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### The Cairo Experience: Civil Rights Litigation in a Racial Powder Keg, 61 Or. L. Rev. 285 (1982)

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## The Cairo Experience: Civil Rights Litigation in a Racial Powder Keg

At the junction of the two rivers, on ground so flat and low and marshy, that at certain seasons of the year it is inundated to the house-tops, lies a breeding place of fever, ague, and death . . . . A dismal swamp, on which the half-built houses rot away . . . a hotbed of disease, an ugly sepulchre, a grave uncheered by any gleam of promise: a place without one single quality, in earth or air or water, to commend it: such is the dismal Cairo.<sup>1</sup>

CAIRO is situated at the confluence of the Mississippi and Ohio Rivers, at the southern tip of Illinois. It is 400 miles south of Chicago and 160 miles north of Memphis. During the late 1960s and early 1970s, Cairo was the scene of some of the worst racial hostility and violence this country has known.<sup>2</sup>

In 1969, the Lawyer's Committee for Civil Rights Under Law opened

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<sup>1</sup> C. DICKENS, *AMERICAN NOTES* 185 (1842).

<sup>2</sup> In 1967, Robert L. Hunts, Jr., a black passenger in an automobile stopped by Cairo police for having a defective tail-light, was arrested for being verbally abusive. He was later found hanged in the city jail. Three days of disorder followed. At a coroner's inquest held two months after the incident his death was ruled a suicide.

In 1968, Reverend Larry Potts, a white segregationist Baptist minister, clubbed a 73-year-old black man to death. A coroner's jury absolved Potts, who contended that the man had attempted to rape Potts' wife.

Cairo's white community responded to black disorder by organizing a group known as the "White Hats." Its 600 members were deputized by the sheriff and patrolled the town to keep order. SPECIAL HOUSE COMM. TO INVESTIGATE THE ALLEGATIONS CONCERNING THE COUNTY OF ALEXANDER AND THE CITY OF CAIRO APPOINTED PURSUANT TO HOUSE RESOLUTION No. 118, PRELIMINARY REPORT (1969) [hereinafter cited as HOUSE REPORT 118]. The White Hats were disbanded in 1969 under pressure from the Illinois Attorney General. This step was taken because under Illinois law a sheriff has no authority to maintain a standing force of special deputies. *Carpenter's Union v. Citizens' Comm.*, 244 Ill. App. 540 (1927). The United Citizens for Community Action (UCCA), an affiliate of the White Citizens' Council, was formed as a successor organization.

an office in Cairo. The Lawyer's Committee channeled the concerns of Cairo's black citizens from the streets into the courts. This use of litigation to combat racism and violence has not been entirely successful, but it has established the framework for an ongoing dialogue as an alternative to street fighting.

This Article outlines the history of Cairo and describes what happened when the civil rights lawyers came to town.<sup>3</sup> Drawing from litigation aimed at securing and protecting the right to protest,<sup>4</sup> nondiscriminatory law enforcement,<sup>5</sup> equal employment,<sup>6</sup> fair housing,<sup>7</sup> and political representation,<sup>8</sup> this Article illustrates the essential role of federal courts in the civil rights arena. These examples highlight the need for both accessibility to the federal courts and the availability of independent legal service organizations to give effect to civil rights.

## I

### THE HISTORICAL SETTING

Cairo's founders and promoters had great hopes for the city.<sup>9</sup> Cairo

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<sup>3</sup> Civil rights lawyers were not always well-received. Not long after the author first went to Cairo to litigate civil rights problems, he traveled to a small rural community to represent a number of students who had been suspended from the local high school for failure to get haircuts. The federal court ordered the students reinstated. *Copeland v. Hawkins*, 352 F. Supp. 1022 (E.D. Ill. 1973). A local newspaper commented:

A new creature has appeared on the horizon. He is a much feared and by many, a much hated sort. Yet, he is a product of our times. We call him the "civil rights lawyer."

This is the villain [*sic*] who defeats our local lawyers and our laws at their own game. He comes to town with a bundle of tricks and seemingly limitless time and efforts to make things go his way. He is the one who wins the court cases on technicalities. He is the one who puts children back in school and sues the school for trying to tell the youth how he should groom his hair. He is the one who is always a thorn in the side of the usual operation of our governmental system.

*Editorial*, *The Gazette-Democrat* (Anna, Ill.), Feb. 15, 1973, at 2, col. 1.

<sup>4</sup> See notes 22-35 and accompanying text *infra*.

<sup>5</sup> See notes 36-64 and accompanying text *infra*.

<sup>6</sup> See notes 65-90 and accompanying text *infra*.

<sup>7</sup> See notes 91-105 and accompanying text *infra*.

<sup>8</sup> See notes 106-131 and accompanying text *infra*.

<sup>9</sup> The early history of Cairo is chronicled by John M. Lansden in J. LANSDEN, *A HISTORY OF THE CITY OF CAIRO, ILLINOIS* (1910, reprinted S.I.U. 1976).

John Lansden went to Cairo in 1865 after graduating from law school. He founded a law firm that continued until 1977 under his son and two grandsons. The Lansden family was destined to play a crucial role in the civil rights struggle of Cairo blacks. Lansden's son successfully argued *People v. Nellis*, 249 Ill. 12, 94 N.E. 165 (1911), before the Illinois Supreme Court. See note 36 *infra*. His grandson, David, was local counsel on the equal pay for teachers and school desegregation cases of the 1940s and 1950s. See notes 15-17 *infra*. His other grand-

was first established in 1818 as a business trust by a group of eastern merchants. The trust failed and the town was transferred in 1836 to the Cairo City and Canal Company. Throughout this period, the fortunes of the city were closely tied to those of the Illinois Central Railroad. In 1846, the city properties were again transferred to the Cairo City Property Trust, and Cairo continued to be administered as a strictly proprietary venture. Private lots were not sold in the city until 1853, and a civil government was not formed until 1855. Despite the more pretentious claims of its promoters, Cairo was a town of "cardsharps, pickpockets, pimps and prostitutes"<sup>10</sup> until Governor Adlai Stevenson put an end to gambling in the city in the late 1940s.

Cairo is situated at the confluence of two important waterways, at almost the exact geographical center of the United States. Nevertheless, the town was never to meet its promoters' expectations. Cairo reached its peak population, about 15,000 persons, in 1920; since then it has slumped into decay. Today its population is about 6,000. At the time of the racial disturbances described in this Article, Cairo had the lowest per capita income, the highest rate of unemployment, and the poorest housing of any municipality in Illinois.<sup>11</sup>

In order to prosper, Cairo had to protect itself from the flood conditions so graphically described by Charles Dickens. The city constructed levees to keep out flood waters, but seepage problems remained. It was not unusual for underground water to shoot up from land enclosed by the levees. Though the seepage problems were solved to some extent by landfill, even today sinkholes form under the city, causing portions of streets and buildings suddenly to subside into the mud beneath. Above all, the floods contribute to a sense of isolation. During floodtimes, Cairo becomes a virtual island linked to the outside world by a single highly-banked highway. Because of the lowness of the land, at floodtime one can stand on Eighth Street and see, over the Ohio levees, barges, or perhaps the Delta Queen, pass by on churning muddy waters eight to ten feet above street level. At these times Cairo is indeed a dismal swamp.

The problems of poverty and isolation in Cairo are exacerbated by rampant racism. Cairo has always been a self-styled "southern town."<sup>12</sup>

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son, Robert, was instrumental in bringing the Lawyer's Committee to Cairo in 1969, and served as co-counsel on many of the Committee's lawsuits.

<sup>10</sup> Lukas, *Bad Day at Cairo, Ill.*, N.Y. Times, Feb. 21, 1971, § 6 (Magazine), at 79.

<sup>11</sup> HOUSE REPORT 118, *supra* note 2.

<sup>12</sup> A sign at the entrance to the city ironically proclaims that Cairo is "Where Southern Hospitality Meets Northern Enterprise."

In 1910, John Lansden wrote: "Cairo is a southern city, not only geographically but racially. In the latter respect, it is not much more likely to change than in the former." J. LANSDEN, *supra* note 9, at 146.

The racial climate in Cairo during pre-Civil War days was shaped by the slave-owning states of Kentucky and Missouri, between which it is wedged. The underground railroad bypassed Cairo, and natives liked to boast that the climate was not suitable for abolitionists.<sup>13</sup>

In 1860, Cairo had a population of 2,188, of whom only fifty-five were black. This quickly changed when General Ulysses S. Grant established his headquarters in Cairo in 1861. Since 1870, when the city's population had grown to 6,267, Cairo's black population has hovered close to forty percent.

Private housing in Cairo, as in most of the South, never has been completely segregated, although virtually everything else was.<sup>14</sup> An additional factor contributing to the polarization of the races in Cairo has been the almost complete fencing out of the black race from the political process. In 1913, Cairo adopted a commission form of government, with city commissioners elected at-large. During the next fifty years, although blacks represented almost forty percent of the population, no black was elected to a city office. Furthermore, blacks were almost totally excluded from any of the appointed boards and commissions in the city and county.

## II

### THE STRUGGLE FOR CIVIL RIGHTS

The first major push for racial equality occurred in 1946 when black teachers filed suit in federal court to secure equal pay.<sup>15</sup> Later, in 1952,

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<sup>13</sup> Unpublished research by Fred Bernstein of Cairo, Illinois from comments in the 1854 *Cairo Times*.

<sup>14</sup> Both public and private facilities were segregated. Cairo's schools were operated on a dual basis until 1953, *see* note 16 *infra*, and its black schools remained exclusively black until 1967. Cairo's public housing was segregated until 1976. St. Mary's Park was segregated until 1962. Seating in the courthouse was segregated until 1963. Almost all public and private offices employed only whites. The municipal swimming pool was closed in 1963 to avoid integration. Places of public accommodation remained segregated until 1962. The Catholic Diocese maintained segregated parishes in Cairo until the late 1960s.

<sup>15</sup> *Negro City Teachers Ass'n v. Schultz*, Civ. No. 968 (E.D. Ill. 1946).

The equal pay case was argued by Thurgood Marshall. Ms. Hattie Kendrick, one of the named plaintiffs, enjoys telling how during the hearing the judge and defense counsel continuously referred to Marshall as a "boy." Defense counsel explained to the court how a comparable case in Tennessee had been handled by a distinguished attorney who knew what he was doing, unlike the "boy" in this case. Defense counsel continued to wax eloquent about the brilliance of the lawyer in the other case. Marshall quietly stood up and thanked counsel for the compliments, then informed the court that he was the brilliant attorney who had handled the Tennessee case. The courtroom exploded with laughter and defense counsel was silent thereafter.

efforts were begun to integrate Cairo's schools,<sup>16</sup> but separate black schools were not finally abolished until 1967.<sup>17</sup>

<sup>16</sup> The State of Illinois had conducted hearings on Cairo's segregated schools in 1951 pursuant to H.R. RES. 34 (1951), 1 ILL. HOUSE J. 101 (Jan. 1951).

