

## CIVIL RIGHTS FOR SOME, STEREOTYPING FOR OTHERS: TWO VIEWS ON THE OPEN HOUSING MOVEMENT OF THE 1960s

JAMES S. PULA

Purdue University North Central

The modern Civil Rights Movement in the United States was successful in addressing long-standing inequities in political, economic, and other civil rights for African Americans and prompted similar changes for other minority groups. Yet, one of the unintended consequences of the interpretation of the civil rights legislation enacted by Congress was that the federal government began classifying people by race so as to determine whether they merited protection under the new laws. This article examines the process created by U. S. government agencies to determine whether the new civil rights laws had been violated, the way in which the legislation was interpreted in the judicial system, and the consequences for Americans of Eastern and Southern European heritage.

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In large part, the domestic history of the United States has been dominated by the struggle to attain the ideals inherent in its Constitution, the Fourteenth Amendment of which guarantees to citizens that the government will not “deny to any person within its jurisdiction the equal protection of the laws.”<sup>1</sup> A seemingly simple statement, but over the years one that has often proven elusive or obtainable only with prolonged conflict. It took 133 years for the Constitution to be amended to allow women to vote. When the Irish began to enter the United States in numbers sufficient to be viewed as a threat, they were at first denied equal civil rights even if the discrimination was *de facto* rather

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<sup>1</sup> *United States Constitution*, Amendment XIV, fl1.

than necessarily *de jure*. Similar battles to share in the promise of the Constitution were waged by German, Italian, Jewish, Polish, and Asian immigrants during the 19<sup>th</sup> and early 20<sup>th</sup> centuries, and more recently by Hispanics and indigenous peoples. The longest and most difficult road to civil and legal equity was faced by those of African descent because of the lengthy, degrading period of slavery followed by the invidious “Jim Crow” laws providing for a legal segregation that insured continuing discrimination. Although slavery was officially defined as illegal by the Thirteenth Amendment to the Constitution in 1865, and minor gains were made over the following decades, it was not until some ninety years later that the modern Civil Rights Movement was successful in beginning the serious dismantling of the rigid segregated system that grew up in the wake of legal emancipation.

Beginning with the Supreme Court decision in *Brown v. the Board of Education* in 1954 a new and vibrant Civil Rights Movement began to emerge. The successful Montgomery Bus Boycott, the confrontational desegregation of the public schools in Little Rock, Arkansas, the beginning of the Sit-In Movement, the Freedom Rides, and other achievements all raised public consciousness leading to increased support for Civil Rights throughout the nation. By the time of his famous speech on the Mall in Washington, DC, the Rev. Martin Luther King, Jr., an advocate of non-violence, had become its recognized leader. In January, 1966, King’s Southern Christian Leadership Council began the “Chicago Movement” designed to focus attention on urban living conditions. To publicize this, King and his family moved into a ramshackle apartment in the Lawndale section of Chicago, an area often referred to as “Slumdale.”<sup>2</sup> His purpose was to draw attention to the poor housing conditions, to obtain a higher minimum wage, and to encourage public school desegregation.<sup>3</sup>

In the mid-1960s Chicago was home to people from a wide cross-section of ethnic backgrounds. The fastest growing major group was African Americans who increased rapidly from 8.2 percent of the city’s population in 1940, to 22.8 percent in 1960 and 32.7 percent, nearly one-third of the entire city, in 1970. With the decline in manufacturing in the early 1960s, competition for jobs, housing and services became acute, while the ills of urban overcrowding – rising crime rates, increased violence, and physical deterioration in the inner cities – all contributed to heightened intergroup tensions. By the mid-1960s, a large number of upper- and middle-class white residents began a mass exodus

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<sup>2</sup> W.R. Miller, M.L. King, Jr., *His Life, Martyrdom and Meaning for the World*, Webright and Talley, New York 1968, pp. 234–35.

