disapproved in *Davis*, but the Court noted that "an invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it be true, that the law bears more heavily on one race than another. It is also not infrequently true that the discriminatory impact . . . may for all practical purposes demonstrate unconstitutionality because in various circumstances the discrimination is very difficult to explain on nonracial grounds." [1447]

The application of *Davis* in the following Terms led to both elucidation and not a little confusion. Looking to a challenged zoning decision of a local board that had a harsher impact upon blacks and low-income persons than upon others, the Court in *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*[1448] explained in some detail how inquiry into motivation would work. First, a plaintiff is not required to prove that an action rested solely on discriminatory purpose; establishing "a discriminatory purpose" among permissible purposes shifts the burden to the defendant to show that the same decision would have resulted absent the impermissible motive.[1449] Second, determining whether a discriminatory purpose was a motivating factor "demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." Impact provides a starting point and "[s]ometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of

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Cisneros v. Corpus Christi Indep. School Dist. 467 F.2d 142, 148–50 (5th Cir. 1972) (en banc), *cert. denied*, 413 U.S. 920 (1973), the court held that motive and purpose were irrelevant and the "*de facto* and *de jure* nomenclature" to be "meaningless." After the distinction was reiterated in Keyes v. Denver School District, 413 U.S. 189 (1973), the Fifth Circuit adopted the position that a decisionmaker must be presumed to have intended the probable, natural, or foreseeable consequences of his decision and therefore that a school board decision that results in segregation is intentional in the constitutional sense, regardless of its motivation. United States v. Texas Educ. Agency, 532 F.2d 380 (5th Cir.), vacated and remanded for reconsideration in light of Washington v. Davis, 426 U.S. 229 (1976), *modified and adhered to*, 564 F.2d 162, *reh. denied*, 579 F.2d 910 (5th Cir. 1977–78), *cert denied*, 443 U.S. 915 (1979). *See also* United States v. Texas Educ. Agency, 600 F.2d 518 (5th Cir. 1979). This form of analysis was, however, substantially cabined in Massachusetts Personnel Adm'r v. Feeney, 442 U.S. 256, 278–80 (1979), although foreseeability as one kind of proof was acknowledged by Columbus Bd. of Educ. v. Penick, 443 U.S. 449, 464–65 (1979).

[1447] Washington v. Davis, 426 U.S. at 242 (1976).

[1448] 429 U.S. 252 (1977).

[1449] 429 U.S. at 265–66, 270 n.21. *See also* Mt. Healthy City Bd. of Educ. v. Doyle, 429 U.S. 274, 284–87 (1977) (once plaintiff shows defendant acted from impermissible motive in not rehiring him, burden shifts to defendant to show result would have been same in the absence of that motive; constitutional violation not established merely by showing of wrongful motive); Hunter v. Underwood, 471 U.S. 222 (1985) (circumstances of enactment made it clear that state constitutional amendment requiring disenfranchisement for crimes involving moral turpitude had been adopted for purpose of racial discrimination, even though it was realized that some poor whites would also be disenfranchised thereby).