

Winter 1996

Historical Perspectives on Fair Housing, 29 J. Marshall L. Rev. 315 (1996)

Julian Bond

Follow this and additional works at: <https://repository.law.uic.edu/lawreview>



Part of the [Civil Rights and Discrimination Commons](#), [Housing Law Commons](#), [Law and Race Commons](#), [Legal History Commons](#), [Legislation Commons](#), [Property Law and Real Estate Commons](#), and the [Social Welfare Law Commons](#)

Recommended Citation

Julian Bond, Historical Perspectives on Fair Housing, 29 J. Marshall L. Rev. 315 (1996)

<https://repository.law.uic.edu/lawreview/vol29/iss2/1>

This Article is brought to you for free and open access by UIC Law Open Access Repository. It has been accepted for inclusion in UIC Law Review by an authorized administrator of UIC Law Open Access Repository. For more information, please contact repository@jmls.edu.

ARTICLES

HISTORICAL PERSPECTIVES ON FAIR HOUSING

JULIAN BOND*

Last year and the first months of 1995 have been filled with observances which mark anniversaries of important events that have occurred in our nation's history. From these events, many quintessential American stories have developed — stories lived and told by people who believe in a tomorrow.

On June 8, 1944, fifty years ago last summer, my father-in-law landed on the beaches of Normandy. I did not know him then. I was only four years old, and the daughter I would marry had not even been born yet. Nevertheless, I made my father-in-law tell me the story about his participation in World War II on the anniversary date.

My father-in-law's name is Ernest Horowitz. His name had been the first name called in the draft in Minnesota. Newspaper headlines in the Twin Cities announced that Ernest Horowitz's number had come up. Six days after he landed in France, he recalled talking to a comrade in a foxhole in a nearby small French town, Ste.-Mere-Eglise. As my father-in-law glanced away for a second, a German shell exploded next to him. His friend was killed instantly. At that moment, Ernie Horowitz's war ended.

Ernie was part of that group that President Clinton referred to when he stated, "[w]hen they were young, these men saved the world." We who are, as the President said, "the children of their sacrifice" watched them gather in England and France. Although some were stooped, all stood proud.

In late June 1994, I attended a reunion in Mississippi marking the 30th anniversary of Freedom Summer 1964. That year, in Mississippi, Mickey Schwerner, James Chaney and Andrew Goodman, three other American young men, made the ultimate sacrifice.

I knew Mickey Schwerner slightly. He was a full-time civil rights worker. James Chaney and Andrew Goodman were civil rights volunteers. Andy Goodman gave up a summer in New York

* Julian Bond is a Distinguished Adjunct Professor in the School of Public Affairs at the American University and a Lecturer in History at the University of Virginia. This Article is an adaptation of a speech given by Mr. Bond on several occasions.

to come to Mississippi in June 1964. James Chaney was born there and had already sacrificed a year of his young life to participate in what we called the Freedom Movement.

In mid-March of this year, the 30th Anniversary of the 1965 March from Selma to Montgomery was held. That march produced the 1965 Voting Rights Act. That anniversary has produced its martyrs as well. These martyrs include Jimmie Lee Jackson who was killed by an Alabama State Trooper; James Reeb, who was clubbed to death by hostile whites in Selma's streets; Mrs. Viola Liuzzo, a Detroit housewife who, while participating in the movement, was slain by the Ku Klux Klan.

At first glance, these ordinary people appear to have nothing in common. A young man from Minnesota in France in 1944, two young men from New York and one from Mississippi in 1964, an Alabama Black man, a New England white man, a Detroit homemaker; five whites, two Blacks; three dead in a Mississippi grave, three killed in Alabama, one still living; some Jews and some Christians, some men and one woman, some from the North and others from the South. But all shared the common elements of bravery and optimism which seem to characterize the best aspects of the American spirit. In the end, all gave their lives for freedom.

They fought against a powerful ideology of racial superiority at home and abroad. They fought it with a more powerful belief that all people are equal and entitled to life, liberty and happiness' pursuit. They shared a common belief that "right" would and could conquer "might" and in France, Alabama and Mississippi they succeeded. That belief seems to represent the best in all of us.

You may not think of yourselves as potential heroes and heroines in the mold of those who gave their lives for a cause. But like them, you have the power to materially affect the lives and welfare of vast numbers of people living in distressed communities. Utilizing this power will improve the quality of life for us all.