The National Association for the Advancement of Colored People (NAACP) met with the school board on January 15, 1952, and it was agreed that 23 black students would be admitted to white schools. This agreement produced a wave of violence by the white community. The home of a black dentist was fired upon and the home of a black physician was bombed. Bernstein, *Let My People Go*, E. St. Louis Monitor, Mar. 1, 1973, at 6, col. 1. On February 7, eight members of the NAACP, including their attorney, David Lansden, were arrested and charged with "conspiring to cause or permit children to be placed in such a situation that their lives and health were endangered in that they did feloniously force children to attend school." *Id.* This matter, together with charges arising out of the bombing incident, was referred to a grand jury; no true bills were returned. *Id.*, Mar. 8, 1973, at 6, col. 1. Thereafter, attorney Lansden was ostracized by the white community; he and his family were threatened, and rocks and garbage were thrown at his house. *Id.*, June 7, 1973, at 6, col. 1. Lansden's neighbors erected a flashing neon sign with an arrow pointing to the Lansden home to ensure that these acts of terrorism were not misdirected. *Id.*, May 3, 1973, at 6, col. 2.

<sup>17</sup> Although Cairo's public schools were integrated without a lawsuit, *see note 16 supra*, education issues formed a major part of the civil rights caseload of both the Lawyer's Committee and its successor, the Land of Lincoln Legal Assistance Foundation. In the years immediately following the integration of the Cairo schools, black students complained of discriminatory harassment, intimidation, and punishment. On February 12, 1970, over 50 black Cairo students filed a complaint with the Illinois Superintendent of Public Instruction concerning discrimination by local school officials. The superintendent earlier had refused to schedule a hearing in Cairo on the complaints because of the violence in the community. Students filed suit to require him to come to Cairo to investigate their charges. *Complaint, Ewing v. Page*, Civ. No. 70-20 (E.D. Ill. filed Feb. 12, 1970). The suit was later dismissed when the superintendent's successor agreed to hold hearings in Cairo.

In 1969, local white leaders organized a private school, which they dubbed "Camelot," to avoid integration. In 1973, the Civil Rights Commission criticized the Internal Revenue Service for granting Camelot tax exempt status. P. Good, *CAIRO, ILLINOIS: RACISM AT FLOODTIDE 19* (U.S. Comm'n for Civil Rights 1973). In 1976, Cairo blacks joined plaintiffs from other communities in a suit against the Secretary of Treasury to prevent him from granting tax exemptions to private schools formed to avoid integration. *Wright v. Simon*, Civ. No. 76-1426 (D.D.C. filed July 30, 1976). The district court dismissed the complaint, but the court of appeals reversed, holding that the plaintiffs had standing to sue. *Wright v. Regan*, 656 F.2d 820 (D.C. Cir. 1981). *See Note, The IRS, Discrimination, and Religious Schools: Does the Revised Proposed Revenue Procedure Exact Too High a Price?*, 56 NOTRE DAME LAW. 141 (1980).

On January 8, 1982, the Reagan administration announced that it was reversing an 11-year-old policy and would begin granting tax exemptions to racially discriminatory private schools. After a storm of protest, the White House reversed its position only four days later; it announced that it would seek legislation denying tax exemptions to schools that discriminated. More than half the lawyers in the Civil Rights Division of the Justice Department signed a protest statement, arguing that to grant tax exempt status to discriminatory private schools "vio-

In 1969, the black community launched a boycott of local merchants to protest employment discrimination.<sup>18</sup> Effects of the boycott were quickly felt, but the white community remained intransigent. Any possible hope for moderation disappeared in 1971, when members of the United Citizens for Community Action (UCCA), an affiliate of the White Citizens' Council, gained control of the city council.<sup>19</sup> During this period there were some thirty-seven fires of suspicious origin and over 140 days of shooting. It appeared that the white community would suffer bankruptcy or even total annihilation of the town rather than try to come to terms with the black community.

It was during this period that the Lawyer's Committee opened an office in Cairo.<sup>20</sup> The Committee located itself in the library of the Lansden and Lansden law firm and quickly became a target for white hostility.<sup>21</sup> Nonetheless the Committee proceeded to funnel blacks' grievances into the federal courts, and both sides gradually stopped shooting and awaited the results.

#### *A. Protecting the Right to Protest*

On March 31, 1969, the Cairo United Front started its boycott of

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lates existing federal civil rights laws as expressed in the Constitution, Acts of Congress, and federal court interpretations thereof." Chicago Tribune, Feb. 3, 1982, § 1, at 3, col. 5.

<sup>18</sup> The boycott was organized by the Cairo United Front, under the leadership of the Reverend Charles Koen. The United Front's goal was to open up 88 jobs for blacks.

<sup>19</sup> The UCCA was the successor organization to the White Hats. See note 2 *supra*.

<sup>20</sup> In 1963, President Kennedy called a meeting at the White House to ask the legal profession to help secure civil rights for blacks. The response was the organization of the Lawyer's Committee; offices were opened in Jackson, Mississippi and later in various cities around the country. The Lawyer's Committee opened its Cairo office in 1969. Shortly after the office was opened it applied for and received federal funding from the Office of Economic Opportunity (OEO). In August 1972, the Cairo office was merged with other OEO funded legal services offices in downstate Illinois into the Land of Lincoln Legal Assistance Foundation.

The Cairo office was the only rural project ever attempted by the Lawyer's Committee. The large distance from any major metropolitan area and the relatively low salaries available to pay the lawyers have made it difficult to hire attorneys. Both before and after the merger with the Legal Assistance Foundation, therefore, the Cairo office relied heavily on support from Chicago attorneys.

Although the office had a general strategy to eliminate all forms of officially imposed discrimination in Cairo and to remedy private discrimination to the extent possible, it would be wrong to assume that the office followed any particular blueprint in filing cases. Most often lawsuits were filed in response to particularly egregious events or because of pressures from the client community to remedy matters of particular concern at the moment.

<sup>21</sup> On one occasion six sticks of dynamite were thrown into the office; fortunately, the fuse was defective. The office was a target for gunfire; a bullet fired into the office struck and dented a photocopier. In 1971, the UCCA organized a campaign to pressure the governor to halt OEO funding. This effort failed.

white merchants to end employment discrimination. In addition to the boycott, the Front regularly picketed business establishments along Commercial Avenue and held solidarity rallies and protest marches on Saturday afternoons. These activities were opposed by both city and state law enforcement authorities, as well as by local merchants.<sup>22</sup> It is not surprising, therefore, that the first suits filed by the Lawyer's Committee in Cairo were to secure the rights of blacks to air their grievances.

On September 11, 1969, Mayor Stenzel proclaimed that a civil emergency existed in Cairo and issued the following notice:

1. Effective immediately all gatherings of people of two or more individuals is prohibited.
2. It is further ordered that no person shall take part in or become a part of a parade or engage in picketing within the corporate limits of the City of Cairo.
3. No person shall loiter in and upon any public street within the corporate limits of the City of Cairo . . . .

Members of the Front were arrested and charged with violating this proclamation and two city ordinances barring peaceful picketing and assemblies in the city.<sup>23</sup> The Lawyer's Committee filed suit in United States District Court and secured a temporary restraining order<sup>24</sup> against the enforcement of these measures.<sup>25</sup>

During the week of September 29, 1969, Preston Ewing, Jr., an organizer for the Front, gave notice to the city and to state officials that a nonviolent parade would take place on October 4. The parade was to proceed from the Front headquarters to the business district on Commercial Avenue. Ewing informed state and city officials that the parade route would include a four block portion of Washington Avenue, a state highway. He was told that if the marchers either crossed or traveled on Washington Avenue they would be arrested.<sup>26</sup> The Front

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<sup>22</sup> On at least one occasion Cairo merchants went to Mississippi to talk with merchants about the possibility of filing a civil damage action against the boycotters. Such an action had resulted in an award of \$1.2 million to Mississippi merchants. *See* *Claiborne Hardware, Inc. v. NAACP*, 393 S.2d 1290 (Miss. Ch. Ct. 1976). Cairo merchants, however, never filed such an action.

<sup>23</sup> The first ordinance prohibited parades in Cairo without a permit from the Commissioner of Streets and Public Improvements. Cairo, Ill., Ordinance 511 (Aug. 12, 1963). The second ordinance authorized the mayor to declare a state of civil emergency and to issue various orders pursuant thereto. Cairo, Ill., Ordinance 601 (June 26, 1969).

<sup>24</sup> *Ewing v. City of Cairo*, Civ. No. 69-150-D (E.D. Ill. Sept. 18, 1969) (order temporarily restraining enforcement of the ordinances). On January 5, 1970, the court's order was made permanent.

<sup>25</sup> The court declared that the proclamation and ordinances violated the United States Constitution, and enjoined the city from proceeding with the prosecutions. *Id.* (E.D. Ill. Jan. 5, 1970) (order granting permanent injunction).

<sup>26</sup> State and city law enforcement authorities relied upon ILL. REV. STAT. ch.



decided to hold the march anyway. As the marchers approached Washington Avenue, they were met by all eighteen Cairo police officers and approximately 100 state troopers. When marchers ignored an order to disperse, troopers began chasing the demonstrators, many of whom were women and children. This free-for-all ended with the arrest of about twenty-five persons on charges of obstructing a public highway.<sup>27</sup>

Not deterred by this confrontation, the Front scheduled another march for the following week and notified city and state officials that they intended to use the same parade route as on October 4. The Lawyer's Committee filed suit in federal court to enjoin the prosecution of the October 4 marchers and to prevent official interference with future parades.<sup>28</sup> On the morning of the second march, both sides appeared before federal Judge William G. Juergens; the judge entered an order allowing the marchers to parade two abreast along the previously designated route.<sup>29</sup> The order further provided that "the police shall provide the same reasonable protections to the marchers in the future as they have in the past" and that plaintiffs should give written notice to the Cairo Police Department "at least three and one-half hours prior to the beginning time of said marches or parades."<sup>30</sup>

By agreement in 1971, the preliminary injunction entered in 1969 was made permanent with the modification that plaintiffs give twenty-four hours notice in advance of any march as required by Illinois statute,<sup>31</sup> instead of the three and one-half hour notice requirement of the 1969 order. On appeal, the Seventh Circuit held that the agreed order

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121, § 4-408 (1965) and ILL. ANN. STAT. ch. 38, § 85.1 (Smith-Hurd 1967). Section 4-408 authorized the State Department of Public Works to permit local government agencies to close traffic temporarily on portions of state highways. Section 85.1 prohibited marches or assemblies on any roadway without a permit. Notice of such a march had to be given to the proper law enforcement authorities at least 24 hours before the march was to begin. The section also limited the hours when such a march could take place.