<sup>3</sup> J. Haskins, *The Life and Death of Martin Luther King, Jr.*, Lothrop, Lee & Shepard Co., New York 1977, pp. 92–93.

to the suburbs or to closely-guarded affluent urban enclaves. In their wake they left blue-collar ethnic neighborhoods in a state of serious erosion.<sup>4</sup> In Chicago, Polish, Italian and other European ethnic neighborhoods became a “buffer zone” between the largely African inner city and the predominantly white suburbia. To African American leaders, the ethnic areas appeared to be blocking their aspirations for better housing. Ethnic leaders perceived the increased pressure as a threat to their traditional neighborhoods and their way of life. Thus, collision appeared inevitable.<sup>5</sup>

While a gradual integration of the relatively insular ethnic districts might have been possible, any chance of this happening was prevented by business practices that reinforced these boundaries. Unscrupulous real estate agents encouraged middle-class white residents to sell at below market values in order to “escape” the inner city before property values fell even further. Financial institutions drew red lines around some neighborhoods, refusing mortgages to Africans who wanted to settle in affluent white areas (“redlining”), while real estate agents encouraged whites to purchase property in the suburbs and attempted to guide those of African ancestry toward hitherto white working-class ethnic sections (“steering”). The results of these practices were falling property values within the remaining, largely blue-collar neighborhoods populated by the sons and daughters of Eastern and Southern European immigrants and a serious erosion of the ethnic character of those communities. The general attitude of blue-collar Polish Americans was reflected in the comments of one resident: “I don’t mind if a Black family moves in next door or across the street. Right now there are four Black families on our street and there ain’t no problems for anyone.... But when you ask me if I would be happy with a majority of Blacks in the neighborhood, I would have to say no.... If we had a majority of Blacks, then the neighborhood wouldn’t be the same any more. It wouldn’t be a Polish neighborhood.”<sup>6</sup> It was not necessarily African Americans Poles objected to, but

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<sup>4</sup> P. Wrobel, *Our Way: Family, Parish, and Neighborhood in a Polish-American Community*, University of Notre Dame Press, Notre Dame, 1979, p. 150; F. Renkiewicz, ‘An Economy of Self-Help: Fraternal Capitalism and the Evolution of Polish America,’ in Ch.A. Ward, Ph. Shashko, D.E. Pienkos, eds, *Studies in Ethnicity: The East European Experience in America*, East European Monographs, Boulder 1980, p. 86; J. Parot, ‘Ethnic Versus Black Metropolis: The Origins of Polish-Black Housing Tensions in Chicago,’ *Polish American Studies*, Vol. 29, No 1–2 (1972), pp. 5, 17, 30.

<sup>5</sup> J. Parot, ‘Ethnic Versus Black...,’ pp. 5, 17, 30, 32. Census figures quoted in J. Wyrwal, *Polish-Black Encounters: A History of Polish and Black Relations in America since 1619*, Endurance Press, Detroit 1982, p. 190.

<sup>6</sup> P. Wrobel, *Our Way...*, pp. 135–36.

the threatened loss of their treasured community: the loss of churches, property and social networks that defined their existence.

Rather than assail the financial system that supported, maintained, and to a large extent created the *de facto* segregated neighborhoods, the deteriorating inner-city property values, and the growing frictions, Chicago activists organized symbolic marches through white neighborhoods to dramatize their complaints because these were sure to draw immediate media attention. This tactic had a profound effect on internal relations within the city. Inevitably, it drew African Americans into direct conflict with the neighborhoods populated by working-class descendants of immigrants from Poland, Italy, and other largely southern and eastern European nations.

