

HOUSING: A NATIONAL DISASTER:

HOW WE CAN AND

MUST IMPROVE OUR HOUSING PROGRAMS

I am very glad to be here, and am grateful to Professor Hogan for having invited me and to Professor Ron Slye, of Seattle University's law school, an old friend who's welcomed and inspired me. I want to express very special thanks to Steve Fredrickson, of Columbia Legal Services, another old friend and colleague whose work is admired by all of us who are concerned with low-income housing. I'm especially grateful to Steve for having provided me with an immense amount of information about housing issues in Seattle.

I'm pleased to have this opportunity to reflect upon and discuss the fundamental issues relating to housing in the United States today. I hope that what I'll say will stimulate more good thinking and acting on this subject.

The title of my talk is a bit misleading, for housing presents not one but several disasters. This is how we begin the 21st century in the richest, most powerful nation in the world: with children and elderly people sleeping in cars and cardboard boxes, in parks, on the streets, and -- famously and literally -- "under the bridges."¹ In Los Angeles, an estimated 40,000 people make their homes in garages.² Here in Seattle, progressive people have to count it a victory that people are allowed to continue to live in tents.

Homelessness is only the most dramatic and obvious form of our housing problems. Millions of people are severely overcrowded; millions more suffer substandard conditions; and still more millions pay far more than they can afford for shelter, thus depriving their families of other necessities. HUD says that 15 million households nationally endure one or more of these conditions, constituting "worst case housing need."³

In addition to these problems, millions of people suffer from oppressive practices, including forced displacement, imposed by private management or government officials, so that the residents have no sense of autonomy, of control over their own lives. Given the huge gap between supply of and demand for housing, residents are at the mercy of their landlords. Women, in particular, are vulnerable to sexual exploitation, but all residents are vulnerable to arbitrariness and oppression.

And overshadowing all of these issues are the problems of discrimination and segregation. Discrimination is imposed on many kinds of people: people with physical and mental disabilities, families with children, people who are not married (whether they be of the same or different sexes), and, of course, those whose race or color or national origin is "different" from that of the person who controls the housing. In addition, economic segregation characterizes virtually every housing market in the United States. Traditionally, poor people

¹Anatole France, *The Red Lily* 80 (1894) (referring to "the majestic equality of the laws, which forbid rich and poor alike to sleep under the bridges, to beg in the streets, and to steal their bread.").

²Peter Dreier & Kelly Candaele, *Housing: An LA Story*, *The Nation*, April 15, 2002, 22.

³Senator Jack Reed, *Preface*, *Out of Reach* 2001, www.nlihc.org/oor2001/preface.htm. (last visited 3/29/02).

generally are confined to inner cities, inner-ring suburbs, and rural areas, while wealthier people live in more-and-more distant suburbs, in exclusionary and often literally gated communities. In some communities, including Seattle, gentrification is bringing higher-income people back into the cities, displacing lower-income people. And segregation on the basis of race or national origin is at very high levels throughout the country. All of these problems exist throughout the United States and here -- in the Pacific Northwest region, the State of Washington, and the city of Seattle.

These problems are devastating not only for the individuals who suffer them, but also for those of us who are not immediately affected and for society as a whole.

For the individuals, of course, the impact is obvious: children and adults suffer physical health problems (asthma, lead based paint poisoning, tuberculosis) and mental health problems (depression, most obviously). Children grow up with little sense of security or stability; they're unable to study effectively; they have to change schools often. Women and children remain in abusive situations because they have no alternatives. Working is difficult or impossible because jobs have moved to suburbs where workers cannot dream of affording housing.

The consequences for the rest of us also are severe. Productivity is reduced because of the time and cost that separates workers from jobs. The environment suffers as more highways destroy more farmland and invite more flooding to enable sprawl to flee center cities. It is extremely difficult for children to realize their full potential when they do not have safe and secure places in which to live. Those of us who have children know how careful we are when we move to arrange things so that the children will be disrupted as little as possible -- but we as a society tolerate conditions in which millions of children do not know where they are to spend the night. Among these children are those who would discover cures for cancer and those who would compose great symphonies -- but they will realize none of this promise if they're confined to degrading living conditions and deprived public schools.

