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An Agricultural Law Research Article

**Jim “USDA” Crow: Symptomatic  
Discrimination in Agriculture**

by

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# JIM “USDA” CROW: SYMPTOMATIC DISCRIMINATION IN AGRICULTURE

*Kristol Bradley Ginapp*

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## I. INTRODUCTION

Biology does not separate blacks from whites and women from men, but it is the law that creates such divisions.<sup>1</sup> Especially concerning African Americans, the law has seldom been a protector. Beginning with laws protecting the institution of slavery through Reconstruction, the New Deal, and the Alien Land Laws, the Government has provided a structure that allowed for legal discrimination in land ownership. This institutionalized discrimination survives today and manifests itself in agency-wide discrimination by preventing minorities and women from succeeding in agriculture.<sup>2</sup>

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1. See JON-CHRISTIAN SUGGS, *WHISPERED CONSOLATIONS: LAW AND NARRATIVE IN AFRICAN AMERICAN LIFE* 44 (2000).

2. See generally *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999) (involving agency-wide discrimination in the United States Department of Agriculture).

This note will examine the history of discrimination in agriculture and its influence through the institutional discrimination that exists today that prevents minorities from becoming influential in the area of agriculture. Part one will look at African American land-ownership throughout American history with an emphasis on discrimination in the Reconstruction period and the New Deal era. Part two will focus on current land loss by African American farmers and the class action lawsuit against the United States Department of Agriculture (“USDA”) regarding discriminatory loan practices as systematic and institutionalized in our federal system.

## II. HISTORICAL DISCRIMINATION

Discrimination has existed in the United States since its inception. The fundamental problem is that the Constitution assumes a white male dominance.<sup>3</sup> This assumption regards white males as “natural beings” and, thus, they have a “status as situated in a condition existent prior to the law itself.”<sup>4</sup> Standing in contrast to the dominance of the white male, the African American lived an existence outside the scope of the Constitution.<sup>5</sup> When political conscience allowed the recognition of their existence, African Americans were forced to live as “amendments to the natural narrative of American legal and social reality.”<sup>6</sup> The consequences of such an existence are that their rights must “always be argued rather than assumed.”<sup>7</sup>

### A. Reconstruction

Property is the hallmark of the free. When African Americans were brought to the United States, the Government ensured their existence as slaves by denying them the right to own land.<sup>8</sup> The denial of property rights meant no potential to build capital, and thus, no opportunity to become free.<sup>9</sup> To the slaves, capital and property meant a better life.<sup>10</sup> Despite the restrictions on property ownership by slaves, many were able to acquire some assets in cattle, cotton,

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3. See SUGGS, *supra* note 1, at 44.

4. See *id.* at 44-45.

5. See *id.* at 45.

6. See *id.*

7. See *id.*

8. Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community Through Partition Sales of Tenancies in Common*, 95 NW. U. L. REV. 505, 523 (2001).

9. See *id.*

10. *Id.* at 524.

tobacco, and other crops and animals.<sup>11</sup> During the antebellum period, some slaves were given the option to purchase their freedom, which strengthened their desire to acquire capital.<sup>12</sup>

After the Civil War, Reconstruction went into effect to bring the country back together under the new idea of freedom for all men. The expectation of the newly freed slaves was that the Government would reallocate the land in the South creating property interests for African Americans.<sup>13</sup> This reallocation was crucial to the survival of the emancipated slaves because their skills were primarily in agriculture.<sup>14</sup> Blacks needed the land to provide for their families and to build capital. The freed slaves could not rely on white plantation owners to provide jobs for them either.<sup>15</sup> The Civil War left white plantation owners devastated.<sup>16</sup> They had no capital and no free labor, and thus, were unable to maintain the large plantation system.<sup>17</sup>