Neighborhoods are special places. They are home to family and friends – an identifiable community within the geographic confines and ambiguity of the larger metropolitan environment. More often than not, one's job, social activities, school, and virtually all other facets of life took place within the confines of this urban subdivision. Sociologist Gerald Suttles, in a seminal work on the neighborhood as community, maintains that “the neighborhood is by definition a place to be defended. The boundaries of the neighborhood are the boundaries of an important segment of one's life. One defends these boundaries because any threat to them is a threat to something that is seen as indispensable to life. Neighborhood is social turf, the place where one lives with one's family and friends.”<sup>7</sup>

For immigrants, or the descendants of immigrants, these urban villages provided reinforcement for their ethnic bonds. For Poles in particular, the most important unit of social identification, beyond the family, was the *okolica*, or neighborhood.<sup>8</sup> Poles identified closely with their parish, proudly telling those who inquired that they were from “Stanisławowo” (St. Stanislaus) or “Wojciechowo” (St. Adalbert).<sup>9</sup> This implied not only the church and parish but the neighborhood community as a whole. In these stable, largely self-sustaining communities, Polish Americans felt secure from overt discrimination, while at the same time being able to “achieve” in symbolic terms they could understand – being active

<sup>7</sup> A.M. Greeley, ‘Two Other Neighborhoods—Bridgeport and the Stanislawo,’ in his *Neighborhood*, Seabury Press, New York 1977, p. 24; Wrobel, *Our Way...*, p. 152.

<sup>8</sup> J.E. Kleeman, ‘Polish-American Assimilation: The Interaction of Opportunity and Attitude,’ *Polish American Studies*, Vol. 42, No 1 (1985), p. 20; R.F. Hill, *Exploring the Dimensions of Ethnicity: A Study of Status, Culture, and Identity*, Arno, New York 1980, pp. 110–11.

<sup>9</sup> E.R. Kantowicz, ‘Polish Chicago: Survival Through Solidarity,’ in M.G. Holli, P. d’A. Jones, *The Ethnic Frontier: Essays in the History of Group Survival in Chicago and the Midwest*, William B. Eerdmans, New York 1977, p. 183; J. Bodnar, ‘Immigration and Modernization: The Case of Slavic Peasants in Industrial America,’ *Journal of Social History*, Vol. 10 (1976), p. 47.

in the church and community, holding leadership positions in organizations, and owning their own homes.<sup>10</sup> Their world view, as indicated by various academic studies, placed tremendous value on the preservation of Polish heritage, religious beliefs, and the community *gemeinschaft*. It was a world they tenaciously clung to despite efforts by the public schools, Anglo-American “reformers,” and the Irish-dominant Roman Catholic Church to force assimilation – to shed their own heritage and become so-called “good Americans.” As researcher J. David Greenstone concluded, “the Poles were the most ethnically assertive among the Roman Catholic immigrant groups.”<sup>11</sup>

Quite naturally, when marchers from outside the neighborhood invaded “their” turf, Poles and other working-class ethnics feared the destruction of their secure community life. In many cases this fear was reflected in counter-protests, angry rhetoric, and in a few cases the outbreak of violence. The resulting series of confrontations made newscasts and press headlines throughout the country. Since these confrontations occurred in ethnic neighborhoods, uninformed observers concluded that these areas were populated with virulent bigots that the media was quick to label “hardhats,” “rednecks,” and other terms laced with racist overtones.<sup>12</sup> An editorial in *The Christian Century* concluded that Rev. King’s activities in Chicago exposed the “intransigent racial hatred in the city’s lily-white neighborhoods,”<sup>13</sup> a view also held by the correspondents of *Time*, *Newsweek*, and the other major print and broadcast media.

The fact that Polish Americans sought to preserve the unique nature of their neighborhoods did not mean that they were racists. Despite the stereotypical label, there is evidence to suggest this perception is inaccurate. For example, Thomas Pavlak published research in *Public Opinion Quarterly* suggesting that Poles were no more or less racially prejudiced than any other ethnic group studied. To the extent that Poles did display some prejudice, Pavlak concluded it was due to the respondents’ social class and proximity of residence to the African population. Further, despite the fears and pressures of urban change, Poles often supported collective action with other racial groups. In 1968, a conference of Polish priests in the Archdiocese of Detroit called upon all Polish Americans

<sup>10</sup> J.E. Kleeman, ‘Polish-American Assimilation,’ p. 20; R.S. Sorrell, ‘Life, Work and Acculturation Patterns of Eastern European Immigrants in Lackawanna, New York: 1900–1922,’ *The Polish Review*, Vol. 14, No 4 (1969), p. 69.

