth type of monetary recovery; such awards are usually a small amount to vindicate a technical right where there has been no actual harm. *Id.* at 135.

²⁹Thus, the parameters of restitution are now ill-defined. See generally *id.* at 222-29.

³⁰5 J. MOORE, FEDERAL PRACTICE ¶ 38.24, at 190.5 (2d ed. 1974).

³¹For an example of a private action to recover a deposit lost as a result of housing discrimination, see *Sanborn v. Wagner*, 354 F. Supp. 291 (D. Md. 1973).

³²For an example of a private action to recover moving and storage expenses incurred as a result of housing discrimination, see *Steele v. Title Realty Co.*, 478 F.2d 380 (10th Cir. 1973).

³³D. DOBBS, REMEDIES 137 (1973).

³⁴In actions to recover for emotional injury, plaintiffs commonly raise such claims as embarrassment or humiliation. The usual basis of recovery is in tort for intentional infliction of emotional distress. See generally Duda, *Damages for Mental Suffering in Discrimination Cases*, 15 CLEV.-MAR. L. REV. 1 (1966).

³⁵See, e.g., *Seaton v. Sky Realty Co.*, 491 F.2d 634 (7th Cir. 1974); *Steele v. Title Realty Co.*, 478 F.2d 380 (10th Cir. 1973).

³⁶Computation of the proper award for loss of bargain is complicated. If, for example, an individual is illegally denied housing at a cost of \$150 a month and must instead pay \$200, he has suffered an apparent loss of \$50 a month. However, if the substitute housing is worth \$250 a month as opposed to \$100 for the original housing, he will receive greater value for his money and thus appear to benefit as a result of the discrimination. For an example of a private action to recover for loss of bargain resulting from housing discrimination, see *Williams v. Streeter*, EQUAL OPPORTUNITY IN HOUSING ¶ 17,507 (Md. Comm'n on Human Relations, March 17, 1973).

the Attorney General under § 3613. Support for allowing this type of monetary recovery may be derived from the recent Supreme Court case of *Curtis v. Loether*,³⁷ discussed below in connection with the possibility of obtaining actual damages,³⁸ as well as from two earlier decisions of the Court.³⁹ In each of the earlier decisions, the phrase "or other order," appearing in successive price control measures,⁴⁰ was held to permit restitution of "overceiling" rental payments in Government actions on behalf of private persons.⁴¹ In one of those

³⁷ ___ U.S. ___, 94 S. Ct. 1005 (1974).

³⁸ See notes 70-73 and accompanying text *infra*.

³⁹ *Porter v. Warner Holding Co.*, 328 U.S. 395 (1946) (interpreting the Emergency Price Control Act of 1942); *United States v. Moore*, 340 U.S. 616 (1951) (interpreting the Housing and Rent Act of 1947).

⁴⁰ Emergency Price Control Act of 1942, ch. 26, § 205(a), 56 Stat. 33 provided:

Whenever in the judgment of the [Price] Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in such acts or practices, a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

(Emphasis added.)

Housing and Rent Act of 1947, ch. 163, § 206(b), 61 Stat. 199-200 provided:

Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of subsection (a) of this section, he may make application to any Federal, State or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order enforcing compliance with such subsection, and upon a showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

(Emphasis added.)

⁴¹ Lower courts also construed the phrase "or other order" as allowing restitution under the Emergency Price Control Act of 1942. See *Woods v. Wolfe*, 182 F.2d 516 (3d Cir. 1950); *Jackson v. Woods*, 182 F.2d 338 (5th Cir. 1950); *Woods v. Gochnour*, 177 F.2d 964 (9th Cir. 1949), *rev'g per curiam* 81 F. Supp. 457 (E.D. Wash. 1948); *Woods v. Wayne*, 177 F.2d 559 (4th Cir. 1949); *Ebeling v. Woods*, 175 F.2d 242 (8th Cir. 1949); *Woods v. Richman*, 174 F.2d 614 (9th Cir. 1949); *Creedon v. Randolph*, 165 F.2d 918 (5th Cir. 1948); *Bowles v. Skaggs*, 151 F.2d 817 (6th Cir. 1945); *United States v. Cowen's Estate*, 91 F. Supp. 331 (D. Mass. 1950); *Woods v. Bomboy*, 85 F. Supp. 475 (W.D. Pa. 1949); *Woods v. Lajeunesse*, 82 F. Supp. 445 (D.N.H. 1949).