There was a time in my life, and perhaps in yours as well, when the nation spoke of a War on Poverty. Now, an ideology exists that celebrates the culture of poverty. These ideologies are the notion that people who are poor seek out and enjoy their impoverished condition, that the poor live in squalor by choice, that their neighborhoods waste away because the residents are less than worthy human beings and that government efforts to assist the poor are less legitimate than the aid routinely given to others. Apparently, these ideologies have replaced the ideology of the War on Poverty.

Yet, something greater than personal choice shapes human destiny. A more powerful force makes some sections of our nation vibrant and productive and others wastelands. We need only look at one lending issue — housing — to put the lie to the culture-of-

poverty myth. Access to decent housing is central to the American dream. Those Americans denied end up barred from obtaining a decent education, decent jobs and decent lifestyles.

From a historical perspective, it is clear that today's ghetto dwellers did not get there on their own any more than today's white suburbanites did. Housing segregation as it exists today is a deliberate result of past federal governmental policies and practices in concert with private groups. It is this salient fact, more than any other, that places an affirmative obligation on the government and us to help fix what we contributed to breaking. One writer has said:

Housing is a unique commodity. It is extremely durable, passing through several hands before its use value is terminated. It constitutes its own market - it does not go to market, but commands value and utility both from its location and ability to be transformed as household structures and as neighborhoods change over time. . . . Finally, it is the most debt-dependent commodity consumed by the American population. Like the automobile, it must be financed to be bought or sold, and is subject to episodic major repairs. These repairs, however, often require further periodic indebtedness by homeowner or landlord, using the house itself as collateral, as housing has the ability to maintain or gain value over time.¹

Last year, the *N.Y. Times* reported on the revitalization of some poorer neighborhoods in New York City² led by aggressive competition among area banks. Private lending had stopped in these neighborhoods in the late 1960s and 1970s, according to the *N.Y. Times*. This new aggressiveness, stated the *N.Y. Times*, was fed by a strong demand from families, a healthy banking industry, neighborhood development groups and the Community Reinvestment Act. "Public progress," the newspaper said, "has led to private gains."³

Forty-six years ago, in the warm aftermath of the Allies' victory in World War II, the United States Congress promised, in the National Housing Act of 1949, "a decent home and a suitable living environment for every family."⁴ The nation requires no survey or national census to discover how far we are from achieving that goal after the last four and a half decades.

The promise of a "suitable living environment" remains a distant and tarnished dream for the American family; for most

1. David W. Bartelt, *Housing the "Underclass"*, in *THE UNDERCLASS DEBATE: VIEWS FROM HISTORY* 110, 119-20 (Michael B. Katz ed., 1993).

2. Emily Bernstein, *Bankers Competing to Lend in New York's Poorer Areas*, *N.Y. TIMES*, July 11, 1994, at A1.

3. *Id.*

4. Housing Act of 1949, ch. 338, § 2, 63 Stat. 413 (current version at 42 U.S.C. § 1441 (1988)).

Black or brown American families; for renters who live in public, subsidized or private housing; for female heads of households; and for the disabled. For these Americans, and for many, many more, a house is seldom a home and a decent home remains a dream deferred.

Each year in April the nation celebrates Fair Housing Month. This year's observance, the 27th anniversary of the passage of the Fair Housing Act of 1968, was marked by a sense of regret and renewal.

Regret, because there are millions of instances of well-documented housing discrimination in the United States each year.

Regret again, because the Department of Housing and Urban Development (HUD) says Black families who want to buy a home stand a fifty-nine percent chance of encountering housing discrimination; the figure for Latino home buyers is fifty-six percent.

Regret again, because Blacks and Latinos looking for rental housing have a fifty percent chance of facing discrimination's closed door.

Regret again, because twenty-five percent of our nation's rental units close their doors to families with children.

Regret again, because segregated housing separates two of three Black children nationwide in majority Black schools, forty one years after a unanimous Supreme Court declared "that in the field of public education the doctrine of 'separate but equal' has no place."⁵

Regret again, because a 1992 study conducted by the Federal Reserve Bank of Boston found that mortgage companies reject credit-worthy Black and Latino mortgage applicants fifty-six percent more often than equally qualified whites.

Regret again, because each year a number of housing related civil rights violations rise to the level of criminal activity.

Regret again, because members of the new congressional majority are trying to gut and repeal the Community Reinvestment Act of 1977.

Fortunately, these regrets are now being countered by renewal.

Renewal, because for their first time in more than a decade, an administration in Washington, D.C. stands for freedom and fairness and not for discrimination and despair.

Renewal, because President Clinton has issued an Executive Order establishing a Cabinet-level Fair Housing Council to create "a coordinated strategy to affirmatively further fair housing."

