

Crossroad blues: the MTA Consent Decree and just transportation

Robert García and Thomas A. Rubin

Standin' at the crossroad
 I tried to flag a ride
 Ain't nobody seem to know me
 everybody pass me by.
 (Robert Johnson, *Cross Road Blues*, 1936, alternate take)

Introduction

This chapter describes how a team of civil rights attorneys working with grassroots activists filed and won the landmark environmental justice class action *Labor/Community Strategy Center v Metropolitan Transportation Authority (MTA)*. The plaintiffs alleged that MTA operated separate and unequal bus and rail systems that discriminated against bus riders who were disproportionately low-income people of color. The parties settled the case in 1996 through a court-ordered Consent Decree in which MTA agreed to make investments in the bus system that would total over \$2 billion, making it the largest civil rights settlement ever. Metropolitan Transportation Authority agreed to improve transportation for all the people of Los Angeles by reducing overcrowding on buses, lowering transit fares, and enhancing county-wide mobility.

Despite the fact that MTA agreed to the terms of the Consent Decree, however, it has resisted bus service improvements for the seven-plus years the Decree has been in force. Metropolitan Transportation Authority has taken its arguments to set aside the Consent Decree all the way to the US Supreme Court – and lost every time. Ultimately, the MTA case was resolved through mediation and a settlement, not trial. The MTA case illustrates what can be accomplished under federal civil rights law in the US, when a community organizes to protest against environmental injustices. This is an important difference between the US and the UK, where no such legislation and litigation is available to populations that are discriminated against by transportation policies.

Background

Los Angeles may be regarded by many as the car capital of the world, but for the working poor and other people with limited or no access to a car who depend on public transit, it can be almost impossible to get to work, to school, to the market, to the park, to the doctor, to the church, to friends and loved ones, or to many of the other basic needs of life that many of us take for granted. At the time of writing, a transit strike had just been settled that gridlocked Los Angeles for 35 days and stranded approximately 325,000 commuters who rely on transit. Traffic – already the worst in the nation (TTI, 2003) – became measurably worse as the result of a 4% increase in cars and trucks that is enough to clog the roadways for everyone. Businesses across the city felt the pain, particularly where customers as well as employees depend on public transportation.

While everyone suffers from the lack of a decent public transit system, low-income people of color suffer first and worst. At the time the MTA Consent Decree was filed, the typical bus rider in Los Angeles was a Latina woman in her 20s with two children. Among bus riders, 69% had an annual household income of \$15,000 – well below the federal poverty line – and no access to a car; 40% had household incomes under \$7,500 (MTA, 1998a)¹. The people who rely most on transit service are disproportionately poor – people of color, women, children, students, older people and disabled people.

Consider the case of Kyle, a 26-year-old single Latina mother of two and a bus rider in Los Angeles. She found work in a drug abuse prevention program after leaving welfare, which she described as ‘hell’, to face the new hell of her daily commute. At 6am, Kyle is at the bus stop with her children. Fourteen-month-old Ishmael is asleep on her shoulder; five-year-old Mustafa holds her hand. Two buses later, she drops off Mustafa at school in Inglewood. Then she rides two more buses to get Ishmael to his babysitter in Watts. From there it is half an hour to work. Kyle arrives about 9am, three hours and **six** buses after starting:

The boys and I read. We play games, we talk to other people, we spend the time however we can.... In LA County, it's very difficult to live without a car. (Quoted in Bailey, 1997, p A1)

For small businesswoman Leticia Bucio, who recently opened a beauty shop in downtown Los Angeles, a mention in a downtown newspaper validated a risky investment in weak economic times. Then the buses stopped rolling. “And look at what happened”, Bucio said, standing in her empty Letty’s Beauty Parlour, where not a single customer had come in since the opening hour. “Now this comes. My God, I don’t even know how I am going to pay the rent” (quoted in Bernstein et al, 2003, p A1).

When student Trevante Banks, 14, could not ride MTA buses and trains between his home in the heart of African American Los Angeles and his honors high school in the San Fernando Valley, Trevante found a roundabout way to school:

taking non-striking buses, which zigzagged more than 30 miles to the stop closest to his school. From there, he walked the remaining two miles to Woodland Hills. The one-way trip took more than four hours, but Trevante said it was worth it because he does not want to attend the academically inferior and gang-plagued school near his home (Liu, 2003).

At the nine meal centers that are run by Jewish Family Services for older people, as many as one third of those who regularly come for hot meals have been unable to make it for lunch or dinner since the strike began. Other kitchens and food banks report even more dramatic drops in attendance (Bernstein, 2003a).

Before the strike began, worker Freddie Summerville's workday started at 4:30am with a mile-long walk from his North Hollywood apartment to the Red Line subway. He would take the subway downtown and transfer to the Gold Line light rail to Pasadena and walk another mile to the construction company where he works as a laborer. On the first day of the strike, he walked eight hours to get to work to avoid losing his job. Since then he has rented a car that he cannot afford to reach a job that he cannot afford to lose (Bernstein, 2003b).

A better, cheaper, safer, clean-fuel bus service is the backbone of the transportation system in Los Angeles. Over 90% of MTA's riders ride buses. Subway, light rail, and commuter rail systems depend on buses to get people to and from stations. Buses reduce the need for single-occupancy cars on streets and highways. Without an effective bus system, the rail system will not work. Roads will become more congested. Pollution, related human health, and global warming problems will worsen. Janitors, housekeepers, day-care providers, factory workers and other low-wage workers are not be able to tend to the children, homes, offices, factories and work places of Los Angeles without an effective bus system. All the people who depend on these workers to get on with their lives – all the people of Los Angeles – suffer as a result. Buses keep Los Angeles moving.

In cities across the US, like San Francisco, Atlanta, Baltimore, Pittsburgh, and New York, the statistics vary, but the stories of transportation injustice remain the same and advocates are extending the lessons of the MTA case (Bullard et al, 2004). The plight of the working poor and others with limited or no access to a car throughout the nation illustrates the need for a transportation policy agenda to provide choices to people who currently lack them (Krumholz, 1982). Transportation is a social and economic justice issue because those who most rely on transit services are disproportionately poor. Transportation is a civil rights issue because the poor are disproportionately people of color. Transportation is an economic issue because a better transit service can increase the mobility of such people, enabling them to reach jobs, schools, training, shopping, and other activities. Transportation is an environmental issue because a better, cheaper, safer, clean-fuel transit service offers an alternative to the single-user automobile and can reduce congestion, pollution, and consumption of energy and other natural resources.

Transit policies leading to the MTA case

During the period 1980-96, the public transit decision-making process in Los Angeles County resulted in poor decisions on the type of transportation projects, including expensive rail lines that would provide little in the way of improved mobility for those who needed it most, expansion of bus service in suburban areas while reducing service and raising fares in the inner city areas of the County selected for implementation, billions of wasted taxpayer dollars, incredible missed opportunities, and massive damage to the most important components of the transit network and its users. In particular, the decision to devote over 60% of total transit subsidy funds to rail construction and operations for over a decade produced very expensive, relatively little used transit system components with paltry evident transportation purposes, while the extremely productive and cost-effective bus system – and its riders – suffered major harm to both quality and quantity of service. During a period when the largely transit-dependent populations of people of color in Los Angeles County grew almost 40%, these ill-considered and poorly executed decisions resulted in the transit ridership of the county's major transit operator falling by 27%².

The demographics of Los Angeles

The popular myth is that Southern California is a spread out, low-density region that is served by the most extensive freeway system in the nation, where virtually no one uses transit. This myth is simply not true, the Los Angeles region is the most densely populated urbanized area on the US mainland – almost 30% more densely populated than number two, New York City³. Los Angeles is close to last in the nation in all measures of miles of roadway per capita (FHWA, 2000).

The average bus passenger load of the MTA and its predecessors was the highest of the 'Top 20' US bus operators every year since the US Department of Transportation began collecting statistics in the late 1970s (UMTA, 1979-97) until the Consent Decree – with its overcrowding limits – was well into effect.

This huge difference between perception and reality had a major impact on transportation decisions in Los Angeles, particularly a belief that there was an essential requirement for something new (a rail network) as the way to solve the area's transportation problems. Unfortunately, the difference between perception and reality led to a course of action that not only did not contribute to the solution of the problems, but also made them significantly worse. How did this state of affairs – this massive difference between what everyone 'knows' about Southern California and the actual truth – come to be?

Transit history in Los Angeles

The story, of course, is long and involved, but the highlights begin with the Red Car/Yellow Car system, arguably the most comprehensive urban/suburban rail

transit systems ever built. This formed an important basis of the early development pattern of Southern California, a collection of small settlements and real estate development joined by a transit system that allowed fast, easy, and relatively inexpensive travel between them. As the age of the automobile arrived and the original real estate developments connected to the rail system developers were built out, the region moved swiftly from reliance on rails to reliance on concrete and asphalt as the main foundations for transport. There was no shortage of plans for improved rail systems – approximately 18 from 1911 to 1978 – but all went nowhere, including at least four that were turned down by the voters (1922, 1968, 1974 and 1976). Interestingly enough, the original 1939 plan for the Los Angeles freeway system concluded that rail rapid transit was the key factor in meeting transportation needs. The need for immediate action, however, led to freeways being built first, with the more expensive rail lines to follow later (Green, 1985). (They didn't.)