Except for the Fifth Circuit in *Moore v. United States*, 182 F.2d 332 (1950), a decision reversed by the Supreme Court at 340 U.S. 616 (1951), lower courts also construed the phrase "or other order" as allowing restitution under the Housing and

cases, *Porter v. Warner Holding Co.*,⁴² the Court held that restitution lay within the equitable jurisdiction of the court on either of two theories. Restitution could be considered either as an "equitable adjunct to an injunction decree"⁴³ or as "an order appropriate and necessary to enforce compliance with the Act."⁴⁴ The Court went to great lengths to distinguish restitution, a remedy within the framework of equity, from the legal remedy of statutory damages. It asserted that restoration of the status quo in the public interest by returning one's rightful property was "within the recognized power and within the highest tradition of a court of equity."⁴⁵ However, in housing discrimination situations, the scarcity of restitutionary claims as opposed to other types of actions would make this remedy of little value to the aggrieved person.

In contrast to restitution, actual and punitive damages do not seem available under the statutory language of § 3613. The *Long* court in its general endorsement of monetary recovery neglected to consider the difference in language between § 3612(c),⁴⁶ concerning enforcement of the Fair Housing Act by private persons, and § 3613.⁴⁷ Both sections provide for relief from housing discrimination by injunction, restraining order, or other order. However, § 3612(c), unlike § 3613, stipulates the additional remedies of "actual damages and

Rent Act of 1947. See *Woods v. Wayne*, 177 F.2d 559 (4th Cir. 1949); *United States v. Cowen's Estate*, 91 F. Supp. 331 (D. Mass. 1950); *United States v. Mashburn*, 85 F. Supp. 968 (W.D. Ill. 1949).

⁴²328 U.S. 395 (1946).

⁴³*Id.* at 399.

⁴⁴*Id.* at 400.

⁴⁵*Id.* at 402. The Fifth Circuit followed this line of reasoning in *United States v. McLeod*, 385 F.2d 734 (5th Cir. 1967), in which the enforcement provision of the Civil Rights Act of 1957 was construed. 42 U.S.C. § 1971 (1970) provides in pertinent part:

(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for *preventive relief*, including an application for a permanent or temporary injunction, restraining order, or *other order*.

(Emphasis added.) The Fifth Circuit held that the phrase "or other order" permitted a court to direct the return of fines and reimbursement of costs where defendants in state criminal proceedings had been unlawfully arrested to hamper a black voter registration drive.

⁴⁶42 U.S.C. § 3612(c) (1970), which appears in pertinent part in text accompanying note 12 *supra*.

⁴⁷42 U.S.C. § 3613 (1970), the text of which appears in note 13 *supra*.

not more than \$1,000 punitive damages"⁴⁸ Inasmuch as Congress specifically provided for actual damages in individual actions, it is illogical to believe that the same remedy was contemplated without specific provision in the very next section.⁴⁹ It is more reasonable to assume that Congress did not intend that the enforcement power of the Attorney General be used to aggregate and collect the individual claims of discrimination victims for actual or punitive damages.⁵⁰

The *Long* court itself may have rejected the idea that punitive damages were permissible under § 3613. In its reliance upon judicial construction of the phrase "or other order" in analogous statutes, the court cited no instances where such terminology had been interpreted to allow punitive damages.⁵¹ Such a position would appear correct in light of the federal court policy that denies recovery of punitive damages in equity.⁵² However, by not specifically limiting monetary recovery to restitution, the court seems to have given tacit approval to the awarding of actual damages as an appropriate form of "monetary compensation." The court attempted to draw support for "compensa-

⁴⁸42 U.S.C. § 3612(c) (1970).

⁴⁹Critics of this line of reasoning may cite a contrary position reached by the courts in interpreting Title VII of the Civil Rights Act of 1964. See cases cited in note 54 *infra*. 42 U.S.C. § 2000e-5(g) (1970), concerning enforcement of Title VII by private persons, specifically provides for back pay as relief in employment discrimination suits. 42 U.S.C. § 2000e-6(a), (1970), the text of which appears in note 53 *infra*, has no similar provision concerning Government enforcement of the same rights. However, convincing legislative history provided the basis for allowing back pay in Government actions under Title VII, despite the absence of express statutory authority. See note 55 *infra*. No analogous congressional intent can be found in the legislative history of Title VIII. See notes 65-66 and accompanying text *infra*.