Renewal, because the Clinton Justice Department has undertaken a major expansion of the Civil Rights Division's Housing

5. *Brown v. Board of Education*, 347 U.S. 483, 495 (1954).

Section.

Renewal, because HUD has pledged to revamp its enforcement process to favor complainants and has already initiated more investigations of housing discrimination under Secretary Cisneros than in the prior ten years.

Renewal, because for the first time ever HUD has taken control of a local public housing authority because of civil rights violations.

Renewal, because nearly 20,000 young women and men may earn educational awards this year through a national service program by working in communities, building housing, cleaning parks and providing other needed services.

Renewal, because the Clinton Administration has proposed spending \$234 million over five years to relocate thousands of low-income families from inner cities to more affluent neighborhoods.

Renewal, because elimination of bias in mortgage lending is another goal of the Clinton Administration. Already, Connecticut-based Shawmut Mortgage Company and banks in Maryland, Mississippi and South Dakota have settled lawsuits with the Justice Department by agreeing to change their practices and to set aside millions of dollars to compensate victims of their discriminatory practices. An insurer in Wisconsin has agreed, in the most costly insurance company discrimination settlement ever, to pay \$14.5 million dollars to Black homeowners in Milwaukee's inner city. A unit of State Farm Insurance Company is currently negotiating to settle claims alleging it discriminated against minorities in selling homeowner's insurance.

Renewal, because in settling another Justice Department lawsuit, the owners and manager of a Detroit-area apartment complex agreed to pay the largest civil penalty ever imposed in a housing discrimination case after landlords and managers of the complex told white testers about vacant units, while telling Black testers no vacancies existed, and subsequently placing the Black testers on a long waiting list.

Renewal, because the Federal National Mortgage Association has announced that it will make one trillion dollars available for low-income and moderate-income housing and will spend millions more to combat racial discrimination in mortgage lending.

Renewal, because Fleet Finance, a Georgia subsidiary of the largest bank in New England, agreed to pay \$115 million to avoid an investigation into charges that it bilked and cheated poor homeowners with high-interest mortgages. Fleet decided to settle after a campaign by Congress, Clinton-appointed regulators and grassroots organizations that exposed their shady practices.

For most of our country's history, regret has been the fair housing — and fair lending — standard; renewal is a recent phenomenon.

One hundred years ago, America's cities were relatively integrated, at least in comparison to the apartheid system that exists today. A quick review will demonstrate how recently the patterns of residential segregation have emerged and how the official policies and practices of the United States, in conspiracy with private interests, deliberately created this segregation. For example, Robert C. Weaver showed that San Francisco, New York, Chicago, Richmond, San Diego, Columbus and Pittsburgh only had limited patterns of housing segregation in the early twentieth-century.

Also, Gunnar Myrdal demonstrated that, as late as the 1930s, fewer than five percent of the residential blocks in Northern cities were occupied exclusively by non-whites. W.E.B. DuBois' study of Philadelphia saw Blacks living in every ward of that city as late as 1897, and my uncle, J. Max Bond, wrote of similar racial dispersal patterns in Los Angeles in 1890. But, as white flight began to create and populate the new suburbs, racial zoning strung a white noose around the inner city. This invisible cord locked Asians, Blacks and Jews inside the boundaries of the inner cities.

When Jim Crow zoning was declared illegal in 1917, restrictive covenants followed. White developers and homeowners agreed *not* to sell or rent to non-whites. The white noose grew tighter. Before the U.S. Supreme Court found these devices unconstitutional in 1948,⁶ the devices had created two separate and unequal housing markets — one for whites and another for Blacks.

Next, the federal government became a more active partner in the drive to create two separate Americas in a perverse, tax-supported affirmative action plan for whites. For example, HUD's predecessor, the Federal Housing Administration (FHA), required racial restrictions in New Deal home-ownership insurance programs. A 1935 FHA underwriting manual made it clear that what the federal government called "inharmonious racial or nationality groups" were to be discouraged from moving into all-white communities.

The Interstate Highway System gave the states more money. This money made white flight into segregated suburbs easier and more attractive. It gave other federal grants for sewage, electric power and open space to discriminating suburban towns on the urban fringe. Highways, sewers and power transmission lines also encouraged the spread of industry away from the city, as did the lower price of land. The ebony urbanite left behind found fewer jobs and fewer services as tax levels dropped as well. Moreover, public housing programs began to destroy older, integrated neighborhoods and replace them with segregated buildings which of-

6. *Shelley v. Kraemer*, 334 U.S. 1, 19 (1948).

fered the least shelter at the lowest cost.