<sup>11</sup> W.J. Galush, ‘Faith and Fatherland: Dimensions of Polish-American Ethnoreligion, 1875–1975,’ in R.M. Miller, T.D. Marzik, eds, *Immigrants and Religion in Urban America*, Temple University Press, Philadelphia 1977, p. 89; J.D. Greenstone, ‘Ethnicity, Class, and Discontent: The Case of Polish Peasant Immigrants,’ *Ethnicity*, Vol. 2 (1975), p. 7.

<sup>12</sup> J. Parot, ‘Ethnic Versus Black...,’ p. 16, 19.

<sup>13</sup> Editorial in *The Christian Century*, September 7, 1966.

to support equal rights for all Americans and the maintenance of interracial harmony. In the same year, Polish and African leaders established a “Black-Polish Conference” to promote cooperation and understanding between the city’s two largest ethnic groups. In the 1968 election campaign the thinly-veiled racist overtures of George Wallace in the Wisconsin primary apparently made little impression among Polish Americans. Studies of the election results, and research on correspondence to local politicians by Stephen Leahy, indicate that Wallace received significantly less support in heavily Polish American districts than he did in the affluent suburbs. Other studies indicate that Wallace received little support from Polish Americans in any of his campaigns.<sup>14</sup>

In a political campaign that received much attention in 1969, a Polish American candidate ran for mayor of Buffalo on a campaign that stressed maintenance of *de facto* segregation in the local schools. When she lost by the largest margin in the city’s history, analysts interpreted her defeat “as a rejection of a campaign based on the themes of ‘law and order’ and opposition to busing inner-city pupils to previously all-white schools.”<sup>15</sup> Clearly, the fact that Polish Americans voted overwhelmingly *against* one of their own is a strong indication of rejection of racial politics. Finally, as sociologist Andrew Greeley explained, there are other instances such as in Chicago where Poles and Hispanics have been able to coexist in relative peacefulness in the traditionally Polish “Stanisławowo” area. “I do not wish to make a case for any great and intimate friendship between the Polish and the Latino communities,” Greeley states, “but they have managed to survive alongside one another in relative peace, occupying a neighborhood which both claim to be theirs and which both have made common cause to defend against the city and federal governments.”<sup>16</sup>

As Greeley further explained, with “a long history of oppression and betrayal by strangers,” Poles reacted defensively to the incursions of the open housing movement.<sup>17</sup> He persuasively argued that “Those who write off as racist all

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<sup>14</sup> D.E. Pienkos, ‘Research on Ethnic Political Behavior Among the Polish-Americans: A Review of the Literature,’ *The Polish Review*, Vol. 21, No 3 (1976), pp. 127, 132, fn 40; R.F. Hill, *Exploring the Dimensions...*, pp. 121–22; S.M. Leahy, ‘Polish American Reaction to Civil Rights in Milwaukee, 1963–1965,’ *Polish American Studies*, LXIII, No 1 (Spring 2006), pp. 35–56; S.M. Leahy, ‘Tentative Conclusions on Milwaukee and Civil Rights, 1958–1968,’ unpublished conference presentation, conference on “American Ethnicity and East European Immigration,” Jagiellonian University, June 16–17, 2014.

<sup>15</sup> F. Renkiewicz, *The Poles in America 1608–1972*, Oceana Publications, Dobbs Ferry, NY 1973.

<sup>16</sup> A.M. Greeley, ‘Two Other Neighborhoods,’ p. 41.

