

# Deterring Discrimination with Data\*

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## ABSTRACT

Discrimination on grounds of race, sex, and handicap persists in many local school districts in spite of nearly twenty years of sustained attention from federal policymakers. Because litigation proceeds slowly and expensively, and because administrative attacks on discrimination have been stymied by political controversy, additional policy strategies merit careful consideration. We studied the operation of one such strategy in nine local districts: the mandatory collection of data concerning civil rights matters in schools. Data collection and reporting shaped local compliance with civil rights laws in four ways: by threatening local officials with future penalties, by providing political ammunition to constituencies that care about civil rights, by allowing local districts to learn about their own performance, and by framing school practices in ways that heighten awareness about equity. In this policy setting, data collection has advantages and disadvantages that complement those of other enforcement strategies. In this and other policy settings, data collection has power to elicit compliance even in the absence of conventional enforcement.

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## I. Discrimination as a Policy Problem

Discrimination on grounds of race, sex, and handicap has been an enduring and disturbing pattern in many local school districts. In spite of two decades of public concern and litigation and in continued violation of federal law, some districts still deny equal opportunities to all children (U.S. Commission on Civil Rights, 1979). Although legally enforced segregation has largely disappeared, children and parents

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still face less blatant, often unintentional, but nonetheless destructive discriminatory practices (Rist, 1977).

The problem persists in the face of several waves of policy attacks on the problem. Congress passed Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973 to forbid discrimination on grounds of race, sex, and handicap, respectively, in districts that receive or benefit from federal funds. These laws can be enforced in three ways: by administrative proceedings of the Department of Education to withhold all federal funds from delinquent school districts, by federal law suit initiated by the Justice Department, and by federal law suit initiated by affected private parties. Since 1965, the Office for Civil Rights (OCR) in the Department of Education (previously in the Department of Health, Education and Welfare) has had the primary administrative responsibility for enforcing these laws and accompanying regulations as they apply to educational institutions. Although OCR, the Justice Department, and private litigants have all made some headway against discriminatory schools, the remaining problems are formidable. Indeed, some observers conclude that federal anti-discrimination policies have failed quite dramatically to improve the lot of their intended beneficiaries (Edmonds, 1980; Fishel and Pottker, 1979).

One explanation for such an outcome is that the federal bureaucracy, Congress, and the courts never seriously intended to eliminate bias from schools (Freeman, 1978). Another explanation is that discrimination as a policy problem is intractable to conventional policy solutions (Gerard, 1983). Both explanations are probably true to some degree. But the policy advice implicit in these explanations is despair. We agree with Hawley et al. (1983) that that is the wrong advice. If at least some policy actors at the federal level genuinely seek to reduce bias in schools, then the critical policy question remains: How can the federal government most effectively intervene?

In this article we explore the merits of one underrated way to intervene – by collecting information about civil rights issues in schools. OCR routinely conducts a survey of school districts, asking about indicators of compliance. The survey is intended to support the compliance activities of the federal government. But its impact extends beyond increasing the efficiency of these activities. Simply filling out the survey at the local level may set in motion local responses that reduce discrimination. Thus our research maps some of the indirect effects of the survey. We found that collecting and reporting data to a federal agency can encourage compliance with civil rights laws, even in the absence of litigation or the termination of federal funds. Data collection cannot accomplish the rapid, visible transformation of a district sometimes achieved by a court order or halt to federal funding. Its effects are gradual and subtle. But given that litigation proceeds slowly and expensively, one district at a time, and given that extreme political controversy has stymied intrusive administrative attacks on discrimination, even gradual, subtle strategies merit careful consideration.

In the next section we describe the history and objectives of the OCR survey and the research we did to examine its consequences. In section three, we describe the ways in

which data collection and reporting shape local compliance. In the final section we place these effects in context by looking at similar effects of data collection in other policy arenas and the relationship of the OCR survey to other influences on civil rights in schools.

## II. The Office for Civil Rights Survey

Most regulatory schemes count on mass compliance. To paraphrase Lave's (1981) account, millions of decisions that affect civil rights in schools are made every year by teachers, counselors, principals, coaches, district administrators, school boards, parents, students, and even such remote participants as realtors and housing developers. Only a tiny number of these decisions can be reached legally by OCR enforcement. And practical considerations limit enforcement proceedings to a fraction of those. Thus one of OCR's chief concerns must be to influence the overwhelming majority of decisions without being able to control them directly. As with all laws regulating social behavior, the effectiveness of civil rights laws depends primarily on deterring discrimination rather than punishing it (Dunlop, 1976).

But officials sitting in Washington do not have many ways to project their concerns into the lives of local school administrators scattered across 16,000 districts. The OCR survey succeeds in making the federal presence felt, although OCR seems to have discovered this almost inadvertently.