In 1865, the Bureau of Refugees, Freedmen, and Abandoned Lands ("Freedmen's Bureau") was established by Congress to oversee the redistribution of the land to free blacks.<sup>18</sup> As imagined by Thaddeus Stevens, each emancipated slave would be entitled to "40 acres and a mule."<sup>19</sup> The reality was that the Freedmen's Bureau was authorized to divide the land into twenty and forty acre plots, but the legislation did not provide for a mule.<sup>20</sup> The legislation promised "every male citizen, whether refugee or freedman, forty acres of land at rental for three years with an option to buy."<sup>21</sup>

In 1866, Congress opened an additional forty-six million acres of public land for settlement.<sup>22</sup> In the end, however, most of the land was returned to the white landowners when President Andrew Johnson issued pardons for many of the former confederates and ordered the Freedman's Bureau to restore the land to the pardoned Southerners.<sup>23</sup> The Bureau was left with only half of the 850,000

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11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 524-25.

15. See Ridgely A. Mu'min Muhammad, *Slaves to Two Parties*, THE FARMER, at [http://www.coax.net/people/lwf/bfaa\\_stp.htm](http://www.coax.net/people/lwf/bfaa_stp.htm). (Sept. 12, 2000) (stating that whites could not operate their plantations for economic reasons).

16. *Id.*

17. *Id.*

18. Mitchell, *supra* note 8, at 525; see also Freedman and Refugees Act, ch. 90, 13 Stat. 507 (1865).

19. DERRICK BELL, RACE, RACISM AND AMERICAN LAW 58 (4th ed. 2000).

20. *Id.* at 70 n.6.

21. Mitchell, *supra* note 8, at 525.

22. *Id.*

23. *Id.* at 526.

acres it controlled in 1865, and many black farmers had to give up their land.<sup>24</sup> Additionally, the Southern Homestead Act, which purported to be additional land for emancipated slaves, ultimately allowed anyone who claimed that he had not supported the Confederacy the right to apply for ownership of the land.<sup>25</sup> However, the result was that seventy-seven percent of applicants were white.<sup>26</sup> The positive impact on agriculture and property ownership among blacks that the Freedmen's Bureau and the Southern Homestead Act were supposed to have proved to be "a dismal failure."<sup>27</sup>

Surprisingly, some blacks were able to gain property rights through the programs of Reconstruction.<sup>28</sup> In 1880, twenty percent of black farmers owned their land.<sup>29</sup> Comparatively, over sixty percent of all white farmers owned their land, "the average value of which was more than double that owned by blacks."<sup>30</sup> While the status of the black farmer may not seem significant, it must be considered with the fact that only fifteen years earlier, *no* black farmers owned land.<sup>31</sup> However, this "success" of the black farmer created a counter-revolution by poor whites that undercut the gains by black farmers through support of discriminatory laws.<sup>32</sup>

The Reconstruction programs ultimately had one fatal flaw – the legislation that enabled the action did not actually enable the programs to take any action.<sup>33</sup> President Andrew Johnson refused to give the Freedman's Bureau any authority to counter state-fostered programs that not only advocated discriminatory practices, but also sponsored such action.<sup>34</sup> The result was that black farmers did not have a chance to really succeed. Their chance was preempted by state law and federal inaction.<sup>35</sup>

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24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* at 525.

28. *See* BELL, *supra* note 19, at 63.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *See* Donald G. Nieman, *The Freedmen's Bureau and the Mississippi Black Code*, in 3 RACE, LAW, AND AMERICAN HISTORY 1700-1990: EMANCIPATION AND RECONSTRUCTION 555-56 (Paul Finkelman ed., 1992).

34. *See id.* at 556-57.

35. *See id.*

### B. *New Deal*

For the next forty years, black farmers worked to overcome these obstacles. By the Great Depression, black farmers had purchased nearly fifteen million acres of land.<sup>36</sup> Like all Americans, black farmers were devastated by the collapse of the economy. To aid those hurt by the Depression, President Roosevelt proposed a set of programs collectively titled the New Deal.<sup>37</sup>