⁵⁰Additional support for the proposition that Congress did not contemplate the awarding of actual or punitive damages under § 3613 derives from a 180 day statute of limitations imposed in § 3612(a) on private actions. As a federal district court observed in *United States v. West Suburban Bd. of Realtors, EQUAL OPPORTUNITY IN HOUSING* ¶ 13,641 (N.D. Ill. Feb. 6, 1974), the purpose of this limitation period is to insure that defendants are not prejudiced by destruction of records or inability to recall specifics of a particular episode. If Congress had intended that the Attorney General be allowed actual or punitive damages on behalf of private persons who had suffered prior injury, a similar statute of limitations would arguably have been included in § 3613. However, the court in *Board of Realtors* did not accept such a proposition; instead it allowed "monetary damages" in actions by the Attorney General, holding that the 180 day statute of limitations in § 3612(a) was necessarily applicable to § 3613 actions. See note 21 *supra*.

⁵¹*EQUAL OPPORTUNITY IN HOUSING* ¶ 13,631, at 14,094.

⁵²*Elizabeth v. Pavement Co.*, 97 U.S. 126 (1877); *Livingston v. Woodworth*, 56 U.S. (15 How.) 624 (1853). Although the Supreme Court has not considered the question of punitive damages in equitable proceedings for almost a century, lower courts in applying federal law have consistently stressed the unavailability of such relief. See cases cited in Annot., 48 A.L.R.2d 947 (1956).

tion" from the "back pay" cases arising under language resembling § 3613 in 42 U.S.C. § 2000e-6,⁵³ the Government enforcement provision of Title VII of the Civil Rights Act of 1964. In each case,⁵⁴ the phrase "or other order" was interpreted as allowing the awarding of back pay to the Attorney General on behalf of victims of discrimination.⁵⁵

⁵³42 U.S.C. § 2000e-6 (1970) provides in pertinent part:

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting *such relief*, including an application for a permanent or temporary injunction, restraining order or *other order* against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(Emphasis added.) Functions of the Attorney General under this section were transferred to the Equal Employment Opportunity Commission on March 24, 1974. 42 U.S.C. § 2000e-6(c) (1970), *as amended*, (Supp. II, 1972). The transfer of functions did not affect any pending litigation. *Id.* § 2000e-6(d).

⁵⁴*United States v. Georgia Power Co.*, 474 F.2d 906 (5th Cir. 1973); *United States v. Lee Way Motor Freight, Inc.*, 7 EMPLOYMENT PRACTICES GUIDE ¶ 9066 (W.D. Okla. Dec. 27, 1973); *Stamps v. Detroit Edison Co.*, 365 F. Supp. 87 (E.D. Mich. 1973); *United States v. Lathers Local 46*, 328 F. Supp. 429 (S.D. N.Y. 1971), *aff'd*, 471 F.2d 408 (2d Cir.), *cert. denied*, 412 U.S. 939 (1973). *Cf. United States v. St. Louis-S.F. Ry.*, 464 F.2d 301 (8th Cir. 1972) (back pay not allowed only because no bad faith shown); *United States v. Hayes Int'l Corp.*, 456 F.2d 112 (5th Cir. 1972) (back pay held a permissible subject for consideration on remand).

⁵⁵In the leading case of *United States v. Georgia Power Co.*, 474 F.2d 906 (5th Cir. 1973), two class actions and a suit by the Attorney General were consolidated for trial. Finding that the defendants had engaged in discriminatory hiring and promoting, the district court enjoined the discriminatory practices and required Georgia Power Company to hire, upon the next vacancies, those qualified black applicants who had been previously rejected. The court also ordered discontinuation of the requirement that employees in most positions have a high school diploma, finding that such a regulation had a disproportionate racial impact without business necessity. Moreover, the court struck down those aspects of the defendant's job seniority system which tended to stifle blacks in low paying jobs. However, back pay was denied except to the named plaintiffs in the private actions. All parties appealed to the Fifth Circuit.

The court of appeals granted the plaintiffs additional injunctive relief, directing the district court to construct a nondiscriminatory recruitment policy for the defendant company. The appellate panel also instructed the district court to evaluate the defendant's testing program for discriminatory effects. Most importantly, the Fifth Circuit held that back pay awards were permissible in actions brought by the Attorney General.