Between the 1964 passage of the Civil Rights Act and the 1967–68 school year, the Department of Health, Education, and Welfare actively sought the desegregation of southern school districts by withholding funds from those that did not offer an acceptable desegregation plan. It became clear to many OCR officials that the only way to guard against deceptive local assurances of prior desegregation was to require statistical indications of actual integration (Rabkin, 1980). OCR began a survey of 5,000 southern school districts, asking about the racial mix of students and faculty in each school. Congress insisted that the South not be singled out for special attention, and so in 1968–69 OCR extended the survey nationwide to all districts with more than 3,000 students, all districts of special concern (e.g. those undergoing court-ordered or voluntary desegregation), and a sample of smaller districts. The survey has continued in various incarnations ever since, most recently in the 1982–83 school year. Over the years the survey has added questions about new issues and dropped old ones. The sample has also swelled and contracted, depending on the political climate for civil rights and OCR's needs for information (Children's Defense Fund, 1977). Questions about female, handicapped, and non-English speaking students were added as OCR's responsibilities came to include these groups. Questions about school disciplinary practices, assignment to special education classes, and athletic teams were added as investigators became aware that bias was pervasive in these domains. Questions about faculty were dropped altogether after the 1972–73 survey, as the Equal Employment Opportunity Commission assumed primary jurisdiction over discrimination affecting school staff.

We began our research on the survey to see whether the data were as useful to OCR as they were intended to be. We found that the survey feeds OCR's enforcement activities in four ways. First, OCR receives four to five thousand complaints every year that some person or group is being treated unfairly by a particular school district (Federal Register, 45 F.R.158:53858). Investigators may use the district's survey data as a way to assess the validity of the complaint and to familiarize themselves with the district. Second, OCR conducts a limited number of in-depth compliance reviews on its own initiative. OCR survey data indicate which districts seem to have serious compliance problems and thus guide the selection of districts to investigate. Third, between 1972 and 1982 the federal government awarded grants to local districts to assist with desegregation. In order to be eligible for these grants, districts had to satisfy OCR that they were in compliance with civil rights laws by appropriate responses to the OCR survey. Fourth, OCR institutes legal proceedings to withhold federal funds from districts that violate civil rights laws and assists other agencies (for example the Justice Department) to enforce civil rights through litigation. Until the early 1970s, the survey data were extremely useful as evidence against districts that had an affirmative obligation to disestablish legally segregated systems. Since then, data have contributed to case-making although the data alone are not decisive proof of discrimination.

But in exploring the uses of the survey, we found ourselves intrigued by its effects on the local school district officials who fill it out. We studied nine school districts intensively, four in California and five in Massachusetts. The nine included two large cities, two medium-sized cities, two small industrial communities, two wealthy suburbs, and one rural town. They were selected to represent different sizes and types of districts, with no effort to construct a random sample or to locate cases where the survey had certain kinds of impact.

We interviewed the district staff members who collected and assembled data to complete the survey, including superintendents, business managers, researchers, data processing people, clerks, principals, counselors, and teachers. We talked to outsiders familiar with the districts, including state civil rights officials, OCR investigators in the regional offices, and state and local civil rights activists. We also examined supporting documentation: internal and external reports, press clippings, memos, workshop handouts, correspondence, pupil records, card files, class lists, etc. In a handful of other districts we made much quicker visits to talk to one or two key people. From these sources, we constructed a picture of local response to data collection for civil rights. Given the unrepresentative nature of the sample, we are unable to estimate the representativeness of this picture. The frequency of these responses and their aggregate effect on student well-being remain open questions. We can, however, demonstrate the multiple paths by which the OCR survey may influence local district behavior with respect to civil rights compliance.

### III. Promoting Compliance Without Enforcement

The survey confronts local school officials with their own performance on civil rights issues. How can that information constrain local behavior? The answer depends on the dynamics of discriminatory practices.

- If discrimination is a calculated choice about the most profitable course for the district, then the survey may prevent discrimination by increasing the costs attached to discriminatory practices.
- If discrimination is the response to political pressures, then the survey may mobilize and reinforce pressures against discrimination.
- If discrimination is the result of ignorance, then the survey may repair the ignorance.
- If discrimination is the product of drift and insensitivity, the survey may deter discrimination by sensitizing school people to the drift.

In fact, we found some instances of all four effects in our nine districts. The survey was a threat of potential federal sanctions, leading some districts to rethink the costs and benefits of their discriminatory practices. The survey offered political ammunition to external constituencies that cared about civil rights issues – parents, civil rights groups, the press, school boards, mayors, courts, and the state – thus strengthening political pressures against discrimination. The survey was a vehicle for organizational learning, in effect insisting that local school people look in detail at their behavior on civil rights issues and encouraging them to correct potential problems. Finally the survey heightened awareness about how school practices affected children of different categories, giving school officials a frame for understanding that raised self-consciousness about the equity implications of local behavior.

In this section, we discuss these four ways in which the OCR survey promotes compliance through data: threat, political ammunition, learning, and framing. One caveat is important. We do not mean to paint too rosy a picture. Some of the districts we studied have a history of serious, persistent discrimination. Bias runs deep and is not dislodged easily. In this analysis, we exclusively discuss the positive aspects of OCR's intervention. We do not imply that OCR's activities are wholly benign or effective. They are not. Both OCR in general and the OCR survey in particular have histories shot through with passionate controversy about the legitimacy of federal intervention and the trade-offs between the paperwork burdens and the policy and program benefits of collecting data. Without resolving those controversies, we document here some oft-ignored consequences of the survey. Because the survey data speak to a major policy initiative that has been historically difficult to enforce, it seemed particularly important to examine the tools available to encourage compliance. In all cases we have taken pains to focus on data collection and reporting, excluding other influences on local choices about civil rights compliance.