As Douglas Massey and Nancy Denton show in their important book, *American Apartheid*, residential racial segregation is the central cause of the conditions that we label "underclass" -- crime, drugs, teenage pregnancy, dependence on public assistance.

On the most selfish level, if history teaches anything, it teaches that continued oppression and deprivation with respect to housing will create an explosion. Periodically, the United States has suffered severe riots, which have caused the loss of thousands of lives and billions of dollars in property damage. Always, these riots have been sparked in part by housing issues -- housing that is too unavailable, too expensive, too substandard, too overcrowded, too segregated. We had those riots in 1919, in 1943, in 1965-68, in Miami in 1980, and in Los Angeles just ten years ago.

A significant part of the causes of the riots in 1965-68 -- the riots before Dr. King was killed -- was an inadequate and segregated housing situation, exacerbated by government destruction of housing and forced displacement of residents by the urban renewal and interstate highway programs. Today, the housing situation is worse than it was then: then, we did not have millions of people who were literally homeless. And today the federal, state, and local governments, incredible as it seems, are repeating the evils of the 1950's -- destroying low-

income housing -- hundreds of thousands of units of public housing -- and replacing it with housing for higher-income people, giving the displaced vouchers that often are useless, closing their eyes to the obvious fact that the poor people who've been displaced will have no place to go but to crowded homeless shelters and the streets.

Langston Hughes' question cries out still for an answer:

What happens to a dream deferred?

Does it dry up

like a raisin in the sun?

*or does it explode?*⁴

We know the answer.

In the 1949 Housing Act, Congress declared the national housing goal to be “a decent home and a suitable living environment for every American family.” Congress said, in the 1949 Act, that it sought the realization of that goal “as soon as feasible.” The same standard is embodied in the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights.⁵ Today, more than 50 years after the '49 Act, we are not even close to the realization of that goal.

As bad as things are now in Seattle and Washington and the United States, they're going to get worse. First, the need for housing help is increasing: time limits on welfare are expiring, and TANF and other public assistance payments are being reduced. With the economy in a downturn -- particularly in this area, with its 7.1% unemployment rate -- mortgage delinquencies and defaults are up, which means that the number of foreclosures will go up. Second, the supply of affordable housing is shrinking: you are losing public housing units and, as your Washington State Housing Finance Commission has just shown, you're also in danger of losing a large stock of existing “affordable housing.”

The Commission studied three kinds of housing programs in the state: project based

⁴Langston Hughes, *Dream Deferred*, in *The Panther and The Lash: Poems of Our Times* 14 (1974).

⁵Universal Declaration of Human Rights, G.A. Res. 71, U.N. GABOR, 3rd Sess., U.N. Doc. A/810 (1948), art. 25; International Covenant on Economic, Social and Cultural Rights, U.N. G.A. Res. 2200(a) (1966), Jan. 3 1976, 993 (U.N.T.S.3. (recognizes: “the right of everyone to an adequate standard of living . . . , including adequate food, clothing and housing, and to the continuous improvement of living conditions.”).

Section 8, the Low Income Housing Tax Credit program, and the Department of Agriculture's Rural Development programs. These programs now provide more than 50,000 units in more than 1200 properties, but restrictions on these units have begun to expire. The Commission found that since 1995, 1700 Section 8 units already have been lost by conversion to market rate. Of the remaining Section 8, Tax Credit, and Rural Development units, almost one-third, 14,500 units, are at risk of loss between now and 2011.⁶

I'm going to focus tonight on one fundamental aspect of these problems -- the "dangerously inadequate" and shrinking supply of low-income housing. I'm going to suggest some things we all can do to increase that housing supply. I'll also comment on the separate problems of discrimination and segregation, for even if the supply of decent, affordable units were adequate, the problems of discrimination and segregation still would need to be addressed.

Let's begin with the fact that housing is very expensive. Land, labor, and materials cost money. Money costs money. The most expensive element of residential construction projects often is the financing.

Poor people cannot pay these costs -- that's why many of them are homeless. It isn't mental illness or substance abuse that causes homelessness: each of probably knows at least one person who's mentally ill but is perfectly well housed, and each of us certainly knows more than one person who abuses alcohol or drugs but is perfectly well housed -- possibly in our own homes.