Under the New Deal, agriculture would get a "jump start" through programs that increased Government involvement in agriculture.<sup>38</sup> These agricultural programs were administered on a local level by "county committees" which controlled the distribution of federal aid.<sup>39</sup> In the South, these county committees were completely comprised of white men.<sup>40</sup> The county committees used the federal aid money to systematically eliminate the black farmer in the South.<sup>41</sup> Additionally, money from the programs went to universities to foster the development of new technology which decreased the labor necessary to effectively farm.<sup>42</sup>

Because black farmers were not awarded financial aid from the county committees, only white farmers could afford the new technology.<sup>43</sup> The financial disadvantage coupled with the technological disadvantage suffered by the black farmer at this time effectively forced many black farmers off their land.<sup>44</sup>

### C. *Alien Land Laws*

Blacks were not the only minorities that were prevented from owning farmland. In 1913, California enacted the Alien Land Laws which prohibited "aliens ineligible to citizenship" from owning agricultural land in fee simple and additionally prohibited such aliens from leasing farmland for more than three years.<sup>45</sup>

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36. Mu'min Muhammad, *supra* note 15.

37. *Id.*

38. See ECON. RESEARCH SERV., USDA, A HISTORY OF AMERICAN AGRICULTURE 1776-1990: GOVERNMENT PROGRAMS AND POLICY, available at <http://www.usda.gov/history2/text11.htm> (last visited Dec. 2, 2001).

39. Mu'min Muhammad, *supra* note 15.

40. *See id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *See id.*

45. Keith Aoki, *No Right to Own?: The Early Twentieth-Century "Alien Land Laws" as a Prelude to Internment*, 40 B.C. L. REV. 37, 38 (1998).

The purpose of the Alien Land Laws was to force Japanese Americans out of the state by preventing them from earning a living in agriculture.<sup>46</sup> Japanese American farmers filled a "vacuum" in California's agricultural labor force.<sup>47</sup> The problem with the Japanese immigrants was that they were too efficient and made stiff competition for white farm laborers in the state.<sup>48</sup> Other states followed California's lead, restricting the agricultural opportunities to Japanese Americans.<sup>49</sup> These laws did not stop at preventing Japanese Americans from owning farmland; the laws eventually extended to the prohibition of owning real property and finally to the mass internment of the Japanese during World War II.<sup>50</sup>

The Alien Land Laws reflected the Sinophobia that existed in the western states.<sup>51</sup> The importance of the Alien Land Laws is evident on a symbolic level in that "the creation [and maintenance] of a class unable to hold land unambiguously sends a message about the status of members of that class as less than worthy—the Alien Land Laws had a more subtle but equally invidious effect."<sup>52</sup>

Keith Aoki recognizes the Alien Land Laws as a cog in the four-rung "ladder" of agriculture that prevented Japanese farmers from succeeding.<sup>53</sup> The first rung allowed Japanese to work as laborers for a white landowner.<sup>54</sup> The Japanese farmer could reach the second rung if he could convince a white landowner to enter into a sharecropping agreement by which the landowner would provide the land, the tools, and housing for the Japanese farmer in return for a share of the profits from the crops harvested.<sup>55</sup> The third rung was achieved when the Japanese sharecropper saved enough money to contract for a direct lease with a landowner.<sup>56</sup> This level of achievement enabled the Japanese farmer to function almost independently and keep profits for himself.<sup>57</sup> The final rung of the ladder was the acquisition of enough capital, either outright or borrowed, to purchase land.<sup>58</sup> The Alien Land Laws created the final bar to the Japanese at

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46. BELL, *supra* note 19, at 120.

47. *Id.*

48. *Id.*

49. *Id.*

50. Aoki, *supra* note 45, at 38.

51. *Id.* at 37.

52. *Id.* at 62.

53. *Id.* at 62-63.

54. *Id.* at 63.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

this fourth rung.<sup>59</sup> After all of their hard work, Japanese farmers were prohibited from owning their own land.<sup>60</sup>

Just as with the freed slaves during Reconstruction, the policies and procedures of the federal government worked specifically against the minority regardless of how hard the Japanese farmers tried to work within the system. The Alien Land Laws, while not directly applicable to black farmers, demonstrate the lengths to which government would go to prevent minority farmers from gaining any capital, land, or any power in agriculture.