**Threat**

Collecting data pertinent to a legal standard may increase compliance with that standard because the respondent interprets (sometimes correctly) the data collection as a preliminary step in enforcement. When local school people receive the OCR survey, their interpretation of the purpose of the survey shapes their reactions, both to the survey itself and to the civil rights issues that the survey covers. In our nine districts we asked the local person primarily responsible for completing the survey why the survey was done. The following responses from three districts (one small, one medium-sized, one large) were typical: “They’re checking for compliance, checking to see whether there’s improper treatment of kids” (D) [1]. “They can pull the plug on you if you don’t fill it out right. You want to keep your shirt clean on that one” (R). “The staff here see the survey as affecting their status. They’re not held accountable but they fear they will be” (M). Local school people understood the survey as a vehicle for OCR to crack down if problems appeared. In this sense they understood the survey to be a threat.

This perception was shared by school personnel as well as central office staff. In three districts (C, S, Q), the survey was completed within the central district office, never reaching principals and teachers. But in the other six districts, the survey questions about individual schools were sent to the schools to be answered. Most principals shared the sense that the survey was a threat. For example, one principal (T) told us that the survey’s purpose was “to check on whether we’re segregating our classrooms.”

To the extent that people in school districts believe that the federal government is policing their actions, poised to pounce on illegal practices, they take pains to avoid those practices, or at least the appearance of those practices [2]. Sometimes they complain that OCR pressure forces them to take counterproductive steps. The superintendent of one district (B) that reported suspending minority students more often than white students said, “We get the cases where we have to make a [suspension] decision based on the evidence you have, not on the basis that the kid is black or white . . . Go out and find a nice little white kid and suspend him so we can balance. Make him do something wrong so we can suspend a white kid, because you want to get that [minority] kid but we can’t suspend him yet because we are already over quota. It gets to that point.” Although the local officials may feel driven to absurd lengths to keep their numbers within tolerable bounds, the point to note is that OCR survey questions make school officials worry about whether they are suspending too many minority students.

Obviously, the power of the survey’s threat is determined by local beliefs about the likelihood that the monitoring is serious. Local superintendents who believe that no one ever looks at their completed surveys are much less threatened than superintendents who expect an investigator to show up at the first hint of trouble. Our nine districts fell between these two poles. Five of the nine (C, I, M, S, T) had extensive experience with civil rights controversies, including contact with OCR regional offi-

ces. The other four (B, D, Q, R) had little direct contact with OCR, but three (B, D, Q) had received phone calls from OCR's contractor during the preparation of data for keypunching about discrepancies in the numbers reported. Because local administrators seldom receive any response to the multitude of forms they fill out, they were impressed that *someone* was looking at the completed surveys.

These nine districts understood the OCR survey to be a signal that Washington was monitoring their performance. Moreover the threat of potential enforcement was made more credible by the evidence that someone actually looked at the surveys, if only to make sure that the rows and columns added up.

Expected-utility analysis explains why such a threat increases the likelihood of compliance. The OCR survey increases the expected costs to local districts of non-compliance, by making it appear more probable that noncompliance will be detected and punished. As a result, the district's cost-benefit calculus tilts toward compliance. This logic is popular among enforcement officials. For example, some of OCR's investigators reported: "We're cops." A civil rights activist described the OCR survey as the equivalent to "a patrol car cruising the streets." The 1981 annual report of the Massachusetts Bureau of Equal Educational Opportunity concluded, "Because we have been seen as willing to get tough, it has been unnecessary to do so." The survey establishes a "tough" OCR presence in many more places than OCR investigators can appear in person.

### Political Ammunition

Local districts have many active constituents. They are vulnerable to pressures from the community, parents, school boards, special interest groups, elected officials, and state and federal education agencies. By law, the OCR survey is a public document. By law, the local superintendents and principals must complete the survey accurately and sign it. Once the deed is done, the survey may become part of a district's broader political environment. The district's external constituents may learn from the survey or may use it to document their case in their efforts to influence the district. As one chief state school officer testified in a Congressional hearing, "I think that data acquisition, data display, is consumer information given to consumers for the purpose of the reformation of education, and is an extraordinarily good thing . . . Given the time and given the money, this is a very valuable tool to equip the consumer with real power in the educational process - which I think is essential to the survival of the educational process itself" (U.S. Senate, 1977: 81).

Local advocacy groups may use civil rights data to lobby their local districts to change school practice. For example, several national groups urge their local affiliates to request and use OCR data. The NAACP Legal Defense Fund, the National Council of La Raza, the Project on Equal Educational Rights of the National Organization for Women Legal Defense Fund, and the Lawyers' Committee for Civil Rights Under Law have all used their networks and newsletters to encourage local advocates to

monitor local activity through the OCR survey. From the district point of view, one administrator (T) noted that “people are lined up outside my door” for the latest edition of the district’s racial data. Advocates for handicapped students in Massachusetts and for bilingual education in California have used OCR data to protest local district treatment of these groups. The districts we studied were forced to respond to these pressures. In one typical case (Q), the citizen’s committee monitoring school closings requested data on the desegregation consequences of alternative patterns of closings. Local branches of the American Civil Liberties Union, American Friends Service Committee, church-related groups, and the League of Women Voters have conducted studies of their district’s policies on suspensions, assignment to special education, and access to athletic opportunities. These reports usually are presented to school boards and superintendents, as well as to local media. Some citizen groups that rank school district “quality” include survey data published in OCR’s directories. As one OCR administrator noted, the public nature of the OCR survey means that “the public becomes our agent.”