What's special about people who are homeless -- what causes homelessness -- is poverty. As Martha Burt says in a report on a recent study, "the most striking thing to note about the income levels of all homeless [people] . . . is "how low these incomes were."⁷ "The most frequent reasons given for losing housing and becoming homeless ," she tells us, ". . . come down to poverty -- not having enough money."⁸

We learn this lesson from public housing, where the government pays all the capital costs, so all the residents need to pay is operating expenses -- and when tenant rents were limited to 25% of income, that wasn't nearly enough to pay even the operating costs. In 1981, to reduce the burden on the federal government, Congress increased the tenant contribution to 30% of

⁶Washington State Housing Finance Cmsn.; A Report on Multi-family Housing and Preservation Activities (Nov. 2001), available at <http://www.WSHFC.org/managers/preservation-reportindex.htm>.

159 Sec. 8 5006 units have HAP contracts that expire,
119 LIHTC w/ 4695 units have regulatory agreements
172 Rural Development 4864 units have affordability requirements

⁷Martha R. Burt, Homeless Families, Singles, and Others: Findings from the 1996 National Survey of Homeless Assistance Providers and Clients, 12 Housing Policy Debate 737, 758 (2001).

⁸Burt in HPD AT 752.

income, but that wasn't enough to pay for the operating costs. Congress has to provide an operating subsidy for public housing -- an operating subsidy on the order of 3 billion, 495 million dollars this year.⁹

Even moderate income people cannot afford market rate housing. In Seattle, one needs more than \$33,800 per year to afford what HUD says is the Fair Market Rent for a 2-bedroom apartment.¹⁰

It would be wonderful if poor people could get more money. If they could stop being poor, they could stop being homeless, stop paying too much of their income for shelter, stop suffering overcrowding and substandard housing and long commutes.

It's important to support policies that enable people to increase their incomes: to raise the minimum wage and the Earned Income Tax Credit, to support living wage campaigns, to eliminate barriers that exclude people from excellent educations and high-paying jobs. There's a shocking history of discrimination in skilled employment in Seattle, for example. In 1969, of 2600 plumbers, one was African-American; of 2700 electrical workers, 2 were African-American -- and so on for other skilled building trades.¹¹ And, at least in a book published in 1994, these unions are said to have remained overwhelmingly white.¹² When people are excluded from jobs that pay well, it shouldn't be surprising that they cannot secure decent housing on the private market.

It's important also to increase public assistance levels, for those who should not or cannot work. Parents of young children should not work, unless they want to; elderly people, and people with disabilities, should not be working unless they choose to do so. We pay the old, the blind, and the disabled -- people whose income is Supplemental Security Income (SSI) -- \$532/month. But HUD says that the Fair Market Rent for a one-bedroom unit in Seattle is \$667/month -- substantially more than the SSI grant. And a market survey tells us that the FMR is low, that a one-bedroom unit rents for \$786/month.¹³ And even if we tell the person on SSI to get an efficiency apartment, that has a Fair Market Rent of \$548 -- and the SSI grant is \$532!

Most low-income people won't be able to pay the market cost of housing -- not with 25%

⁹Department of Housing and Urban Development Budget Authority by Program Comparative Summary, Fiscal Years 2001-2002.

¹⁰Out of reach.

¹¹Quintard Taylor, *The Forging of a Black Community: Seattle's Central District from 1870 through the Civil Rights Era*, 230 (1994) (Of 850 iron workers, one was African-American; of 1200 sheet metal workers, two were African-American; of 7500 operating engineers, 23 were African-American).

¹²*Ibid.* at 231.

¹³Rental Assistance Levy, p. 13.

of their income, or with 30% of their income, or with 40 or 50% of their income. HUD says that the Fair Market Rent for a 2-bedroom unit in Seattle is \$845 -- which we know is low. One would need to earn \$16.25/hour to afford that rent. The median home price in King County was \$272,000 in March of 2002. Low and moderate income people cannot dream of affording housing at that price.

So where will the money come from? What will be the source of the money to pay for housing, if low- and moderate-income people cannot pay it? Let us consider four options: philanthropy, the city, the state, and the federal government.

You here in Seattle have received generous contributions toward housing from the Gates Sound Families Initiative and other private philanthropies, as well as the local real estate industry. Philanthropic contributions to housing go back to the "Model Tenement" movement a century ago, but we learned then and learn now that even the wealthiest philanthropies do not have enough money to cover the costs of housing poor people.