Urban renewal, of course, has been "Negro removal" from its inception in 1949.

Thus, Uncle Sam took up the fight that white private parties had begun. In the process, he began to solidify, in the public mind, the myth that integrated neighborhoods and lower real estate values went hand in hand. This myth extends to all kinds of lending — the notion that non-discriminatory lending means making bad loans.

Private parties played an important role too. Home Mortgage Disclosure Act (HMDA) data from 1978 through 1990 confirm that less mortgage credit flows to low-income and mostly Black or Latino neighborhoods than to upper-income and white neighborhoods. Blacks are two-thirds more likely than whites to be rejected for loans. The difference between white and Latino rejection rates is almost as large.

The Boston Federal Reserve Bank study sought to build on this data by collecting information on all objective indicators of applicant risk for more than 3000 loan applications throughout the Boston metropolitan area. After accounting for every factor considered a legitimate reason for denying a loan, the Black rejection rate was more than fifty percent greater than that for whites. If those statistics are not sufficient proof of discrimination's ugly hand, the study also found that about four-fifths of all applications do not perfectly fit the applicable underwriting standards. Thus, in most cases, the individual underwriter or loan officer uses discretion in making loan decisions.

In effect, lending money to homebuyers is an expression of faith — faith in the borrower, faith in the property, faith in the neighborhood, faith in the economy. In the United States, such questions of lending faith have historically been influenced by race. That influence used to be blatantly stated and easily defined — with a list.

In 1933, a respected economist at the University of Chicago, Homer Hoyt, published a list of racial groups, ranking them from their negative to positive influence on property values. Note as you read the list to find where your national heritage ranks your potential to downgrade a neighborhood.

The first, most highly valued were:

1. English, Germans, Scotch, Irish and Scandinavians
2. North Italians
3. Bohemians or Czechs
4. Poles
5. Lithuanians
6. Greeks
7. Russians, Jews (lower class)
8. South Italians

9. Negroes
10. Mexicans⁷

The next year, the federal government hired Hoyt to develop the first underwriting criteria. This criteria was to separate the good credit risks from the bad credit risks for the new FHA. Hoyt's top ten list was not included in the underwriting study, but his warnings on racial influence were.

In 1933, the American Institute of Real Estate Appraisers included these same views in the first text of their manual. This manual warned appraisers of the harm to property values caused by the "infiltration of inharmonious racial groups." The list also appeared in the bible of appraising, *McMichael's Appraising Manual*, as late as 1975.

Appraisers were not alone. The rules of bankers and the real estate agents institutionalized the prevailing racism in society as well. For example, the National Association of Realtors developed a code of behavior forbidding members from selling homes in white areas to minority buyers. These racial views persisted well into the civil rights era. HUD publications also reflected Hoyt's views as late as 1975. In that year, *The Dynamics of Change*, a HUD publication, defined racial change, or the fear of racial change in nearby neighborhoods, as the most significant predictor of "incipient decline."

As late as 1977, it took a lawsuit from the Justice Department before such racial standards were purged from the guidelines of the Society of Real Estate Appraisers, the Mortgage Bankers Association of America, the American Institute of Real Estate Appraisers and the United States League of Savings Associations. Appraisers opposed the lawsuit, contending that not being able to consider the effect of race on their appraisals abridged their right to free speech.

In 1991, just four years ago, the Federal Home Loan Mortgage Corporation examined focus groups of 147 individuals from 133 lending institutions in twelve cities. The results showed that racial prejudice by loan officers and their perceptions of underwriting criteria contribute to race discrimination in mortgage lending. Also, the *Los Angeles Times* has tried to eliminate the word "ghetto" from its stylebook. Yet, we are far from eliminating the ghetto from our reality.

The ghetto's foundation is institutionalized discrimination in the real estate and banking industries. Furthermore, its pilings are individual prejudice and discrimination and its co-builder was the federal government itself. The federal government, namely the FHA and its predecessor agency, originated home lending discrim-

7. STANLEY L. MCMICHAEL'S APPRAISING MANUAL 160 (4th ed. 1951).

ination, subsidized the creation of white suburbs through mortgage interest deductions, denied credit to inner cities and promoted white flight by placing highways for the alleged use of urban renewal to isolate Blacks.