<sup>17</sup> A.M. Greeley, ‘Ethnicity and Racial Attitudes: The Case of the Jews and the Poles,’ *American Journal of Sociology*, Vol. 80, No 4, p. 926; Hill, *Exploring the Dimensions...*, p. 122.

those poor benighted white ethnics who are uneasy about neighborhood change simply cannot grasp how the concepts of ‘defended neighborhood’ or ‘social turf’ can be important to anyone. If you are worried about your neighborhood, your street, your block, your property, then by definition you are a racist – a definition usually made by someone living in a fashionable, safe, upper middle-class suburb. The intellectual and cultural elites of the country simply cannot understand that there are many people who have no objection to racial integration, no resistance to blacks as neighbors or as parents of children who go to school with your children, yet still have very powerful fears of what racial change does to a neighborhood.”<sup>18</sup> Yet, the persistent perception of white ethnics as racists was to have very serious long-term consequences for the descendants of *all* European immigrants for those who had themselves been denied equal opportunity were about to be classed among the perpetrators of inequity rather than its victims.

The Civil Rights Act of 1964 was designed specifically to make discrimination based on race, color, religion, gender, or national origin illegal.<sup>19</sup> But how does one prove that discrimination has occurred? To enforce the new law required some bureaucratic definition and form of measurement if cases for violation of the legislation were to be pursued. In 1945 sociologist Louis Wirth had defined a minority as “a group of people who are singled out from the others in the society in which they live for differential and unequal treatment and who therefore regard themselves as objects of collective discrimination.”<sup>20</sup> Since it would have been extremely difficult to identify discrimination on a case-by-case basis, the perhaps unintended consequence of the law was that the United States government essentially adopted Wirth’s definition and began to collect data to identify *groups* that suffered past and present discrimination.<sup>21</sup> To do this, the federal government began to collect data and to compare it with general census data to determine if, for example, an employer’s workforce did or did not reflect the general percentage of people available from a given group in the general population. However, all of the “official” groups on which data was collected – White, Black, Hispanic, American Indian/Alaska Native, and Asian – were defined by *race*; no comparable data was collected for European ethnic groups such as Italians, Jews, and Poles who had clearly been subject

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<sup>18</sup> A.M. Greeley, ‘Two Other Neighborhoods...,’ p. 24.

<sup>19</sup> 42 U.S.C. §2000d, 78 Stat. 252.

<sup>20</sup> L. Wirth, ‘The Problem of Minority Groups,’ cited in *The Chronicle of Higher Education*, October 16, 1991.

<sup>21</sup> These categories were taken from ‘Directive No. 15: Race and Ethnic Standards for Federal Statistics and Administrative Reporting,’ *Federal Register*, April 4, 1977.

to discrimination during the twentieth century. Instead, all so-called “whites” were lumped together.

Of course, some ethnic groups tracing their origins to Europe attempted to make the case that they had also suffered discrimination because of their group identity. One of the most well-known studies of the era was undertaken by Russell Barta who focused on the representation of various groups among 106 corporate offices in Chicago. He found that “102 had no Polish Americans as directors and 97 had no Polish American officers. Although Poles constituted 6.9 percent of the area population, only 0.3 percent of directors and 0.7 percent of officers were Polish American.”<sup>22</sup> Similar results were found for those of Italian, Hispanic and African heritage. Yet, the Equal Employment Opportunity Commission did not pursue a single case of discrimination against Poles or Italians, ignoring the exact form of statistical data that it had used as a basis for creating its listing of officially recognized minority groups. Perhaps part of the problem rested with the composition of the judiciary itself. As late as 1980, ethnic descendants of Southern and Eastern Europeans comprised approximately 30 percent of the population of the United States, yet only 3.2 percent of federal judges and a similar number of high government officials were from those groups. In Chicago, there was not a single Polish or Italian judicial officer.<sup>23</sup>