Given the nearly parallel language of § 3613 and § 2000e-6, the *Long* court's analogy between the two statutes would at first seem appropriate. This is particularly true in light of the broad congressional purpose of the Fair Housing Act⁵⁶ and the liberal construction traditionally accorded civil rights statutes.⁵⁷ However, § 3613 and § 2000e-6 are distinguishable on their faces⁵⁸ and by their different legislative histories.⁵⁹ Moreover, there is dissimilarity between the remedies of actual damages for victims of housing discrimination and back pay for victims of employment bias.⁶⁰

Section 2000e-6, unlike § 3613, permits the Attorney General to request "such relief" as he deems necessary.⁶¹ Section 3613 is more

The basis for allowing back pay was found in the statute's legislative history. The original Civil Rights Bill considered in committee gave federal enforcement power to the Equal Employment Opportunity Commission and specifically permitted an order for the reinstatement or hiring of employees, with or without back pay. H.R. 7152, 88th Cong., 2d Sess. § 707(e) (1964) provided in pertinent part:

If the court finds that the respondent has engaged in or is engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent to take such affirmative action, including reinstatement or hiring of employees with or without back pay . . . as may be appropriate.

When that bill appeared stymied on the Senate floor, a substitute bill was drafted by the late Everett McKinley Dirksen (R-Ill.), Senate Minority Leader, and Mike Mansfield (D-Mont.), Senate Majority Leader. This Dirksen-Mansfield substitute, taking away the power of the EEOC to bring suit and giving it to the Attorney General, became the Civil Rights Act of 1964. Although the substitute, unlike its predecessor, did not specifically authorize the awarding of back pay, floor debate does not indicate any intent to weaken this aspect of the bill. See 110 CONG. REC. 12595-96 (1964) (remarks of Senator Clark, floor sponsor of the original legislation); *id.* at 12721-25 (remarks of Senator Humphrey, a supporter); *id.* at 14219-21 (remarks of Senator Holland, an opponent). In fact, the Fifth Circuit stated that Senator Clark probably would not have responded so favorably to a weaker substitute. 474 F.2d at 920.

The court relied upon one additional factor in the legislative history of Title VII for its broad construction enabling the Attorney General to seek back pay. The Equal Opportunity Employment Act of 1972 amended the Civil Rights Act of 1964 so as to allow the Equal Employment Opportunity Commission to bring an action for back pay in a complaint brought through administrative channels. 42 U.S.C. § 2000e-5(f)-(g) (1970), *as amended*, (Supp. II, 1972). If the respondent is a government, governmental agency, or a political subdivision, that power instead is vested in the Attorney General. *Id.* The Fifth Circuit would find a result "incongruous" that allowed back pay to be awarded after administrative actions but not in the more serious violations under 42 U.S.C. § 2000e-6 (1970). 474 F.2d at 920.

⁵⁶See note 6 and accompanying text *supra*.

⁵⁷See note 18 *supra*.

⁵⁸See notes 61-63 and accompanying text *infra*.

⁵⁹See notes 64-66 and accompanying text *infra*.

⁶⁰See notes 67-76 and accompanying text *infra*.

⁶¹For text in pertinent part of § 2000e-6, see note 53 *supra*.

narrow, providing that the Attorney General may request "such preventive relief" as he deems necessary.⁶² Although no court has apparently attempted to define "preventive relief," the term "preventive" in common usage is usually associated with the stopping of future misconduct.⁶³ Although the awarding of any type of monetary recovery to the Attorney General on behalf of victims of housing bias would undoubtedly serve as a deterrent to potential discriminators, its primary purpose would be to compensate those who had suffered prior injury.

A second distinction between § 3613 and § 2000e-6 arises from floor debate as a means of determining congressional intent. Whereas particular comments in the Senate deliberation of the Civil Rights Act of 1964 furnished strong support for the validity of back pay despite the absence of express statutory authority,⁶⁴ no similar legislative history aids in the interpretation of § 3613. Title VIII was added to the Civil Rights Act of 1968 on the floor of both houses of Congress, thus committee reports do not discuss fair housing.⁶⁵ The lengthy floor debate which preceded enactment offers no clear guidance as to congressional intent regarding any type of monetary recovery in actions brought by the Attorney General.⁶⁶

⁶²For text of § 3613, see note 13 *supra*.

⁶³For example, the court in *Bates v. City of Hastings*, 145 Mich. 574, 108 N.W. 1005, 1007 (1906), held that a "preventive injunction" necessarily operates upon unperformed and unexecuted acts. Another court in *Commonwealth v. Burnett*, 274 Ky. 231, 118 S.W.2d 558, 560 (1938), ruled that "preventive justice" was not a punishment of past misdeeds but a precaution against future violations of the law.