Your city, Seattle, has been astonishingly progressive; indeed, I would say, heroic -- notably with the housing levies that it's provided in the past and proposes now to renew, and its eviction prevention measures. Of course, the city could do more: it could enact inclusionary zoning legislation; it could ban discrimination on the basis of source of income (especially Section 8 receipt); it could take steps to preserve subsidized housing (such as prohibiting opt-outs and reducing property tax assessments on projects with expiring uses); it could enact linkage ordinances; and it could strengthen its anti-displacement and pro-tenant protections. But -- no matter how much the city did -- it's unrealistic to expect that the city could provide the housing subsidies necessary for all the households in Seattle who don't earn enough to command decent housing on the private market.

The State gets credit for enactment of the housing trust fund, but it certainly hasn't done all it could. It's astonishing that there's no state income tax (and therefore no room for a state low-income housing tax credit); the state could provide other tax advantages (perhaps through a Business and Occupation tax credit) and direct subsidies for those who provide housing for very low income households. But the state's budget outlook is "grim"; again, it's not realistic to expect the state to provide the housing subsidies needed.

We really are pointed, almost inevitably, to the federal government. As Willie Sutton said when he was asked why he robbed banks: "That's where the money is."

The first point to note about the federal government is that it already spends an enormous amount of money on housing. The federal government spends about \$30 billion per year in direct housing assistance to moderate and low-income people, through programs administered by HUD, the Department of Agriculture, and the Department of Veterans' Affairs.

Most of the people who are served by these programs are people of moderate, not low, or very low, income. And most receive rental assistance, not the benefit of production programs. This \$30 billion figure includes the expenditures for the public housing program -- much of whose resources are devoted to destroying deeply subsidized housing, through the HOPE VI

program.

There's really only one subsidized housing production program today: "[T]he LIHTC program has been the *de facto* federal housing production program for more than a decade"¹⁴ The program costs many billions of dollars. The so-called "Low-Income Housing Tax Credit program" actually serves people at 40 to 60 per cent of area median income. (To the extent that the LIHTC program serves poor people -- people below 30% of AMI -- it's because those people are using the Section 8 and other subsidy programs as well.)

But the expenses for these programs are dwarfed by the tax expenditures for homeowners. Our largest federal housing expenditures by far are tax expenditures -- taxes given up by the government. We give tax benefits on the order of \$280 billion per year to homeowners.

We have four principal tax concessions to owner-occupied housing: the deductibility of mortgage interest on owner-occupied homes; the deductibility of local property taxes on owner-occupied homes; the nontaxation of the first \$250,000 (\$500,000 for a married couple) of capital gains on the sale of an owner-occupied home; and the nontaxation of net imputed income from owner-occupied housing.¹⁵

The cost of the exclusion of gain was estimated at \$22 billion in 1989.¹⁶ The cost of untaxed rental value was estimated at another \$145 billion in 1998. The cost of the mortgage interest and property tax deductions is _____. While these aren't all additive,¹⁷ we're certainly talking about something on the order of \$300 billion per year for housing -- most of it for people whose incomes are not low.

Since we are spending more than \$300 billion each year subsidizing housing, why do we have 15 million households with "worst case housing needs?" If we simply divided that \$300 billion among the needy households, each would have about \$20,000, which should be more than enough to enable each to afford a decent home -- even in the most expensive housing markets!

The answer, obviously, is that we're not spending the money on poor people. Most of

¹⁴Jean L. Cummings & Denise Dipasquale, *The Low-Income Housing Tax Credit: An Analysis of the First Ten Years*, 10 *Housing Policy Debate* _____ at 251, 278, and 252 (1999).

¹⁵There are six "quantitatively less important housing tax concessions, only one of which applies to owner-occupied housing." One of these is credit for low-income housing investments. Bourassa & Grigsby, 521

¹⁶See Joseph Yourko & Todd Sinai, *The Spatial Distribution of Housing-Related Tax Benefits in the United States* 1, 4 (Brookings Institution Center on Urban and Metropolitan Policy, July 2001) (In 1989, the cost of the untaxed return on home equity was more than the total cost of the mortgage interest deduction and the property tax deduction (62% of the total of the three costs).).