The latest Census tells us that thirty percent of the nation's Blacks still live in near-total segregation with more than nine million living in neighborhoods that are at least ninety percent Black. Sixty-eight percent of whites live in virtually all-white areas. The number of whites living in all white areas is down from seventy-six percent in 1980, due largely to suburbia's growing numbers of Asians and Latinos who have historically faced fewer racial barriers than Blacks.

During his campaign for the Presidency in 1960, John F. Kennedy promised, if elected, to eliminate housing segregation "with the stroke of a pen." He must have used invisible ink. His executive order applied only to federally-assisted housing built after November 1962, covered less than one percent of then-existing housing, and less than fifteen percent of new construction. In short, it had little effect on housing constructed and segregated over past decades with the consent and complicity of the government of the United States. This sorry scenario began to change in 1966 when Congress introduced legislation to end racial discrimination in housing throughout the country.

Despite the earlier successes of the Civil Rights Act of 1964 and the Voting Rights Act of 1965, compassion in Congress had cooled and the effort had barely begun. It was one thing to work next to a Black person or to share a voting booth with one; but living next to one was entirely different. The 1964 Civil Rights Act, which outlawed discrimination in employment and federally funded organizations, specifically excluded federal mortgage insurance from coverage. This exclusion perpetuated pervasive discrimination in FHA and Veterans' Administration (VA) loans. Thus, civil rights forces beat a disorderly retreat and shifted their aim from broad targets to those that seemed politically palatable.

The Civil Rights Act of 1968, of which the Fair Housing Act (Title VIII) was to become an important part, began in 1967 as a mild attempt to protect Blacks and others, such as Goodman, Schwerner, Chaney engaged in civil rights work, from racially motivated violence. It passed the House, and Senate debate began in January, 1968. While Congress blundered on, President Lyndon B. Johnson sent it a special message on civil rights, calling for a much broader measure, including a national fair housing law.

By the end of February, Senate Minority Leader Everett Dirksen of Illinois had changed his position on fair housing. His earlier opposition had kept the Senate from passing the 1966 Act. But now, Dirksen and the Senate Democratic leadership agreed to a compromise, and the Republican's shift doomed the thirty-three

day-long filibuster that had bottled up the bill. The opponents were ready. North Carolina's Senator Sam Ervin, who four years later would become the Constitution's biggest defender in the Watergate hearings, said the Dirksen bill would "rob Americans of their precious freedom to control the use and disposition of their privately-held property."⁸

A look back at the climate which produced the debate may be instructive. When Congress introduced the original bill, people had been rioting in more than 200 cities across the United States. We were four years past the 1963 March on Washington for Jobs and Freedom, then the largest demonstration for any cause in the United States. We were thirteen years past the 1954 Supreme Court decision integrating public education, and two years beyond the 100th anniversary of the beginning of the Civil War.

However, by 1967, civil rights had slipped off the American agenda. Energies expended in passing the 1964 and 1965 laws had dissipated, the commitment abandoned. With urban violence as an excuse, the half-hearted soldiers on the battleground for equal rights felt the ground they had gained had been sufficient, the beneficiaries of their gifts ungrateful and the victories won had been enough. Then, as now, debates about rights became arguments about responsibilities and then, as now, the opponents of equality dressed their bigotry in sophisticated arguments over "States' Rights" and "Federal intrusion."

As Senator Robert Kennedy of New York said in debate in early 1968, "today our national focus is riveted on other, urgent issues: a seemingly endless debilitating war half a world away; violence and bloodshed in the streets of American cities; and a loss of faith in our purpose and principles."⁹

On March 1, 1968, the Kerner Commission, appointed by President Johnson to investigate the causes of 1967's riots, issued its report.¹⁰ It said that America consisted of two societies that were moving farther and farther apart. One society was largely Black and poor and the other largely white and rich. It called for, among other things, the passage of Fair Housing legislation to cover "the sale and rental of all housing, including single family homes."¹¹ Three days later, on March 4, the Senate voted to end the filibuster by the smallest possible margin which was sixty-five to thirty-two. With cloture voted, passage of the bill became certain. The only question was whether opponents would attach amendments that would cripple and kill. Then, as now, equality's

8. 114 CONG. REC. 4689 (1968).

9. *Id.* at 2083.

10. REPORT OF THE NAT'L ADVISORY COMM'N ON CIVIL DISORDERS (Bantam Books 1968).

11. *Id.* at 28.

enemies were ingenious.