### III. DISCRIMINATION TODAY

#### A. Land Loss by Black Farmers

Since the 1920's, the number of farmers in the United States has steadily declined.<sup>61</sup> Between 1920 and 1992, the total number of farms decreased by seventy percent.<sup>62</sup> The number of minority-owned farms has declined even more severely. In 1920, minority-owned farms numbered 954,300, however by 1992 that number had dwindled to 43,500—a ninety five percent reduction.<sup>63</sup> The decline of black-owned farms represents a large part of the minority decline. In 1920, black farmers comprised one in every seven farmers, but by 1992, they were only one in every one hundred farmers in the United States.<sup>64</sup> A 1990 congressional report found that black-owned farms were going out of business at a rate of three times that of white farms.<sup>65</sup>

The decline in farms, both whites and minorities, is mostly the result of the numerous changes in agriculture over the past seventy years.<sup>66</sup> Both white and black farmers were affected by the shift from labor-intensive to a capital-intensive system that required greater investments in technology.<sup>67</sup> But white and black farmers were not affected equally. Because of their historically subordinate economic and social position in agriculture, black farmers were disproportionately affected due to their inability to acquire funding to take advantage of

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59. *Id.*

60. *Id.*

61. See Economic Res. Service, USDA, *Minority & Women Farmers in the U.S.*, AGRIC. OUTLOOK, May 1998, at 16 [hereinafter AGRIC. OUTLOOK].

62. *Id.*

63. *Id.*

64. *Id.*

65. 136 CONG. REC. S10727-03 (daily ed. July 26, 1990) (statement of Sen. Fowler); see also AGRIC. OUTLOOK, *supra* note 61, at 16-17.

66. See AGRIC. OUTLOOK, *supra* note 61, at 16.

67. *Id.*

the new advancements.<sup>68</sup> The result was that many black and minority farmers lost their farmland.

Many federal programs were introduced to help black and other minority farmers adapt to the changing agricultural world, such as loans, insurance, technology aid, and other programs.<sup>69</sup> However, these programs usually failed to help minority farmers because of flawed design, ineffective outreach, insufficient funding, and most generally, discrimination.<sup>70</sup> Numerous reasons exist why black farmers are losing land including discrimination by public and private lenders, inadequate aid from the Farmers Home Administration, lack of technical and financial assistance from the USDA, lack of access to farmland, and inadequate legal assistance.<sup>71</sup>

### B. *Pigford v. Glickman*

The USDA loan system operates under the 1935 Soil Conservation and Domestic Allotment Act, part of President Roosevelt's New Deal legislation.<sup>72</sup> This system functions on a local level where local farmers are elected to determine the creditworthiness of applicants.<sup>73</sup> Traditionally, these representatives were white farmers.<sup>74</sup> As a result, black and minority farmers have been wrongly denied loans and aid based on race.<sup>75</sup>

This lack of availability of loans for minority farmers is troublesome for many reasons. Primarily, USDA loans generally serve as a means for obtaining money necessary to the survival of the small farm when the farmers are unable to secure credit from other lending institutions.<sup>76</sup> Small farmers, as a group, tend to be regarded as uncreditworthy by both private and public lenders.<sup>77</sup> Second, USDA loans are desirable because interest rates are typically lower than those of the commercial lender.<sup>78</sup> Also, the USDA has a program with a special interest

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68. *Id.*

69. *Id.* at 17.

70. *Id.*

71. THE LAND LOSS FUND, WHY IS LAND BEING LOST?, at

[http://www.members.aol.com/tillery/llf\\_why.html](http://www.members.aol.com/tillery/llf_why.html) (last visited May 21, 2003).

72. 16 U.S.C. § 590(h), *repealed by* Pub. L. No. 89-554, § 8(a), 80 Stat. 648 (1966). This section has been repealed with the other New Deal legislation, but it appears from the literature consulted that the USDA still employs this loan system.