This concept of all “whites” being the same found confirmation before the United States Supreme Court even before the 1964 legislation was enacted. An excellent analysis of the fate of non-discrimination legislation at the hands of the judicial system is Raymond J. Dziejczak’s article “Expanding the Legal Definition of Discrete and Insular Minorities: From *Carolene Products* Through *Al-Khazraji/Shaare Tefila* and Beyond.” As Dziejczak explains, the United States *v.* *Carolene Products Company* was a seemingly innocuous legal action regarding the content of milk shipped in interstate commerce.<sup>24</sup> Yet, the verdict had far more wide-ranging influence than the immediate case when Justice Harlan F. Stone,

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<sup>22</sup> R. Barta, *The Representation of Poles, Italians, Latins and Blacks in the Executive Suites of Chicago's Largest Corporations*, The National Center for Urban Ethnic Affairs, Washington, DC 1973.

<sup>23</sup> A.M. Greeley, *An Ugly Little Secret. Anti-Catholicism in North America*, Sheed Andrews and McMeel, Kansas City 1977, pp. 7, 9.

<sup>24</sup> For this and subsequent analyses of court cases I am indebted to my long-time friend Raymond J. Dziejczak for his seminal article ‘Expanding the Legal Definition of Discrete and Insular Minorities: From *Carolene Products* Through *Al-Khazraji/Shaare Tefila* and Beyond,’ in J.S. Pula, M.B. Biskupski, eds, *The Polish Diaspora: Volume II: Selected Essays from the Fiftieth Anniversary International Congress of the Polish Institute of Arts and Sciences of America*, East European Monographs, Boulder 1993, pp. 171–90; *United States v. Carolene Products Company*, 58 S. Ct. 778.



writing the majority opinion, asserted in his famous “Footnote 4” that “prejudice against discrete and insular minorities may be a special condition which tends seriously to curtail the operation of those political processes ordinarily relied upon to protect minorities and which may call for a correspondingly more searching judicial inquiry.”<sup>25</sup> In other words, the Court may take special action in cases where plaintiffs claim discrimination as members of a recognized “discrete and insular minority.”<sup>26</sup> And, of course, the only such minorities recognized by the government were those based on racial characteristics. The highest court in the nation had spoken: Membership in a government-recognized minority group carried with it an automatic presumption of discrimination, while Poles, Italians, and other European ethnics were all “white” and could not claim *ipso facto* to be the victims of discrimination.

One of the test cases of this judicial proclamation was *United Jewish Organizations of Williamsburg, Inc. v. Carey*.<sup>27</sup> Beginning in the 1960s several cities and states took action to re-draw local political districts to guarantee that recognized minority groups would be able to elect public officials. When New York State took a similar action to create districts in King’s County that contained 65 percent non-white residents, the Hasidic population filed suit arguing that the proposed redistricting would fragment their neighborhood, thus decreasing their ability to elect government officials to represent their community. By purposely altering the election districts to favor government-recognized minorities, they argued, the Constitutional rights of the Hasidic community to equal protection under the Fourteenth Amendment were being violated.<sup>28</sup> In rejecting the suit the Court ruled that Hasidic Jews, and by logical extension all Jews, were white. Therefore, they had no right “to separate community recognition.”<sup>29</sup> In short, Jews were white, all whites were members of the dominant majority, thus they had no right to claim protection based on their ethnicity. In *Shaare Tefila Congregation*

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<sup>25</sup> *United States v. Carolene Products*, 304 U.S. 144, 58 S. Ct. 778, 82 L. Ed. 1234 (1938).

<sup>26</sup> *Ibid.*; L. Lusky, ‘Footnote Redux: A ‘Carolene Products’ Reminiscence,’ *Columbia Law Review*, Vol. 82, no 6 (1982), pp. 1093–1109. See also P. Linzer, ‘The Carolene Products Footnote and the Preferred Position of Individual Rights,’ *Constitutional Commentary*, Vol. 12 (Summer 1995); M. Perry, ‘Justice Stone and Footnote 4,’ *George Mason University Civil Rights Law Journal*, Vol. 6 (Fall 1996); Dziedzic, ‘Expanding the Legal...,’ pp. 171–72.