After the Second World War, Southern California grew at an amazing rate of speed and the demand for automotive capacity grew with it. The 'Golden Age' of freeway construction lasted through the early 1970s, when the combination of environmental protection measures enacted by Congress, the first oil crisis, and a temporary, but significant, reduction in auto travel finally combined to end it.

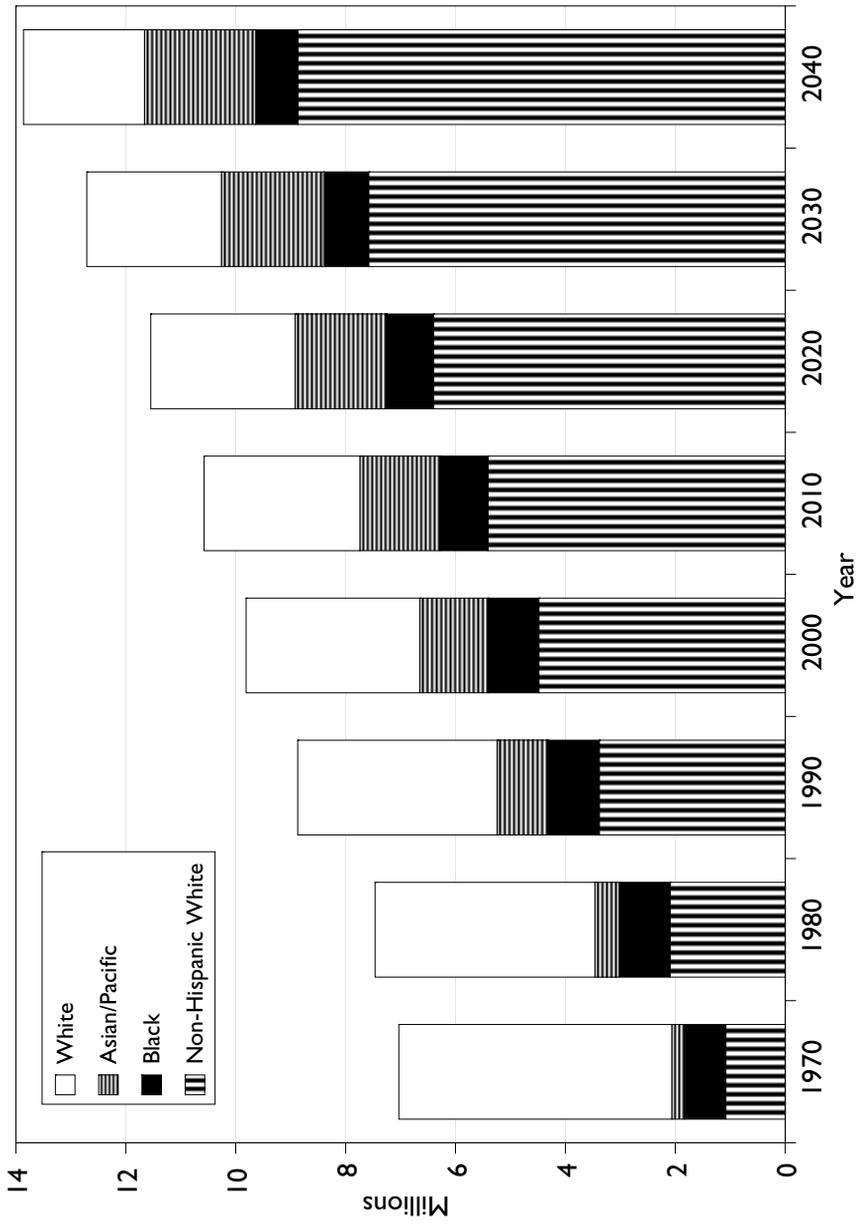
After the first oil crisis began in 1973, a number of elements combined to limit the immediate response to the increasingly higher ratio of people to road capacity. First, the increase in the price of gasoline, and its occasionally limited availability, limited vehicle travel. This reduced at least the growth of congestion for some years. Second, the economic downturns of the late 1970s through mid-1990s (the latter had a far larger impact on the greater Los Angeles area than nationally) limited job growth. Third, public opinion moved against massive roadway construction as many people began to wonder where their next gallon of gasoline was coming from. The political decision makers heard and understood. Finally, bus mass transit in Los Angeles experienced a period of very rapid growth. During the six years from 1974 to 1980, for example, MTA's predecessor saw ridership increase from 217.7 million to 396.6 million – 82% overall, a sustained compound growth rate of over 10% per year (UMTA, 1978-97).

The other major change in Los Angeles during this period was a major shift in demographics. The non-Hispanic white population has actually decreased steadily in absolute numbers since 1970, as the population percentage fell from 70% to 32% in 2000, on its way to a projected 16% in 2040 (see Figure 12.1).

The most significant change is the over seven-fold growth of the Hispanic population, from 15% in 1970 to 46% or more in 2000, to a projected 64% in 2040. The black population is projected to increase only 2% in total, with the population percentage dropping from 11% in 1970 to 9% in 2000 to a projected 6% in 2040. The Asian population shows very rapid growth from a small base, from 4% in 1970 to 13% in 2000 to 18% in 2040 (DMU, 2001).

As people of color became the overwhelming majority of the Los Angeles

Figure 12.1: Los Angeles population by ethnicity (1970-2040)



County population, transit usage has become, overwhelmingly, a minority phenomenon, far more those than in virtually any other major US mainland urbanized area. Although minority transit usage is virtually always significantly higher than the minority urban area population in the US (with the exception of largely suburban transit systems, such as commuter rail and water ferry operators, that serve overwhelming non-minority areas), the percentage of people of color who use transit is far higher for MTA than for the average of other US transit systems (APTA, 2001; DMU, 2001).

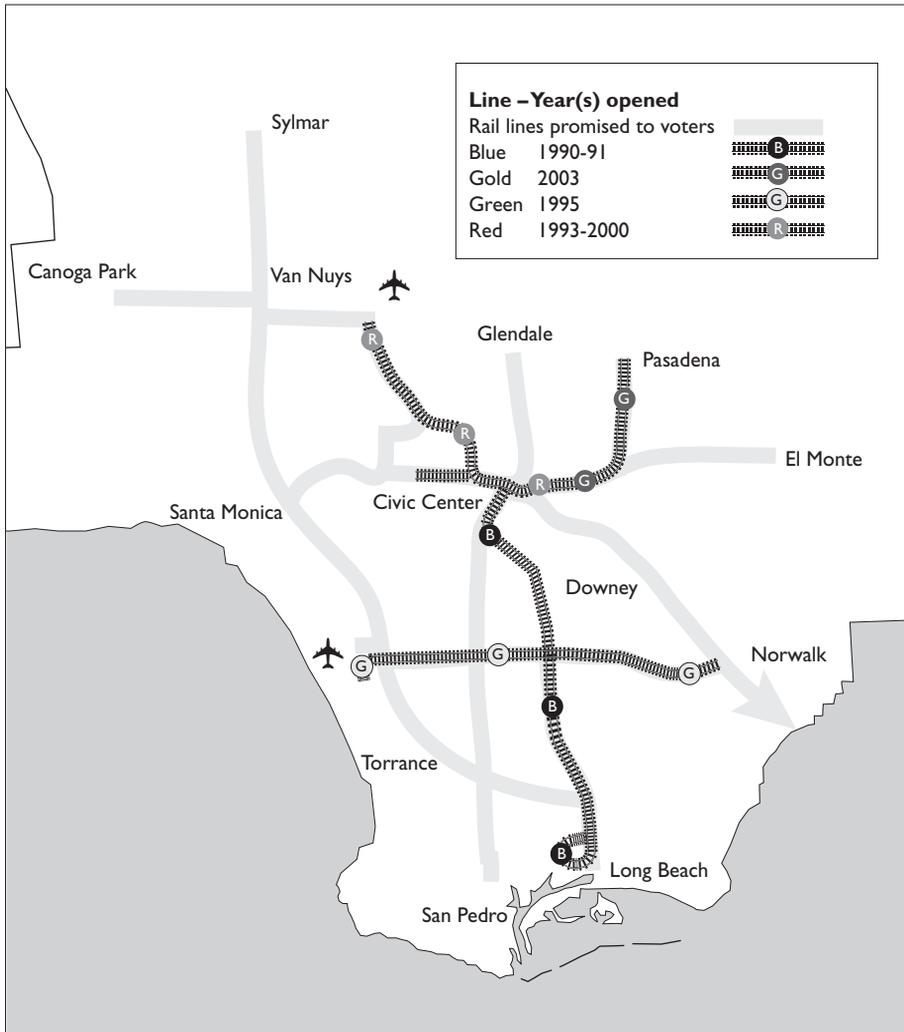
By 1980, however, transit in Los Angeles was running out of funding. The major public funding source was the quarter-cent state-mandated the 1971 Transportation Development Act sales tax. The limitations of these funds led to fare increases throughout the late 1970s. Quickly, however, the buses became so overcrowded that service was added to handle the loads. Fares went up from \$0.25 to \$0.35 for 1977, \$0.40 for 1978, \$0.45 for 1979, and \$0.55 for 1980. Ridership continued to increase every year, even as the price of riding increased.