The work of Tennessee Republican Senator Howard Baker was most devastating. Baker tried to exempt privately-owned single family housing from the coverage of the bill. However, as finally approved by the Senate, the bill promised to eliminate housing segregation in three steps.¹²

The measure returned to the House, which delayed action, and Congress set a vote for April 9, 1968. Five days before the scheduled vote, on April 4, James Earl Ray shot and killed Dr. Martin Luther King Jr. on the balcony of the Lorraine Motel in Memphis, Tennessee. April 9 was his funeral day. On that day, the House Rules Committee cleared the way to send the bill to the House floor. The next day, after one hour of debate, it passed, 229 to 195. Only two months after the House vote the United States Supreme Court reminded America that a 100-year-old open housing law on the federal statute books already existed. In *Jones v. Alfred H. Mayer Co.*,¹³ the Court revived the Civil Rights Act of 1866, ruling that it barred racial discrimination in housing throughout the United States.¹⁴

Thus, in 1968, America had two fair housing laws. One law dated back to America's first Reconstruction. This law placed a broadside ban against discrimination in the sale or rental of all housing. Congress enacted the other law just as the Second Reconstruction ended a century later. That law barred discrimination based on race, religion or national origin, but limited coverage to only seventy-seven percent of the then sixty-nine million housing units in the United States.

And once again the national promise would be broken, once again the dream deferred. In exchange for its passage, Congress designed the 1968 Fair Housing Act not to work. Its ban on housing discrimination was destined to be an empty promise. The bill merely gave HUD authority to investigate complaints and to engage in "conference, conciliation and persuasion." It could not force compliance, grant a remedy, assess damages, enjoin any prohibited practice or penalize a lawbreaker in any way. It could only refer cases to the Justice Department.

The Department, in turn, could only act in the face of "a pattern or practice" of discrimination or if the alleged discrimi-

12. Civil Rights Act of 1968, Pub. L. No. 90-284, §§ 801-819, 82 Stat. 73, 81-89. The first step, enumerated in § 804, made discrimination in the sale or rental of housing unlawful. § 804, 82 Stat. at 83. The second step criminalized discrimination in the financing of housing. § 805, 82 Stat. at 83. Finally, the third step made discrimination in the provision of brokerage services unlawful. § 805, 82 Stat. at 84.

13. 392 U.S. 409 (1968).

14. *Id.* at 2194-2202.

nation raised an issue "of general public importance."¹⁵ The late Patricia Harris, HUD Secretary under President Carter, said the 1968 Fair Housing Act reduced her agency to "asking the discovered lawbreaker whether he wants to discuss the matter."¹⁶ Therefore, during the 1970s and 1980s, even the most blatant lawbreakers had little to fear from HUD or the Justice Department.

By the middle 1970s, the growing numbers of women, Blacks and other minorities pressing for entry into and power in the academy, the media, business, government and other traditionally white male institutions created a backlash in the discourse over race. Opinion leaders, both in government and private sector, began to redefine the terms of the discussion. No longer was the Kerner Commission's formulation acceptable. Any indictment of white America could be abandoned. Instead, Black behavior became the reason why Blacks and whites live in separate worlds. Then, as now, racism retreated and pathology advanced. Thus, the burden of racial problem-solving shifted from racism's creators to its victims. In a kind of nonsensical tautology, America heard over and over again, these people are poor because they are pathological; they are pathological because they are poor.

The color-blind society that was the 1960's ideal became an imaginary reality. The failure of the lesser breeds to enjoy society's fruits became their fault alone. Thus, pressure for additional civil rights laws became special pleading. America's most privileged population, white men, suddenly became a victim class and aggressive Blacks and pushy women were responsible for society's demise. All this occurred despite almost daily incidents of racial attack, and a series of public opinion surveys which demonstrate convincingly that most white Americans believed racial minorities are less than equal human beings — lacking in thrift, morality, industriousness and patriotism.¹⁷

An American majority does not just think ill of American minorities. It thinks more minorities exist than there actually are. According to a Gallup Poll, the average American thinks that thirty-two percent of all Americans are Black, but the actual figure is twelve percent. The average American thinks that twenty-

15. Civil Rights Act of 1968, Pub. L. No. 90-284, § 813, 82 Stat. 73, 88 (codified as amended at 42 U.S.C. § 3614 (1982), repealed 1984, recodified by Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, § 814, 102 Stat. 1619, 1634-35 (current version at 42 U.S.C. § 3614 (1988))).

16. *Title II, Fair Housing Amendments Act of 1977 to amend Fair Housing Act of 1968: Hearings on H.R. 3504 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 95th Cong., 2d Sess. 3-34 (1978) (statement of Patricia R. Harris, former Secretary of HUD).

