

CHANCES ARE: LESSONS FROM THE 1962 UNITED STATES CIVIL RIGHTS COMMISSION HOUSING DISCRIMINATION HEARINGS IN WASHINGTON D.C. FOR THE CURRENT FORECLOSURE CRISIS

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By examining a prior government hearing that investigated instances and patterns of housing discrimination in the U.S., a more accurate picture of the damage created by government policies that supported housing discrimination, racial segregation, and economic inequality can be presented. This Article focuses specifically upon the 1962 Housing Discrimination hearings convened in Washington D.C. by the United States Civil Rights Commission. The hearings focused upon housing discrimination and patterns of racial segregation in the Washington D.C. Metropolitan region produced as a direct result of government policies pursued and endorsed for over thirty years by the Federal Housing Administration (FHA). In addition, this Article will not only expose the ineffectiveness of the 1962 hearings in addressing these very important socio-economic issues but also identify current racial discrimination and economic equality at the center of today’s damaging housing crisis. In sum, this Article argues for addressing past, present, and future racial discrimination patterns in housing with a much more aggressive and honest approach to a problem rooted in economic inequality and ineffective government policy. Even in the age of resistance to governmental solutions to economic inequality, the need for just such an approach is justified in this instance.

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I. INTRODUCTION

On September 9, 1957, Republican President Dwight D. Eisenhower signed the Civil Rights Act of 1957 into law.¹ It was the first civil rights law passed in the United States since 1875.² The period from 1875 to 1957 was an era of stagnant racial progress in the United States. Laws legalizing discrimination and racial segregation were prevalent throughout the country and the federal government did little to address the problem. Discrimination and racial segregation were also a frequent occurrence in states without overt laws legalizing these practices.³ Further, custom and outright mob violence perpetuated America’s racial caste system. For these reasons, the passage of a civil rights law in 1957 was quite an achievement.

While the law was an historic accomplishment, it was also a compromised piece of legislation that reflected the nation’s inability to get beyond the issue of race in the twentieth century. President Eisenhower was among those disappointed by the new law when he signed the bill. In issuing no comment on the new civil rights law, he demonstrated his disdain for its limitations.⁴ However, the law authorized the creation of the United States Civil Rights Commission, the first government entity devoted to the issue of civil rights in the history of the nation.⁵

The significance of the period between civil rights laws enacted during Reconstruction⁶ and the Civil Rights Act of 1957 is noteworthy. It was during this period that most of the nation’s African American population became second-class citizens who were forced to exist under “Jim Crow” conditions, whereby civic barriers were enforced legally, institutionally, and by custom.⁷ African Americans were segregated from the rest of the population in every facet of daily life in the United States, including public education, housing, employment, and socialization. And the perpetuation of a dual system of housing (home ownership and home location) during an important segment of the Jim Crow period left an indelible imprint on the structure of racial and economic equality in the United States, now and for the future.

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¹ FOSTER RHEA DULLES, *THE CIVIL RIGHTS COMMISSION, 1957–1965*, at 1(1968).

² *Id.*

³ MARTIN LUTHER KING, JR., *WHY WE CAN’T WAIT* (Penguin Books 2000) (1963).

⁴ W.H. Lawrence, *President Backs U.S. Court Order*, N.Y. TIMES, Sept. 10, 1957, <http://query.nytimes.com/mem/archive/pdf?res=F70D13F7385A177B93C2A81782D85F438585F9>.

⁵ DULLES, *supra* note 1, at 3.

⁶ “Reconstruction” is generally considered the historical period immediately following the Civil War of 1861–1865 and the end of chattel slavery in 1865. The period lasted from approximately 1865–1877.

⁷ THE RICHARD WRIGHT ENCYCLOPEDIA 342 (Jerry Washington Ward & Robert Butler eds., 2008).

The federal government's intentional policy decisions promoted racial segregation and economic inequality in the housing market from 1934 to 1968.⁸ During this period, the Federal Housing Administration (FHA) adopted and promoted discriminatory housing policies in the United States.⁹ These policies led to segregated housing patterns and created segregated cities and neighborhoods. Housing policies have therefore contributed to an enduring economic inequality where whites have accumulated far more wealth than minorities, particularly African Americans.¹⁰

Thus, the Civil Rights Act of 1957 and the creation of the U.S. Civil Rights Commission could have been a moment of serious social and political progress. Instead, the law reaffirmed and reinforced lawmakers' attitudes of racial inequality towards African Americans, just as President Eisenhower's disappointment had foreshadowed. The activities of the U.S. Civil Rights Commission were impressive but were conducted with limitations and purpose.¹¹ One significant example is the April 1962 hearings of the Commission convened in Washington, D.C. to examine housing discrimination in the metropolitan Washington, D.C. area.¹²

An analysis of the April 1962 hearings on housing discrimination in Washington, D.C. and the surrounding region reveals the weaknesses of the Civil Rights Act of 1957 that Eisenhower had suspected, as well as an overall flawed approach to solving the problem.

Today, with a devastating housing crisis still dominating the nation's economic affairs, lessons for the future can be learned by examining the April 1962 hearings and exploring the mistakes made by the government in the following years. Specifically, a re-examination of the April 1962 hearings is an opportunity to consider a new approach to addressing economic equality along racial lines and to consider new approaches to current problems in the housing market.

Part II of this Article will focus upon the creation of the U.S. Civil Rights Commission in 1962. Part III will summarize and report on the Commission's April 1962 hearings regarding housing discrimination in the Washington, D.C. metropolitan area. Part IV will evaluate the 1962 hearings and consider the economic impact of government policies in the housing market that have disproportionately impacted the lives of African Americans in accumulating wealth over the years.

Part V will consider the lessons learned 1962 hearings and the 2007 housing foreclosure crisis to examine what can be done to change systemic, entrenched housing discrimination against and economic inequality amongst some African Americans. Finally, Part VI will consider recommendations to remedy economic inequality and housing discrimination, emphasizing the need to address the problems created by past government policy as well as new issues created by the government's subsequent attempts to increase the rate of homeownership in the African American community.

II. THE UNITED STATES CIVIL RIGHTS ACT OF 1957

A. A Civil Rights Law, At Last

The Civil Rights Act of 1957 addressed several areas of civil rights in a fairly conservative manner. Most notably, the Act authorized the creation of the United States Commission on Civil Rights.¹³ The Commission was created as an "independent, bipartisan fact finding agency established by

⁸ DAVID M.P. FREUND, COLORED PROPERTY: STATE POLICY AND WHITE RACIAL POLITICS IN SUBURBAN AMERICA 155 (2007).