73. *Id.*

74. Cassandra Jones Havard, *African-American Farmers and Fair Lending: Racializing Rural Economic Space*, 12 STAN. L. & POL'Y REV. 333, 333 (2001).

75. *Id.* at 335.

76. *Id.* at 334.

77. *Id.* at 338.

78. *Id.* at 334.

rate for farmers who do not qualify for regular USDA loan programs, but need the loan money to "maximize their incomes for farming."<sup>79</sup>

The county committee reviews the loan applications and decides to whom to give approval.<sup>80</sup> "If the application is denied, the [applicant has the opportunity to] appeal to a state committee and then to a federal review board."<sup>81</sup> In the case of an application denied based on alleged racial issues, the Civil Rights Division of the USDA would review the loan denial.<sup>82</sup> However, in 1980, the Civil Rights Division of the USDA was dismantled.<sup>83</sup> The USDA continued, nevertheless, to collect the civil rights appeals. As a result, when black farmers were denied loans, their complaints and appeals were never processed.<sup>84</sup>

In 1997, a class action lawsuit representing the ignored African American farmers against Secretary of Agriculture Dan Glickman was filed.<sup>85</sup> At the time the class was certified, approximately four hundred African American farmers alleged "that the [USDA] willfully discriminated against them when they applied for various farm programs, and. . .the USDA failed properly to investigate" the discrimination complaints.<sup>86</sup>

In January of 1999, the USDA and the black farmers entered into a settlement—a five-year consent decree.<sup>87</sup> Under the consent decree, each individual plaintiff had three options to pursue their claim.<sup>88</sup> First, the claimant could choose Track A which allowed the claimant to recover \$50,000 plus forgiveness of their debt upon a showing of "substantial evidence" of credit discrimination based on race.<sup>89</sup> Those claimants who could not show credit discrimination by "substantial evidence" would not get the \$50,000, but if they could show substantial evidence of non-credit discrimination, would receive \$3,000 which was deemed to be the "approximate value of the benefit wrongly denied" as long as

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79. *Id.*

80. *Id.* at 335.

81. *Id.*

82. *See id.*

83. *Id.*

84. *Id.*

85. *See generally* Pigford v. Glickman, 182 F.R.D. 341 (D.D.C. 1998) (establishing the class of black farmers against the USDA).

86. *Id.* at 343.

87. *See generally* Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999) (setting up the parameters of the consent decree); USDA, *PIGFORD V. VENEMAN: CONSENT DECREE IN CLASS ACTION SUIT BY AFRICAN AMERICAN FARMERS: BACKGROUND AND CURRENT STATUS*, available at <http://www.usda.gov/da/consentsum.htm> (last visited Jan. 13, 2003) [hereinafter CONSENT DECREE].

88. *See Pigford*, 185 F.R.D. at 95.

89. *Id.* at 95-96, 105.

funds are available for this purpose.<sup>90</sup> As of December 23, 2002, twenty-one thousand five hundred ninety-one claimants have chosen this course of action.<sup>91</sup> Of this number, approximately sixty percent of the claims have received some type of payment.<sup>92</sup>

The second option for the class members is Track B providing a settlement tailored to “individual circumstances, including a cash payment equal to actual damages, and forgiveness of outstanding USDA loans affected by discriminatory conduct.”<sup>93</sup> This track has a higher standard of proof, claimants are required to prove by a “preponderance of the evidence” that they have been the victim of discriminatory practices.<sup>94</sup> Only 181 claimants had chosen this course of action as of December 23, 2002.<sup>95</sup>

Claimants did not have to choose either Track A or Track B as part of the consent decree. Those claimants who did not want to participate in the consent decree were given the option to “opt out” of the class action suit and continue with individual cases.<sup>96</sup> Approximately 230 claimants have chosen to pursue their cases in this manner.<sup>97</sup>

While approximately sixty percent of the applicants under Track A have recovered some form of award, many still claim that the consent decree itself is discriminatory and unfair to black farmers. The Black Farmers and Agriculturalists Association (“BFAA”), many of whose members were part of initial class in *Pigford*, think that the consent decree should be thrown out because it has only had the effect of ruining the lives of black farmers.<sup>98</sup> BFAA claims that most people who recover under the consent decree and receive the \$50,000 payment no longer farm or own farmland, nor do they have any outstanding loans with the USDA.<sup>99</sup>

The few deserving black farmers who do get the settlement generally must use the money to pay costs related to their previous bankruptcy.<sup>100</sup> The

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90. See *id.* at 105-06 (setting up the parameters of the consent decree); CONSENT DECREE *supra* note 87.