In 1980, the voters of Los Angeles County passed Proposition A. This measure imposed a half-cent sales tax in Los Angeles County for transit purposes. Learning from past failures at the ballot box, the Proposition A promoters put something in it for everyone. First, they reserved 25% of the collections for 'local return' to each incorporated city and Los Angeles County Supervisor (for the unincorporated portions of the County). This ensured a very high level of support from local elected politicians, or at least defused much of the former suburban opposition to countywide transit plans and taxes. Second, they dedicated 35% of the funds for rail construction and operations, promising a network of no less than 11 rail lines reaching virtually every corner of the primary populated areas of the County⁴ (see Figure 12.2).

Third, for the first three years of tax collections, bus fares would be reduced to \$0.50 and a \$20 monthly pass. The '\$0.50 fare' program was funded out of the 35% rail 'pot', thereby delaying rail spending full implementation for three years. Finally, 40% of the funds were put into the 'discretionary' pot, to be utilized for any purpose allowed by state statute and Proposition A. As a result, the proponents of every transit project in the county were able to convince themselves – often with a little help from Los Angeles County Transportation Commission (LACTC) staff – that 'their' project would be one of the first to be favored with discretionary funding (LACTC, 1980, for distribution of funding only). Proposition A gained 54% of the vote in the November 1980 election.

The \$0.50 bus fare program was instituted in 1982 after a court challenge to the tax was successfully resolved. The result was the greatest increase in transit utilization over a comparable period in the US in a non-wartime situation since the early decades of the century – a 40% plus increase in transit ridership in three years, adding over 143 million riders a year (UMTA, 1987)⁵. The increases occurred despite bus service mile increases of only 1.5% over the period, resulting in the most overcrowded US buses since the Second World War. The fare subsidy

Figure 12.2: Proposition A rail plan



program required slightly under 20% of the Proposition A sales tax collections, or not quite a \$0.001 sales tax – quite a bargain, to say the least.

At the end of 1985, the funding for the \$0.50 fare terminated, under the terms of Proposition A, with the funds originally programmed for this purpose being used for rail construction. The first two projects to start construction were the Long Beach–Los Angeles Blue Line light rail and the Red Line subway from downtown Los Angeles to the San Fernando Valley.

Unfortunately, the combination of overly optimistic projections of rail construction costs, political expediency, and the lack of managers and staff with ‘hands on’ experience had already sown the eventual seeds of destruction of the

Proposition A rail plan. In order to gain the political support necessary to get Proposition A passed, it was necessary to include a very large number of rail lines. However, the costs of construction and operations of these lines far exceeded the funding that could be generated by Proposition A and other available funding sources. At the same time, the need to begin construction, to show the voters that they were receiving value for their money, and that their elected representatives were doing their job, served to ensure that expenditures were to be made, and committed, at a rate that far exceeded the ability of the funding sources to cover the costs.

The first problem that surfaced was the realization that the Proposition A 40% Discretionary Funds would not be available for rail construction. Financial reality required that the 40% funds be used to support the operations of the county's existing bus transit systems. The other major problem was the costs of rail construction were far higher than the original, technically deficient projections (and no one was willing to tell the emperor that he had no clothes!). For example, the earliest, informal estimates of the costs of the Long Beach–Los Angeles Blue Line light rail were approximately \$125 million. The final approved budget was \$877 million in 1990 – and the true cost is over \$1 billion (Rubin, 2000).

Part of this increase of over 700% was due to changes in project design. A large part was due, however, to the original cost estimates just plain not being competent – and the reluctance of staff to admit to the governing board that costs were increasing. (These situations are known to anyone who has ever followed major capital projects for any length of time.)

The Blue Line light rail construction costs as a percentage of tax revenues rose from a 'best case' 6.75% of Proposition A sales tax rail funds over the construction period to over 115%. At the same time, the costs of the other rail programs were also growing. The Red Line subway Segment 1 had significant increases in costs of approximately \$188 million over the \$1.25 billion federal grant agreement cost (MTA, 1998b). The costs of the Green Line light rail line rose from a projected \$178 million in 1986 to approach \$1 billion (LACTC, 1986; Rubin, 2000).

These cost overruns began to require such high levels of borrowing that MTA's predecessor was approaching its debt limits. Proposition A's 11-line rail system would have soon come to a halt with only one line completed (Long Beach Blue Line light rail) and two others partially completed (Red Line subway and Green Line light rail) – and no funds to operate the lines that had been completed.

The result was what became Proposition C, a second half-cent sales tax that was placed before the voters in November 1990. The Proposition A success story was copied, including the local return (20%), dedicated fund 'pots' for specific interest groups (25% for 'transit-related' highway improvements which, as a practical matter, meant high-occupancy vehicle lanes, 10% for commuter rail/transit centers, and 5% for transit security) and discretionary fund (40%) tactics. Proposition C passed with a small margin, along with three state-wide

measures that promised billions for transportation improvements, primarily rail construction, in Southern California.

One of MTA's predecessor agencies published a long-range transportation plan that was adopted as the 30-Year Integrated Transportation Plan in 1992. This became one of the all-time 'everything for everyone' planning exercises. The difficulty was in incorporating every project that all the many interested parties wanted while keeping within fiscal reality. The solution was, where there was a conflict, fiscal reality lost. Few knowledgeable observers believed that the projections in the 30-Year Plan could be realized, even before it was finalized – and it did not take long for its total lack of reality to be conclusively demonstrated⁶.

When MTA started the next major plan process, it quickly discovered the extent of the problems they faced. The result was a document presented to the MTA board in October 1994 (MTA, 1994) that showed that, compared to the 1992 projection of \$100 billion of revenues over the first 20 years of the 30-Year Plan, MTA was instead expecting \$64 billion. MTA had overestimated the \$64 billion it expected in 1994 by \$36 billion, or over 56%. This is one of the largest, if not the largest, revenue forecast errors in the history of municipal finance.

Another major financial shortfall was the failure of the second and third parts of a \$3 billion state transportation construction-funding program in 1992 and 1994.

The fare hike of 1994

During the first years of MTA's existence after its formation in 1993, the continual problem faced by the board and management was how to keep the rail construction program going at full speed. In his first major action before the Board, presenting the first MTA budget (for the 1994 fiscal year), the new chief executive officer stood tall and told the members the truth – that the agency was in deep financial trouble and the only way out was to live within the agency's means. Specifically, there was not sufficient funding to begin construction on the Pasadena light rail line and it would have to be delayed. The board refused to accept this and, led by the new Los Angeles Mayor, Richard Riordan, ordered staff to come up with a way to start the project. Staff returned with a plan that probably no one believed would work (or cared if it would), which the board immediately adopted, and work began on the Pasadena line – and the 'plan' to finance it was promptly forgotten by all⁷.

In the budget process for the next fiscal year (1995), the big problem, once again, was to find ways to keep the rail construction projects going. One tactic was a fare increase. There had been no bus fare increase since the beginning of 1989, six years earlier.

One thing that all transit agency managers soon learn is that all transit board members absolutely detest being asked to approve fare increases. The MTA board proved no exception to this rule, taking the better part of a year to study alternatives before finally approving a major fare increase to become effective on

1 September 1994. It appeared that perhaps the one thing that bothered board members more than having to vote for a fare increase was stopping or slowing construction of rail projects.

This time, however, MTA had gone too far. Its ridership had been falling rapidly since 1985. The fare increases of 1985 and 1989 were prime causes of the decline in ridership and the 1994 fare increase would be far larger in impact. For the people of Los Angeles who depended on transit for their everyday mobility, this was the time to draw the line.

The fare increase that MTA attempted to implement, effective 1 September 1994, was huge. While the MTA documents focused on the cash fare increase from \$1.10 to \$1.35 – a 23% increase – the real crusher was the proposed total elimination of almost all pass programs. The MTA standard monthly pass cost \$42 – and the average pass user took almost exactly 100 trips per month. The savings from passes was and is extremely important to MTA's very low-income ridership. For one type of 'typical' pass user, the cost of replacing the \$42 monthly pass with \$0.90 tokens and \$0.25 transfers would be \$57.50 – a 37% increase; for another, the replacement cost would be a \$68.25, or 63% increase⁸. A small percentage of transit riders would encounter 100%, and even larger, fare increases.

The median MTA passenger household income was approximately \$10,000 per year at the time of this action (MTA, 1998a, 1998c, 1998d, 1998e)⁹. An increase of \$26.25 per month for transportation would run to a \$315 increase per year – over 3% of household income. For a two-transit rider household (a very common situation), the impact of such a cost increase would be over 6% of household income. This was 6% of household income for households that were having great difficulty in putting food on the table for their children, let alone having a table to put the food on and a home to put the table in.

As a practical matter, of course, transit use would decline, even for these riders who are the most transit dependent of the transit dependent. Once a passenger has purchased a monthly pass, each use is 'free' – there is no additional cost to taking it. However, when each trip must be paid for on an individual basis with real cash money, care will be taken in taking unnecessary bus trips – for example, walking a mile or more may be preferable to spending \$0.90 in scarce funds, or even \$0.25 for a transfer.

This proposed increase was the direct precipitating event of the MTA lawsuit.

The MTA Consent Decree

The organizing effort

The MTA case is a prime example of how a highly organized grassroots campaign can team up with creative civil rights lawyers, academics, and other experts to achieve social change. Together, the participants collected and analyzed the data, organized the community, made political connections, presented the case to the media, and won the groundbreaking lawsuit that is helping to bring transportation

equity to Los Angeles (for other perspectives on the MTA case see Lee, 1997; Hair, 2001 and Mann, 2004).