⁹ *Id.*

¹⁰ MELVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY 18–19 (10th ed. 2006).

¹¹ DULLES *supra* note 1, at 2–3.

¹² UNITED STATES CIVIL RIGHTS COMMISSION, HOUSING IN WASHINGTON: HEARINGS BEFORE THE UNITED STATES COMMISSION ON CIVIL RIGHTS 3 (1962) [hereinafter HOUSING IN WASHINGTON].

¹³ DULLES, *supra* note 1, at 2.

the Congress,”¹⁴ with the following duties: “To investigate complaints regarding deprivation of the right to vote; To study legal developments constituting a denial of equal protection of the laws under the Constitution; and; To appraise the Federal laws and policies with respect to equal protection.”¹⁵

While the Commission’s duties were devoted to the issue of civil rights, the Commission had no authority to enforce laws relating to equal protection or to punish any individual or entity for racially racial discriminatory conduct.¹⁶ Even if the Commission identified a violation of federal law proven by actual testimonial evidence, the Commission could do nothing address the problem.¹⁷

Even with these limitations, the Commission held significant potential:

[E]mpowered to assemble authentic and documented information, to be incorporated in the public record, this new Federal agency would be able to build up to an unassailable factual record of the status of civil rights throughout the country. From this base it could then point the way towards more effective policies, on the part of both the Executive and Congress¹⁸

The Commission was formed during a period when civil rights and relations were particularly volatile in the United States. In 1954, the Supreme Court rendered its most famous decision affecting race relations in the United States: *Brown v. Board of Education*.¹⁹ *Brown* effectively declared “Jim Crow” laws in the United States illegal and unconstitutional and ushered in an era of desegregation and integration that is still evolving today.²⁰

In December 1955, Rosa Parks’ legendary act of civil disobedience while on a Montgomery, Alabama, transit bus inspired the modern civil rights movement.²¹ Numerous other individual and collective efforts to oppose the nation’s racial caste system soon followed.²² By 1957, the entire “Jim Crow” system had come under increased scrutiny in the face of fierce resistance of change. It was in this context that the Commission was created.

Further integration, and acts of civil disobedience, ensued. In 1957, nine African American students challenged the “separate but equal” public school system when they integrated Central High School in Little Rock, Arkansas.²³ By 1960, in Greensboro, North Carolina, college students began “sit in” campaigns at lunch counters to dramatize racial segregation.²⁴ In 1961, the integration of interstate bus transportation would be commenced through the well-known “Freedom Riders” campaign.²⁵ With so much change occurring in the United States, the inception of a Commission devoted to studying civil rights was both appropriate and necessary.

B. The Commission

¹⁴ HOUSING IN WASHINGTON, *supra* note 12, at 3.

¹⁵ *Id.*

¹⁶ DULLES, *supra* note 1, at 2–3.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954).

²⁰ WALDO E. MARTIN, JR., *BROWN V. BOARD OF EDUCATION: A BRIEF HISTORY WITH DOCUMENTS 1* (1998).

²¹ RUTH ASHBY, *ROSA PARKS: FREEDOM RIDER 56* (2008).

²² *Id.* at 63–75.

²³ Brian Gilmore, *The Courage of the Little Rock Nine*, SOUTH BEND TRIB., Aug. 24, 2007, http://articles.southbendtribune.com/2007-08-24/news/26789243_1_black-students-diversity-in-public-education-public-schools.

²⁴ Brian Gilmore, *Sit-ins Changed Society*, PITTSBURGH TRIB., Feb. 7, 2010, http://triblive.com/x/pittsburghtrib/opinion/columnists/guests/s_665891.html.

²⁵ RAYMOND ARSENAULT, *FREEDOM RIDERS: 1961 AND THE STRUGGLE FOR RACIAL JUSTICE 3* (2006).

Notwithstanding the limitations on its authority to enforce civil rights, the initial Commission was very impressive. It was comprised of John Hannah, President of Michigan State University; Robert G. Storey, Dean of Southern Methodist University Law School; John S. Battle, a former Governor of Virginia; Father Theodore M. Hesburgh, President of Notre Dame; J. Ernest Wilkins, an Assistant Secretary of Labor; and Doyle E. Carleton, a former Governor of Florida.²⁶

The initial Commission had no female members and only one African American member, J. Ernest Wilkins.²⁷ Unfortunately, Wilkins resigned due to illness shortly after his appointment to the Commission. He was replaced by another African American, George M. Johnson, the former Dean of the Howard University School of Law from 1946 to 1958.²⁸ President Hannah was Chairman of the Commission and Storey was Vice Chairman.²⁹ Hannah is worthy of closer examination because of his unlikely rise as a leader in the area of civil rights.³⁰ Hannah had no prior background experience in civil rights issues or government policy. Yet in his 1966 article, *Civil Rights and the Public Universities*, Hannah wrote intelligently on the topic, referring to the issue of civil rights as a “problem” that did not exist “exclusively in the South,” but in the “East and the North and the West as well.”³¹ The Commission’s influence on Hannah’s views on civil rights was evident in this article:

The Negro is forever marked by the color of his skin as one apart. He cannot lose himself in the homogeneity in which the rest of us take refuge, and he suffers under a dreadful handicap as a consequence. The task of education is to persuade his white brothers and sisters that color makes no difference. Only a beginning has been made in the long, hard fight against race prejudice, but doors of opportunity, so long closed arbitrarily to the Negro, are slowly opening in the professions and the higher vocations.³²

Father Theodore Hesburgh, another initial commission appointee, described the commission as “a kind of national conscience in the matter of civil rights.”³³ Commissioners faced physical threats in the early years, and they were “publicly harassed in the media and politics for most of the commission’s history.”³⁴ Despite these challenges, the commission survived; it “became known for its integrity and its hallmark independence from political authority by doing its work without fear.”³⁵

III. THE APRIL 1962 HEARINGS ON HOUSING IN WASHINGTON, D.C.

A. The Commission Pursues its Mission

On April 12–13, 1962 in Washington, D.C., the commission held hearings on the state of the city’s housing.³⁶ While many of the Commission’s original members remained, there were several notable.³⁷ President John F. Kennedy appointed new members to the Commission in 1961, including

²⁶ DULLES *supra* note 1, at 18.

²⁷ *Id.*

²⁸ *Id.* at 19.