17. NATIONAL OPINION RESEARCH CENTER, *ETHNIC IMAGES, GEN. SOC. SURV. TOPICAL REP.* 19 (Dec. 1990). The National Research Center is located in Chicago, Illinois.

one percent of the nation is Latino, but the actual figure is only eight percent. Americans think that eighteen percent of the population is Jewish, but the actual figure is only three percent. These imaginary numbers mean that most Americans think minorities are an American majority — seventy-one percent of the population!

Between 1968 and 1978, the Justice Department prosecuted an average of thirty-two fair housing cases a year. This number is huge when compared to the Reagan Presidency caseload. During Reagan's first year as President, not one fair housing case was filed. In 1982 only two were filed. At the same time, the number of fair housing complaints had escalated sharply. Between 1979 and 1982, the number of complaints filed with HUD nearly doubled, from 2800 in 1979 to 5100 in 1982. The number of cases filed by the Reagan Justice Department tripled from two to six in 1983. At the end of Reagan's eight years in office, the total number of housing cases filed equaled the annual average during each of Carter's four years in office.

It took twenty years, but Congress amended the Fair Housing Act in 1988. These 1988 Amendments gave the nation and the victims of housing discrimination a fair housing law whose promise was capable of being fulfilled. In addition to making the law more "user-friendly" by extending the time within which a complaint may be filed, allowing attorney's fees and costs to winning plaintiffs and increasing available remedies, the amendments greatly strengthened HUD's enforcement powers.¹⁸

Finally, that battle, stretching over decades, had been won. But, there are still more battles to be fought and won. Data from the 1990 Census show that America remains an overwhelmingly segregated society. Northern cities on average are severely segregated. At the average rate of change across all northern areas, it will take seventy-seven years just to achieve a moderate level of segregation. Although southern metropolitan areas are less segregated than the Northern areas, it will take thirty-six years for them to reduce their segregation to the moderate range.

"Compared with poor whites, poor Blacks are more likely to live in neighborhoods where a high proportion of the residents are poor."¹⁹ They interact mainly with others who are poor, who share their disadvantage. They live squeezed together in less than standard housing, in neighborhoods that have been divested of essential services. They shop at stores owned by merchants geared to do business with a poor clientele. Their neighborhoods are economically segregated, bereft of opportunity, out of sight and often

18. Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619.

19. NATIONAL RESEARCH COUNCIL, *A COMMON DESTINY - BLACKS AND AMERICAN SOCIETY* 283 (Gerald David Jaynes & Robin M. Williams eds., 1989).

out of mind. Their children attend schools only with other poor children. "They face," the New Jersey Supreme Court said last July, "through no fault of their own, a life of poverty and isolation that most of us cannot begin to understand and appreciate."²⁰

It is time to think again of a War on Poverty, with every American as a vital part of the army, officers and enlisted men and women, facing an ancient foe. As in every war, there is bureaucracy, there is paperwork, there are reporting requirements, there are orders some soldiers do not want to follow and some they claim they do not understand. But there are victories that must be won. As in our earlier contests, there are great costs, human costs, if we lose. The issue here, of course, is not just housing, but a larger battle in which fair lending is the prize. Credit of all kinds is essential to rebuilding America — not just for housing but for rehabilitation, consumer products, business development and expansion.

Last summer, the House of Representatives rejected a tough measure that would have made the insurance industry face the same racial and locational data-gathering requirements bankers now face. This information could have documented widespread discrimination in home-insurance practices.

In Chicago, in some low-income minority neighborhoods, nearly half of occupied single-family homes go without hazard insurance altogether. Lenders, of course, often refuse to finance or refinance properties where insurers refuse to do business.²¹

Predatory home improvement lending practices plague low-income communities with interest rates ranging as high as twenty-four percent. These practices result in equity theft from consumers least able to afford it. Bank red-lining creates the climate for these bandits, and the disappearance of banks from low-income communities means more and more are forced to seek other lending sources.

These other sources include check-cashing services where the poor pay more — \$500 versus \$50 a year for a two-income family — to cash their checks and pay their bills. They constitute a two-tier financial services system. In New York City alone, these check-cashing services annually cash ten billion dollars worth of pay checks, distribute \$1.5 billion in public assistance payments, disburse food stamps, sell money orders and lottery tickets, transmit funds and electronically pay utility bills for their customers. But they do not offer checking or savings accounts.²²

20. Chief Justice Wilentz, *Paying For New Jersey's Schools: Excerpts of Court Ruling Requiring Parity in New Jersey's School Spending*, N.Y. TIMES, July 13, 1994, at B7.