91. CONSENT DECREE, *supra* note 87.

92. *Id.*

93. See CONSENT DECREE, *supra* note 87.

94. See *Pigford*, 185 F.R.D. at 105-106 (setting up the parameters of the consent decree); CONSENT DECREE, *supra* note 87.

95. CONSENT DECREE, *supra* note 87.

96. *Id.*

97. *Id.*

98. Gary R. Grant, *BFAA Does Not Support Reopening Pigford vs Glickman*, at [http://www.coax.net/people/lwf/bfaa\\_gg.htm](http://www.coax.net/people/lwf/bfaa_gg.htm) (last visited Nov. 21, 2002).

99. *Id.*

100. *Id.*

plain fact is that the settlement is "too little, too late."<sup>101</sup> When these black farmers were unable to secure financing from the USDA initially, they were constructively forced to default on other loans and thus, forced off their land.<sup>102</sup> Black farmers have also lost their land in conjunction with the consent decree when they have been denied the settlement and the USDA forecloses on their land.<sup>103</sup>

As of December 23, 2002, approximately forty percent of the claims filed under Track A were ruled against the claimant.<sup>104</sup> Black farmers believe that discrimination continues in rejecting claims.<sup>105</sup> Some of the reasons that claims have been rejected by the adjudicator in Track A include misspelling of the name of the similarly situated white farmer, the claim was too much like other claims coming from the same area, and misspelling of the county name.<sup>106</sup> The ultimate problem is that once these claims are rejected, for whatever reason, there is no available appeal.<sup>107</sup>

### C. *What Is Being Done About the Discrimination?*

Since the filing of *Pigford*, the USDA has taken steps to end discrimination.<sup>108</sup> As a result of the pressure to become more civil rights sensitive, the USDA formed a Civil Rights Action Team.<sup>109</sup> In the team's March 1998 report, the culprit of the discriminatory practices was deemed to be the lack of a system for dealing with complaints.<sup>110</sup> As a result of their investigations, the Civil Rights Action Team made ninety-two recommendations to Secretary Glickman.<sup>111</sup> Of these recommendations, seventy-seven were implemented, including civil rights

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101. Hamil R. Harris, *Can't Save the Farm*, BLACK ENTERPRISE, Dec. 1, 2000, at 34, available at 2000 WL 12146262.

102. *Id.*

103. Kenneth R. Timmerman, *Farming While Black*, INSIGHT ON THE NEWS, Sept. 3, 2001, at 10, available at <http://www.insightmag.com> (available under "Archives" link).

104. CONSENT DECREE, *supra* note 87.

105. Timmerman, *supra* note 103.

106. *Id.*

107. *Id.*

108. See generally USDA, No. 4300-005, DEPARTMENTAL REGULATION: AGENCY CIVIL RIGHTS PROGRAM, at <http://www.wip.usda.gov/ocio/directives/DR/DR4300-005.htm> (last visited Jan. 16, 2003) (detailing new USDA policy implemented for agency civil rights programs) [hereinafter DEPARTMENTAL REGULATION].

109. Greg Moses, *Special Focus on Pigford v. Glickman*, TEX. C.R. REV., at <http://members.tripod.com/~gmoses/tcr/pigford.htm> (last visited Jan. 16, 2003).