²⁹ *Id.*

³⁰ *Id.*

³¹ John A. Hannah, *Civil Rights and the Public Universities*, 37 J. HIGHER EDUC. 61, 67 (1966) (“Finally, we must acknowledge that the real problems of civil rights are not to be found exclusively in the South. They exist in the East and the North and the West as well.”).

³² *Id.* at 65.

³³ MARY FRANCES BERRY, AND JUSTICE FOR ALL: THE UNITED STATES CIVIL RIGHTS COMMISSION AND THE CONTINUING STRUGGLE FOR FREEDOM IN AMERICA 4 (2009).

³⁴ *Id.*

³⁵ *Id.*

³⁶ HOUSING IN WASHINGTON, *supra* note 12, at 3.

³⁷ *Id.*

Spottswood Robinson, Dean of the Howard University School of Law. His appointment is particularly noteworthy because of his civil rights background.³⁸

An accomplished litigator in the civil rights field, Robinson had close associations with the Howard University School of Law and the National Association for the Advancement of Colored People (NAACP) Legal Defense Fund.³⁹ He was also a member of the *Brown v. Board of Education* legal team, which included Charles Hamilton Houston, Thurgood Marshall, and Julian Dugas, among others.⁴⁰

The District of Columbia hearing was not the first convened by the Commission. The Commission had previously held hearings in Los Angeles, Atlanta, Chicago, Detroit, and New Orleans. These hearings explored several civil rights issues in addition to housing, such as voting, public education, public accommodations, and the administration of justice.⁴¹ At the outset of the hearings, Chairman Hannah noted that these previous hearings by the Commission strongly suggested that housing was an area that warranted more attention by the Commission:

Our studies have revealed that one of the most crucial civil rights problems is housing. Housing is the one commodity in the American market that is not freely available on equal terms [to] everyone who can afford to pay.

Throughout the country large groups of American citizens, mainly American Negroes, but other groups as well, are denied an equal opportunity to choose where they will live. Much of the housing market is closed to them for reasons unrelated to their personal worth or ability to pay, and in the restricted market that is open to them, Negroes generally pay more for equivalent housing than do the favored majority.⁴²

The Commission convened the District of Columbia hearings because, as Chairman Hannah noted, Washington is “the window of America” and “the entire nation” would be judged by the commission’s actions there.⁴³ The Commission also sought to examine the housing problem in the Washington Metropolitan Area.⁴⁴

B. A Discriminatory Environment

The numerous witnesses that testified at the hearing established that African Americans experienced denial of access to equal housing⁴⁵ and racial discrimination related to home ownership⁴⁶ in the Washington Metropolitan Area. The discussion below provides a summary of just some of the testimony presented at the hearing.

The first to testify was Walter N. Tobriner, President of the District of Columbia Board of Commissioners. Mr. Tobriner confirmed that Washington and the metropolitan region were segregated:

³⁸ DULLES, *supra* note 1, at 100.

³⁹ Spottswood Robinson III was born in Richmond, VA. He graduated from the Howard University School of Law in 1939 and eventually served as head of the NAACP Legal Defense Fund’s Virginia Office. It was there that he filed one of the school desegregation cases that would eventually result in the *Brown v. Board of Education* decision of 1954 outlawing segregation in the United States. Robinson was a well-known successful civil rights lawyer in segregated Virginia over the years. He also served as Dean of the Howard University School of Law and was the first African American appointed to the United States District Court for the District of Columbia and the United States Court of Appeals for the D.C. Circuit. *Robinson, U.S. Appeals Judge, Dies in Virginia at 82*, JET MAGAZINE, Nov. 2, 1998, at 57.

⁴⁰ *Spottswood William Robinson III*, BROWN @ 50: FULFILLING THE PROMISE, <http://www.brownat50.org/brownbios/BioJudgeSpottswoodRobinson.html> (last visited Dec. 4, 2012).

⁴¹ HOUSING IN WASHINGTON, *supra* note 12, at 4.

⁴² *Id.*

⁴³ *Id.* at 4–5.

⁴⁴ *Id.*

⁴⁵ *Id.* Evidence of discrimination in the housing market is presented throughout the hearings.

⁴⁶ *See* HOUSING IN WASHINGTON, *supra* note 12.

Eighty percent of the region's African Americans were residing in the District of Columbia.⁴⁷ While Mr. Tobriner also testified that African Americans found Washington, D.C. to be a city where there was "hope for equal opportunity," Tobriner acknowledged that equal opportunity had not been achieved.⁴⁸ Tobriner spoke little about how the city's housing market contributed to the segregation but did allude to various programs being implemented to provide additional low-income housing opportunities.⁴⁹

Sociologists George and Eunice Grier presented data on segregation in the region and noted that the African American population had been increasing in the District of Columbia but "declining" in the "suburbs" since 1920.⁵⁰ Of particular note was the testimony of George Grier, in which he explained that Washington, D.C. has had a significant African American population for decades.⁵¹ Some African Americans families had lived in Washington, D.C. for five or six generations. However, the African Americans in Washington, D.C. were not becoming dispersed in the area, according to Mr. Grier; rather, they were becoming more concentrated in specific areas of the metropolitan region.⁵²

Furthermore, African Americans were at an "economic disadvantage" in attaining home ownership although they earned incomes "above the national average for non-whites," and as a result, could afford to purchase homes in almost exclusively white areas of the city.⁵³ These areas, Glover Park and Woodley Road, however, remained exclusively white even though African Americans could afford to reside there.⁵⁴ Segregation in the face of African Americans' moderate income is a key fact in understanding the overall issue of segregation and discrimination in the area.⁵⁵

Robert Weaver, Administrator for the Housing and Home Finance Agency also acknowledged the presence of displacement and racial concentration, and advocated opening "suburban areas . . . to all elements of the population."⁵⁶ Until that occurred, he urged, the Washington, D.C. region would "continue to suffer from too great concentrations of ethnic groups in too small a sector of the total metropolitan area."⁵⁷

Sterling Tucker, Executive Director of the Washington Urban League,⁵⁸ also testified at the hearing.⁵⁹ Tucker testified that housing discrimination in the metropolitan region is part of an "economic monster."⁶⁰ Tucker offered recommendations to the Commission based on its own 1961 housing report.⁶¹ The recommendations stressed the need to address neighborhood segregation patterns, development as it affects African American neighborhoods, housing discrimination, and relocation issues that arise when African Americans are displaced.⁶² Tucker testified that segregation patterns in the

⁴⁷ *Id.* at 8.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 15.

⁵¹ HOUSING IN WASHINGTON, *supra* note 12, at 18.