<sup>27</sup> Dziedzic, *Ibid.*, p. 176; *United Jewish Organizations of Williamsburg, Inc. v. Carey*, 430 U.S. 144, 97 S. Ct. 996, 51 L. Ed. 2d 229 (1977).

<sup>28</sup> *Ibid.*, at 153.

<sup>29</sup> *United Jewish Organizations of Williamsburg, Inc. v. Carey*, 430 U.S. 144, 97 S. Ct. 996, 51 L. Ed. 2d 229 (1977); *United Jewish Organizations of Williamsburgh v. Carey*, The Oyez Project at IIT Chicago-Kent College of Law, May 21, 2014, [http://www.oyez.org/cases/1970-1979/1976/1976\\_75\\_104](http://www.oyez.org/cases/1970-1979/1976/1976_75_104).

v. Cobb, another case involving Jewish Americans, the congregation filed suit against people who had spray painted anti-Semitic graffiti on their synagogue claiming that the perpetrators had violated the anti-discrimination laws. The court ruled *against* the plaintiffs on the basis that “discrimination against Jews is not racial discrimination.” It argued that “A charge of racial discrimination within the meaning of § 1982 cannot be made out by alleging only that the defendants were motivated by racial animus. It is also necessary to allege that that animus was directed toward the kind of group that Congress intended to protect when it passed the statute.”<sup>30</sup>

Another interesting case was *Kurylas v. U. S. Department of Agriculture* in which Stephan Basil Kurylas, a Ukrainian American veterinarian, claimed he was the victim of discrimination that violated the Equal Employment Opportunity Act.<sup>31</sup> The U. S. District Court for the District of Columbia Circuit dismissed the case, ruling that “only nonwhites have standing to bring an action” based on ethnic discrimination.<sup>32</sup> In *Budinsky v. Corning Glass Works* the Polish American plaintiff claimed he had been illegally dismissed after fourteen years of service because he had objected when his supervisors continually subjected him to derogatory name-calling because of his Slavic heritage.<sup>33</sup> Once again, the district court dismissed the case on the basis that “Discrimination grounded on national origin—or, indeed on anything but ‘race’ ... —is not now cognizable ..., and plaintiff has advanced no compelling reason why, in light of Title VII, this Court should expand the ambit of the statute to cover alleged employment discrimination based entirely on non-racial factors.”<sup>34</sup>

In *Petrone v. City of Reading* an Italian American named Salvatore Petrone filed suit against the city claiming that he was discriminated against in the denial of a zoning permit to establish a pizza franchise. He asserted that during the process the commissioners specifically subjected him to defamatory remarks about his Italian ancestry, especially by making false public claims that he was

<sup>30</sup> Dziedzic, ‘Expanding the Legal...,’ p. 180; *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615 (1987); N.M. Stolzenberg, ‘Righting the Relationship Between Race and Religion in Law,’ *University of Southern California Legal Studies Research Paper*, No. 11–12 (2011), pp. 1–2, <http://ssrn.com/abstract=1858801>.

<sup>31</sup> Dziedzic, ‘Expanding the Legal...,’ p. 177; *Kurylas v. U. S. Department of Agriculture*, 373 F. Supp. 1072 (D.D.C. 1973); ‘Stephan Kurylas, 85, veterinarian, community activist’ (obituary), *The Ukrainian Weekly*, May 28, 2006, No. 22, Vol. LXXIV. Kurylas was a Polish citizen of Ukrainian ethnicity prior to emigrating to the U.S.

<sup>32</sup> *Kurylas v. U. S. Department of Agriculture*, 373 F. Supp. 1072 (D.D.C. 1973), at 1074–75.