For years, MTA and its predecessor agencies had been favoring rail over bus service. These policies and practices came to a head in 1994. MTA approved a \$0.25 increase in the cash bus fare, eliminated the \$42 monthly bus pass that provided unlimited rides, and reduced the bus service to help overcome a claimed bus-operating deficit of \$126 million. The following week, MTA allocated \$123 million to build the new Pasadena Blue Line light rail line (now known as the Gold Line). Despite the chief executive officer of the MTA informing the board that the Pasadena line was beyond the agency's fiscal capacity, the MTA nevertheless proceeded with the light rail project and further burdened those riders who could least afford it.

A grassroots advocacy group called the Labor/Community Strategy Center (LCSC) and its transportation equity project, the Bus Riders' Union, had been organizing support for improved transit service and increased funding for buses since 1991. The Billions for Buses campaign advocated for a first-class, clean-fuel, bus-centered transit system for Los Angeles.

The 1994 public hearing on the proposed fare increase was the catalyst for the organizing effort to join a legal challenge to MTA's transit policies. The passionate testimony of bus riders pleading against a fare increase, coupled with the indifferent response of the MTA board members to their plight, reflected the sharp dissonance between MTA policies and the needs of the community. The Los Angeles Times reported that "the Board's conduct while pushing through a fare increase ... was so outrageous that it's hard to single out its most offensive act" (Boyarsky, 1994, p B1).

Unable to persuade MTA to stop the proposed fare increase, the LCSC turned to civil rights attorneys at the NAACP¹⁰ Legal Defense and Educational Fund, Inc. (LDF) and others in search of a remedy through the courts.

Stopping the fare increase in court

On 31 August 1994, the day before the proposed fare hike was scheduled to go into effect, LDF filed a civil rights class action seeking to prevent the fare increase and to secure the equitable allocation of public funds for the bus system. The plaintiffs included the LCSC, Bus Riders Union, Southern Christian Leadership Conference, Korean Immigrant Workers Advocates, and various individual bus riders. The case was filed as a class action on behalf of all bus riders, as discussed below.

Federal District Court Judge Terry Hatter, an African American judge appointed by President Jimmy Carter, issued a temporary restraining order and a preliminary injunction against MTA to prevent the fare restructuring. The District Court enjoined MTA's proposed fare increase because the increase would:

... cause minority bus riders substantial losses of income and mobility that, for a significant number, will result in the loss of employment and housing, and the inability to reach medical care, food sources, educational opportunities, and other basic needs of life.

The Court held that plaintiffs presented “more than sufficient evidence” to support their disparate impact claims and “raised serious questions going to the merits” on the claims of discrimination:

Plaintiffs have presented the Court with more than sufficient evidence to meet their burden of preliminarily showing that MTA’s actions have adversely impacted minorities; that MTA’s actions were not justified by business necessity; and that the MTA has rejected less discriminatory alternatives. (LCSC v MTA, 1994, pp 1-2, 4-5)

Metropolitan Transportation Authority agreed to settle the case after mediation, on the eve of trial, after all discovery was complete, after the District Court denied MTA’s motion for summary judgment, when it faced near certain liability and extensive public disclosure and media coverage of its discriminatory, inefficient, and environmentally destructive transportation policies. After almost two years of extensive discovery and dozens of depositions, the parties settled the case through mediation in October 1996¹¹.

Through the Consent Decree, MTA agreed to roll back the price of the monthly unlimited-use bus pass from \$49 to \$42, to roll back the price of the biweekly bus pass from \$26.50 to \$21, and to institute a new weekly pass for \$11. It agreed to purchase 102 buses for the most congested lines over the next two years and to reduce overcrowding by specified goals and specified times. Metropolitan Transportation Authority agreed to expand the bus service to new areas throughout the county. Finally, in a victory for democratic decision making, MTA agreed to work directly with bus riders in shaping transit policy through the Joint Working Group over the 10-year life of the decree.

The MTA case was settled with broad support that included Republican Mayor Richard Riordan, the libertarian Reason Foundation, free market efficiency advocates at the University of Southern California, self-described “bleeding heart liberals” at University of California, Los Angeles (UCLA), Cardinal Roger Mahony, and the grassroots groups who were plaintiffs in the case.

Several professors of transportation and urban planning, including Martin Wachs and Bryan Taylor of UCLA and James Moore II of University of Southern California (USC), and Professor Richard Berk of the UCLA Program in Statistics, prepared important expert reports and provided other vital assistance to the plaintiff class. The former chief financial officer for MTA’s predecessor agency, Thomas A. Rubin, provided invaluable analyses of MTA’s policies and insider knowledge of its practices.

While LDF led the legal charge, LCSC continued organizing and conducted

a massive public relations campaign. This included appearances at virtually all MTA board and committee meetings, pushing the 'no fare increase' agenda and opposing MTA's actions to fund rail construction and other non-productive projects out of monies that could be utilized for bus operations. The LCSC prepared information flyers and reports, organized community meetings, met with other activist groups, continually pressed their story to newspaper, magazine, radio, and television reporters and editors, and ran a website. It took the message to the streets, and to the buses, with members and staff spending hundreds of hours at bus stops and on buses. Sit-in protests at MTA meetings resulted in Bus Riders Union members and staff being dragged off in handcuffs before the media.

On the eve of trial, the legal team recommended that plaintiffs and the class settle the case. Plaintiffs LCSC, the Bus Riders' Union, and Korean Immigrant Workers Advocates disagreed and retained separate counsel to recommend to the District Court that the case go to trial. This was a tense moment in the case. As counsel to the class, LDF's obligation was to represent the best interests of the class; it believed that the settlement terms were as good or better as anything the District Court could order after trial. A trial would take weeks or months and the inevitable appeals on the merits would drag on for years. On behalf of the Southern Christian Leadership Conference and the class, LDF recommended that the District Court accept the proposed settlement. The District Court agreed and signed the Consent Decree. LDF then resumed representing all the organizational plaintiffs in monitoring compliance with the Consent Decree.

Since the signing of the Consent Decree, despite determined MTA efforts to gut the Consent Decree through legal means and massive failures to meet its requirements, MTA transit ridership has increased by 22% – a net turnaround of over 25 million annual riders per year over the prior 11-year period – at very low cost per added bus rider, particularly compared to the rail system.

For the bus, the average subsidy per new passenger for fiscal year 2004 is a hair over \$1.00; for the average of four MTA rail lines Blue, Gold, Green, and Red, the average subsidy is just over \$19.00¹². Since signing the Consent Decree, MTA has expanded its fleet by 140 buses.

Unfair disparities in transit service

The lawsuit allowed the plaintiff class to present a well-documented story about MTA's pattern and history of inequitable, inefficient, and environmentally destructive allocation of resources. The legal team documented the ridership disparities in a massive 226-page brief in opposition to MTA's motion for summary judgment and in support of the Consent Decree. The evidence was largely undisputed and is summarized below (LCSC v MTA, 1996).

Racial disparities

While over 80% of the people riding MTA's bus and rail lines were minorities, most people of color rode only buses. On the other hand, only 28% of riders on Metrolink – the six-county Southern California commuter rail line, which MTA has provided with over 60% of the local subsidy funding, for only about a third of the riders and an even lower percentage of the passenger-miles – were people of color. Thus, the percentage of minorities riding Metrolink varied by 173 standard deviations from the expected 80%. The likelihood that such a substantial departure from the expected value would occur by chance is infinitesimal (*Castaneda v Partida*, 1977).¹³

Subsidy disparities

While 94% of MTA's riders rode buses, MTA customarily spent 60-70% of its budget on rail. Data in 1992 revealed a \$1.17 subsidy per boarding for an MTA bus rider. The subsidy for a Metrolink commuter rail rider was 18 times higher, however (\$21.02). For a suburban light-rail streetcar passenger, the subsidy was more than nine times higher (\$11.34); and for a subway passenger, it was projected to be two-and-a-half times higher (\$2.92). (The actual figures, after operations began, were far higher.) For three years during the mid-1980s, MTA reduced the bus fare from \$0.85 to \$0.50. Ridership increased 40% during the period, making this the most successful mass transit experiment in the post-war era. Despite this increase in demand, MTA subsequently raised bus fares and reduced its peak-hour bus fleet from 2,200 to 1,750 buses.

Security disparities

While MTA spent only \$0.03 for the security of each bus passenger in fiscal year 1993, it spent 43 times as much (\$1.29), for the security of each passenger on the Metrolink commuter rail and the light rail, and 19 times as much (\$0.57), for each passenger on the Red Line subway.

Crowding disparities

MTA customarily targeted peak period loads of 145% of seated capacity on its buses and that 'target' was very commonly exceeded. In contrast, there was no overcrowding for riders on Metrolink and MTA-operated rail lines. Metrolink was operated to have three passengers for every four seats so that passengers could ride comfortably and use the empty seat for their briefcases or laptop computers.

The history and pattern of discrimination

Such disparate treatment has devastating social consequences. The Governor's Commission on the 1964 Los Angeles riots and rebellion found that transportation agencies "*handicap[ped minority residents] in seeking and holding jobs, attending schools, shopping, and fulfilling other needs*" (Governor's Commission, 1965, p 75), and that the inadequate and prohibitively expensive bus service contributed to the isolation that led to the civil unrest in Watts (Governor's Commission on the Los Angeles Riots, 1965). Thirty years later, following the riots and rebellion in the wake of the acquittals of the police officers involved in the Rodney King beating, MTA commissioned a new study on inner-city transit needs that echoed the recommendations of the Governor's Commission. Metropolitan Transport Authority, however, did not comply with the recommendations of either report.