The outside intervention that local administrators dread most is litigation. Federal civil rights laws permit students and parents (among others) to sue local districts for noncompliance (Orfield, 1978). Five of our nine districts had been sued by someone at some point over some civil rights matter. Survey data do not make a legal case by themselves; they contribute to a body of evidence about district behavior and its consequences. They often provide a starting point for investigations and lead plaintiffs and attorneys to critical issues. Thus groups preparing to take action or in the midst of legal action are often the most avid consumers of civil rights data. In the two largest districts we studied (M and C), plaintiffs and attorneys regularly requested and received OCR and state civil rights data. When we asked one local administrator (M) who used the survey, he unhesitatingly replied, “the attorneys.” A legal aid group brought suit against one school district for failure to serve students with limited English proficiency largely on the basis of data from the OCR survey. A state-wide case on the misclassification of Hispanics in special education was based on the data; even the consent decree called for a formula that used OCR data. One civil rights lawyer reported that the survey greatly facilitated the process of discovery, because he knew exactly what records the school district was required to keep for OCR. In defending against such suits, districts themselves rely on the record provided by survey data as, for example, the Detroit public schools did in *Bradley v. Milliken* (Wolf, 1981).

Newspaper and television coverage of local protests or litigation is embarrassing to local school officials. They prefer to avoid public exposure of even the appearance of noncompliance. Playing upon this embarrassment, many groups use publicity as a tactic to prod local administrators into action. For example, OCR itself issued a press release after one administration of the survey identifying the 100 worst districts in the United States and various criteria. Two of our districts (M and C) made the lists, which got considerable press attention. District administrators are still complaining about the unfair and arbitrary ranking methods. Another district (S) was the subject of a



large university research project that received moderate press attention. District administrators there also complained about the publication in *Psychology Today* of misleading data about the extent of desegregation in their system.

The critical process here is that the OCR survey may help to empower local constituencies that care about civil rights. This process presumes that local constituencies exist or at least that they could get organized. But many advocates must operate without benefit of detailed documentation because school officials do not volunteer the information. Moreover in many districts there are no advocates for civil rights issues in the schools (Hill, 1979). In the absence of organized constituencies, the survey's potential as ammunition often remains unrealized. One superintendent's secretary who compiles data for the survey in a wealthy suburban school district (B) was delighted to talk to us about the survey because we were the first people who had ever asked about it. Where constituencies do exist, the survey may provide them with powerful, authoritative documentation for their charges against the district. Data from the survey may mobilize these local groups external to the district, just as they may mobilize forces within the district. In fact, concerned district officials use sympathetic external constituents to put forward civil rights concerns. One such local official (I) told us: "We should be forced to respond and report. I'm saddened that no one is asking us to report . . . I lean on third party requirements. There are a lot of things this city and schools didn't want to do."

### **Organizational Learning**

The survey requires local school districts to create or reshape information about their treatment of students sorted by race, sex, handicap, and ability to speak English. This requirement may create new information on a one-time basis within a district about the district's performance. It may create a permanent record of the district's performance on civil rights issues that can be tracked over time to assess trends. It may create a routine or standard procedure in the district for collecting and analyzing civil rights data that becomes independent of the administration of the survey. It may create an enduring appetite for civil rights data on the part of school administrators and school boards. In some or all of these ways, the survey gives local districts the opportunity to learn about their own behavior and to act on the basis of that knowledge. One former OCR director told us that such self-assessment was potentially the most valuable function of the survey but that, in his experience, 95 percent of local districts fail to learn from the survey. Our results suggest that he was too pessimistic. We judged some learning to have occurred in all nine districts as local staff members were exposed to new information about their district from the exercise of completing the survey.

In these two states the state education agencies require local districts to report regularly on their student enrollment broken down by race and sex. As a result information in these districts must be organized to produce this information routinely; they simply re-aggregate it when the federal form arrives. Local administrators say

they learn nothing new from resorting the state-mandated breakdowns into federally-mandated racial breakdowns. (Not all states require the collection of racial data; the OCR survey is the only stimulus for many local districts to collect evidence about civil rights.) Some of the OCR survey questions do not replicate Massachusetts or California state requirements and these questions create information in addition to the routine collection. The most important examples are questions about student discipline (suspensions, expulsions, and corporal punishment), classroom segregation, and assignment to special education classes. Neither state requires districts to report on discipline or classroom composition, and only one requires a race and sex breakdown of students assigned to special education. (One district (C) was subject to a court order mandating collection of data about disciplinary practices.) So the survey did create some new information for all nine districts.