<sup>33</sup> Dziedzic, ‘Expanding the Legal...,’ pp. 177–78; *Budinsky v. Corning Glass Works*, 425 F. Supp. 786 (1977).

<sup>34</sup> *Budinsky v. Corning Glass Works*, 425 F. Supp. 786 (1977), at 787.

associated with organized crime.<sup>35</sup> The circuit court for the Eastern District of Pennsylvania dismissed the case on the grounds that Petrone “asserted discrimination based only upon his heritage and that there is no allegation that plaintiff is generally perceived as a non-white.”<sup>36</sup> The same point was argued in *United States v. Biaggi* when the prosecution used its preemptory challenges to exclude potential jurors with Italian-sounding surnames. The defense argued that this was illegal because Italians share a common ancestry, a common cultural and religious heritage, and often a common language, and they can also usually be distinguished by recognizable last names. Because of this they constituted a recognizable minority group and ought to be accorded legal protection under the existing laws. The argument was rejected.<sup>37</sup>

As recently as 2001, “A federal judge, William Yohn, ruled that Italian-Americans were not discriminated against when six of them were excluded from jury duty in the 1980s murder trial of reputed mobster ‘Joseph Rico’ (real name: Joseph Gravel). Yohn said it was acceptable for prosecutors to exclude Italian-Americans since the Supreme Court does not recognize them as a ‘cognizable racial group.’ Apparently, individual ethnicities are not protected from profiling in the jury selection process.”<sup>38</sup> Ironically, despite his Italian-sounding name Rico was *not* of Italian heritage.

In all of these cases what we see happening is that the descendants of Italian, Jewish, Slavic and other immigrants from Southern and Eastern Europe, who themselves suffered discrimination because of their national origin, were now being denied their unique identity by a judicial system that selectively applied the laws passed by Congress. Instead of equal protection, those of Southern and Eastern European heritage were consolidated with others of European heritage into the politically contrived homogenized group labeled “white” with the implicit

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<sup>35</sup> *Petrone v. City of Reading*, 541 F. Supp. 735 (E.D. Pa. 1982), at 738. The court concluded that “with regard to persons of Slavic or Italian or Jewish origin. These groups are not so commonly identified as ‘races’ nor so frequently subject to that ‘racial’ discrimination which is the specific and exclusive target of § 1981. Members of these groups, like plaintiff Budinsky, do not properly fall within the coverage of the statute.” However, in *Manzanares v. Safeway Stores*, 593 F.2d 968, 971 (10th Cir. 1979) the court allowed a claim by a “white” Hispanic American. The plaintiff argued that since the definition had been extended beyond those of African descent, there was no reason to include Slavic or other groups. The court disagreed. See Dziedzic, ‘Expanding the Legal...,’ p. 178.

<sup>36</sup> *Petrone v. City of Reading*, 541 F. Supp. 735 (E.D. Pa. 1982), at 738–39.

<sup>37</sup> D.R. Massaro, ‘Italian Americans as a Cognizable Racial Group,’ in J. Kruse, J.N. DeSena, eds, *Italian Americans in a Multicultural Society*, Forum Italicum, Stony Brook 1994, p. 51.

<sup>38</sup> C. Borsella, *On Persecution, Identity & Activism: Aspects of the Italian-American Experience from the Late 19th Century to Today*, Dante University Press, Boston 2005, p. 126.

stereotypical implication that they were part of the dominant group responsible for the discrimination directed against the government-sanctioned minorities and thus not entitled to the anti-discrimination protections of the Fourteenth Amendment to the Constitution and subsequent civil rights legislation.

The modern Civil Rights movement was extremely successful in obtaining legal protections for many groups whose history in America was replete with overt discrimination – groups that clearly needed and deserved equal protection. But for Southern and Eastern Europeans, the movement only resulted in the exchange of one discriminatory stereotype for another.