Efficiency and equity prevail

Buying more buses under the Consent Decree reflects sound transportation policy to offset decades of overspending by MTA on rail and unproductive road projects. Metropolitan Transport Authority's policies have focused on attracting automobile users onto buses and trains, to the detriment of the transit dependent who are MTA's steadiest customers. The dissonance between the quality of service provided to those who depend on buses and the level of public resources being spent to attract new transit riders is both economically inefficient and socially inequitable. Policies to attract affluent new riders decrease both equity and efficiency because low-income riders are, on average, less costly to serve. The poor require lower subsidies per rider than wealthier patrons. Moreover, the loss of existing ridership brought about by increased fares and the reduced quality of bus service, as in Los Angeles, far exceeds the small number of new riders brought onto the system (Garrett and Taylor, 1999).

Title VI of the Civil Rights Act of 1964 and just transportation

Title VI of the Civil Rights Act of 1964 and its implementing regulations prohibit both (1) intentional discrimination based on race, color or national origin, and (2) unjustified discriminatory impacts for which there are less discriminatory alternatives, by applicants for or recipients of federal funds such as MTA and most transportation agencies across the US. In the MTA case, the plaintiff class alleged both forms of discrimination.

The Title VI statute provides:

No person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (US DOT, 2000)

The Equal Protection Clause of the Fourteenth Amendment to the US Constitution also prohibits intentional discrimination. Section 1983 of the Civil Rights Act of 1871 prohibits intentional discrimination and unjustified discriminatory impacts.

Similarly, California state law now prohibits both intentional discrimination and unjustified discriminatory impacts for which there are less discriminatory alternatives by recipients of state funds under California Government Code § 11135. In addition, California law now defines environmental justice as “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies”, under Californian Government Code § 65040.12. (These state law provisions were not in effect, and thus not at issue, at the time of the MTA litigation, but they now provide potential remedies for public resource inequities in light of the roll backs in federal civil rights protections since the MTA case was settled, as discussed later in this chapter.)

To receive federal funds, a recipient such as MTA must certify that its programs and activities comply with Title VI and its regulations (*Guardians Ass’n v Civil Service Commission*, 1983). In furtherance of this obligation, recipients must collect, maintain and provide upon request timely, complete, and accurate compliance information (see also Executive Order 12898 on Environmental Justice, 1994). Gathering, analyzing, and publishing such information can provide a powerful tool to illuminate inequities and to enable democratic participation in the decision-making process, as illustrated by the MTA case.

Unjustified discriminatory impacts

It is necessary to examine three components under the discriminatory impact standard under Title VI regulations, and by analogy, under parallel state laws:

1. whether an action by a recipient of federal funds, such as MTA, had a numerical discriminatory impact based on race, ethnicity or national origin;
2. if so, the recipient bears the burden of proving that any such action is justified by business necessity;
3. even if the action would otherwise be justified, the action is prohibited if there are less discriminatory alternatives to accomplish the same objective. (*Larry, P. v Riles*, 1984)

In support of the Consent Decree, the plaintiff class argued that the evidence established both discriminatory impact and intentional discrimination.

a) *Discriminatory impacts.* The racial, subsidy, security, and crowding disparities documented in the MTA case through statistical analyses have been outlined earlier in this chapter. The plaintiff class also produced anecdotal evidence, the

human stories of individual bus riders who faced incredible difficulties riding the bus and paying for transit service.

b) *No business necessity.* MTA was unable to provide any public transit or business necessity to justify the disparities outlined above.

c) *Less discriminatory alternatives.* MTA had less discriminatory alternatives: MTA could allocate resources to improve the bus service and reduce the transit fare.

Intentional discrimination

In order to evaluate an intentional discrimination claim, courts consider the following types of evidence:

- (1) the impact of the action – whether it bears more heavily on one racial or ethnic group than another;
- (2) the historical background of the action, particularly if a series of official actions was taken for invidious purposes;
- (3) any departures from substantive norms, particularly if the factors usually considered important by the decision maker strongly favor a decision contrary to the one reached;
- (4) any departures from procedural norms;
- (5) the decision maker’s knowledge of the harm caused by its decision;
- (6) a pattern or practice of discrimination. (*Village of Arlington Heights v Metropolitan Housing Dev. Corp.*, 1977; US Department of Justice, Civil Rights Division, 1998)

(1) *Impacts.* The evidence of discriminatory impacts has been discussed earlier in this chapter.

(2) and (6) *History and pattern.* The plaintiff class argued that the evidence discussed above – the discriminatory impacts and the Governor’s Commission on the 1964 Los Angeles Riots – documented the continuing history and pattern of intentional discrimination against communities of color and low-income communities in the provision of transit services.

(3) and (4) *Substantive and procedural irregularities.* The plaintiff class argued that the decisions to increase the bus fare and to allocate resources to bus over rail were replete with procedural and substantive irregularities. Metropolitan Transportation Authority routinely proceeded with rail and commuter bus programs that had either marginal or no rider, fiscal, environmental, economic, or other benefit. For example, MTA approved the increase in the bus fare to meet a claimed budget shortfall, and almost simultaneously allocated millions of dollars to build a new Pasadena light rail line that the MTA chief executive officer described as “idiocy”.

(5) *Knowledge.* The plaintiff class maintained that MTA’s own documents analyzing the impact of fare increases established that MTA knew the harm caused to low-income people of color.

The class of all bus riders

While the MTA case was based on civil rights laws prohibiting discrimination based on race, color, or national origin, the case was also fought on behalf of poor white bus riders, who constituted almost 20% of the ridership. The District Court certified the case as a class action on behalf of all poor minority and other riders of MTA buses who were denied equal opportunity to receive transportation services because of MTA's operation of discriminatory mass transportation system, a class of approximately 350,000 people. The definition of the class included white bus riders because discrimination against any one diminishes everyone. Metropolitan Transport Authority did not challenge the class definition.

The MTA case highlighted the complexities of race, class, and the environment that are common in resource equity disputes around the nation. Racial and ethnic exclusion is often symptomatic of a larger, structural unfairness that affects all people who are powerless to protect themselves, including disadvantaged white people. This is why it was important to define the class to include all bus riders, not just riders of color.

Attention to racial and ethnic exclusion is often dismissed as being unduly confrontational, divisive, or at best opportunistic because race no longer matters. Some people believe race no longer matters in contemporary society, that racial discrimination is a thing of the past. Whatever vestiges of racism remain should be adequately addressed (if at all) through protections against invidious intentional discrimination against insular minorities.

While people of color stood to benefit from the suit, people of color with power and money held decision-making roles within MTA and were responsible for decisions that unfairly impacted low-income people of color; they, in particular, resented being accused of racial discrimination. Some also felt that, while MTA's transit policies might be inefficient, irrational, and indefensible, they were not intentionally discriminatory based on race or ethnicity despite the adverse impact the policies had on people of color and low-income communities.

Environmental justice is about race and ethnicity. The likelihood that the transit disparities documented in the MTA case would occur by chance is infinitesimal, as discussed earlier. Arguments dismissing adverse impacts on the grounds that they do not constitute racial discrimination fundamentally misunderstand discriminatory impact laws and the dynamics of interracial bias in contemporary society (Krieger, 1995).

Contemporary racial justice efforts focus on ferreting out institutional practices that systemically disadvantage individuals or groups based on race or class. Commonly referred to as 'institutional' or 'environmental' racism, these structural inequities are the result of a pattern of collective thought, action, or inaction, which are characteristic of many institutions like municipalities, state governments, or private corporations. Individuals in decision-making positions may not personally be racist, but by carrying out established institutional priorities they

perpetuate and extend patterns of environmental inequity and injustice (Weiskel, 1999). Discriminatory impact law focuses on the cause and effect rather than just the racial animus of the actor. The fact that personal biases are not at stake does not make efforts to combat discrimination any more palatable to the actors.

The aftermath of the Consent Decree

Metropolitan Transportation Authority has resisted complying with the Consent Decree for over seven years. Three years after signing the Decree, MTA admitted that it violated the provisions of the settlement that required MTA to reduce overcrowding by specified levels and specified dates on 75 of 78 monitored bus lines. The Special Master monitoring compliance with the Decree ordered MTA to buy more buses to remedy the overcrowding violations. Metropolitan Transportation Authority asked the Special Master to reconsider, but then refused to comply with the Special Master's decision.

Metropolitan Transportation Authority appealed to the District Court, which ordered MTA to buy 248 more buses. The authority again appealed, this time to the Ninth Circuit Court of Appeals. Plaintiffs and the class filed their response, supported by a friend of the court brief filed by a broad multicultural alliance of environmental, environmental justice, civil rights, and grassroots advocates. When the Court of Appeals denied the appeal, MTA petitioned for a review by both the original three-judge panel and a special en banc hearing. Both refused to consider MTA's petition, voting 3-0 and 25-0 against, respectively. Ultimately, MTA sought review in the US Supreme Court, which refused to hear the case (*LCSC v MTA*, 2001, 2002). At every stage of the seven-year litigation, MTA has illustrated the only successful defense tactic from the time the suit was filed in 1994 to the present date – delay.