⁵² *Id.*

⁵³ *Id.* at 19.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ HOUSING IN WASHINGTON, *supra* note 12, at 35.

⁵⁷ *Id.* at 35.

⁵⁸ The Greater Washington Urban League was founded in 1938 and is one of more than 100 affiliates of the National Urban League. A major civil rights and social services organization, the League has been dealing effectively with a wide range of social and economic problems for seventy-one years. *See History*, GREATER WASHINGTON URBAN LEAGUE, <http://www.gwul.org/about/history> (last visited Nov. 16, 2012).

⁵⁹ HOUSING IN WASHINGTON, *supra* note 12, at 40.

⁶⁰ *Id.*

⁶¹ *Id.* at 40.

⁶² *Id.* at 41.

suburbs were “firmly entrenched” and that it was “virtually impossible for a non-white family—regardless of means . . . to secure modern suburban housing.”⁶³

Tucker, like many other witnesses, testified on the high concentration of African Americans in the city, as opposed to the suburbs.⁶⁴ He additionally testified that thirty-six percent of the African Americans in the city owned their homes while only twenty-eight percent of whites in the city owned their homes.⁶⁵ While this could be viewed in a positive manner, Tucker noted that this only speaks to the industrious nature of the African American experience; the fact that they are forced to reside in the city is a tragic hidden reality behind the statistic.⁶⁶

Tucker’s points, and the pronouncements of many others, are historically consistent in Washington, D.C. as well as most major American cities in the twentieth century.⁶⁷ Large numbers of African Americans migrated to large cities across the country and eventually discovered that they were soon segregated in these cities and urban communities.⁶⁸ In these large metropolitan areas, the reasons for segregation were almost always tied to the effect of racial attitudes and policies on housing, as suggested by Tucker’s testimony.⁶⁹

Testimony in the Commission’s Washington, D.C. hearing also supported a wider analysis of how housing discrimination in the United States and segregation was achieved. The testimony of Mrs. Adolph Williams, President of the Montgomery County Branch of the NAACP, is one of the best examples of this official and unofficial policy.⁷⁰

Mrs. Williams described for the Commission her own experience in seeking to purchase a house in the suburbs. Mrs. Williams testified that she and her husband, a dentist, sought to purchase a home in the city of Norbeck, located in Montgomery County, Maryland, where “Negroes” were already residing.⁷¹ Mrs. Williams identified a house in a newspaper and spoke with a real estate agent over the telephone. The agent had already identified Mrs. Williams’ husband as a “Negro.” On this basis, the agent immediately raised the price of the house by \$1,000 stating that the newspaper price had been a mistake.⁷²

Later, Mrs. Williams inquired regarding another house in Montgomery County. That agent pushed to meet with Mrs. Williams before she could see the house but Mrs. Williams insisted on meeting the agent at the house.⁷³ The description of the meeting at the house is as follows:

I got to the house a little ahead of the agent, and I went in, and when the owner introduced me, he seemed very surprised to see me, and when the owner introduced us, he said, ‘You can look around, if you want to,’ and he excused himself from the living room and went into the kitchen, and he asked the owner whether or not he thought I was a Negro, and she gave him some ambiguous answer. He made no attempt to try to sell me the home or interest me in the house. I asked him the price of the home. He was not sure, but he gave me a price which was a thousand dollars higher than the asking price. When I asked him when the house would be available for occupancy, he didn’t

⁶³ *Id.*

⁶⁴ HOUSING IN WASHINGTON, *supra* note 12, at 42.

⁶⁵ *Id.* at 42.

⁶⁶ *Id.*

⁶⁷ JOHN F. McDONALD, URBAN AMERICA: GROWTH, CRISIS, AND REBIRTH 108–11 (2007).

⁶⁸ *Id.*

⁶⁹ CHARLES T. CLOTFELTER, AFTER BROWN: THE RISE AND RETREAT OF SCHOOL DESEGREGATION 80 (2006).

⁷⁰ HOUSING IN WASHINGTON, *supra* note 12, at 99.

⁷¹ *Id.* at 100.

⁷² *Id.*

⁷³ *Id.*

know. He had absolutely no information about the house he was showing to me. After I looked through the house, I told him I would like to buy it and I wanted to sign a contract that day. He said I could not sign the contract⁷⁴

Additionally, Mrs. Williams testified that she continued to pursue the purchase of the house despite further resistance from the real estate company.⁷⁵ There were not only additional stall tactics, but the president of the company also expressly advised Mrs. Williams that if he sold her the house, “he would be ruined.”⁷⁶ The family also had trouble securing financing for their home purchase. People who found out that the Williams were moving into the home—including members of the loan company’s board of directors—pressured the loan company and attempted to prevent it from extending a mortgage loan to the family.⁷⁷ It was not until Mrs. Williams told the loan company that the U.S. Justice Department was interested in her experience purchasing a home in the suburban area that the sale of the house was completed. The family finally moved into the house on June 15, 1961.⁷⁸

On July 3, 1961, a hangman’s noose was placed on the windshield of Mrs. Williams’ car followed by the burning of a cross on her porch on July 4, 1961.⁷⁹ The Williams family also received a bomb threat shortly after moving into their new house.⁸⁰

Mrs. Williams’ testimony is just one example of the environment in Washington, D.C. at the time of the hearings. Others who testified provided additional details regarding the hostile actions of various individual actors in the Washington housing market as well as the racial attitudes of the time that contributed to the rampant racial discrimination in the region.

Marion Johnson, Vice President of the Alexandria, Virginia, Council on Human Relations, provided testimony relating to Alexandria, Virginia, a city just outside the District of Columbia.⁸¹ According to Vice President Johnson, African Americans faced serious obstacles to obtaining housing in the city of Alexandria from a variety of directions. “Decent, sanitary housing on any level” was unavailable to African Americans as a result of the actions of “financial institutions, private builders, and other segments of the homebuilding industry” in working to prevent African Americans from obtaining such housing.⁸² In addition, according to Vice President Johnson, the Alexandria city government also worked to ensure that African Americans could not purchase housing in Alexandria.⁸³

Reverend Charles N. Mason Jr., past Chairman of the Social Action Committee of the Silver Spring, Maryland Ministerial Association, testified to similar conditions in Montgomery County, Maryland, a suburban area just outside of Washington.⁸⁴ Reverend Mason testified that “exclusive minded” property owners, real estate developers, and lenders, who worked together to prevent African American families from gaining entrance into suburban communities, were the reason African-Americans had difficulties in locating and purchasing suburban housing.⁸⁵

Arguably, as opposed to oral testimony, the most striking evidence presented during the hearings was a racial map testimonial of Washington, D.C. The map revealed that in the Washington

⁷⁴ *Id.*

⁷⁵ HOUSING IN WASHINGTON, *supra* note 12, at 101.