The chief of police had told Ewing that he could have a permit, and indeed did have permission to march anywhere in the streets of Cairo so long as the marchers did not go onto the state highway.

<sup>27</sup> ILL. REV. STAT. ch. 95-1/2, § 197 (1965).

<sup>28</sup> *Koen v. Thomas*, Civ. No. 69-139 (E.D. Ill. Aug. 30, 1969). The suit asked that ILL. ANN. STAT. ch. 38, § 85.1 (Smith-Hurd 1967), ILL. REV. STAT. ch. 95-1/2, § 197 (1965), and *id.* ch. 121, § 4-408 be declared unconstitutional.

<sup>29</sup> *Koen v. Thomas*, Civ. No. 69-139 (E.D. Ill. Aug. 3, 1970). This order was telephoned to Cairo just as the marchers were about 1000 feet from Washington Avenue, where a contingent of about 150 state troopers and the entire Cairo police force awaited them. Another confrontation was averted.

<sup>30</sup> *Id.* After the order was hammered out, the city attorney expressed concern about returning to Cairo with a second order permitting blacks to demonstrate. It was therefore agreed that the order should end with a clause that it "should not be construed as a victory for any of the parties thereto." *Id.*

<sup>31</sup> ILL. REV. STAT. ch. 38, § 85.5 (1967).

was proper in all respects except that the district judge should have scheduled a hearing to determine the validity of the twenty-four hour notice requirement.<sup>32</sup> Finally, in December 1973, District Judge Henry S. Wise ruled that six hours notice would give the city sufficient time to provide protection to the marchers.<sup>33</sup> Neither side appealed this order.

Peaceful demonstrations in Cairo offered an effective alternative to violence.<sup>34</sup> Most disturbances occurred only when city or state officials tried to interfere with the demonstrators.<sup>35</sup> In fact, on more than one occasion, blacks peacefully picketed to end racial discrimination as members of the American Nazi party or other similar groups demonstrated in favor of white supremacy. The boycott and demonstrations, which continued for several years, drew broad attention to Cairo's racial injustices and provided an effective "safety-valve" to release racial

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<sup>32</sup> The court of appeals held that because of the important first amendment principles involved, the district court should have resolved the notice requirement only after a hearing. The court noted that "[a]s an appropriate starting point for the hearing, defendants should be prepared to demonstrate why the [three and one-half] hours' notice requirement of the temporary restraining order should be lengthened." Order, *Koen v. Thomas*, No. 72-1805 (7th Cir. Sept. 4, 1973).

<sup>33</sup> *Koen v. Thomas*, Civ. No. 69-139 (E.D. Ill. Dec. 31, 1973). The court did not find the Illinois 24-hour notice statute unconstitutional on its face, but only that it could not be applied constitutionally in Cairo. Once again Cairo was shown to be unique in relation to the rest of the state.

<sup>34</sup> Judge Wise's final order in December 1973 referred to testimony by Preston Ewing, Jr. that parades were conducted in Cairo not only to demonstrate racial injustices, but also to serve as a "safety-valve," or emotional release, for members of the black community when racial incidents created severe tension. *Id.* at 4. The court expressly recognized that a notice requirement of more than six hours could frustrate this latter purpose. *Id.*

Because most racial incidents in Cairo occurred at night, and because of the prohibitions against night marches in the court's previous order, Judge Wise recognized that a demonstration might not be allowed to take place under the 24-hour notice provision until two days after the incident. The judge concluded that six hours would give the authorities sufficient time to organize, but it would not be so long as to frustrate the purpose of the march, because it enabled marches to be conducted on the same day an incident occurred.

<sup>35</sup> On November 20, 1970, the Cairo City Council passed an ordinance requiring pickets to remain 10 feet apart, and further requiring that no more than two pickets be within a 20 foot radius of the entrance of any premises being picketed. The ordinance covered not only pickets, but also anyone else "stationed" or "posted" by a building to induce others not to enter, or to observe those who entered or patronized the same. Cairo, Ill. Ordinance 630 (Nov. 20, 1970).

On Saturday, December 5, 1970, about 30 peaceful pickets in Cairo's downtown area were arrested by approximately 10 police officers and 40 special deputies wearing helmets and carrying guns and night sticks. A shot was fired, and the police proceeded to club and beat the pickets. Twelve members of the Front, including some who had been merely observing the pickets, were arrested and held in the city jail. Police confiscated the cameras of reporters on the scene of the confrontation, and later refused to allow lawyers to see those arrested.

tension. More importantly, they provided a daily reminder to Cairo citizens that their city had not yet come to terms with its racial problems.

### *B. Enforcing the Law Against the Law Enforcers*

Between 1969 and 1972, shootings and arson were almost daily occurrences in Cairo. Violence and lawlessness<sup>36</sup> were not the exclusive province of private individuals—they permeated each and every aspect of the law enforcement and justice agencies in Cairo. Both the sheriff of Alexander County and the state's attorney were organizers of the White Hats.<sup>37</sup> In 1969, a special Illinois House Legislative Committee recommended that a special prosecutor be appointed to investigate the inability of Cairo officials to keep the peace.<sup>38</sup> In 1970, the Cairo Police Department was described in a special survey conducted by the International Association of Chiefs of Police as "ill-trained" and lacking in "the necessary leadership to accomplish its mission."<sup>39</sup> The report concluded that citizens had little faith in the department, and that members of the department were insensitive to the racial conditions confronting them.<sup>40</sup> In 1973, the United States Commission on Civil Rights recommended that the Illinois General Assembly pass legislation allowing state officials to take over local law enforcement functions in Cairo because local officials had failed to protect the rights of citizens.<sup>41</sup> None of these recommendations was adopted.

Not only did Cairo police officers fail to protect the rights of citizens,

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<sup>36</sup> Cairo's penchant for violence and lawlessness was not of recent origin. On November 11, 1909, William James, a black man, was lynched for the alleged murder of a young white woman. The sheriff of Alexander County had tried to protect James by taking him to a nearby town but a mob intercepted them, took James from the sheriff's custody, and brought James back to Cairo, where he was lynched. After hanging James the mob shot him, and dragged his body to the scene of the crime. A week later the Illinois Governor declared the office of Alexander County Sheriff vacant on the ground that the sheriff had not done all in his power to prevent the lynching. The Governor's action was taken pursuant to ILL. REV. STAT. ch. 38, § 25-2(b) (1965) under which the lynching of a person in custody is prima facie evidence of a sheriff's failure to perform his duty. The Governor's actions were affirmed by the Illinois Supreme Court in *People v. Nellis*, 249 Ill. 12, 94 N.E. 165 (1911).

In 1967, the national guard was called to Cairo as a result of disorders following the hanging of James Hunt. See note 2 *supra*.

<sup>37</sup> See note 2 *supra*.

<sup>38</sup> HOUSE REPORT 118, *supra* note 2, at 8.

<sup>39</sup> Field Operations Div., Internat'l Assoc. of Chiefs of Police, Survey of the Police Dept., Cairo, Illinois (Aug. 1970).

Under Cairo's commission form of government each city commissioner had exclusive authority over a specific city department. Thus an untrained city commissioner supervised the police department.

<sup>40</sup> *Id.* In late 1969 the city turned down a \$75,000 grant to improve police-community relations. See P. GOOD, *supra* note 17, at 26-35.

<sup>41</sup> U.S. COMM'N ON CIVIL RIGHTS, CAIRO, ILLINOIS: A SYMBOL OF RACIAL POLARIZATION (1973) [hereinafter cited as RACIAL POLARIZATION].

they engaged in many acts of police brutality.<sup>42</sup> There was also some evidence that they contributed to the nightly acts of violence which rocked the community. The angle of the over forty bullets fired into St. Columba's church and rectory, the headquarters of the Front, located directly across from the police station, indicated that they had been fired from the cupola at the top of the police station.<sup>43</sup>

In 1970, the state police were called to permanent duty in Cairo. From 50 to 150 state police officers were assigned to Cairo each week. Although the black community initially had respect for the state police, it was not long before the state police were perceived as an occupational army which supported the white power structure.<sup>44</sup> On January 21, and again on February 12, 1971, the state police, together with the city police department and the sheriff's office, conducted raids of Plymouth Court, the segregated, low-income housing project where thirty-five percent of Cairo's black population was housed. The officers, wearing riot-gear, surrounded the project while squads of officers broke down doors and conducted systematic searches of various apartments. The warrants under which the officers purported to act were later held legally insufficient by the county circuit court. The Lawyer's Committee subsequently filed a civil suit for damages against the officers. The state agreed to settle the case in 1975 by making awards and returning seized items to the plaintiffs.<sup>45</sup>

Racism permeated every level of the criminal justice system in Cairo.<sup>46</sup> One of the first activities of the Lawyer's Committee was to

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<sup>42</sup> Police brutality was alleged in both *Koen v. Thomas*, Civ. No. 69-139 (E.D. Ill. amended complaint filed Aug. 3, 1970) and *Whitfield v. Reineking*, Civ. No. 71-126-D (E.D. Ill. filed July 21, 1971). Whites, as well as blacks, were the victims of police brutality. See, e.g., *Joiner v. Cairo*, Civ. No. 78-2073-B (E.D. Ill. Aug. 24, 1978); *Harget v. Roach*, No. 73-6-23 (Cir. Ct. Alexander County, July 25, 1973).

<sup>43</sup> No charges were ever filed as a result of this or any other incidents of gunfire in Cairo against blacks or civil rights workers.

<sup>44</sup> The state police remained in Cairo through 1971. At that time the Illinois State Police had virtually no black officers.

When the author left Chicago in 1972 to drive to his new job with the Lawyer's Committee in Cairo, he was stopped on I-57 for a minor traffic violation just south of Champaign, Illinois and about 250 miles north of Cairo. The officer asked the author where he was moving and when he heard the name "Cairo" he began to curse the place, stating that he had been assigned there for several weeks the previous year.

<sup>45</sup> *Whitfield v. Reineking*, Civ. No. 71-126-D (E.D. Ill. filed July 21, 1971).

<sup>46</sup> In 1969, an independent public defender's office was established in Cairo under the auspices of the Illinois Defender Project, with funds from the Illinois Law Enforcement Commission. By giving those accused of crimes a vigorous defense, the office helped to change the one-sided approach to criminal justice that formerly had prevailed in the county. The office continued until 1975, when the influence of local officials succeeded in establishing a locally controlled defender program.

halt all jury trials in Alexander County until a jury list fairly representing the county's racial composition was compiled. This was the only important victory achieved in Cairo without extensive litigation. The first two trials conducted with blacks seated on the juries resulted in acquittals for the defendants. Although Cairo's mayor issued a statement condemning these results, and a local newspaper<sup>47</sup> printed the names of all the jurors in an article critical of them, the state's attorney was thereafter induced to dismiss a number of frivolous prosecutions.<sup>48</sup>

In July 1970, a suit was brought in federal court to attack the unequal administration of justice in Cairo.<sup>49</sup> The suit arose after a number of demonstrators were injured when a white man drove his truck into them. The state's attorney refused to allow the injured to sign a complaint against the driver, thus prompting the federal suit.