Most recently, Special Master Bliss has ordered that MTA purchase 145 40-seat buses as soon as possible (but no later than December 2005) and operate a total of 370,185 additional in-service bus hours for load factor reduction (Bliss, 2004). The MTA board has voted (with the bare majority seven affirmative votes) to appeal the portion of the order requiring it to buy additional buses (MTA, 2004).

The Consent Decree fare increase protections ended in late 2003, and effective from 1 January 2004, MTA implemented a significant fare increase, raising the price of monthly passes \$10, to \$52, and doing away with \$0.25 transfers in favor of \$3.00 day passes. The adult cash fare was reduced from the current \$1.35 to \$1.25 (which, due to the rather strange method of allocating transit operating subsidies to bus operators in Los Angeles County, MTA believes will actually increase total MTA revenue) (MTA, 2003a, 2003b).

Metropolitan Transportation Authority has also decided to delete bus services wherever it can. While the requirement that MTA reduce overcrowding under the Consent Decree provides protection against reductions in service on most bus lines during peak hours, MTA has concentrated on lower utilized lines and

off-peak and weekend service. Metropolitan Transportation Authority has reduced bus service hours more than it is adding hours to comply with overcrowding requirements – in effect, MTA is forcing the Consent Decree to serve as both a floor to reduce, as well as a ceiling to limit, overcrowding.

Throughout the struggle, however, MTA has never lost its appetite for expensive guideway transit projects. Indeed, even as MTA continues to plead that it does not have the fiscal resources to buy and operate the buses required by the Consent Decree, it is actually borrowing hundreds of millions of dollars against promised state grants that were eliminated as part of the current \$38 billion California budget shortfall work-out package. Instead of getting these funds on a reimbursement basis as MTA funds are spent, MTA is borrowing and paying interest in the hope – but not the certainty – that the funding for these grants will appear in some future state budget.

Even in fiscal year 2004, over 54% of the transit subsidies for MTA's own transit services capital, operating, and financing expenditures are going for guideway transit (MTA, 2003c). 'Guideway transit' includes expenditures for a \$337.6 million San Fernando Valley 'Rapidway', or the 'Orange Line', a Bus Rapid Transit/Bikeway project that MTA keeps renaming.

Metropolitan Transportation Authority's past and proposed billions of dollars in rail capital and operating funds, well over half of all MTA expenditures for a period of decades, would, according to MTA, eventually carry 18% of MTA system-wide passenger trips. These projects are demonstrably inferior to many bus projects that MTA is refusing to even consider.

This combination of MTA decisions produces a very strange result. It is utilizing high-risk borrowing techniques to fund expensive, but non-productive, guideway transit systems. In the process, MTA is using up funds that could be used for transit operations both now and in future years, while pleading inability to finance the operating costs of the Consent Decree that MTA voluntarily entered into. Yet, if MTA allows these projects to be constructed, the projects will significantly increase MTA's operating expenses in the near future. The fear is that MTA will then reduce bus service to respond to the operating funding crisis it created, a fear compounded by a newly released MTA transit service policy (MTA, 2003d).

While the Consent Decree has protected the transit riders of Los Angeles from grievous harm to the bus transit system that they depend on and also produced very large improvements, the battle to obtain the full measure of improvements promised in the Consent Decree is obviously an ongoing war with many major battles yet to be fought.

Beyond MTA

Equal justice after Sandoval

Equal access to public resources including transportation dollars remains as important today as ever. A conservative 5–4 majority of the US Supreme Court in *Alexander v Sandoval* (532 US 275, 2001) took a step to close the courthouse door to individuals and community organizations challenging practices that adversely and unjustifiably impact people of color, such as transportation inequities, police abuse, racial profiling of drivers on the highway, and unequal access to parks and recreation. The majority, led by Justice Antonin Scalia, held there is no right for private individuals like José Citizen and groups like the Labor/Community Strategy Center under Title VI to enforce the discriminatory impact regulations issued by federal agencies under the Title VI statute.

Although the *Sandoval* holding is a serious blow to civil rights enforcement, it is more important to keep in mind that intentional discrimination and unjustified discriminatory impacts are just as unlawful after *Sandoval* as before. Recipients of federal funds, like MTA, remain obligated to prohibit both. Even now, after *Sandoval*, individuals still can sue a recipient of federal funds under Title VI to challenge intentionally discriminatory practices. Known discriminatory impact continues to be among the most important evidence leading to a finding of discriminatory intent.¹⁴

Aside from private lawsuits, there remain other ways to enforce discriminatory impact regulations. Recipients of federal funds are still bound by the regulations under Title VI. Every recipient signs a contract to enforce Title VI and its regulations as a condition of receiving federal funds. This provides an important opportunity to use the planning and administrative process to resolve discriminatory impact issues.

There are important strategic considerations in the quest for equal justice after *Sandoval*. Elected officials should be increasingly sensitive to and held accountable for the impact of their actions on communities of color, especially now that people of color are in the majority in 48 out of the 100 largest cities in the US. Los Angeles is about 50% Hispanic, 70% people of color, and only 33% non-Hispanic white, according to 2000 Census data. People of color are increasingly being elected to positions of power. Congress should pass legislation to reinstate the private cause of action to enforce the discriminatory impact standard. State civil rights protections can be enforced and strengthened. Civil rights and environmental claims can be combined in future cases in the wake of the MTA case and *Sandoval*. Similar kinds of evidence are relevant to prove both discriminatory intent and discriminatory impact. The same kinds of evidence can be as persuasive in the planning process, administrative arena, and court of public opinion, as in a court of law.

The complexities of equal justice after *Sandoval* require far-reaching strategies that include building multicultural alliances, legislative and political advocacy,

strategic media campaigns, research and analyses of financial, demographic, and historical data, and strengthening democratic involvement in the public decision-making process in addition to litigation. Societal structures and patterns and practices of discrimination are significant causes of racial injustice and should be principal targets of reform.

The planning and administrative processes

Outside of the MTA case, others are working toward transportation equity. In 1998, for example, the Southern California Association of Governments (SCAG) adopted a regional transportation plan that is committed to complying with Title VI of the Civil Rights Act. The SCAG is the first transportation agency in the country that explicitly analyzes the impact of transportation proposals on low-income communities and communities of color in its regional transportation plan. It demonstrates how agencies can incorporate transportation equity and public participation into the planning process (US DOT, 2000).

While SCAG, the other metropolitan planning organizations that have begun to conduct environmental justice analyses, should be congratulated for beginning this important step in transportation and urban planning, there is still a great deal of work to be done to ensure that the processes that are being utilized will actually be meaningful tests of environmental justice. Unfortunately, in the early stages of environmental justice analyses of large-scale transportation plans, the evaluation is often limited to testing if the recommended program of projects appears to work *against* the interests of minority, low-income and other protected classes, rather than modelling alternative projects to determine which could provide the *most benefits* to these groups. This compounds a common problem in such long-range transportation planning, as well as corridor-specific planning exercises. Many schemes, that there is good reason to believe could be financially viable, are frequently suppressed, by staff, and/or consultants, who do not wish to see competition for their, or their Board's, pre-selected 'winners'.

Highways and land use

Just as transportation decisions affect social equity, economic vitality, and environmental quality, those decisions are affected by other factors, such as highway spending. Governments should consider all feasible options, including different mixes of roads and transit, to determine which is best for each region and its people, with a major emphasis on informed public input in the decision-making process.

Land-use planning and patterns also affect transportation policies and vice versa. Consequently, they should be addressed together. For example, sprawl in Los Angeles was initially generated not by the freeway system, which started in 1943, but by the Los Angeles and Pacific Electric Railway system, which served

Southern California from Long Beach to San Fernando, and from Riverside to San Pedro, from 1901 through the mid-century. The electric interurban (Red Car) and streetcar (Yellow Car) system made residential sprawl possible far from the urban core of Los Angeles (Wachs, 1997).

Los Angeles also pioneered the use of racially restrictive covenants in deeds, which restricted African Americans and other people of color from buying homes in white neighborhoods. Through the 1930s, the Federal Housing Authority subsidized racially homogenous neighborhoods¹⁵. Some economists have estimated that the federal government has spent more than \$2 trillion subsidizing the flight of white people from central cities. As a result, Los Angeles and other cities today face a spatial mismatch between jobs, homes, and transportation (Waldinger and Bozorgmehr, 1996; García, 1997; Powell, 1999). By planning for multicultural, multiuse communities that are better suited to transit, walking, and biking, we can create healthier communities with more mobility, greater access to jobs, reduced congestion, cleaner air, and greater justice.

It is also necessary to recognize that orders of magnitude of more low-income people and people of color depend on the automobile than on public transportation. Many minority people live in rural areas, small towns, and other out-of-the-way places, nowhere near transit services. Transportation equity cannot be defined solely in terms of the experience of large, metropolitan areas. It is also necessary to look at the delivery of transportation services in small towns and rural areas and elsewhere.

For many highway projects, transit is not a viable alternative. Deciphering which communities are harmed by the negative aspects of highways and which communities get service is critical even in communities where no transit service exists. Highway projects generally do not displace houses and businesses in upper-middle-class neighborhoods to connect lower-income minority residents to jobs. Instead, highway projects displace lower-income and minority residents. There are no freeways in Beverly Hills, but the Latino Barrio of East LA is dissected every which way by freeways.