⁷⁶ *Id.* at 101.

⁷⁷ *Id.* at 101–02.

⁷⁸ *Id.* at 102.

⁷⁹ *Id.*

⁸⁰ HOUSING IN WASHINGTON, *supra* note 12, at 102.

⁸¹ *Id.* at 105.

⁸² *Id.* at 106.

⁸³ *Id.*

⁸⁴ *Id.* at 94.

⁸⁵ HOUSING IN WASHINGTON, *supra* note 12, at 95.

Metropolitan Area, African Americans were largely segregated into a small portion of the region.⁸⁶ Whites, on the other hand, resided mostly outside the city in Montgomery County, or in particular neighborhoods within the city.⁸⁷ The population percentages were nearly identical.⁸⁸

In the inner city, African Americans comprised approximately seventy-five to one hundred percent of the population in several neighborhoods.⁸⁹ In outer city neighborhoods and in suburban areas, whites comprised over ninety percent of the population.⁹⁰ In other words, the region in 1962 was segregated by race, in housing and in neighborhoods.⁹¹

C. The Government and the Banks

Financial institutions and representatives from the Federal Housing Administration (FHA) also provided testimony at the hearing. This segment of the hearing provides information relating to the historical role the federal government played in perpetuating racial discrimination, segregation, and economic inequality in the Washington Metropolitan Area through its lending policy.

The FHA was created in 1934 amidst the economic catastrophe known as “the Great Depression.”⁹² The purpose of the agency, like that of other agencies that preceded it, was to stimulate the private housing market during a difficult economic time in the country.⁹³ The agency, from the very beginning, never built any homes or made any loans to any consumers.⁹⁴ The main function of the agency is to provide insurance against loss on housing loans made by private lending institutions.⁹⁵ This is a critical function of the housing market because it encourages lending. Financial institutions are more likely to extend loans if they possess some protection against potential losses.⁹⁶

The creation of the FHA was a continuation of efforts commenced by the federal government when it created the Home Owners Loan Corporation (HOLC).⁹⁷ The HOLC was created to stimulate

⁸⁶ *Id.* at 29–30.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* at 30.

⁹⁰ HOUSING IN WASHINGTON, *supra* note 12, at 30.

⁹¹ *Id.* at 30.

⁹² The Great Depression occurred between 1929 and 1939 in the United States. It is agreed it is the worst economic period in the history of the nation. According to John Kenneth Galbraith, the Great Depression can be described as follows:

After the Great Crash came the Great Depression which lasted, with varying severity, for ten years. In 1933, Gross National Product (total production of the economy) was nearly a third less than in 1929. Not until 1937 did the physical volume of production recover to the levels of 1929, and then it promptly slipped back again. Until 1941, the dollar value of production remained below 1929. Between 1930 and 1940 only once, in 1937, did the average number unemployed during the year drop below eight million. In 1933, nearly thirteen million were out of work, or about one in every four in the labor force. In 1938 one person in five was still out of work.

JOHN KENNETH GALBRAITH, *THE GREAT CRASH* 168 (1955).

⁹³ CHRISTOPHER BONASTIA, *KNOCKING ON THE DOOR: THE FEDERAL GOVERNMENT’S ATTEMPT TO DESEGREGATE THE SUBURBS* 62 (2008).

⁹⁴ CLARENCE VOSE, *CAUCASIANS ONLY: THE SUPREME COURT, THE NAACP, AND THE RESTRICTIVE COVENANT CASES* 225 (1992).

⁹⁵ *Id.*

⁹⁶ The Government Accounting Office (GAO) reported in 1997 regarding the relationship between the number of loans sold and approved and FHA insurance. See UNITED STATES GOVERNMENT ACCOUNTING OFFICE, *Homeownership: Potential Effects of Reducing FHA’s Insurance Coverage for Home Mortgages*, REPORT TO THE CHAIRMAN, SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY, COMMITTEE ON BANKING AND FINANCIAL SERVICES, HOUSE OF REPRESENTATIVES (May 1997), available at <http://www.gao.gov/assets/160/155917.pdf>.

⁹⁷ KEVIN FOX GOTHAM, *RACE, REAL ESTATE, AND UNEVEN DEVELOPMENT: THE KANSAS CITY EXPERIENCE, 1900–2000*, at 53 (2002).

the housing market by removing poor performing mortgages from the U.S. housing market.⁹⁸ Consumers with mortgages in danger of default or foreclosure were provided with refinancing options in order to remove these mortgages from the housing market.⁹⁹ The program was highly successful in that it changed the nation's antiquated mortgage system where the mortgages on houses were not fully amortized to a system where the loan was fully amortized for a longer period of time. This enabled the consumer to actually repay the loan.¹⁰⁰

But the new mortgage system instituted through the creation of HOLC also created an appraisal system with inherent and deliberate racial discrimination as a key part of its operations.¹⁰¹ The system created a code system for neighborhoods where the HOLC would or would not extend refinancing opportunities.¹⁰² Considering that black neighborhoods were "deemed undesirable" and placed in the lowest appraisal category by the HOLC, the system essentially removed access to the suburban mortgage market in the U.S. from African Americans as far back as the 1930's.¹⁰³ The FHA would eventually adopt the system adopted by the HOLC when it began operating in 1934.¹⁰⁴ While the practical reason the HOLC adopted a system of valuation for properties was to determine the "productive life of housing," the racism underlying the policy decision by the government created agency had a profound impact upon racial equality into the future.¹⁰⁵

In 1934, when the FHA was created and began its operations, the agency was using the HOLC appraisal system to determine mortgage insurance protection for consumers.¹⁰⁶ Under the HOLC system, African American neighborhoods and mixed neighborhoods both had little chance to obtain government support for the purchase of a home.¹⁰⁷ The racially discriminatory policy was "[b]uilt into the agency's appraisal procedures and lending policies." There was "an explicit commitment to racial exclusion" by the agency that was "codified to a series of Residential Security Maps commissioned by the FHLBB in 1935." Accordingly, the HOLC worked with the lenders and realtors to design "maps . . . which ranked neighborhoods on a scale of A (most desirable, and hence, most valuable) to D (in 'decline' and least valuable)."¹⁰⁸

The neighborhoods considered "D" received a code "red" under the HOLC system and thus, the system known as "redlining" was born.¹⁰⁹ Redlining, long linked to banks and other institutions outside the government, is essentially a creation of the federal government.¹¹⁰ The system that was designed did reflect the racial attitudes prior to the creation of the HOLC but the agency and the federal government created the system.¹¹¹

Even more destructively, the FHA not only provided insurance protection on the consumer loan transactions, the agency also provided protection to builders constructing new housing.¹¹² For decades, if a developer (builder) did not include a racial covenant that excluded blacks and other groups from ever purchasing and/or occupying the house, the FHA provided no insurance to the builder.¹¹³ The FHA

⁹⁸ Kenneth T. Jackson, *Race, Ethnicity, and Real Estate Appraisal: The Home Owners Loan Corporation and the Federal Housing Administration*, in *THE SUBURB READER* 247, 247–48 (Becky M. Nicolaides & Andres Wiese eds., 2006).