Once information has been created, it is available for use. That does not necessarily mean it will be used. Some local administrators told us that they already knew how their schools performed on discipline, classroom composition, and assignment to special education. But many agreed that it was helpful to push beyond impressions of school or district performance to document precisely how individual schools or districts were performing. As one central office administrator (M) said, “our principals want to know about their race/ethnic mix. They want to see how well they’re doing in living up to our compliance agreement.” Survey data permit schools within a district to compare themselves to other schools. This is particularly useful to new principals as they familiarize themselves with their schools. Several principals reported that the first time they did the survey they learned something about their schools, although subsequent surveys elicited little new information. Information created by the survey may also be useful to central office administrators. The research director in one large district (M) told us that data originally collected to fill out the OCR survey had been incorporated into the district’s own regular data collection, as administrators came to depend on that knowledge. In two other districts (Q and S), administrators reported that their boards of education had developed an appetite for data about civil rights issues. Regular reports to the boards were drawn from the districts’ data bases to address OCR-like questions.

It was easier to document the effects of the survey on learning than on changed behavior. Many factors shape a district’s response to civil rights concerns, and it is difficult to disentangle the unique effect of any one. We picked up fragmentary evidence of the survey’s impact. One local official (M) said, “there’s no question that the [OCR] questions on bilingual ed really revved up our program.” In another district (C) that collects data to report under court order as well as to OCR, principals said, “you can’t run this school without the printout” from the central office showing race, handicap, and language status of students. Another respondent told us about a district in another state where a concerned teacher took OCR data on suspensions and expulsions to key administrators and provoked a reexamination of district disciplinary policies. The result was the clarification and strengthening of due process

guarantees for students. The Children's Defense Fund (1977) reported that one city reduced its suspension rate by 85 percent after looking at the survey data and changing its policies. In all of these examples, the survey created information that district staff could use, if they were so moved, to document, diagnose, and correct potential civil rights violations.

In several cases, the diagnoses led to decisions not to act. One district administrator (O) reported that the classroom composition question turned up evidence of racial segregation in high school classes. But, he explained, closer examination showed that the segregation was the fall-out of ability grouping in mathematics. The district could not solve the scheduling gridlock of preserving some grouping for instructional purposes *and* getting classrooms that were racially mixed. So they chose to do nothing. Whatever OCR or other outsiders may think of that choice, the district did use the survey data to assess its own performance. In another district (Q) a principal looked at his school's data and discovered that some classrooms had unusual concentrations of handicapped and limited English-speaking students. He concluded that these concentrations were not a violation of civil rights guarantees, but he did provide extra help to teachers in those classrooms.

In eight of the nine districts, most people knew little about the district's record on civil rights. (The exception was one urban district complying with a court order that required frequent reassessment of compliance.) Although the survey created new information, that information was not widely shared among school staff. But where knowledge penetrated, it did have influence. By creating information in the district, the OCR survey opened the possibility for the district to solve its own problems. This was likely to happen only if district officials were previously unaware of the magnitude of their compliance problems. When faced with clear evidence, respondents in the majority of our districts seemed quite willing to correct practices that had discriminatory consequences. In comparison, district officials who deliberately practice discrimination do not learn much from the OCR survey; they are more interested in removing the appearance of noncompliance than in eliminating its causes. In such cases, deterrence is unlikely to succeed through learning.

### **Framing**

On its face, the OCR survey is a batch of numbers. But the numbers are saturated with meaning. The survey embodies a theory about what is important in schools, a theory that emphasizes the race, sex, and handicap of students. At least for those hours or days in which districts are responding to the survey, local school people are brought to see their world in terms of these characteristics. By leading them to see their worlds this way, the survey may create a permanent frame for understanding local district practice (Tversky and Kahneman, 1981). "When you force people to collect data in certain ways, it makes them look at things in ways they never did before," according to one civil rights advocate.

One effect of the survey may be to increase the salience of information about students' race, sex, and handicap. Activating a frame or construct in people's minds makes it more likely that the frame will be used again (Higgins and King, 1981). For example, one superintendent said that he "had been under the federal gun so long" that he was "used to looking at the population in terms of its racial breakdown." Such a frame permits district officials to see, perhaps for the first time, the differential consequences of their behavior for different groups of students. The survey may sensitize them to the drift of district practice into unwitting inequity.

The survey probably had more dramatic framing effects in the late sixties and early seventies than it has had since. One observer of the early years remembers that "the initial intrusion of the OCR survey was a real eye-opener. People at the local level did not think about things that way." Even civil rights supporters were initially ambivalent about the desirability of framing the issues in this way. For many years the NAACP opposed racial identifiers on student records and other means of sorting students by race. (To this day, many states forbid the inclusion of racial data in student files. Districts are required to keep racial data in some other form.) They objected to the idea that race was a relevant criterion for sorting children. But without documentation of racial sorting, the federal government and the courts could not identify and correct discriminatory practices. Thus official attention to racial distinctions shifted from a device for exercising bias to a device for exorcising it. As federal intervention has succeeded in shaping the terms of debate, the repetition of federal data collection has less shock value.

Although the survey is no longer eye-opening, repetition of the survey reactivates the issues at regular intervals. Busy local administrators cannot sustain close attention to all of their own concerns, much less to all federal priorities. Sproull (1983) quotes one Pennsylvania superintendent's comment about federal policies: "There's no way we could pay attention to all of that stuff and still educate kids." Because issues claw for space on crowded administrative agendas, OCR's ability to require local officials to devote time and effort to questions about civil rights is critical. Repeated surveys remind people that they must pay attention. As one state official described it, data collection is "the best way to get on the agenda. You want to try to keep the stuff alive so you keep resurfacing it." Another administrator noted, "Filling out the forms keeps some people attuned to the responsibilities and the requirements . . . One would suspect that just bringing it to your attention once a year would remind you that it's something you have to pay attention to."