Finally, airports raise transportation equity issues that fall squarely within the transportation equity framework. For example, the proposed expansion of Los Angeles International Airport will affect not only communities of color and low-income communities but in fact all the people of Southern California. Major issues of concern include human health, air pollution and climate change, water quality, biodiversity, open space, noise pollution, job creation, ground transportation to flights and jobs, and displacement of communities and homes. Los Angeles World Airways, the city agency responsible for operating the airport, included a chapter on environmental justice in the draft environmental impact report/ environmental impact statement published in 2001, but the expansion plan covered in that draft was abandoned in the wake of the 11 September terrorist attacks and the emphasis on security over airport expansion (US DOT FAA and the City of Los Angeles, 2001).

Beyond transportation

The lessons of the MTA case for ensuring equal access to public resources extend beyond the transportation context. One of the broadest and most diverse alliances ever behind any issue in Los Angeles has joined together to create parks in underserved communities of color. Los Angeles is park-poor, with fewer acres of parks per thousand residents compared to any major city in the country, and there are unfair disparities in access to parks and recreation based on race, ethnicity, income, class, and access to transportation. People in neighborhoods without parks or school playgrounds lack access to cars and to a decent transit system to reach the neighborhoods with parks and playgrounds. Activists are fighting to bring open space to the people and to provide transit to take people to the open space.

The urban park alliances stopped warehouses to create the state park in the 32-acre Chinatown Cornfield (Sanchez, 2001; García et al, 2003). The *Los Angeles Times* called the Cornfield “a heroic monument, and maybe even a symbol of hope” (Ricci, 2001, p 6). Robert García from the Center for Law in the Public Interest led the coalition that challenged the project as being one more product of discriminatory land-use policies that long deprived minority neighborhoods of parks (Sanchez, 2001). An alliance stopped a commercial project to create a 40-acre park, as the first step towards a planned 103-acre park in Taylor Yard along the 51 mile Los Angeles River. The alliance helped stop a power plant and a city dump in favor of a two-square-mile park in the Baldwin Hills, the historic heart of African American Los Angeles, that will be the largest urban park in the US in over a century – bigger than Central Park in New York City or Golden Gate Park in San Francisco.

The urban park movement is relying on strategies refined from the MTA case. First, there is a vision for a comprehensive and coherent web of parks, playgrounds, schools, beaches, and transit for the region. Second, the campaign is engaged in active coalition building that includes civil rights, environmental, environmental justice, religious, business, and economic interests. Third, the campaign engages in public education and advocacy outside the courts through the planning and administrative processes. Fourth, strategic media campaigns sharpen public debate and help build alliances. Fifth, extensive financial, demographic, and historical research and analyses provide hard data to support reform. Sixth, the urban park movement creatively engages opponents to find common ground. Litigation combining civil rights, environmental, and other claims remains available as a last resort.

Urban issues like transportation, parks and recreation, and sustainable communities are genuine civil rights issues of race, poverty, and democracy that are interrelated in Los Angeles and the American economy. The urban park movement, like the MTA case, is part of a broader struggle for equality, democracy, and livability for all (García, 2002a, 2002b, 2004: forthcoming; García et al, 2003).

The struggle continues

Clearly, transportation equity is about more than concrete, asphalt, steel, buses, trains, and cars. It is about investing in people and providing the opportunities to pursue better lives.

In fact, transportation equity is part of the continuing struggle for equal justice that goes back more than 100 years to the 1896 *Plessy v Ferguson* decision upholding segregated railroad cars and legitimizing the “separate but equal” treatment of white people and people of color¹⁶. Indeed, the modern civil rights movement has roots in the Montgomery bus boycott led by Rosa Parks and Martin Luther King Jr, who recognized transportation as an issue that lies at the intersection of civil rights, economic vitality and the environment. Addressing the need for structural reforms to deal with race and poverty, Reverend King wrote:

When you go beyond a relatively simple though serious problem such as police racism ... you begin to get into all the complexities of the modern American economy. Urban transit systems in most American cities, for example, have become a genuine civil rights issue – and a valid one – because the layout of rapid-transit systems determines the accessibility of jobs to the black community. If transportation systems in American cities could be laid out so as to provide an opportunity for poor people to get meaningful employment, then they could begin to move into the mainstream of American life. (Washington, 1991, pp 325–6)

Decades later, the experience in Los Angeles demonstrates that some transportation policies continue to nurture an environment that is not only separate, but starkly unequal. Nonetheless, as efforts in the wake of the MTA case show, there is hope. Transportation equity can be achieved and with it improvements in social justice, economic vitality, and environmental quality for all.

Conclusion

Has the Consent Decree been a benefit or a detriment to transportation and transit in the MTA service area? Not surprisingly, the plaintiffs and the defendants have very significant differences on this question.

For an unbiased evaluation, let us examine what Special Master Donald T. Bliss, the man who was appointed specifically to resolve disputes between the parties to the Consent Decree, has concluded, following presentations by both parties to him on this matter. The following is from his most recent order (Bliss, 2004, p 32), specifically Footnote 22 (detailed citations and emphasis notations have been deleted):

MTA's new management apparently is not pleased with the way the Consent Decree entered into by its predecessors has been implemented. In his declaration, David Yale states that 'the Consent Decree has had no benefits that could not have been achieved without the Decree, and it has diverted significant financial resources in process to questionable bus service expansions', which are 'a poor investment of scarce public funding'. Moreover, according to Mr Yale, 'the Consent Decree has, and will continue to have, detrimental impacts on the Regional Transportation System in Los Angeles County for many years to come'. Without the Decree, Mr Yale states that the MTA 'would have had additional financial resources' for highway construction. Mr Yale candidly acknowledges that 'the MTA has carefully developed a *short range plan* that balances these needs as best it can under the constraints of the Consent Decree...'. However, Mr Yale continues, 'any further unanticipated financial changes that are needed for the Decree *will have to be undone as soon as the Decree expires in early FY 2007*.... (emphasis in the original)

Given these views on the alleged shortcomings of the Consent Decree presented by an MTA planning official in the record of this proceeding, it is all the more imperative that the MTA commit to a specific bus capacity expansion program that will provide lasting improvements in the quality of bus service for the transit-dependent – in accordance with the letter and spirit of the Consent Decree – beyond the expiration of this Decree. It should be noted that Mr Yale's views present an interesting contrast to what the MTA staff apparently wrote, at least with respect to the procurement of new buses, in a briefing for the MTA Board on the Consent Decree. The staff outlined the benefits of compliance with the Decree, including the transformation of the MTA bus fleet from 'the oldest to the newest fleet of major bus companies', and stated that 'MTA's new buses are worth every penny'.

Furthermore, the Bus Rider Union and its expert, Thomas Rubin, who have been sharply critical of the MTA's implementation of the Decree, also have presented a more positive view of the benefits achieved by the Decree in improving bus service for transit-dependent riders, which is, after all, the singular purpose of the Decree. In his Declaration Re Reallocation of MTA Funds, Mr Rubin analyzes in detail the effects of the Consent Decree, finding that in the six year post-Consent Decree period, the MTA has gained a total of 81.6 million annual riders. According to Mr Rubin, MTA ridership increased from 364 million in 1996 to 445 million in 2002, resulting in an increase in total fare revenues of \$100.5 million over the six year period. This in stark contrast to a loss of 133.6 million annual passengers over the eleven year period preceding the Consent Decree. Mr Rubin also shows that, even taking into account

what he views as ‘extremely overstated’ Consent Decree expenditures per new rider, the cost per new rider – 83% of whom are bus riders – is still far below other transit modes. Mr Rubin describes other benefits of the Consent Decree: ‘The [Consent Decree] has made great progress in reducing overcrowding, and pass-by’s, on MTA bus routes ... MTA service has also become more reliable and the condition of MTA’s bus fleet improved substantially as the average age has decreased. The fares to ride MTA bus and rail have been kept low for MTA’s huge numbers of extremely low-income riders. The service added for Consent Decree compliance has meant shorter headways, and the reduced overcrowding has decreas[ed] running times, speeding travel for these bus riders. The Rapid Bus Program, which MTA has claimed as a [Consent Decree] cost ... is another significant benefit for bus riders. Many new bus lines have begun service. The speed-up of bus replacement has meant cleaner air for all Los Angeles County residents.... All in all, hundreds of thousands of MTA bus and rail riders each day, and many more non-transit users, are receiving benefits in lower cost transit; a faster, higher quality, and more reliable transit experience; access to new destinations; and improved environmental quality and traffic flow – all due to the workings of the [Consent Decree].