The complaint in *Littleton v. Berbling*<sup>50</sup> alleged that State's Attorney Peyton Berbling, was an organizer and officer of the White Hats, and that he had conducted his office so as to deny plaintiffs equal rights.<sup>51</sup> Specifically the complaint alleged that Berbling and his investigator willfully and maliciously refused to initiate criminal prosecutions against white persons upon the complaints of blacks, and listed seven instances involving the named plaintiffs to support this charge. The plaintiffs also asserted that Berbling prosecuted blacks for offenses no white person would ever be prosecuted for, and that he requested higher bonds<sup>52</sup> and sentences for blacks than for whites. The police commissioner and police chief were accused of harassing civil rights demonstrators by arresting them and charging them with crimes unwarranted by the facts. Two judges, Michael O'Shea and Dorothy Spomer, were accused of participating in unlawful measures aimed at discouraging the demonstrators, by illegally setting bail, by imposing heavier sentences against blacks, and by requiring blacks to pay the cost of jury trials.<sup>53</sup> The suit requested an injunction ordering the defendants to

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<sup>47</sup> The *Tri-State Informer*, a local newspaper sympathetic to the UCCA.

<sup>48</sup> More recently, Alexander County jurors have shown a reluctance to convict where there is evidence of police brutality. In 1977, Michael Joiner, a young white man, was charged with resisting a police officer. Evidence was presented that he had been beaten by the police and refused permission to talk to his attorney. A biracial jury found him not guilty. The city later agreed to pay him damages. *Joiner v. Cairo*, Civ. No. 78-2073-B (E.D. Ill. filed Aug. 24, 1978).

<sup>49</sup> *Littleton v. Berbling*, Civ. No. 70-103 (E.D. Ill. Mar. 23, 1971).

<sup>50</sup> *Id.*

<sup>51</sup> The complaint was premised on 42 U.S.C. § 1983 (1976).

<sup>52</sup> Even if criminal charges later are dismissed, Illinois law authorizes the clerk to keep 10% of the bail to cover administrative expenses. ILL. REV. STAT. ch. 38, § 110-7(f) (1965).

<sup>53</sup> The prosecutions against the civil rights demonstrators were similar to those used in the early 1960s to harass civil rights workers in the South. See Amsterdam, *Criminal Prosecution Affecting Federally Guaranteed Civil Rights: Fed-*

cease and desist from these illegal practices.<sup>54</sup>

The Illinois Attorney General filed a motion to dismiss on behalf of the judges, claiming they were immune from suit for their judicial acts. The state's attorney appeared through private counsel, and filed a similar motion, claiming that he was immune from suit and that the complaint failed to state a cause of action. The district court dismissed the complaints against Berbling, his investigator, and O'Shea and Spomer.

The Court of Appeals for the Seventh Circuit reversed the district court, holding that the defendants were not immune from suit, and that if, after trial, the allegations against the defendants were shown to be true, a proper order could be fashioned to correct the abuses.<sup>55</sup> The United States Supreme Court reversed; in a remarkable opinion the Court held that the plaintiffs' controversy was not ripe for adjudication.<sup>56</sup> The Court did not hold that the judges were immune from suit, but did note that equitable considerations would generally preclude any relief against them.<sup>57</sup> While the case was proceeding to the Supreme

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*eral Removal and Habeas Corpus Jurisdiction to Abort State Court Trial*, 113 U. PA. L. REV. 793 (1965).

<sup>54</sup> The suit also requested damages against Berbling and his investigator. The suit was filed prior to *Imbler v. Pachtman*, 424 U.S. 409 (1976), which established that prosecutors could not be sued for damages. No damages were sought against the judges because of the prior Supreme Court decision in *Pierson v. Ray*, 386 U.S. 547 (1967), holding judges immune from damages. See also *Stump v. Sparkman*, 435 U.S. 349 (1978) (judge will not be deprived of immunity because the action complained of was taken in error, was malicious, or was in excess of authority, but will be deprived of immunity when he or she has acted in the clear absence of all jurisdiction).

<sup>55</sup> *Littleton v. Berbling*, 468 F.2d 389 (7th Cir. 1972), *rev'd sub nom.* *O'Shea v. Littleton*, 414 U.S. 488 (1974).

<sup>56</sup> *O'Shea v. Littleton*, 414 U.S. 488 (1974). The court noted: "[A]ttempting to anticipate whether and when these respondents will be charged with crime and will be made to appear before either petitioner takes us into the area of speculation and conjecture." *Id.* at 497. Neither party had raised the ripeness issue before; Justice Douglas, in dissent, noted:

This is a more pervasive scheme for suppression of blacks and their civil rights than I have ever seen. It may not survive trial. But if this case does not present a "case or controversy" involving the named plaintiffs, then that concept has been so watered down as to be no longer recognizable. This will please the white superstructure, but it does violence to the conception of evenhanded justice envisioned by the Constitution.

*Id.* at 509 (Douglas, J., dissenting).

Of course, had the plaintiffs waited until actions were pending against them, they would have run squarely into *Younger v. Harris*, 401 U.S. 37 (1971) (federal courts will not enjoin pending state criminal prosecutions except under extraordinary circumstances where the danger of irreparable loss is both great and immediate).

<sup>57</sup> 414 U.S. at 499. The Court later held that judges in their enforcement capacity were proper defendants in suits for declaratory and injunctive relief. Supreme

Court, Peyton Berbling retired as state's attorney and was succeeded by W.C. Spomer.<sup>58</sup> The Supreme Court remanded the case against State's Attorney Spomer to the Seventh Circuit to determine whether the plaintiffs should be permitted to amend their complaint to include claims for relief against him, or whether the action was moot.<sup>59</sup>

The *Littleton* litigation can best be seen as a final cry of frustration by the black community. The plaintiffs had nowhere to turn; they viewed law enforcement authorities as part of a scheme to frustrate their rights.<sup>60</sup> Although the Illinois Attorney General has the duty to defend state officials who are sued in civil suits, he also has a duty to protect the civil rights of Illinois citizens.<sup>61</sup> *Littleton* demonstrated which duty he considered paramount. Not only did the state rush to the aid of the judges, but so did the Illinois Bar Association and the Illinois Judges Association. The defendants and their supporters pressed the

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Court v. Consumers Union, 446 U.S. 719 (1980). Cf. *Lyons v. City of Los Angeles*, 615 F.2d 1243 (9th Cir.), cert. denied, 449 U.S. 934 (1980) (plaintiff who sought to enjoin the city of Los Angeles and four police officers from pursuing policy of using strangleholds in non-life-threatening situations held to have stated a case or controversy within the jurisdiction of the federal courts).

<sup>58</sup> Spomer, Berbling's former law partner and the husband of Circuit Judge Dorothy Spomer, had been Cairo's corporation counsel in 1969. That year the House Investigating Committee had noted that it could appear to outsiders that Cairo was run by a small, closed group of prosperous whites who were closely related by blood and business ties. HOUSE REPORT 118, *supra* note 2. While the committee stated that the situation was not unusual for a small town and that there was no conflict of interest in the technical sense, it did give the appearance to blacks of a solid white wall of authority unsympathetic to their problems. *Id.*

<sup>59</sup> *Spomer v. Littleton*, 414 U.S. 514 (1974). On remand, the plaintiffs informed the court of appeals that they did not wish to name State's Attorney Spomer as an additional party because he did not appear to be continuing the practices alleged against his predecessor. The injunctive claim against the state's attorney was therefore dismissed. *Spomer v. Littleton*, Civ. No. 71-1395 (7th Cir. Jan. 29, 1975) (order dismissing claim).

<sup>60</sup> Supreme Court dicta noting that plaintiffs had remedies other than injunctive relief did not comport with reality. State and federal officials showed a remarkable indifference to the problems in Cairo, and when they did intervene it was generally to the detriment to Cairo's blacks. See RACIAL POLARIZATION, *supra* note 41. The change of venue "remedy" discussed by the Court, *O'Shea v. Littleton*, 414 U.S. at 502, would not have solved the problems associated with defending wrongful prosecutions and having to post bond to secure one's freedom while the case was pending. See note 52 and accompanying text *supra*.

<sup>61</sup> ILL. REV. STAT. ch. 14, § 9 (1965) creates a civil rights division in the Illinois Attorney General's office. The Attorney General is charged with preventing discrimination and investigating civil rights violations, and is further authorized to take all steps necessary to enforce Illinois civil rights laws. *Id.* It is a criminal offense, as well as grounds for removal from office, for any Illinois official to deny or refuse any person equal services because of his race. *Id.* ch. 38, § 13(2) (d). This provision imposes a duty on the Attorney General to investigate and prosecute those who violate the statute.

broadest argument—that state judges are immune from federal injunctions even if they violate federal civil rights laws.<sup>62</sup> The fact that Cairo's black citizens were not getting a "fair shake" out of the justice system did not matter.

Although the plaintiffs lost in the Supreme Court, the *Littleton* litigation was not without its effect in Cairo. It certainly raised the consciousness of the defendants and their successors in office, and at least while the suit was pending, and in its immediate aftermath, justice was administered more even-handedly. But the long range impact of the litigation is more difficult to assess. If similar abuses take place in the future, the Supreme Court's opinion will make it extremely difficult, if not virtually impossible, for the victims of such misconduct to get relief from the federal courts.<sup>63</sup>

Cairo exemplified a social structure in which racism and lawlessness permeated every institution, including law enforcement and justice. Yet the victims of this system have been left without a systematic way to deal with the problem should it recur, other than to defend individual criminal prosecutions and now and then to file a police brutality suit.<sup>64</sup>

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<sup>62</sup> Indeed, the attorneys representing the defendants were so intent on establishing a broad precedent that during oral argument before the Supreme Court, the attorney representing W.C. Spomer, fearing the Court might find the action moot, asserted that his client would follow the same illegal practices alleged against his predecessor. Even the Court found this assertion "somewhat extraordinary" and stated in its opinion that it would consider only those assertions pressed by the plaintiffs. *Spomer v. Littleton*, 414 U.S. 514, 522 n.10 (1974).