21. Kenneth R. Harney, *House Rejection of Tough Redlining Bill Will Hurt Inner-City Home Buyers*, WASH. POST, July 30, 1994, at E3.

22. CITY OF NEW YORK DEP'T OF CONSUMER AFFAIRS, THE POOR PAY MORE . . .

These lending issues do not exist in a vacuum; they emerge from and are part of a broader struggle involving poverty, race and urban development. When the idea of racial justice seemed to be a new and widely popular idea some years ago, there seemed also to be an assumption that achieving it would be cost-free. It has not been, of course. Change never is. And when it began to squeeze and pinch, its popularity began to fade. In the long run, however, the cost of achieving justice is never so great as the cost of justice denied. The cost of justice denied is measured in crime, mental illness, social disintegration and human decay.

The great modern movement for racial equality, stretching back in time, has seen great progress made. Those were years of great legal struggles in the courts, complemented by extra-legal struggles in the streets. Gains were won at lunch counters, movie theaters, polling places, bus stations, schoolhouses, and the fabric of legal apartheid in America began to come undone. Those years brought great change to America. America is a very different nation than the one my father-in-law shed blood to defend fifty years ago.

The *Wall Street Journal* reported last year that in one California county, six of the top manufacturing CEOs were born outside the U. S. — in China, Taiwan, Japan, Mexico, the former Yugoslavia and Pakistan.²³ The *Journal* said the ten most common names for recent home buyers in California include Lee, Martinez, Rodriguez, Garcia and Wong.²⁴ In Orange County, Nguyens out number Smiths two to one.²⁵

When I entered the labor force more than three decades ago, five workers paid into the Social Security System to support every retiree. Their names might well have been Carl, Ralph, Steven, Bob and Bill. When I retire, there will be only three workers paying in for every retiree. Their names may well be Kwanza, Maria and Jose. Where they live, the kinds of schools they attend and homes they occupy, how well-educated they become, what sorts of businesses they work in or own, is in some measure up to you.

I remain an optimist, a quality surely inherited from a grandfather I never met. He was James Bond, born a slave in Kentucky in 1863. Like so many Black Americans, then and now, he had his clash with housing segregation. In 1917, when he was fifty-four years old, he was arrested in Atlanta for moving his family onto a street reserved for whites.²⁶ In his teens, barely able to read and

FOR LESS, PART 3, PREDATORY HOME IMPROVEMENT LENDING (Feb. 1993); CITY OF NEW YORK DEP'T OF CONSUMER AFFAIRS, PART 4, FINANCIAL SERVICES (Apr. 1994).

23. Joel Kotkin, *Immigrants Lead A Recovery*, WALL ST. J., Apr. 22, 1994, at A12.

24. *Id.*

25. *Id.*

26. See WAYNE J. URBAN, *BLACK SCHOLAR: HORACE MANN BOND, 1904-1972* 10

write, he put his tuition, a mule, at the end of a rope, and walked nearly 100 miles to Berea College, which accepted him. Fourteen years later he graduated from Berea and subsequently graduated from law school.

He finished college in 1892 at a time historians consider the nadir, the worst time since slavery for Black Americans. The Southern states had rolled back the gains won in the Civil War. State by state the right to vote had been taken away. State by state, the ugly rule of Jim Crow spread across the South. State by state, lynch law and hooded terror ran wild.

My grandfather gave the commencement address at his graduation. His words might offer encouragement now to those discouraged by our failure to open the doors of opportunity to all. He said then:

The pessimist from his corner looks about upon the world of wickedness and sin, and blinded by all that is good or hopeful in the condition and progress of the human race, bewails the present state of affairs and predicts woeful things for the future. In every cloud he beholds a destructive storm, in every flash of lightning an omen of evil and in every shadow that falls across his path a lurking foe. He forgets that the clouds also bring life and hope, that the lightning purifies the atmosphere, that shadow and darkness prepare for sunshine and growth, and that hardships and adversity nerve the race, as the individual, for greater efforts and grander victories.²⁷

Greater efforts and grander victories. That was his generation's promise 103 years ago. That was the promise made by the generation that won the great world war for democracy five decades ago. That was the promise made by those who brought democracy to America's darkest corners three decades ago, and that is the promise we ask of you in turn.

(1992); ROGER M. WILLIAMS, *THE BONDS — AN AMERICAN FAMILY* 65 (1971).

27. James Bond, Commencement Address at Berea College Graduation, *reprinted in* BERE A COLLEGE REP., June, 1892. Berea College is located in Berea, Kentucky.