⁶⁴See note 55 *supra*.

⁶⁵See H.R. REP. NO. 473, 90th Cong., 1st Sess. (1967); S. REP. NO. 721, 90th Cong., 1st Sess. (1967).

⁶⁶The late inclusion of fair housing provisions in the Civil Rights Act of 1968 followed several years of vigorous debate. After a strong plea from President Lyndon B. Johnson for an effective federal law against discrimination in housing, fair housing provisions were first introduced in Title IV of the proposed Civil Rights Act of 1966 (H.R.14765 and S.3296). The legislation would have prohibited all discrimination in housing. While not providing for administrative enforcement, the measure would have permitted actions both by private persons and by the Attorney General. However, a much weakened bill emerged from the House of Representatives, restricting coverage in several ways and excluding owner occupied dwellings of four or less units. Bitterly debated in the Senate for several months, the bill died as proponents unsuccessfully attempted to invoke cloture to defeat a filibuster. A proposed Civil Rights Act of 1967 (H.R.5700 and S.1026), providing for gradual coverage of almost all housing and containing a clause on administrative enforcement by the Department of Housing and Urban Development, was not reported. The House instead passed another measure, H.R.2516, which prescribed penalties for intimidation and certain acts of violence. That legislation, without a fair housing title, died in the Senate upon the adjournment of the first session of the 90th Congress.

However, the most compelling reason for rejecting the analogy of the *Long* court is the dissimilarity between the remedies of back pay under § 2000e-6 and actual damages contemplated under § 3613. Back pay awards entail the return of money wrongfully withheld from victims of discrimination. Courts have generally characterized the nature of these payments as equitable,⁶⁷ some explicitly labeling the awards as "restitution."⁶⁸ As one commentator observed, back pay usually involves definite amounts which can often be stipulated by the parties rather than left to subjective evaluation.⁶⁹ On the other hand, actual damages, a remedy outside the scope of equity, would require subjective determination of compensatory awards.

In *Curtis v. Loether*,⁷⁰ the Supreme Court, considering the question of the right to a jury trial in a private civil action for damages brought under the Fair Housing Act,⁷¹ observed the traditional legal nature of actual damages.⁷² By way of contrast, the Court remarked that the courts of appeal have characterized back pay as "an integral part of an equitable remedy, a form of restitution."⁷³ The Court held unanimously that either party was entitled to a jury trial in the private action. Any interpretation of the equitable language of § 3613⁷⁴ that allows the Attorney General to receive actual damages

However, the Senate in 1968 resumed action on H.R.2516 and accepted a compromise fair housing title. The House, possibly prompted to an accelerated pace by the assassination of Dr. Martin Luther King several days earlier, accepted the Senate version on April 10, 1968 (H. Res. 1100). One day later President Johnson signed the Civil Rights Act of 1968, with its fair housing title, into law. For a comprehensive history of federal fair housing legislation, see Dubofsky, *Fair Housing: A Legislative History and a Perspective*, 8 WASHBURN L.J. 149 (1969).

⁶⁷See, e.g., *United States v. Georgia Power Co.*, 474 F.2d 906, 921 (5th Cir. 1973); *Rogers v. Loether*, 467 F.2d 1110, 1121 (7th Cir. 1973), *aff'd sub nom. Curtis v. Loether*, ___ U.S. ___, 94 S. Ct. 1005 (1974); *United States v. Lee Way Motor Freight, Inc.*, 7 EMPLOYMENT PRACTICES GUIDE ¶ 9066 (W.D. Okla. Dec. 27, 1973), at 6501.

⁶⁸See, e.g., *Rogers v. Loether*, 467 F.2d 1110, 1121-22 (7th Cir. 1973), *aff'd sub nom. Curtis v. Loether*, ___ U.S. ___, 94 S. Ct. 1005 (1974); *United States v. Lee Way Motor Freight, Inc.*, 7 EMPLOYMENT PRACTICES GUIDE ¶ 9066 (W.D. Okla. Dec. 27, 1973), at 6501.

⁶⁹Note, *The Right to Jury Trial Under Title VII of the Civil Rights Act of 1964*, 37 U. CHI. L. REV. 167, 173 (1969).

⁷⁰___ U.S. ___, 94 S. Ct. 1005 (1974).

⁷¹Because of the uncertainty of popular revulsion against discriminatory acts, the plaintiff in *Curtis* sought to avoid a jury trial. She was supported by amicus curiae briefs from the Attorney General and the National Commission Against Discrimination in Housing.