<sup>63</sup> Furthermore, any attorney who decides to sue a judge in the Illinois courts does so at his own risk. After the Supreme Court decided *Littleton*, the public defender for Alexander County, in the course of representing a client, filed suit against the circuit judge in state court. The suit claimed the judge had illegally denied the client bail. The attorney was cited for contempt, and although the contempt citation was initially reversed by the Illinois Appellate Court, *People ex rel Kunce v. Hogan*, 37 Ill. App. 3d 673, 346 N.E.2d 456 (5th Dist. 1976), the Illinois Supreme Court reinstated it on the ground that suing a judge on the basis of a proceeding still pending before him is contemptuous per se. *People ex rel Kunce v. Hogan*, 67 Ill. 2d 55, 364 N.E.2d 50 (1977), cert. denied, 434 U.S. 1023 (1978).

<sup>64</sup> Remedies are available today that were not available at the time of the Supreme Court's decision in *Littleton*. Municipalities are no longer immune from suit under 42 U.S.C. § 1983 (1976). *Owen v. City of Independence*, 446 U.S. 993 (1980); *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658 (1978). The City of Cairo recently was unsuccessful in its motion to have the city dismissed as a defendant in a police brutality case, *Joiner v. City of Cairo*, Civ. No. 78-2073-B (E.D. Ill. Sept. 26, 1979), and ended up settling with the plaintiff. However, the requirement imposed by the United States Supreme Court that the civil rights deprivation result from official policies or customs of the city still makes recovery difficult. See Seng, *Municipal Liability for Police Misconduct*, 51 *Mrss. L.J.* 1 (1980). In its 1973 Cairo report, the U.S. Commission for Civil Rights had recommended that Congress abrogate municipal immunity under 42



So long as effective legal remedies were available, blacks in Cairo were willing to defer to them, but the Cairo experience also indicates that persons will not suffer abuse indefinitely, and that if effective legal remedies are not available, they will vent their frustration in less socially desirable ways.

### C. *Securing Equal Employment*

It is idle to argue whether Cairo's racial problems stemmed from its economic problems or whether its economic problems stemmed from its racial problems. The two were inseparable and each aggravated the other. Neither could be solved in isolation; in toto, however, the problems were too immense for any local agency to deal with. Civil rights litigation helped to provide blacks with equal access to a few jobs in the community, but in itself litigation cannot reverse the economic stagnation that has plagued the community throughout most of its existence.<sup>65</sup>

In 1970, Cairo ranked first in poverty in Illinois. Some thirty percent of its population received welfare assistance.<sup>66</sup> At least in part as a result of longstanding discrimination in the community, blacks continue

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U.S.C. § 1983. RACIAL POLARIZATION, *supra* note 41, at 18.

New provisions in Illinois law may provide additional remedies against public officers who practice racial discrimination. The Illinois Human Rights Act, ILL. ANN. STAT. ch. 68, §§ 1-101-9 to -102 (Smith-Hurd 1980), gives the Human Rights Commission authority over state and local government officials who deny persons "the full and equal enjoyment of the accommodations, advantages, facilities or privileges of the Official's office or services or of any property under the official's care because of unlawful discrimination." *Id.* § 5-102(C). Upon proof of a violation by a preponderance of the evidence, the commission may award affirmative relief as well as damages, *id.* § 8-108, and may recommend that public officials be disciplined or discharged, *id.* § 8-109. It is too early to predict whether this statute will be enforced strictly, but Illinois' past record does not give much cause for optimism.

<sup>65</sup> For at least the past 30 years, Cairo has faced a declining population. It has little industry and virtually no growing businesses. The E.L. Bruce Company, the last large manufacturer of hardwood flooring, closed its doors in Cairo in February 1971. The Burkhart Company, which makes seat padding, is the largest employer in Cairo. The number of its employees fluctuates, however, and many of its employees live in the surrounding states.

The prospect for better employment in the future does not look encouraging. Cairo needs more unskilled jobs in the private sector, and these do not appear to be forthcoming. In 1976, city fathers heralded a bright future when Bunge Corporation located a large grain elevator complex in Cairo. The project occupies much of the limited waterfront property in the city. However, the plant as constructed is fully automated and the people of Cairo have received virtually no jobs in return.

Economic growth in a city such as Cairo can be measured only by the number of jobs created for local residents. Until Cairo officials recognize that economic progress must benefit the entire community, neither Cairo's economic status, nor the status of Cairo's black community, is likely to improve.

<sup>66</sup> RACIAL POLARIZATION, *supra* note 41, at 6.

to be disproportionately represented on the welfare rolls. The white community's resentment over this contributes to racial antagonism.<sup>67</sup> A large number of poor whites, many from the bordering states, compete with blacks for the few jobs available in Cairo, and this further contributes to racial strife.<sup>68</sup> The 1969 Illinois House reported that "[t]he atmosphere in which black children grow up in Cairo is one of dependency and hopelessness."<sup>69</sup> As with so many small communities, the ablest of Cairo's young citizens grow up, graduate from school, and move away.

The boycott begun by the Cairo United Front identified equal employment as its major objective.<sup>70</sup> The Lawyer's Committee and its successor Legal Assistance Foundation<sup>71</sup> had a constant caseload of employment discrimination charges before the Illinois Fair Employment Practices Commission (F.E.P.C.),<sup>72</sup> the Equal Employment Opportunity Commission (E.E.O.C.), and the courts. Gradually blacks gained employment in the banks and offices about town. Because most businesses in town are small, owner-operated enterprises with few employees, however, downtown Cairo is still virtually all-white.

In 1969, employment discrimination suits were filed against the Alexander County Housing Authority<sup>73</sup> and the Cairo Public Utility Commission.<sup>74</sup> The Alexander County Housing Authority operated public housing in the county on a segregated basis.<sup>75</sup> When suit was filed, only three of the Authority's seventeen employees were black. One of these blacks, Brady Buckley, served as a management aid for Pyramid Court, the all-black family project, and for Butler Homes, an all-black project for the elderly, but he had no authority in any of the white projects. The other two black employees served as custodians. The suit against the Housing Authority was settled in 1974. At that time, five of the Authority's sixteen employees were black. It was agreed that a black person would be hired to fill the position of Leasing and Occupancy Clerk, that Brady Buckley would be given expanded administra-

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<sup>67</sup> See HOUSE REPORT 118, *supra* note 2.

<sup>68</sup> See *id.*

<sup>69</sup> *Id.*

<sup>70</sup> See text accompanying note 22 *supra*.

<sup>71</sup> See note 20 *supra*.

<sup>72</sup> The FEPC has been succeeded by the Illinois Human Rights Commission. See note 64 *supra*.

<sup>73</sup> Amended Complaint, *Young v. Alexander County Hous. Auth.* Civ. No. 69-157 (E.D. Ill. filed May 11, 1970).

<sup>74</sup> Amended Verified Complaint, *Hollis v. Emerson*, Civ. No. 69-146 (E.D. Ill. filed Jan. 23, 1970).

<sup>75</sup> See text accompanying notes 95-96 *infra*.

<sup>76</sup> Consent Order, *Young v. Alexander County Hous. Auth.* Civ. No. 69-157 (E.D. Ill. Oct. 17, 1974). The order also provided for the projects to be integrated, and for the appointment of blacks to the Housing Commission.

tive responsibilities, and that black workers would be considered in the future as supervisory employees.<sup>76</sup>

After the consent decree was entered, the Federal Department of Housing and Urban Development (H.U.D.) provided funds to the Housing Authority to modernize its two formerly segregated multi-family projects. The Authority proceeded to award contracts without consideration of any employment opportunities for the tenants. The tenants of Pyramid Court refused to allow the contractor into the project until representatives from H.U.D. came to Paducah, Kentucky, to meet with the tenants, the Housing Authority, and the contractor. The parties agreed that tenants would be given priority in hiring. As a result, a number of tenants were admitted into the local construction unions and had employment at least during the period that the modernization work continued. The tenants also organized a not-for-profit construction company and subcontracted to do some of the modernization work.

The Cairo Public Utility Commission was a municipally owned utility. In 1969, the Commission employed approximately twenty-five persons; all were white except one man who worked as a groundskeeper. Many of the Commission's employees were skilled workers hired through union apprentice programs. The office workers were required to pass an unvalidated pre-employment test. Most of the Commission's employees had been employed by it for more than twenty years, and turnover was rare. However, by 1976, the Commission had hired three blacks. A consent decree entered that year provided that the next office employee hired would be black, and that thereafter one of the next two office employees hired would also be black.<sup>77</sup> The Commission abandoned its pre-employment test and agreed actively to recruit a black to fill an existing vacancy for an apprentice operator in the sewage plant.<sup>78</sup>

The police department was the city agency most visible to blacks, and also the agency that caused the most friction with the black community. In 1969, the department was criticized by the International Association of Police Chiefs for its insensitivity to the black community.<sup>79</sup> In 1970, two of the city's three black officers resigned because of the adverse conditions for blacks on the force.<sup>80</sup>

Police officers were appointed by a three person Board of Fire and Police Commissioners. In May 1969, Julius Oats, a black, filed an application with the Board to take the police examination. He passed both

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<sup>77</sup> Consent Order, *Hollis v. Emerson*, Civ. No. 69-146 (E.D. Ill. Feb. 10, 1976). The order also provided for the appointment of a black to the Cairo Public Utility Commission.

<sup>78</sup> *See id.*

<sup>79</sup> *See* notes 39-40 and accompanying text *supra*.

<sup>80</sup> *See* P. Good, *supra* note 17, at 31.

the oral and written examinations and was placed on the eligibility list. In August 1969, he was informed that his name was being removed from the eligibility list because an F.B.I. check had revealed that he was once charged with being a deserter from the United States Army, and that a disorderly conduct charge had been filed against him in 1968 in Chicago. Oats had not been convicted of either offense.<sup>81</sup>

The Lawyer's Committee filed charges of racial discrimination on his behalf before the Illinois F.E.P.C. A hearing examiner recommended the complaint be dismissed, but the Commission reversed and ordered the city to offer Oats employment and to pay him back wages. The city filed a complaint for administrative review before the Circuit Court of Alexander County, and that court reversed the Commission because there was no evidence that the city used a different standard for blacks than for whites. Oats and the F.E.P.C. appealed to the Illinois Appellate Court, which reversed the circuit court in 1974.<sup>82</sup> The appellate court held that the city's policy of excluding persons from employment because of their arrest records constituted illegal race discrimination regardless of the city's lack of a discriminatory motive or the evenness of application of the policy. The court relied on E.E.O.C. rulings and F.B.I. statistics in concluding that arrest record hiring criteria have an inherently discriminatory impact upon black job applicants. The city filed a motion for rehearing, but before the court ruled on the motion, the city agreed to pay Oats \$12,500 to cover his back pay.<sup>83</sup>

In 1973, the city had approximately 130 employees, but only twelve were black, and of these, ten were street or garbage workers. About ninety-six percent of the city's payroll and annual expenses went to whites, and only four percent to blacks.<sup>84</sup> The police department had seventeen officers, of whom two were black. The city had thirteen firefighters, but it had never hired a black in the fire department.<sup>85</sup> Prompted by the United States Commission on Civil Rights,<sup>86</sup> the E.E.O.C. launched an investigation of Cairo's employment practices in 1973. In 1974, it returned charges against the city,<sup>87</sup> and an attempt at conciliation was commenced. In December 1975, a number of Cairo

<sup>81</sup> Indeed it was revealed later that the Army had routinely charged Oats with desertion when they more properly should have charged him with being absent without leave; the Army discharged Oats "under honorable circumstances."