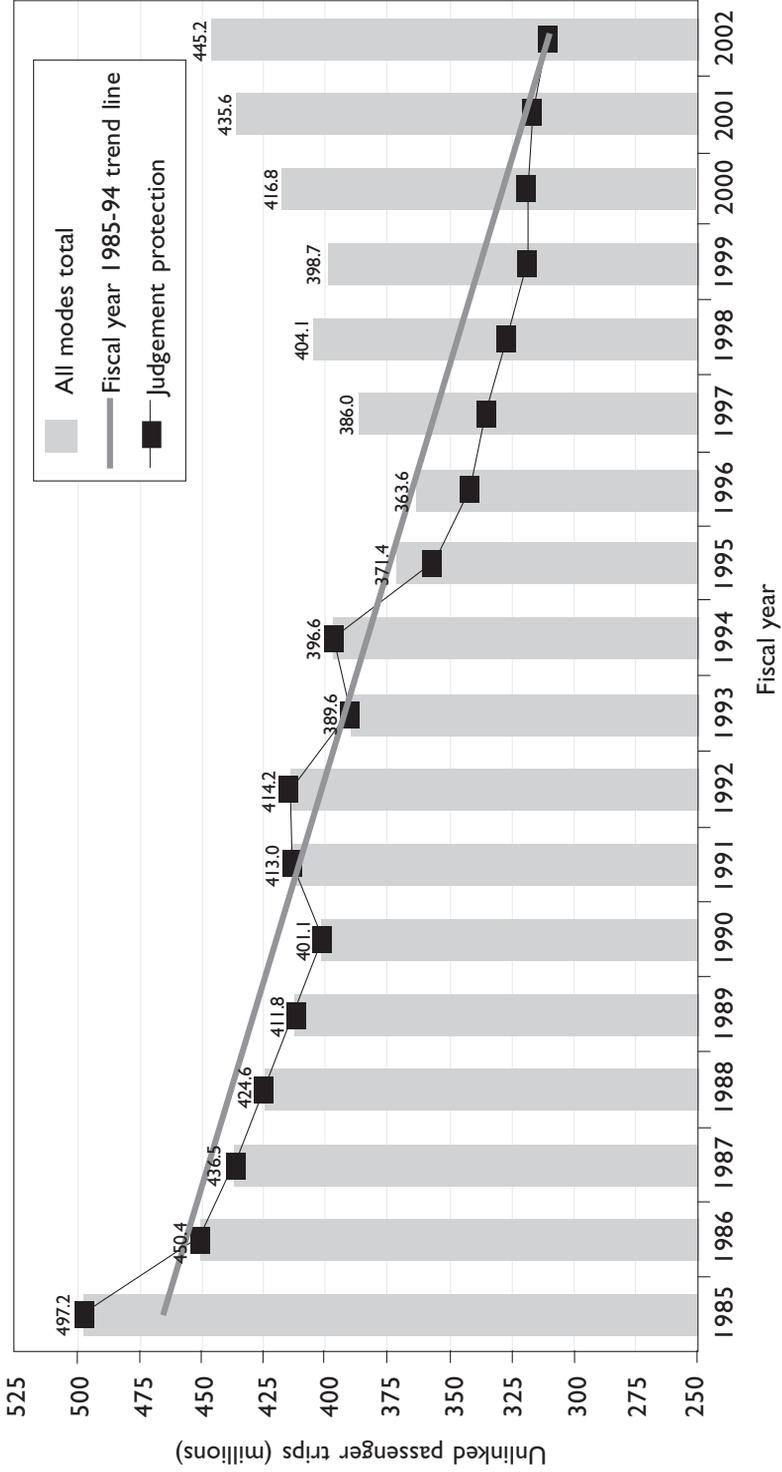
Hopefully, these benefits are not the temporary results of a ‘short range plan’ due to expire at the end of the Consent Decree but rather are permanent improvements in the quality of bus service that will be sustained well beyond the Decree’s expiration.¹⁷

As the ridership data clearly shows, the Consent Decree has been, by any measure, a tremendous success for the plaintiffs and other transit users in Los Angeles County. Indeed, an analysis of MTA ridership patterns demonstrates that the ridership under the Decree is almost 50% higher than ridership would have been without the Decree (Rubin, 2003).

During the period of the Consent Decree, MTA has never been in compliance with its requirement to reduce overcrowding. The plaintiffs are currently in the process of petitioning Special Master Bliss to extend the Consent Decree for six years to provide the full benefit of the Consent Decree for the full period that MTA had agreed to provide. It is expected that MTA will oppose this action.

The graph on page 249 (see Figure 12.3) includes two projection lines. The first is a simple extension of the ‘least squares’ (simple regression) trend line for the 11 years immediately preceding the implementation of the Consent Decree. The second is a ‘judgment project’ based on my expert analysis and report on what would have likely occurred if the Consent Decree, and the legal action that led to it, had never existed.

Figure 12.3: Los Angeles County MTA passenger trips: fiscal year 1985-2002, with and without Consent Decree



Lessons from the MTA Consent Decree action that can be applied to other environmental justice struggles

Four of the central lessons of the environmental justice movement are that communities of color and low-income communities are:

- disproportionately denied the benefits of public resources like just transportation systems;
- disproportionately bear the burdens of environmental degradation;
- are denied access to information to understand the impact of decisions on all communities;
- are denied full and fair participation in the decision-making process.

The MTA case is one example of communities and attorneys working together to change the relations of power, to give people a sense of their own power, and to bring real improvements in people's lives. The case depended on a multifaceted approach that put affected communities at the center. The MTA case provides valuable lessons that go beyond transportation equity for strategic campaigns in and out of court to achieve social change. First, the mission of achieving equal access to transportation is just one aspect of a broader vision for the distribution of public resources' benefits and burdens in ways that are equitable, protect human health and the environment, promote economic vitality, and engage full and fair public participation in the decision-making process.

Second, the campaign must engage in active coalition building, both to learn what people want and to find collective ways of getting it. The coalition works to build bridges between civil rights, environmental, environmental justice, business, civic, religious, and economic leaders. Third, the campaign shows people how to participate in the planning and administrative processes so that they may engage in public policy and legal advocacy outside the courts. Fourth, strategic media campaigns focus attention and build support. Fifth, multidisciplinary research and analyses illuminate inequities.

Following the money clarifies who benefits by the investment of public resources and who gets left behind. Extensive financial, demographic, and historical analyses also connect the dots to demonstrate how cities and regions came to be the way they are and how they could be better. Finally, it is necessary to engage opponents creatively to find common ground. Ultimately, the MTA case was resolved through mediation and a settlement, not trial. Litigation nevertheless remains available, and reserved as a last resort, in the context of a broader campaign.

[Editor's note: subsequent to the submission of this chapter it has been announced that MTA has agreed, by unanimous decision of its board, to comply with the federal court order to add 145 buses to its network by 2005.]

Notes

- ¹ In contrast, the typical Metrolink commuter rail rider was a white male who had an annual household income of \$64,000 and owned at least one car.
- ² In this chapter, ‘ridership’ means unlinked passenger trips. For example, a transit user that takes a bus to the Blue Line light rail and then transfers to the Red Line subway will create three *unlinked* passenger trips – and one *linked* passenger trip.
- ³ The data here covers the Los Angeles–Riverside–Orange County Urbanized Area.
- ⁴ To ensure that this point was not lost on the voters, the rail lines on the Rail Rapid Transit System map as drawn would have been approximately one and a quarter miles wide in reality, generating a false visual impact that all points in the core densely populated areas of the county were relatively close to one or more rail lines.
- ⁵ To provide perspective, if the 143 million increase in bus ridership was a separate transit agency, it would have been the fifth-largest bus operation, and the tenth-largest transit system in the US in 1985 (UMTA, 1987).
- ⁶ The MTA’s two predecessor agencies merged to form MTA in 1993.
- ⁷ At the end of 1997, MTA finally had to admit that it did not have the financial capacity to complete even the ‘limited’ number of rail projects that it had started and put the Red Line Segment 3 Eastside and Mid-City and Pasadena line projects on what later turned out to be indefinite hold. This decision was made after the Federal Transit Administration had refused to accept three separate MTA attempts to structure a financial plan to complete these three rail lines while meeting its other obligations. The newly appointed MTA chief executive officer, Julian Burke, was forced to submit this suspension of work to the board after spending his first several months at MTA attempting to get to the bottom of MTA’s financial situation.
- ⁸ The original proposal was to increase the price of tokens from \$0.90 to \$1.00; the adopted fare structure kept the token price at \$0.90.
- ⁹ In the ‘Bus’ survey, which represented over 90% of riders, 40% of respondents had household incomes under \$7,500 and 29% had household incomes between \$7,500 and \$15,000. Respondents to the three rail surveys had somewhat higher income patterns, but it is such a small portion of total MTA ridership that the bus survey population controls the distribution.
- ¹⁰ The NAACP Legal Defense and Educational Fund, Inc. began as the legal arm of the National Association for the Advancement for Colored People, but is now a totally separate organization.
- ¹¹ Donald Bliss, former Acting General Counsel to the US Department of Transportation, served as the mediator and later as the Special Master monitoring compliance with the Consent Decree.
- ¹² Mr Rubin’s calculation using Federal Transit Administration ‘New Starts’ costing methodology and data from MTA Approved Budget 2003-04.
- ¹³ Differences of two or three standard deviations are suspect.
- ¹⁴ Arguably, individuals can sue to enforce discriminatory impact regulations against recipients of federal funds through the 1871 Civil Rights Act, a matter not decided in *Sandoval*. Subsequent decisions suggest this theory might not prevail, however

(see for example *Gongaza University v Doe* S36 US 273 (2002); *Save our Valley v Sound Transit*, 335 F.3d 932, 936-937 (9th Circuit, 2003).

¹⁵ The Federal Housing Administration Manual of 1938, for example, states: “If a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same racial classes. A change in social or racial occupancy generally contributes to instability and a decline in values”. See also Davis (1990, 2000).

¹⁶ *Plessy v Ferguson*, 163 US 537 (1896), was overturned 59 years later in *Brown v Board of Education*, 347 US 483 (1954).

¹⁷ The last paragraph is *not* quoting Mr Rubin, but is the opinion of Special Master Bliss.

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