⁷²94 S. Ct. at 1009.

⁷³*Id.* at 1010. See notes 67-68 and accompanying text *supra*.

⁷⁴See note 19 *supra*.

on behalf of private persons would effectively deprive defendants of their right to a jury trial.⁷⁵ Such a result would be incompatible with the Supreme Court's zealous protection of Seventh Amendment rights.⁷⁶

Conclusion

Title VIII of the Civil Rights Act of 1968 was intended as a comprehensive attempt by the federal government to attack discrimination in housing, a barrier labeled the "cornerstone of segregation."⁷⁷ The legislation has succeeded in accomplishing much of its goal, but the volume of complaints remaining on court and agency dockets reveals the continuing existence of discriminatory practices.⁷⁸ Despite

⁷⁵U.S. CONST. amend. VII provides in pertinent part: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved" The right to a jury trial does not attach where all issues to be tried are equitable. Thus, the court in *Long*, buttressed by the equitable nature of § 3613, was able to deny defendants a jury trial on the issue of monetary recovery although they clearly would have possessed this right under § 3612. *But see* *United States v. Pelzer Realty Co.*, EQUAL OPPORTUNITY IN HOUSING ¶ 13,656 (M.D. Ala. June 5, 1974). The question of the right to a jury trial in an action for monetary recovery under § 3613, if permissible, was certified for interlocutory appeal along with the principle question to the U.S. Court of Appeals for the Fourth Circuit pursuant to 28 U.S.C. § 1292 (1970). For text in pertinent part of § 1292, see note 22 *supra*.

⁷⁶*See* *Pernell v. Southall Realty*, — U.S. —, 94 S. Ct. 1723 (1974); *Ross v. Bernhard*, 396 U.S. 531 (1970); *Dairy Queen, Inc. v. Wood*, 369 U.S. 469 (1962); *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500 (1959). Professor Wright, commenting on *Dairy Queen* and *Beacon Theatres*, asserted that the relevant policy expressed in the Seventh Amendment is favorable to jury trials. C. WRIGHT, *FEDERAL COURTS* 407 (2d ed. 1970). He maintains that "any seeming curtailment of the right to jury trial should be scrutinized with the utmost care." *Id.* at 402.

⁷⁷REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 475 (1968). Discrimination in housing retards progress in the entire area of civil rights. It reinforces de facto segregation in the public schools. Moreover, it denies equal employment opportunity to minorities who are unable to purchase suburban homes in proximity to new jobs. One commentator discusses and dismisses two alternate explanations of poverty and preference for the high degree of residential segregation. *See* Chandler, *Fair Housing Laws: A Critique*, 24 *HASTINGS L.J.* 159 (1973). He cites convincing surveys which show that large numbers of blacks have sufficient incomes to live outside the inner-cities and that only small numbers wish to live in all or mostly black neighborhoods.

⁷⁸Father Theodore M. Hesburgh, former Chairman of the U.S. Commission on Civil Rights, observed less than two years ago that there are relatively few blacks who live in good neighborhoods. Hesburgh, *Father Hesburgh's Program for Racial Justice*, *N.Y. Times*, Oct. 29, 1972, § 6 (Magazine), at 80. He dramatically emphasized the point: "No segment of American life is more completely ruled by prejudice and white superiority than housing. It is a simple fact that an underworld gangster or a white call girl can more easily rent or buy a house in most white neighborhoods than a

the broad congressional purpose behind Title VIII, the authority of the Attorney General to seek monetary recovery on behalf of discrimination victims appears statutorily limited to restitution. Because the Attorney General has greater resources than private persons for proceeding against discriminators, it may be desirable to enlarge that authority.⁷⁹ However, any expansion of the remedies provided by § 3613 should derive from congressional intent rather than dubious judicial construction.

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professional black man or woman." *Id.* at 76. Census statistics reveal that integration in the suburbs is proceeding slowly. In 1970, blacks constituted only 4.5 per cent of the suburban population of 67 large metropolitan areas, an increase of only .3 per cent since 1960. N.Y. Times, Feb. 22, 1971, at 16, col. 7.

⁷⁹Whether the Attorney General would elect to use his full statutory authority is, of course, dependent on administration policy. Former Attorney General John Mitchell, believing that primary responsibility for enforcing the Fair Housing Act rested with the Department of Housing and Urban Development, took a passive stand on Justice Department action. *See* N.Y. Times, Jan. 20, 1971, at 32, col. 5.