<sup>82</sup> *City of Cairo v. Fair Employment Practices Comm'n*, 21 Ill. App. 3d 358, 315 N.E.2d 344 (5th Dist. 1974).

<sup>83</sup> At that time Oats no longer desired employment as a Cairo police officer.

<sup>84</sup> ILLINOIS ADV. COMM. TO U.S. CIVIL RIGHTS COMM'N, *A DECADE OF WAITING IN CAIRO* 9 (1975) [hereinafter cited as *A DECADE OF WAITING*].

<sup>85</sup> In 1971, the city had turned down a Department of Labor grant of \$137,000 under a program, called "Public Service Careers," designed to train and upgrade city employees. See P. GOOD, *supra* note 17, at 67.

<sup>86</sup> RACIAL POLARIZATION, *supra* note 41, at 24.

<sup>87</sup> E.E.O.C. Charge No. TCH4C-0241.

blacks, fearing that the E.E.O.C. was not effectively representing their interests, asked for permission to intervene in the conciliation process. This petition was never acted upon. In February 1976, the city agreed to maintain a seventeen percent black workforce. The fire department would employ two blacks and the police department three.<sup>88</sup>

The lawsuits and economic pressures brought to bear on the white community by blacks did produce some jobs for Cairo's black citizens. In 1972, most public offices in the area were still white.<sup>89</sup> Under pressure, such agencies as Public Aid, the Department of Children and Family Services, and the Mental Health Department added blacks to their staffs, thus increasing their credibility in the black community. Although litigation helped to change the all-white complexion of many offices, each case took years to complete, and even then the gains were only modest. An equal employment strategy can succeed only if jobs themselves exist, and in Cairo there were simply not enough jobs to go around.<sup>90</sup>

#### *D. Facilitating Fair Housing*

Perhaps the most outwardly depressing aspect of Cairo is its housing. Despite a few postbellum mansions and some magnificent old magnolia trees, the town in 1970 had the appearance of utter neglect and decay. At least one-half of Cairo's housing was substandard and in need of major repair.<sup>91</sup> Nearly every block of the city contained one or more abandoned buildings—although it was sometimes difficult to differentiate which buildings were abandoned and which ones were still being used to house families. Unpainted and unheated frame houses with broken porches, windows, and doors were the rule and not the exception in Cairo.

Between 1960 and 1972, fewer than a dozen new homes were constructed in Cairo. During hearings before the Civil Rights Commission in 1972, then Mayor Walder testified that the city had no plans for improving the housing situation.<sup>92</sup> Not only did Cairo officials have no

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<sup>88</sup> The 17% figure accepted by the E.E.O.C. did not accord with the city's population, which was 38% black, or the county's population, which was 28% black. The E.E.O.C. apparently accepted 17% as representative of the black workforce in the county.

The city previously had employed three black police officers in 1970, so there was no real net gain in that department.

<sup>89</sup> See P. GOOD, *supra* note 17, at 66.

<sup>90</sup> The limited usefulness of existing employment discrimination laws is discussed in D. BELL, *RACE, RACISM AND AMERICAN LAW* 589-665 (2d ed. 1980).

<sup>91</sup> A DECADE OF WAITING, *supra* note 84, at 18. Cairo ranked second in Illinois in substandard housing units.

<sup>92</sup> In the mid-1970s, Cairo did receive some funding to demolish some of the abandoned buildings in the city. While the program helped to improve the appearance of the town, it did nothing to improve the substandard housing in which persons actually lived.

plans for improvement, they actually tried to block efforts to alleviate the shortage of decent homes in the city.

In 1969, the State of Illinois made \$5 million available to build new housing in Cairo, and the biracial, not-for-profit Egyptian Housing Development Corporation was formed to implement the project. Van Ewing, the director of this corporation, appeared before the City Council on numerous occasions to ask the city to sell land on which the group could build houses; each time the city refused.<sup>93</sup> The corporation was able, however, to purchase other land, and between 1972 and 1976, constructed nearly 160 sorely needed homes for low-income Cairo residents.<sup>94</sup>

Apart from a few exceptional older homes and the houses later constructed by the Egyptian Housing Development Corporation, the best housing in Cairo for low-income persons was the public housing administered by the County Housing Authority. Cairo had two large multi-family projects which had been built in the 1940s and several smaller projects built for elderly persons. When the family projects were built in the 1940s, the federal government directed that they be segregated and specified different standards of quality for the white and black projects.<sup>95</sup> Pyramid Court, the black project, had approximately 237 units, and Elmwood Place, the white project, had 159. The Authority continued to operate these projects on a segregated basis even after H.U.D. changed its policies in 1966 to specifically forbid segregation in public housing. Neither H.U.D. nor the State of Illinois, whose laws also forbade segregated public housing, intervened.<sup>96</sup>

In 1969, the Lawyer's Committee filed suit against the Authority to end segregation in its various projects.<sup>97</sup> Four years later, the Justice

<sup>93</sup> The city opposed the project, at least in part, because it was supported by the United Front. See P. GOOD, *supra* note 17, at 62; A DECADE OF WAITING, *supra* note 84, at 18.

The project provided not only homes, but also badly needed employment for area craftsmen and laborers. It was projected that the new housing would result in more than \$37,500 in new property taxes every year and that the building program would circulate about \$9,840,000 in new money throughout the local economy.

<sup>94</sup> The homes were financed through long-term mortgages made available by the Farmer's Home Administration.

<sup>95</sup> It was ironic that public housing was segregated although most private neighborhoods were not completely segregated. See A DECADE OF WAITING, *supra* note 84, at 17.

<sup>96</sup> In 1973, the U.S. Commission for Civil Rights severely castigated H.U.D. for failing to take any steps to compel the Authority to comply with federal fair housing laws and regulations. RACIAL POLARIZATION, *supra* note 41, at 25.

<sup>97</sup> Amended Complaint, *Young v. Alexander County Hous. Auth.*, Civ. No. 69-157 (E.D. Ill. filed May 11, 1970). The suit also asked that the Authority be required to hire blacks, that blacks be appointed to the five member Authority, and that the Authority modify some of its admissions policies.

Department filed its own suit to end the segregation.<sup>98</sup> The two suits were consolidated and a consent decree entered in October 1974.<sup>99</sup> The decree forbade the Authority from segregating tenants on the basis of race and required it to take some modest steps to integrate the projects.<sup>100</sup> Tenants were permitted to apply for a transfer to a project where their race did not predominate. New applicants were placed in projects where their race did not predominate, and if they refused, lost their place on, and were moved to the end of, the waiting list. Elmwood Place was to be considered integrated when it had thirty-nine black tenants, and Pyramid Court when it had seventy-one white tenants.<sup>101</sup> Elmwood Place was integrated quickly and without incident; today it appears to be a stable biracial community. At one time after the order was signed, as many as ten white families resided in Pyramid Court; today, however, only a handful remain.<sup>102</sup>

The consent decree ended the Authority's official policy of segrega-

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<sup>98</sup> Complaint, *United States v. Alexander County Hous. Auth.*, Civ. No. CV-73-76D (E.D. Ill. filed Nov. 14, 1973).

<sup>99</sup> Consent Decree, *United States v. Alexander County Hous. Auth.*, Civ. No. CV-73-76D (E.D. Ill. Oct. 17, 1974).

<sup>100</sup> *Id.*

In a separate consent decree of the same date, the Authority agreed with the plaintiffs in the *Young* case to adopt various amendments to its admission policies. Applicants were to receive written notice of their eligibility for housing and were to be informed of their right to a hearing if they were found ineligible. A point system was created to determine the priority of persons on the Authority's waiting list. *Id.* This decree did not end disputes over the Authority's admission procedures, however, and in 1978 the Legal Assistance Foundation again sued the Authority. Amended Complaint, *Ayers v. Shumaker*, Civ. No. 78-2028B (E.D. Ill. filed June 11, 1979). A consent decree issued in that case specified even more detailed procedures to be used by the Authority in considering the applications of prospective tenants. Consent Decree, *Ayers v. Shumaker*, Civ. No. 78-2028B (E.D. Ill. Aug. 21, 1980).

<sup>101</sup> The Authority's affirmative obligations were to cease when the requisite number of minority tenants was reached in each of the projects, or in two years, whichever came first. The Legal Assistance Foundation had suggested that the order would be more effective if a HUD representative was assigned to Cairo to help implement the order and to explain it to the residents. It was felt that this would placate local fears better than the system of written notices specified in the order. The Legal Assistance Foundation also suggested that the 50 vacant units in Pyramid Court be rehabilitated immediately so that a block of white families could be moved at once, rather than one at a time. These suggestions were not accepted by the Justice Department.

<sup>102</sup> Because Pyramid Court was the scene of many racial confrontations between 1969 and 1972, black and white families alike expressed reluctance to live there. Shortly after the first white families moved into Pyramid Court, there were several incidents in which all of the project's street lights were shot out.

At the expiration of the two-year period during which the Authority had an affirmative obligation to integrate the housing projects, the Legal Assistance Foundation, on behalf of the private plaintiffs in *Young*, asked that the order be extended to allow more time to integrate Pyramid Court. The Justice Department

tion on the basis of race. The effects of this policy had been more than merely symbolic. The projects had not been maintained equally and city services, especially police protection, had not been provided equally to the area in which Pyramid Court was located. Hence the integration order had the effect of directly raising the standard of living for many black Cairo families.