⁹⁹ *Id.*

¹⁰⁰ ROBERT MCELVAINE ed., *DOWN & OUT IN THE GREAT DEPRESSION* 53 (2008).

¹⁰¹ SHAPIRO & OLIVER, *supra* note 10, at 16–17.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ RUDOLPH ALEXANDER, *RACISM, AFRICAN AMERICANS, AND SOCIAL JUSTICE* 85 (2005).

¹⁰⁷ *Id.*

¹⁰⁸ FREUND, *supra* note 8, at 115.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² GOTHAM, *supra* note 97, at 57–58.

¹¹³ *Id.*

policy was complex but does explain America's racial history and the current state of race relations in the United States. The FHA refused to insure mortgages in "racially mixed areas" but also refused to insure "the homes" as well unless the home and the community complied with the racist occupancy standards imposed upon the industry and consumers.¹¹⁴

These historical facts substantiate the testimony at the Washington, D.C. hearings of the witnesses from the banking industry and from the government in April 1962.

Thomas C. Barringer testified at the hearings on behalf of the FHA.¹¹⁵ Barringer was the Director of the Washington, D.C. FHA Insuring Office, an office that served not only Washington, D.C., but also suburban cities such as Falls Church, Va., Alexandria, Va., and suburban counties such as Prince George's County, and Montgomery County.¹¹⁶

Barringer testified that it was the FHA policy that properties should be "made available to all qualified applicants without regard to their race, creed or color."¹¹⁷ However, in the same statement he admitted that "the opportunities" for African Americans and other "non-European minorities" to purchase anywhere in the area (including the historically exclusively white areas) was "still limited."¹¹⁸

Barringer's testimony regarding the ability of the FHA to compel non-discriminatory conduct by builders who were receiving the FHA's insurance protection was quite revealing. The questioning came from Berl Bernhard, Staff Director of the United States Commission on Civil Rights in 1962:¹¹⁹

Mr. Bernhard: Would it be accurate to say that the affirmative policy you are talking about of encouraging open occupancy only becomes an operating procedure when the locality or the State has a fair housing law in effect?

Mr. Barringer: We have no right to deny a builder assistance—I mean FHA insurance—on the basis of what position he may take. We have jobs built on an open occupancy basis, and we are delighted to have them, but we have not been able to tell a builder: 'Unless you provide for open occupancy we will cut off your commitments.'¹²⁰

In other words, the FHA could not guarantee the construction of properties that would be open to anyone for purchase regardless of race. Barringer admitted that the FHA's only means of opening up areas to integration was through "encouragement."¹²¹ Barringer confirmed the speculation of lawyers, economists, sociologists and politicians regarding the FHA policy.

Paul P. Cooke, National Vice Chairman of the American Veterans Committee, also confirmed the policy of the FHA as well as the testimony of Mr. Barringer. Mr. Cooke testified of actual instances where qualified African Americans (Edmund Millard and Joseph Edwards) sought to purchase homes in the suburbs that were set aside exclusively for whites.¹²² Mr. Cooke elaborated that there were thousands of homes being built currently in the Washington, D.C. metropolitan area and African Americans, even if qualified, could not purchase any of these properties.¹²³

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 222.

¹¹⁶ *Id.*

¹¹⁷ GOTHAM, *supra* note 97, at 223.

¹¹⁸ *Id.* at 224.

¹¹⁹ *Id.* at 5.

¹²⁰ See HOUSING IN WASHINGTON, *supra* note 12, at 244.

¹²¹ *Id.* at 245.

¹²² *Id.* at 228.

¹²³ *Id.* at 228–29.

“This is often referred to as the white noose around the black core,” Cooke stated, “with Negroes heavily in the center of the city and the white noose of suburban America around this core.”¹²⁴ Mr. Cooke’s testimony identified actual individuals who were denied an opportunity to purchase housing as a direct result of government policy.¹²⁵ Mr. Cooke even provided the names of individuals who were discriminated against and the details of the specific incident.¹²⁶

Mr. Cooke also testified regarding other individuals who were denied the opportunity to purchase homes in desirable suburban areas in the Washington D.C. region.¹²⁷ In addition, Mr. Cooke testified that these individuals earned high incomes and would easily financially qualify for the purchase of a property.¹²⁸ This would directly challenge any suggestion that even if these individuals had been extended credit they would not have qualified for a long term mortgage loan.¹²⁹

IV. WHAT DO THE HEARINGS MEAN?

A. Wealth accumulation

The real meaning of the U.S. Civil Rights Commission’s April 1962 hearings is that housing discrimination, racial segregation, and economic inequality have been persistent problems in our society and share a direct relationship.¹³⁰ Unfortunately, the Commission did not discuss this problem¹³¹ or the wealth gap between the races that exists today as a result of the some of the events described by the witnesses.¹³²

Wealth is the key to understanding economic inequality in the United States because it is different from income; wealth is permanent and extends opportunities to families for generations.¹³³ It is how families have been able to put their children through college and to purchase a home of their own.¹³⁴

In the United States, the major path to wealth accumulation historically has been and still is home ownership.¹³⁵ It is not one’s regular paycheck but is more permanent items such as home equity, stocks, bonds, inheritance; your assets minus your liabilities.¹³⁶ White families historically have been in a much better position to accumulate wealth in this society because their home ownership rates have always been higher than the rest of the population.¹³⁷ This is where government housing policy has been

¹²⁴ *Id.* at 229.

¹²⁵ HOUSING IN WASHINGTON, *supra* note 12, at 229.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ MICHAEL T. MALY, BEYOND SEGREGATION: MULTIRACIAL AND MULTIETHNIC NEIGHBORHOODS IN THE UNITED STATES 2–3 (2006).