¹⁷Bourassa & Grigsby, 522-3.

that money -- the \$280 billion in homeownership benefits -- is going to well-to-do people -- only those who itemize their deductions are eligible for this benefit, and those with the most expensive houses, the highest interest rates, and the highest property taxes will benefit the most.¹⁸

One recent study shows that “Low- and moderate-income families . . . benefit least from the [mortgage interest] deduction. Fully 90 percent of the benefit goes to homeowners with incomes over \$50,000 a year . . .”¹⁹

So, the question is: how do we get the federal government to spend adequate housing money on subsidizing poor people -- either by diverting what’s now going to others and re-directing it to the poor, or by securing parity for poor people, and spending on their housing as much as we spend on the non-poor?

Having seen de jure segregation ended and the Berlin Wall demolished and the Soviet Union dismembered and apartheid ended in South Africa, and being an incorrigible optimist, I don’t want to say we’ll never eliminate the tax concessions for homeowners, but that’s certainly not on the immediate political horizon. All observers agree that ending the mortgage interest deduction is a political nonstarter. So the more useful question is: how to get parity for the poor?

To answer that question, we need to understand why federal housing programs are as they are -- why Congress spends huge amounts of federal tax dollars on homeownership and the Low Income Housing Tax Credit program -- why the homeowner benefits are politically sacrosanct.

I think that one part of the answer is that these are the programs that advantage, and therefore are urged upon Congress by, the housing industries -- the homebuilders, the realtors, the mortgage bankers, the lumber industry. These industries have powerful, experienced, well-financed, professional lobbies in Washington. These are the groups that always have dictated the terms of federal housing policies.

What brought the federal government into the housing business in the first place (aside from a brief incursion in World War I), was the industries’ demand to be rescued from the Great Depression.

The Federal Housing Administration program was created in 1934 to serve the industries. That white, working class, would-be homeowners also benefitted was a plus, but not the principal purpose of the program.

And, after the FHA program had been created, when do-gooders -- “housers” -- advocated

¹⁸See Steven C. Bourassa & William G. Grisby, Income Tax Concessions for Owner-occupied Housing, 11 Housing Policy Debate 521, 531 (2000) Note, however, that people rich enough to pay for their homes in full, without mortgages, do not benefit from the mortgage interest deduction. See Weicher _____.

¹⁹Bourassa & Grisby at 531.

for the public housing program, the industries, as historian Gail Radford has shown, distorted the low-rent public housing program so that it was doomed to disaster -- cursed with inadequate funding and cost limitations, local control, and exclusion of moderate-income households.²⁰ The industries fostered the Section 8 program, which benefits landlords by allowing them to decide whether to participate. The industries benefit from the LIHTC program.

This background about how Congress has been influenced in the past suggests two things. One is that the public interest housing lobby needs to strengthen itself. As Peter Dreier reminds us in several books and articles, organized labor was a crucial part of the lobby for good public housing programs in the 1930's, and the voices of organized labor and the religious community are very much needed in housing advocacy today. As he says, we need to “expand the political constituency for a progressive federal housing policy.”²¹

In addition to strengthening the public interest voice, I think that those of us who are concerned to meet the housing needs of very low income people should try to work with the industries and the state housing finance agencies to devise ways to use mortgage revenue bonds and new mortgage instruments to encourage home-ownership (which is low in Washington), and to avoid foreclosure. We should work with the state housing finance agencies and the tax credit developers to provide additional benefits to tax credit developers so that the program can meet the needs of very low income people.

There are at least five improvements that ought to be made in the LIHTC program:

First, the program has to be made to serve poor people. As one study reports, “The program did not provide additional incentives to serve low-income rather than moderate-income households. The benefits derived from the tax credits are identical for low- and moderate-income units. However, allowed rents are higher for units designated for moderate-income households. Thus, designation for moderate-income occupancy brings in more income and the same amount of tax credits, making it very much preferred for [over?] low-income occupancy. As a result, units have been designated almost exclusively for moderate-income households.”²²

When public and non-profit developers do use the LIHTC program to serve poor people, they have to be incredibly creative, and use 7 to 12 different funding sources.²³

²⁰See Gail Radford, *The Federal Government and Housing during the Great Depression*, in *From Tenements to the Taylor Homes: In Search of Urban Housing Policy in Twentieth Century America* (John F. Bauman et al., eds. 2000) 102, 111.