Most importantly, the consent decree induced H.U.D. to grant the Authority modernization funds to be used for badly needed repairs in Pyramid Court and Elmwood Place, and for additional improvements to Pyramid Court to make that project comparable to Elmwood Place. However, the modernization program also opened up new areas of dispute between the tenants and the Authority. The tenants had formed a union and under H.U.D. guidelines the Authority was to consult with the union on all phases of the modernization program. This the Authority refused to do until the tenants of Pyramid Court blocked construction and forced H.U.D. to call a meeting between all concerned parties to negotiate an agreement. After negotiation, the Authority agreed to consult with the tenants on all policy questions and an affirmative action program was adopted to give hiring preference to tenants for work done in the projects.<sup>103</sup>

The most serious problem to arise from the modernization work concerned the future of the almost fifty units in Pyramid Court that the Authority had allowed to sit vacant and which now were wholly uninhabitable. The Authority wanted to tear down eight buildings in Pyramid Court to alleviate overcrowding and to provide parking and recreational space for the project's residents. The tenants objected. Because of the severe shortage of low income housing and the long waiting list for public housing the tenants wished that the units be rehabilitated to serve additional families. The Authority threatened to cease modernization work and return the remaining funds to H.U.D. unless some buildings were torn down to reduce the density of the project.<sup>104</sup> H.U.D. refused to intervene and eventually a compromise was reached under which all but four Pyramid Court buildings were refurbished.<sup>105</sup>

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refused to join the private plaintiffs in this request and the order was allowed to expire.

<sup>103</sup> See notes 73 & 75-76 and accompanying text *supra*.

<sup>104</sup> Because the 50 vacant units were uninhabitable as they existed, if the modernization work had been stopped, no new units would have been made available for those on the waiting list. Further, in light of the past history of local officials turning down federal funds, *see, e.g.*, notes 40 & 83 *supra*, it was conceivable that the Authority would refuse funds to refurbish the projects.

<sup>105</sup> The United Front vehemently objected to this compromise and hired its own attorney to file suit in federal court to block the demolition. *Chairs v. Alexander County Hous. Auth.*, Civ. No. CV-77-2048B (E.D. Ill. filed June 1, 1977). Their request for an injunction was denied, and the project refurbishment eventually was completed according to the compromise terms.



Especially since 1974, public housing matters have occupied a disproportionate amount of time for legal services attorneys in Cairo. Federal programs appear to be the only answer to Cairo's shortage of low-income housing. The Lawyer's Committee and the Legal Assistance Foundation tried to force those programs to conform to federal constitutional and statutory requirements. Litigation solved some problems, but the day-to-day monitoring of the system is never-ending. Efforts to fully untangle the maze of conflicting policies operating on the local and national levels, and housing problems, will no doubt continue to vex local attorneys for the immediate future.

### *E. Ensuring Political Representation*

Before the 1970s, blacks were noticeably under-represented in Cairo's political process. Although they made up approximately forty percent of the population, few blacks had been appointed to city and county boards and commissions,<sup>106</sup> and no black had ever been elected to a city office. Complete discretion in appointing board and commission representatives was, in part, responsible for the disproportionate representation. Cairo's commission form of government, with city commissioners elected at-large, was also responsible. Four suits, filed between 1969 and 1973, helped ensure greater black representation in the political process.

In *Hollis v. Emerson*,<sup>107</sup> and *Young v. Alexander County Housing Authority*,<sup>108</sup> both filed in 1969, the Lawyer's Committee requested the district court to order the appointment of blacks to the Utilities Commission and Housing Authority in numbers proportionate to the percentage of blacks in the population. *Ewing v. Walder*,<sup>109</sup> filed in 1972, made a similar request respecting all remaining city and county boards and commissions.

When the agreement to integrate the housing projects was reached in 1974,<sup>110</sup> the attorney for the county agreed to a stipulation of fact on the appointments count.<sup>111</sup> Plaintiffs' attorney submitted a proposed

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<sup>106</sup> In 1969, an Illinois House of Representatives Special Committee recommended that blacks be appointed to city and county boards and commissions. HOUSE REPORT 118, *supra* note 2, at 9. The United States Commission on Civil Rights made a similar recommendation in 1973. RACIAL POLARIZATION, *supra* note 41, at 22.

<sup>107</sup> Consent Order, *Hollis v. Emerson*, Civ. No. 69-146 (E.D. Ill. Feb. 10, 1976).

<sup>108</sup> Consent Order, *Young v. Alexander County Hous. Auth.*, Civ. No. 69-157 (E.D. Ill. Oct. 17, 1974).

<sup>109</sup> Consent Order, *Ewing v. Walder*, Civ. No. 72-119-D (E.D. Ill. Sept. 2, 1975).

<sup>110</sup> See notes 97-100 and accompanying text *supra*.

<sup>111</sup> The attorneys stipulated that blacks made up 38% of the Cairo population and 28% of the Alexander County population, and that blacks made up

order to the district judge, who entered the order in October 1974.<sup>112</sup> The order provided that the chairman of the Alexander County Board and his successors in office would appoint and maintain a Housing Authority with at least two black members.<sup>113</sup> The order also provided that notice of all vacancies on the Authority would be publicized at least forty-five days in advance and that interested persons could submit names of possible appointees.

The ice was now broken and in August 1975, the county agreed to settle *Ewing v. Walder*. The chairman of the County Board agreed in a consent order that he and his successors would appoint a specified number of blacks to each county commission.<sup>114</sup> The county also agreed to public notice of vacancies so that interested persons could submit their names for consideration.

The city initially refused to discuss a similar resolution until the *Ewing* case was set for trial on September 2, 1975. The city then agreed to a decree requiring appointment of a specified number of blacks to city boards and commissions.<sup>115</sup>

*Hollis v. Emerson* was resolved in February 1976. The city agreed to an order that required the appointment of a black to the four member Public Utilities Commission and provided that all future appointments would be made so that at least one member of the commission was black.<sup>116</sup>

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62% of the public housing population, occupying 52% of the public housing units. The attorneys also stipulated that until 1972 no black person had ever been appointed to the five member Housing Authority, although the percentage of blacks who were qualified and willing to serve on the Authority mirrored their representation in the community.

<sup>112</sup> Consent Order, *United States v. Alexander County Hous. Auth.*, Civ. No. CV 73-76D (E.D. Ill. Oct. 17, 1974).

<sup>113</sup> *Id.* See also notes 97-102 and accompanying text *supra*.

<sup>114</sup> The order required the appointment of one black to the five member County Building Commission, four blacks to the ten member County Welfare Commission, two blacks to the five member County Land Commission, one black to the four member County Health Department, and one black to the five member Airport Commission. Consent Order, *Ewing v. Walder*, Civ. No. 72-119-D (E.D. Ill. Aug. 13, 1975) (order settling the case only as to Alexander County).

<sup>115</sup> The city agreed to appoint at least two blacks to the nine member library board, one black to the five member Police Pension Board, one black to the three member Board of Fire and Police Commissioners, and three blacks to the seven member Board of Zoning Appeals. Consent Order, *Ewing v. Walder*, Civ. No. 72-119-D (E.D. Ill. Sept. 2, 1975).

Unlike the order against the county, which provided that blacks would be appointed when the next vacancy occurred, the city promised to make all appointments within 30 days. Also unlike the order against the county, which bound the present county board and its successors, the order against the city was binding only until the next city election in April 1979. The district court retained jurisdiction over the case, noting that if future mayors and city councils failed to appoint blacks in accordance with the order the matter would be advanced for trial.

<sup>116</sup> Consent Order, *Hollis v. Emerson*, Civ. No. 69-146 (E.D. Ill. Feb. 10, 1976).

While these orders do not assure blacks a controlling vote on any of the boards or commissions, they do provide blacks with a voice to help shape future city and county policies.<sup>117</sup> The local newspaper praised both the city and the county for compromising and for making new advances to achieve racial harmony in the community.<sup>118</sup>

On November 5, 1973, six blacks, represented by the Legal Assistance Foundation, filed the suit of *Kendrick v. Walder*<sup>119</sup> which sought a declaration that the commission form of government in Cairo was unconstitutional. Under this system, adopted in 1913,<sup>120</sup> five city commissioners, each in charge of a specific city department, were elected at-large. Before the commission form of government was adopted, blacks had been elected to the City Council;<sup>121</sup> since 1913,<sup>122</sup> however, no black had been able to win an election to city office.<sup>123</sup>

The complaint in *Kendrick v. Walder* alleged that Cairo was a racially polarized community and that under the at-large system of electing public officials Cairo's blacks were effectively fenced out of the political process.<sup>124</sup> The complaint detailed the history of segregation and racial antagonism in the community. The plaintiffs asserted that black candidates and voters had been unable to form political coalitions with white candidates and voters, that black residents of Cairo shared a com-

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<sup>117</sup> In his memoirs, Justice William O. Douglas expressed strong support for black representation on local school boards. He noted that the school desegregation decrees approved by the Supreme Court were almost always administered by all-white school boards, and stated that the Court should have directed lower federal courts to approve only those school plans submitted by integrated school boards. W. DOUGLAS, *THE COURT YEARS, 1939-1975*, at 149-50 (1980).

<sup>118</sup> *A Step Forward*, Cairo Evening Citizen, Sept. 9, 1975, at 2, col. 1. The newspaper queried why the national media did not cover Cairo when it took a "step forward" by settling the lawsuit, when the national media had given extensive coverage to the racial strife in Cairo.

<sup>119</sup> 527 F.2d 44 (7th Cir. 1975).

<sup>120</sup> The commission form of government is authorized by Illinois law. ILL. REV. STAT. ch. 24, §§ 4-3-2 to -5 (1965).

<sup>121</sup> From 1885 to 1901, there was always at least one black city councilman. J. LANSDEN, *supra* note 9.

<sup>122</sup> When the commission form of government was adopted in 1913, local political and press support was premised on the need to eliminate corruption in city government. However, John Lansden commented in his 1910 history of Cairo that Cairo blacks were "bought and sold at election times until the elective franchise in their hands seem[ed] to be a travesty." J. LANSDEN, *supra* note 9, at 146. It is more likely, therefore, that the adoption of the commission form of government was intended to effectively disenfranchise Cairo's black voters. The commission form of government certainly ensured a future of "white man's elections" in Cairo. *Id.* at 181.

<sup>123</sup> In 1969, Norman Seavers, a black man, was appointed to fill a city council vacancy.

<sup>124</sup> Complaint, *Kendrick v. Walder*, Civ. No. CV-73-19-C (E.D. Ill. filed Nov. 5, 1973).

munity of interest based upon race, poverty, and the legacy of racial discrimination, and that the at-large voting system had furthered racial discrimination in the community. The city moved to dismiss the complaint, and in January 1975, the district court held that the complaint failed to state a cause of action upon which relief could be granted.<sup>125</sup> Plaintiffs appealed to the United States Court of Appeals for the Seventh Circuit, which reversed the district court and remanded the case for trial.<sup>126</sup> The Seventh Circuit recognized that "the use of an at-large system of voting, not in itself unfair to any individual voter, when imposed on a community with a history and legacy of discrimination against an identifiable group may operate to deny that group an opportunity for effective participation in the electoral system."<sup>127</sup> The court also noted that the adoption of the at-large system by a referendum vote of the people of Cairo did not defeat plaintiffs' equal protection claim because the citizens of Cairo could not, by majority vote, dilute the plaintiffs' votes.<sup>128</sup>

Five years later, in March 1980, the district court entered a consent decree which abolished the at-large voting election system.<sup>129</sup> The city was divided into five wards, at least two of which are predominantly black. Candidates must reside in the ward from which they are elected. The order also allows for a sixth council member to be elected at-large. Because the next election was not scheduled until April 1983, the order also provided that a special election would be held to determine the council members from the predominantly black second and third wards. In November 1980, two blacks were elected to the City Council.<sup>130</sup>

*Ewing* and *Kendrick* may well prove to be the most significant suits filed in Cairo. They ensure that blacks will have at least some voice in community decisions. While these cases cannot guarantee that discrimination will not occur in the future, they do guarantee that blacks will have representatives within the political process to keep them informed. With a representative government at the core of our system,

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<sup>125</sup> *Kendrick v. Walder*, Civ. No. CV-73-19-C (E.D. Ill.), *rev'd*, 527 F.2d 44 (7th Cir. 1975).