110. *Id.*

111. Deputy Secretary of Agriculture Rich Rominger, Address at the Dr. Martin Luther King, Jr. Observance: "Living the Dream in the New Millennium" (Jan. 13, 2000), available at <http://www.usda.gov/news/speeches/st01>.

regulations, a new computer system to reduce backlog, and outreach councils in every state.<sup>112</sup>

An additional recommendation of the Civil Rights Action Team was reorganization of the Office of Civil Rights.<sup>113</sup> In January 1998, the USDA initiated the agency.<sup>114</sup> This included a full-time director as well as a civil rights office for each agency located in Washington, D.C.<sup>115</sup> The purpose of the "new" agency is to "[install] a system for statistical evaluation and reporting . . . to determine the extent to which racial/ethnic minorities . . . benefit from, or receive the services" of the agency, to "establish information/public notification" system to inform those who are eligible for the benefits, and "to increase the participation of under-represented groups in agency programs."<sup>116</sup> Whether or not these goals are achieved remains to be seen.

While the USDA has been proactive in addressing civil rights issues at the agency level, many people feel that the settlement in *Pigford* did not do enough to solve the problem of discrimination in USDA lending procedures.<sup>117</sup> When the Civil Rights Action Team was formed, the USDA refused to bind themselves legally to the team's recommendations and findings.<sup>118</sup> The committee found that the decentralized bureaucratic system of the USDA is a leading contributor to discrimination within the agency because of the difficulty "[m]aintaining focus on civil rights policy across the far-flung bureaucracy."<sup>119</sup> Within this bureaucracy, the USDA's failure to address the issue of discriminatory procedures in lending is illustrated by the fact that many loan officers charged with discriminatory practice have retained their positions.<sup>120</sup>

#### D. What Should Be Done About the Discrimination?

The fundamental problem regarding discrimination in agriculture in the United States is not only that the discrimination is systematic, it is also symptomatic. Our lending system is based on a concept that is over sixty years old. Since 1938, our country has gone through numerous social and technological changes. Most importantly is the Civil Rights movement. Discrimination based

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112. *Id.*

113. DEPARTMENTAL REGULATION, *supra* note 108.

114. *Id.*

115. *Id.*

116. *Id.*

117. Bob Williams, *Black Farmers Plight Not Over*, THE NEWS AND OBSERVER, June 24, 2001, at A1, available at 2001 WL 3470990.

118. Moses, *supra* note 109.

119. *Id.*

120. Williams, *supra* note 117, at A1.

on race is no longer acceptable. State government agencies, other public entities, and even private companies have been required to maintain equal opportunity standards. However, the USDA and agriculture industry has managed to completely avoid changing with the times and discrimination still persists.

Additionally, technological advances make it unnecessary to have county committee systems. Because of the ease in communication, the USDA could centralize their lending programs. This would allow for greater oversight by the Office of Civil Rights and a greater compliance with civil rights guidelines. The county committee system lends itself to too many variables that cannot be effectively controlled to minimize discrimination.

The next step belongs to Congress. Our representatives must take the initiative in fighting to save black family farms. A new centralized program must be designed to minimize discrimination or the future of the black farmer is just as bleak as it has been since the beginning of our nation's history.

While the USDA is taking steps to deal with discrimination within the existing framework, the fact remains that discrimination is prevalent at the local level where the most control is located. Local farmers have the power to decide the fate of other local farmers. With discrimination as the impetus to deny financial aid, this is too much power. The plain facts are that any farmer applying for one of these loans needs the money soon. If the local farmers on the county committee want to force black farmers off their land, all that must be done is to deny the loan in the first place. Because the appeals process takes time, the black farmer will likely lose his land in a foreclosure sale before his denial is overturned. The situation is win-win for the discriminatory county committee because there is no recourse for a finding of discrimination by the board.

#### IV. CONCLUSION

Discrimination infects the agriculture industry to the detriment of all involved. Our refusal as a nation to recognize the problem and take adequate steps to address the problem will only result in the loss of more farms and the increase in discrimination. The laws that protect this institutionalized discrimination must be directly attacked if black and other minority farmers are ever to escape their "slavery" within this oppressive system. Once we can break this cycle of systematic discrimination, we may begin to see the solution to other problems in agriculture, such as the decline of the family farm and issues in crop production.