¹³¹ According to the latest statistics on discrimination, it continues to occur, segregation patterns have not been reversed, and economic inequality between the races persists as well. The National Fair Housing Alliance reported on discrimination patterns and racial segregation in April 2010 while Professor Thomas Shapiro of Brandeis University reported on the wealth gap between whites and minorities as referenced in this article in more detail below. Thomas Shapiro, Laura Sullivan & Tatjana Meschede, *The Racial Wealth Gap Increases Fourfold*, INSTITUTE ON ASSETS AND SOCIAL POLICY (May 2010), available at <http://iasp.brandeis.edu/pdfs/Racial-Wealth-Gap-Brief.pdf>.

¹³² *Id.*

¹³³ DENNIS L. GILBERT, THE AMERICAN CLASS STRUCTURE IN THE AGE OF INEQUALITY 237 (2008).

¹³⁴ Shapiro et al., *supra* note 131.

¹³⁵ YUVAL ELMELECH, TRANSMITTING INEQUALITY: WEALTH AND THE AMERICAN FAMILY 13 (2008).

¹³⁶ SHAPIRO & OLIVER, *supra* note 10, at 75–79, 108–09, 113.

¹³⁷ *Id.*

so destructive. The home ownership rates (and the gap), as perpetuated through government policy, have been described as the single greatest “indicator” of a persistent “social inequality” in the United States.¹³⁸

At the turn of the century, only twenty-two percent of African Americans owned a house compared to forty-five percent of the whites.¹³⁹ While there were several different patterns of small growth and decline during the twentieth century, the gap remained fairly constant, decreased to a small degree for a short period of time, but ultimately increased on several occasions.¹⁴⁰ By 1960, thirty-nine percent of African Americans owned their homes but sixty-six percent of whites owned a home, an increase over sixty years in the racial gap of fifteen percent.¹⁴¹

The testimonial results from the hearings in Washington, D.C. were also from just one city. The U.S. Civil Rights Commission held similar housing hearings in other cities.¹⁴² Prior to the Washington, D.C. hearings in 1962, the Commission had already held hearings in New York, Atlanta, and Chicago, and uncovered similar racial patterns and results.¹⁴³ This means that the economic oppression created by government policy over decades is not contained to one city and there is likely very specific evidence of that policy, its implementation, and who exactly was affected by the policy (as in the Washington D.C. hearings). Other evidence is also available regarding other major American cities in regards to housing discrimination towards African Americans.

For example, a 1967 study regarding St. Louis determined that the home ownership rate in that city would have been thirty percent higher “if blacks had been able to purchase homes at the same rate of whites at similar life cycle stages and with similar income, education, and employment characteristics.”¹⁴⁴ The conclusion of the study, like the testimony from the 1962 Washington, D.C. hearings, is fairly consistent with the factual history of the issue:

In addition, their results showed that black homebuyers paid more than whites for equivalent housing. They concluded that restriction on the supply of housing—a function of segregation and housing market discrimination—was the root cause of both the home ownership deficit and higher ownership costs for blacks.¹⁴⁵

The results of the St. Louis study are not the exception either; this is essentially the norm in cities with high concentrations of African Americans and it was due to the policy forged by the government and the accompanying actions of the various private actors.¹⁴⁶ For example, the city of Detroit presented similar patterns of home ownership as St. Louis during a similar period.¹⁴⁷

Even more revealing are the statistics on FHA mortgages. Of all the home mortgage loans financed in the U.S. between 1946 and 1959, “blacks purchased less than 2 percent of all loans financed with the assistance of federal mortgage insurance.”¹⁴⁸ In addition, evidence regarding cities across the country establishes the existence of racial discrimination and segregation in housing at the time of the

¹³⁸ KARIN KURZ & HANS PETER BLOSSFELD, HOME OWNERSHIP AND SOCIAL INEQUALITY IN COMPARATIVE PERSPECTIVE 316 (2004).

¹³⁹ RACE AND WEALTH DISPARITIES: A MULTIDISCIPLINARY DISCOURSE 17 (Beverly Moran ed., 2008).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *See* DULLES, *supra* note 1, at 51.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ KURZ & BLOSSFELD, *supra* note 138, at 316.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 317–18.

¹⁴⁸ MICHAEL T. MALY, BEYOND SEGREGATION: MULTIRACIAL AND MULTIETHNIC NEIGHBORHOODS IN THE U.S. (2006).

1962 hearings.¹⁴⁹ The issue, therefore, is not whether racism impacted the economic status of African Americans in the twentieth century and beyond; it is to what extent African Americans were impacted by their choices and who specifically was impacted by the policy.

B. The Swelling “Racial” Chasm in the 21st Century

Economic inequality between the races, a direct result of housing discrimination decades ago, is a phenomenon that is barely discussed in society today as a policy concern. It is important to place this social phenomenon in proper context because the actions described in the Washington, D.C. hearings in 1962 have had long lasting implications for real racial inequality.

According to Michael Powell, in a 2010 New York Times article on the subject, “[t]he reasons for” the wealth “gap are rooted deep in this nation’s racial history. Government policy shut many blacks out of homeownership during the depths of the Depression.”¹⁵⁰ “Discriminatory bank lending and real estate practices” assured segregated neighborhoods and economic inequality.¹⁵¹

Sociologist and Brandeis University Professor Thomas Shapiro stresses that the impact of this historical policy, the failure to address the problem, and new policies that continue to promote the wealth gap are ever present.¹⁵² While the wealth gap between whites and blacks was approximately \$20,000 in 1984, by 2007 it had risen to \$95,000.¹⁵³ Professor Shapiro identifies several factors that can explain this increase in the wealth gap, including tax policies that perpetuate inequality and labor problems.¹⁵⁴ However, a continued lack of equal access to credit for home mortgages is a primary factor according to Shapiro.¹⁵⁵

Shapiro’s analysis of high earning African Americans is particularly striking. According to Shapiro, middle income white families accumulated an average of \$74,000 in wealth from 1984-2007. However, on average, high earning African American families only accumulated \$18,000 during this same period. Shapiro stresses that the increasing wealth gap cannot be explained by looking at income.¹⁵⁶

Other evidence also supports Shapiro’s conclusions regarding the wealth gap years before Shapiro’s latest conclusions. For example, a study conducted by the University of Michigan in 2000 concluded that access to home ownership remained a major issue for African Americans as compared to whites.¹⁵⁷ The study focused upon renters in 1991 and learned that by 1996, twenty-nine percent of the whites had purchased a home compared to only twelve percent of the African Americans in the focus group.¹⁵⁸

Of course, the concern with respect to the homeownership gap and the wealth gap is what it has produced and will continue to produce: an unequal society divided by race, on an economic basis. It is again Professor Shapiro who examined the problem as a real societal issue that cannot be ignored because of the by-products of the phenomenon.