<sup>126</sup> 527 F.2d 44 (7th Cir. 1975).

<sup>127</sup> *Id.* at 49.

<sup>128</sup> *Id.* at 50-51.

<sup>129</sup> Consent Order, *Kendrick v. Walder*, Civ. No. CV-73-19-C (E.D. Ill. Mar. 11, 1980).

<sup>130</sup> Whether these orders would have been approved by the Supreme Court is questionable. In *Mayor of Philadelphia v. Educational Equality League*, 415 U.S. 605 (1974), the Court evidenced reluctance to interfere with the discretionary appointment of public officials. *Id.* at 618-29. Furthermore, just a few months after the *Kendrick* settlement was approved, the Supreme Court held that federal courts should not dismantle an at-large election system without proof that it was "purposefully" adopted or maintained to discriminate on the basis of race. *City of Mobile v. Bolden*, 446 U.S. 55 (1980).

effective political participation by minority groups must be protected.<sup>181</sup> *Ewing* and *Kendrick* probably offer the best guarantee against another breakdown of law and order in Cairo.

### III

#### THE LESSONS OF CAIRO

Whether it was protecting the right to protest or securing other civil rights, the federal judiciary was the most effective referee of Cairo's racial problems. No other court or agency had such broad jurisdiction or power, nor commanded the necessary respect to ensure that its decisions would be implemented. The federal injunctions averted potentially violent confrontations. Federal injunctive relief also effectively terminated a number of state court prosecutions under statutes and ordinances unconstitutional on their face or as applied.<sup>182</sup> The preliminary orders in each of the protest cases filed by the Lawyer's Committee, however, were entered before the Supreme Court decision in *Younger v. Harris*.<sup>183</sup> The *Younger* decision and its progeny, through abstention principles, have effectively closed the lower federal courts to those seeking injunctive or declaratory relief with respect to pending state prosecutions. The Cairo experience calls into question the comity and federalism concerns that provide the doctrinal basis for *Younger*-type abstention. Had the federal judicial forum been closed, it is difficult to

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<sup>181</sup> John Hart Ely has demonstrated that "the duty of representation that lies at the core of our system requires more than a voice and a vote." J. ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* 135 (1980). He therefore urges that "[t]o the extent that there is a stoppage, the system is malfunctioning, and the Court should unblock it without caring how it got that way." *Id.* at 136.

<sup>182</sup> Whether the state court would have accepted the demonstrators' constitutional arguments is at least questionable. The local prosecutor and judges, as elected officials who lived in Cairo, were certainly subject to local pressures and were closely tied to the local white power structure. See generally Amsterdam, *supra* note 53. Federal judges were not subject to such pressures; they neither resided nor held court in Cairo. As a practical matter, the local judges probably were not completely unhappy to have the federal judges assume the burden of deciding the validity of arrests and the constitutionality of particular statutes or ordinances.

<sup>183</sup> 401 U.S. 37 (1971).

At the time the Cairo orders were entered the controlling precedent in the area of federal court injunctions against state criminal proceedings was *Dombrowski v. Pfister*, 380 U.S. 479 (1965). In *Dombrowski*, the Court had held that federal courts properly could enjoin certain state court prosecutions against civil rights demonstrators. The efficacy of federal court proceedings was severely limited by the *Younger* decision. The *Younger* Court held that equitable considerations, as well as considerations of comity and federalism, prevented federal courts from enjoining pending state court prosecutions unless the state proceedings constituted bad faith harassment.

imagine any acceptable end to the shootings and other violence that were a regular occurrence in Cairo.

Most other Cairo cases, like the protest cases, were brought before the Supreme Court's recent retrenchment in the civil rights area. Cairo's at-large election system was dismantled just months before the Supreme Court's decision in *City of Mobile v. Bolden*.<sup>134</sup> Cairo's housing and employment cases were settled just before the Court enunciated its view that only "purposeful" discrimination is unlawful in these areas.<sup>135</sup>

Despite the New Federalism,<sup>136</sup> the first lesson to be learned from the Cairo lawsuits is that federal courts can play an important role in solving racial problems; however, the federal courts must be open to provide prompt and effective relief to civil rights litigants. This means that the courts must take a liberal view of the standing of private litigants to initiate lawsuits.<sup>137</sup> Private litigants must also be allowed to intervene to protect their own interests in actions initiated by the government. The Cairo experience demonstrates that state and federal officials are slow to act, and that when they do act, it is generally only to achieve the most minimal concessions. Therefore, it is imperative that Congress provide for, and that the courts recognize, the right of litigants to initiate private actions under federal regulatory schemes<sup>138</sup> and that mandamus or injunctive remedies be available against officials who fail to perform their statutory or constitutional duties.<sup>139</sup> Courts should be concerned more about the practical consequences of official action and less about the subjective motivations of public officials. Cairo blacks were effectively excluded from the political process regardless of the subjective motivations of the voters who enacted the at-large voting

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<sup>134</sup> 446 U.S. 55 (1980). See also note 130 *supra*.

<sup>135</sup> See, e.g., *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977); *Washington v. Davis*, 426 U.S. 229 (1976).

<sup>136</sup> See, e.g., O'Connor, *Trends in the Relationship Between Federal and State Courts from the Perspective of a State Court Judge*, 22 WM. & MARY L. REV. 801 (1981).

<sup>137</sup> Recent Supreme Court decisions indicate that plaintiffs in some of the Cairo cases might well have faced serious challenges to their standing to litigate had their cases been brought today. See, e.g., *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26 (1976); *Warth v. Seldin*, 422 U.S. 490 (1975).

For a discussion of ripeness problems, see note 56 *supra*.

<sup>138</sup> The Supreme Court recently has expressed reluctance to recognize new private rights of action under federal statutes. *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11 (1979); *Touche Ross & Co. v. Reddington*, 442 U.S. 560 (1979). See Note, *Implied Causes of Action: A New Analytical Framework*, 14 J. MAR. L. REV. 141 (1980). But see *Cannon v. University of Chicago*, 441 U.S. 677 (1979).

<sup>139</sup> See *Legal Aid Soc'y v. Brennan*, 381 F. Supp. 125 (N.D. Cal. 1974) (claims against federal compliance agencies fell within ultra vires exception to sovereign immunity bar).

system in 1913.<sup>140</sup> For the courts to adhere to any other standard belies reality. In addition, courts must be allowed broad discretion to fashion effective decrees. Affirmative remedies must be available, and, even more importantly, decrees must provide for ongoing checks and for permanent structural changes when necessary to ensure that past illegal practices will not recur.<sup>141</sup>

The second lesson to be learned from the Cairo experience is that continued federal funding must be available for legal services programs free from political and local control. The Cairo lawsuits would not have been filed under a *judicare* system operated by local attorneys or under a legal services system administered or otherwise controlled by the local bar or politicians. Although the Lansden brothers fought many courageous battles on behalf of civil rights as private attorneys, they did so at a price few other lawyers would be willing to pay.<sup>142</sup> Furthermore, part-time legal aid lawyers with private practices could not maintain the caseload handled by the Cairo office, which kept a minimum of three attorneys busy full-time.<sup>143</sup>

#### CONCLUSION

When the Lawyer's Committee arrived in Cairo in 1969, the community was being destroyed by racism and violence. The Committee was able to channel the grievances of black citizens into the courts. For those who believe that litigation is an effective alternative to street fighting, the strategy of the Lawyer's Committee must be regarded as a success. The lawsuits initiated by the Lawyer's Committee, and its successor,

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<sup>140</sup> In fact, racial discrimination is best demonstrated by proof of a long-term pattern and practice of racial bias, and by connecting current action with that long-term pattern. *See, e.g.,* *White v. Register*, 412 U.S. 755 (1973); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

Furthermore, focusing on purposefulness tends to turn a lawsuit into a personal vendetta. Plaintiffs cannot succeed showing that defendants' actions are wrong by demonstrating an objective discriminatory effect; rather, plaintiffs must show that defendants are bigots, and thus defendants' actions are wrong *a fortiori*. If the purpose of a lawsuit is to open a dialogue between the plaintiffs and the defendants, the dialogue will be furthered by focusing on objective criteria and not upon that particular motivation which may have inspired the defendants' conduct. The Cairo lawsuits were most successful when plaintiffs and defendants each thought they had won something. The recent Supreme Court decisions requiring proof of discriminatory intent are more likely to promote dissension than to draw people together. *See* R. NIEBUER, *MORAL MAN AND IMMORAL SOCIETY* 248-49 (1960).

<sup>141</sup> *See* O. FISS, *THE CIVIL RIGHTS INJUNCTION* (1978).

<sup>142</sup> *See* notes 9 & 16 *supra*.

<sup>143</sup> In 1975, the office was assigned a fourth attorney under the Reginald Heber Smith Program. Even with four attorneys there were few evenings or weekends that the attorneys did not work. The serious abuses that occurred in Cairo necessitated that at least one attorney be "on-call" at all times in case of disorder.

the Land of Lincoln Legal Assistance Foundation, largely achieved the limited goals sought.

This is not to say that all is well today in Cairo—the community continues to contend with the twin legacies of poverty and racism. Though the lawsuits have not reversed economic stagnation in the community,<sup>144</sup> they have established the framework for an ongoing dialogue. If this dialogue continues and if the community can forget old antagonisms, the future need not be as bleak as past events would seem to portend.

Lawsuits have made a difference in Cairo. They have not produced a color-blind society, but they have helped blacks participate equally in society. Those who would disparage “judicial activism” or the ability of law to effect social change only need look to Cairo and consider the alternatives.

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<sup>144</sup> In the long run, it is possible that harmonious interracial relations will encourage business to locate in Cairo, or at least that businesses will no longer shy away from Cairo because of fears of racial turbulence. Cairo need not be “a grave uncheered by any gleam of promise.” C. DICKENS, *supra* note 1, at 185.