Success in shaping the ways in which local school people understand their jobs may be very significant. As one state administrator said, civil rights data are now a widely accepted aspect of discourse about elementary and secondary schools. This was confirmed by several local school officials whose spontaneous comments would have been unthinkable twenty years ago. A central office administrator (I): "An important part of any teacher's job is identifying and depicting the nature of the kids in the classroom." An elementary school principal (T): "I try to keep classes balanced by race

and sex. We attract minority children because we're a magnet school. For organizing I try to keep classes equal." Another elementary school principal: "I have records of class lists here on my desk. When I'm grouping, I'm very much aware of racial composition and sex composition." This last principal also said, "I have absolutely no need for information" such as that found on the OCR survey. He is right. He has already internalized the frame that the survey provides and thus provides his own monitoring of compliance.

#### **IV. The Value of Data for Policy**

Mandatory collection of civil rights compliance data affects the behavior of local officials in four ways: by threatening them with future enforcement, by arming external constituencies with detailed information about a district's performance, by allowing them to learn about their own district's performance, and by framing district practice in ways that highlight civil rights issues. But do these effects really matter? Given the complex relationships among federal, state, and local governments, given the crowds of policy actors who want some say about what happens in schools, the question arises of how much leverage the OCR survey can exert. Have we merely observed an epiphenomenon while the real action is the legal thrust and parry? Or do the data have deterrent effects independent of the legal enforcement apparatus? There are two ways to approach such questions, by a closer analysis of the policy arena of civil rights and by seeking confirmation in research in other policy arenas.

The four dynamics we describe constitute nudges toward compliance. Any school district determined to deny equal opportunities to all children will not be transformed by completing a survey every other year or every other week. The deterrent effects of data collection cannot overcome powerful incentives toward noncompliance, such as strong community opposition to desegregated classrooms or female sports. Nor are data likely to matter much in districts firmly committed to compliance. The survey is one among many pressures on school practice. It is difficult to separate a district's response to federal intervention in civil rights from its response to state civil rights officials, civil rights-minded members of the school board, or local advocacy groups. The deterrent effects of data collection interact with these other pressures in ways that enhance or detract from their potency.

For example, the survey is probably most effective when combined with vigorous legal enforcement. Threat, of course, is directly enhanced when legal action follows data collection in visible ways. If local officials believe that OCR is unlikely to take legal action, the presence of the survey is not a credible threat of enforcement. But the connections between formal enforcement and deterrent effects also enhance political ammunition, learning, and framing. A clear translation from survey data to legal proceedings is a powerful legitimizer; it communicates forcefully that the survey questions are important and that the districts' answers are taken seriously by a federal agency. As a result, local officials are more likely to take the survey seriously, whether they use it themselves or external groups use it.

However, direct experience with legal enforcement is not a prerequisite for the deterrence scenario to play out. We found evidence of deterrent effects, including threat, in districts that never had direct contact with legal enforcement, either OCR or private litigants. The survey alone seemed to be a deterrent. Of course people in these districts were well aware that other districts had been zapped, and this knowledge may have been necessary to their experience of the survey as threat. Because the civil rights arena is suffused with the possibility of legal action, there can be no definitive evidence about the deterrent value of the survey in the absence of legal enforcement.

But we can be more confident about the importance of these effects if they appear in other policy settings, and they do. Some brief examples of threat, political ammunition, learning, and framing come readily to mind. The most dreaded information collection in the country is the Internal Revenue Service 1040 form. The form asks for a great deal of information to document a taxpayer's claim about how much income tax is owed. But most people understand the data collection to be a threat of future sanctions if the data are in some way unsatisfactory. The IRS encourages this popular belief in the expectation that it deters noncompliance.

Political ammunition is the moving force behind other information collection mandated by the federal government. For example, the Securities and Exchange Commission requires that firms report information about the financial status of securities offered for public sale. The Federal Trade Commission requires manufacturers and advertisers to disclose important product information. In both agencies, the object is to give ammunition to buyers and consumers that permits them to exercise more influence over the securities and products that reach the market (Day, 1976; O'Hare, 1982). The data shift the power balance among multiple constituencies, to promote some interests (in these examples, the consumers) over others (the sellers) in the directions that federal law deems desirable.

Some federal regulators use the information they collect as a substitute for formal enforcement, relying instead on adverse publicity (Gellhorn, 1973). For example, when the Consumer Product Safety Commission became aware of asbestos hazards in hair dryers, they did not ban the products; they issued a public warning. An official of the Association of Home Appliance Manufacturers described the result: "People cave in because they can't stand the publicity" (cited in Baram, 1982). Baram's (1982) analysis of alternatives to regulation concluded that "adverse publicity is an extremely effective quasi-enforcement mechanism." The active ingredient is the release of information to constituents who can use it to encourage or discourage behavior of the target organizations.

Learning from mandated data collection also occurs in other policy settings. For example, food and drug laws and regulations force manufacturers to learn more than they ever wanted to know about the components and effects of their products, in the course of satisfying the Food and Drug Administration's requests for information. California's energy conservation forms require builders and architects to master ways to minimize heat loss values during construction (Bardach, 1982), which they may or may not have bothered to learn before the forms were required.