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²²Kirk McClure, *The Low-Income Housing Tax Credit as an Aid to Housing Finance: How Well has it Worked?*, 11 *Housing Policy Debate* 91, 98 (2000).

²³This is exemplified by KCHA's development (“The Village at Overlake Station”) atop a park and ride and bus transit center in Redmond, which uses 7 funding sources to serve teachers, police officers, and health care workers!

Rick McClure finds that Michael Stegman’s 1991 criticism of the LIHTC program still is valid: it makes little sense, Stegman wrote, to design a housing program where the poorer the income group served, the more complicated and costly it is to arrange the financing.²⁴

Some improvements can be made by use of the QAP, but legislative changes also are needed. “Where the rents in the LIHTC units are low and where construction and development costs are high (a combination found in most inner-city markets, the 9 percent credit rate is not enough to make a project financially feasible.”²⁵ “What is needed is a mechanism that permits planners to adjust the amount of the tax credits up or down. If planners had the flexibility to award higher credit amounts to more worthy developments, then layers of additional subsidy could be removed. If these credit amounts were enough to cover the shortfall between total development costs and conventional loan and equity amounts, the developers could be freed from the burden of chasing additional layers of subsidy to finance their projects The agencies could induce . . . developers to target some units to the poorest of the poor instead of those who have more income. Finally, they could help developers finance meritorious developments in markets where, even with several layers of subsidy, projects are simply not feasible.”²⁶

Second, the LIHTC program should not be used to displace people. Today, much displacement occurs when LIHTC funding is used as part of the HOPE VI program.

Third, despite the rhetoric, the LIHTC program is not producing mixed-income housing; on the contrary, it’s reproducing the bad housing forms of the past, the concentrations of lower-income households. “Mixed-income housing is not being produced in great numbers through the LIHTC program. Rather, the vast majority of the development tend to be fully covered, with the tax credits applied to all of the units.”²⁷

Fourth, QAP and legislative changes are needed to prevent economic and racial segregation in the LIHTC program. The GAO and NCSHA studies show that “Developments . . . tend to be directed toward areas with high concentrations of racial minorities”²⁸ and that “Typically, LIHTC properties are located in areas with high concentrations of poor people.”²⁹ What we are doing with the LIHTC program is re-creating concentrations of poverty and race, exacerbating school segregation -- repeating the mistakes of the 1950's.

QAPs can address this. A recent study by Cummings and DePasquale notes that “states

²⁴McClure, supra note 24, at 100-101.

²⁵, at 112.

²⁶, at 113

²⁷, at 97.

²⁸, at 99.

²⁹, at 99.

could set as a goal for the LIHTC program the provision of housing for poor households in suburban jurisdictions that may offer better public schools, lower crime rates, and greater access to suburban employment opportunities.”³⁰ But we also need legislative changes, for the current statute provides higher credits for developments in Qualified Census Tracts and Difficult Development Areas -- which will be areas of minority and poverty concentration.

Fifth, the LIHTC program needs to be enlarged to offer additional incentives for preservation -- of the tax credit, Section 8, and Department of Agriculture units that are threatened with loss. As your Washington State Commission has said, “public and private entities [must] find creative ways to refinance, rehabilitate, acquire and manage them for extended terms.”³¹

You all here in Seattle, in Washington State, are very well situated to lead a national campaign for housing justice. You have sophisticated, experienced housing advocates and other professionals -- Steve Fredrickson at Columbia Legal Services, John Fox at the Seattle Displacement Coalition, the Washington Coalition to Preserve Low Income Housing, the Low Income Housing Institute, the Washington Low Income Housing Network, the Washington Low Income Housing Congress, the Washington State Coalition for the Homeless. You have vast experience with all forms of housing subsidies. You have well-placed representatives in Congress -- Representatives Jennifer Dunn and Jim McDermott on the House Ways and Means Committee, Senator Patty Murray on the Senate Appropriations Committee. You should redouble your involvement with the National Low Income Housing Coalition -- which is meeting at this moment -- and work with others to make real the promise of a decent, affordable home and a suitable living environment for everyone in the United States.

Thank you very much.

³⁰10 hpd 268 n. 25.

³¹Wash. State Cmsn. Report