Framing also has powerful effects in many arenas. The best example is the environmental impact statement required by the National Environmental Policy Act. The requirement is not to refrain from taking on projects that harm the environment, but only to take a hard look at the environmental consequences of proposed projects. Some observers believe that thinking in environmental terms has killed many potentially harmful projects (Breyer, 1982) by showing people previously neglected aspects of their policies (Roberts and Bluhm, 1981). Nearly all observers agree that environmental impact statements have raised consciousness about environmental factors in ways that encourage compliance with federal objectives.

Similar framing effects can be seen in nonregulatory arenas. For example, Peters (1978) proposes that corporate policy changes more readily when people are given new frames. Sustained attention to agenda setting, manipulating symbols, and creating patterns can energize and redirect massive, traditional bureaucracies when frontal change tactics fail. His research on corporate strategy suggests that "by articulating a particular version of events, the leader can alter people's perception of what has been happening . . . Strings of controlled successes are used over time to shape and manage attention and perceptions, thereby affecting the course of interactions and outcomes" (Peters, 1978). If, as we have argued, the OCR survey shapes attention and interpretations, then it seems plausible that people in school districts may act on the basis of those perceptions as do people in business firms.

Thus there are considerable grounds for taking the deterrent effects of the OCR survey seriously. The same kind of effects we saw in school districts can be seen in other regulatory settings, with other types of regulated institutions, which increases our confidence in their validity. Other analysts have concluded that information can be a powerful complement to more conventional regulation, and even a substitute for it. The moral imperatives of civil rights laws brook no substitutions for legal enforcement. But our results do confirm the value of data collection as part of OCR's attack on discrimination in schools.

In fact data collection and legal enforcement complement one another as policy strategies. Litigation and proceedings to terminate federal funding have been targeted and informed by data from OCR's survey. The primary justification for the survey has always been its contributions to formal enforcement activities. If, as we suggest, data collection has consequences beyond its contributions to litigation and fund terminations, these consequences at the local level seem to have more impact in a policy environment where formal enforcement is a plausible sequel to noncompliance. Thus the synergy of the two strategies is obvious.

Each strategy solves some problems that the other cannot. For example, districts that knowingly discriminate cannot be deterred by increasing their knowledge through data collection. Only direct legal action is likely to prevent recalcitrant districts from continuing a persistent pattern of illegal activity. Data collection is far less potent than litigation or fund termination in cases where discrimination is pursued with malice aforethought.

However, many districts discriminate unthinkingly and without explicit direction from the top. In these cases, data collection may mobilize the district's own resources and constituents to remedy illegal practices, with less expense and controversy than hauling the district into court. As questions about discipline, special education, and gender have been added to the OCR survey, districts have been able to take the hard look and adjust their own performance before a formal investigation descended on them. That saves local face as well as the time and expense of federal enforcement. And that is not a bad indicator of a good regulatory system. As Bardach and Kagan (1982: 323) conclude, "the social responsibility of regulators, in the end, must be not simply to impose controls, but to activate and draw upon the conscience and talents of those they seek to regulate." Mandatory data collection creates the opportunity for local school people to use their talents to conquer whatever problems the survey may reflect. If many school officials cheerfully pass up that opportunity, at least they had the choice.

The policy lesson is not to replace a legal strategy with data collection but to understand the ways that the two strategies reinforce the federal attack on discrimination. For several reasons the contributions of data collection have been undervalued. OCR is a regulatory agency, largely staffed by lawyers and civil rights enthusiasts who tend to see school districts as adversaries. (As one OCR lawyer told us, "Not every school superintendent is an enemy, but everyone who is an enemy is a school superintendent.") OCR was born in the heat of the civil rights effort to attack systemic racial discrimination that was not merely intentional but compulsory. The legacy of that period is the staff's focus on invidious and malicious discrimination. Such a legacy makes OCR reluctant to acknowledge that treating school people like allies with "conscience and talent" may be as successful in achieving compliance as treating them like enemies. Some states and districts are able and willing to correct their own behavior once the equity implications have been raised (Larson, 1979).

As a result OCR has not taken maximum advantage of the deterrent power of its survey. Two steps might increase the impact of data collection as a deterrent strategy: to increase public awareness of the OCR data, and to help school district officials and other school constituents to see the pertinence of the data for their work. For many reasons, OCR has not spent its scarce resources for such activities. Compounding the inherent difficulties of working with these data are the recent policies adopted by Congress and OMB to restrict federal paperwork, which have made it extraordinarily difficult for OCR (or any other federal agency) to collect, analyze, and publish data. But publicity, improved access to survey data, better dissemination, prompt nontechnical feedback to districts, and technical assistance coordinated with the survey may have effects at least as far-reaching as OCR's more formal enforcement activities.

Policymakers who seek to reduce discrimination in schools confront complex, impacted problems with legal and administrative strategies that have been steadily eroded by political controversy and public opposition (Kirp, 1982). If policy goals are worth pursuing, they are worth pursuing along multiple paths. Information strategies



offer an alternate policy route with many potential advantages for beleaguered policymakers in civil rights and other policy arenas.

### Notes

- 1 Each district is identified by a letter, rather than by name, to protect the confidentiality of our respondents.
- 2 One easy way to avoid the appearance of discrimination is to lie on the survey. We were surprised to find considerable evidence that districts do not often take this way out. Some candidly reported gross violations of the law. Some reported damaging data, confident that they could justify their record. Others refused to answer certain questions, rather than reveal noncompliance. The OCR investigators who check into fishy numbers find that they are much more often errors in arithmetic than deliberate evasions. A few districts have clearly lied, but these are probably districts so committed to discrimination that they are not likely to be deterred by subtle means in any case. Most districts seem to be discouraged from lying by the public visibility of the survey or by the required signature of the superintendent certifying the accuracy of the information. See Weiss and Gruber (1984).

### References

- Baram, Michael S. (1982). *Alternatives to Regulation*. Lexington, MA: Lexington Books.
- Bardach, Eugene (1982). "Self-regulation and regulatory paperwork," in E. Bardach and R. A. Kagan (eds.), *Social Regulation: Strategies for Reform*. San Francisco: Institute for Contemporary Studies.
- Bardach, Eugene and Kagan, Robert A. (1982). *Going by the Book: The Problem of Regulatory Unreasonableness*. Philadelphia: Temple University Press.
- Breyer, Stephen (1982). *Regulation and its Reform*. Cambridge: Harvard University Press.
- Children's Defense Fund (1977). *The Elementary and Secondary School Civil Rights Survey*. Washington, D.C.: Children's Defense Fund.
- Day, George S. (1976). "Assessing the effects of information disclosure requirements," *Journal of Marketing* 40: 42-52.
- Dunlop, John T. (1976). "The limits of legal compulsion," *Labor Law Journal*. Reprinted in J. L. Perry and K. L. Kraemer (eds.), *Public Management*. Palo Alto: Mayfield, 1983.
- Edmonds, Ronald (1980). "Effective education for minority pupils: Brown confounded or confirmed," in D. Bell (ed.), *Shades of Brown: New Perspectives on School Desegregation*. New York: Teachers College Press.
- Fishel, Andrew and Pottker, Janice (1979). *National Politics and Sex Discrimination in Education*. Lexington, MA: Lexington Books.
- Freeman, Alan D. (1978). "Legitimizing racial discrimination through antidiscrimination law," *Minnesota Law Review* 62: 1049.
- Gellhorn, W. Ernest (1973). "Adverse publicity by administrative agencies," *Harvard Law Review* 86: 1380-1442.
- Gerard, Harold (1983). "School desegregation: The social science role," *American Psychologist* 38: 869-877.
- Hawley, Willis, et al. (1983). *Strategies for Effective Desegregation*. Lexington: Lexington Books.
- Higgins, E. Tory and King, Gillian (1981). "Accessibility of social constructs," in N. Cantor and J. Kihlstrom (eds.), *Personality, Cognition, and Social Interaction*. Hillsdale, N.J.: Lawrence Erlbaum Publishers.
- Hill, Paul T. (1979). "A study of local education agency response to civil rights guarantees, WN-10420-HEW." Santa Monica: Rand Corporation.
- Kirp, David (1982). *Just Schools*. Berkeley: University of California Press.
- Larson, Meredith (1979). *Finding the Common Denominator: The Capacity of State Agencies to Assist the Office for Civil Rights*. Menlo Park: SRI International.

- Lave, Lester B. (1981). *The Strategy of Social Regulation*. Washington: Brookings.
- O'Hare, Michael (1982). "Information strategies as regulatory surrogates," in E. Bardach and R. A. Kagan (eds.), *Social Regulation: Strategies for Reform*. San Francisco: Institute for Contemporary Studies.
- Orfield, Gary (1978). *Must We Bus?* Washington: Brookings.
- Peters, Thomas J. (1978). "Symbols, patterns, and settings: An optimistic case for getting things done," *Organizational Dynamics* 15: 3-23.
- Rabkin, Jeremy (1980). "Office for Civil Rights," in J. Q. Wilson (ed.), *The Politics of Regulation*. New York: Basic Books.
- Rist, Ray (1977). *The Invisible Children*. Cambridge: Harvard University Press.
- Roberts, Marc J. and Bluhm, Jeremy (1981). *The Choices of Power: Electric Utilities Meet the Environmental Challenge*. Cambridge: Harvard University Press.
- Sproull, Lee S. (1983). "Organizational capacity to respond to federal directives." Working paper, Carnegie-Mellon University.
- Tversky, Amos and Kahneman, Daniel (1981). "The framing of decisions and the psychology of choice," *Science* 211: 453-458.
- U.S. Commission on Civil Rights (1979). *Desegregation of the Nation's Schools: A Status Report*. Washington: U.S. Government Printing Office.
- U.S. Senate (1977). Committee on Human Resources, *Hearings on Amendments to the Elementary and Secondary Education Act*. U.S. Government Printing Office, October 4.
- Weiss, Janet A. and Gruber, Judith, E. (1984). "Using knowledge for control in fragmented policy arenas," *Journal of Policy Analysis and Management* 3: 1-23.
- Wolf, Eleanor P. (1981). *Trial and Error: The Detroit School Segregation Case*. Detroit: Wayne State University Press.