¹⁴⁹ LEON MATHIS DESPRES & KENAN HEISE, CHALLENGING THE DALEY MACHINE: A CHICAGO ALDERMAN’S MEMOIR 136–37 (2005); *See generally* STEPHEN GRANT MEYER, AS LONG AS THEY DON’T MOVE NEXT DOOR 10–11 (2001).

¹⁵⁰ Michael Powell, *Wealth, Race, and the Great Recession*, N.Y. TIMES, May 17, 2010, <http://economix.blogs.nytimes.com/2010/05/17/wealth-race-and-the-great-recession>.

¹⁵¹ *Id.*

¹⁵² Shapiro et al., *supra* note 131, at 1–2.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ Kerwin Kofi Charles & Erik Hurst, *The Transition to Homeownership and the Black-White Wealth Gap* 29 (March 2000), available at <http://www.fordschool.umich.edu/research/papers/PDFfiles/00-012.pdf>.

¹⁵⁸ *Id.*

Shapiro describes wealth as the “single dimension in which whites and blacks are persistently unequal” and contends that the study of its relationship to racial inequality on economic terms has been “neglected.”¹⁵⁹ Darrick Hamilton corroborates Shapiro’s conclusions. He notes: “Despite an enormous and persistent black-white wealth gap, the ascendant American narrative is one that proclaims our society has transcended the racial divide. But wealth is a paramount indicator of social well-being.”¹⁶⁰

According to Hamilton, “[w]ealthier families are better positioned to afford elite education, access capital to start a business, finance expensive medical procedures, reside in higher-amenity neighborhoods, exert political influence through campaign contributions, purchase better legal representation, leave a bequest, and withstand financial hardship resulting from an emergency.”¹⁶¹

V. LESSONS OF THE 1962 HEARINGS AND THE FORECLOSURE CRISIS OF 2007

A. The American Racial Dynamic

The past racial injustices in the United States continue to shape the present and future. Housing discrimination now has two difficult issues to address. First, past government policy in the housing market was discriminatory against African Americans and other minorities and promoted economic inequality. Nothing has ever been done to address this problem.¹⁶² Second, present government policies regarding home ownership and wealth accumulation and preservation, will not alter the past and do not address current abuses in the housing market.¹⁶³ In the current foreclosure crisis, there is evidence of continued discriminatory behavior by private actors in the housing market.¹⁶⁴

For the last four years, the United States has been experiencing a destructive foreclosure crisis within the housing market that is resulting in loss of homes and wealth, and the devaluation of entire communities.¹⁶⁵ A racial component to the crisis has emerged over the last few years.¹⁶⁶ This is perhaps unintentional but nevertheless, race is still a major part of the crisis.

Due to the fact that African Americans and other minorities were confronting great difficulties in the area of homeownership in the 1990’s, President Bill Clinton sought to address the deficiency from 1994 to 1995 by implementing a major homeownership initiative that would allow financial institutions to offer home purchase opportunities to groups that were historically underrepresented in the housing market. The initiative was known as “The National Homeownership Strategy.”¹⁶⁷ A major part of President Clinton’s homeownership initiative was contained in a document known as “Urban Policy Brief #2.”¹⁶⁸

The document was created at the request of President Clinton and was intended to be an “unprecedented public-private partnership to increase homeownership to a record-high level over the

¹⁵⁹ THOMAS M. SHAPIRO, *THE HIDDEN COST OF BEING AFRICAN-AMERICAN* 33 (2004).

¹⁶⁰ Darrick Hamilton, *Race, Wealth, and Intergenerational Poverty*, *THE AMERICAN PROSPECT* (Aug. 14, 2009), <http://prospect.org/article/race-wealth-and-intergenerational-poverty>.

¹⁶¹ *Id.*

¹⁶² While many anti-discrimination laws have been passed, no laws at the present time have been passed to address the past effects of discrimination towards African Americans and other minorities.

¹⁶³ Current anti-discrimination laws such as the Fair Housing Act and the Equal Opportunity Act are enforcement laws that attempt to address discrimination that will occur now; these laws do not address the effects of government sponsored housing discrimination.

¹⁶⁴ Shapiro et al., *supra* note 131.

¹⁶⁵ William Alden, *Foreclosure Crisis Hit Blacks the Hardest*, *THE HUFFINGTON POST* (Oct. 4, 2010), http://www.huffingtonpost.com/2010/10/04/post_541_n_749319.html.

¹⁶⁶ *Id.*

¹⁶⁷ U.S. DEP’T OF HOUSING & URB. DEV., *URBAN POLICY BRIEF NO. 2, HOME OWNERSHIP & ITS BENEFITS* (1995) [hereinafter *HOME OWNERSHIP*].

¹⁶⁸ *Id.*

next 6 years.”¹⁶⁹ President Clinton began the homeownership initiative specifically because homeownership levels had dropped significantly from 1980 to 1991.¹⁷⁰ This included significant declines in the homeownership rate for African Americans and Latinos.¹⁷¹ The initiative, noting the government’s successful history in promoting homeownership for more than sixty years, expressly desired to target these groups and also underserved communities in an effort to increase homeownership.¹⁷² It was not solely a government effort but was a public-private partnership:

Under the leadership of Secretary Cisneros, HUD has forged a nationwide partnership that will draw on the resources and creativity of lenders, builders, real estate professionals, community-based nonprofit organizations, consumer groups, State and local governments and housing finance agencies, and many others in a cooperative, multifaceted campaign to create ownership opportunities and reduce the barriers facing underserved populations and communities.¹⁷³

The initiative proposed various means with which to accomplish this goal, including “expanding homeownership education and counseling,” “opening the home buying market to underserved communities,” and “making financing available, affordable, and flexible.”¹⁷⁴ President Clinton’s initiative called for alternative financing products and changes in down payment requirements and interest costs in an effort to extend homeownership opportunities to underrepresented groups. It is this area in particular that became the area of exploitation that would contribute significantly to the foreclosure crisis.¹⁷⁵

As is now reported, the private institutions responsible for providing financing to consumers seeking to purchase homes or to refinance existing homes targeted some groups more than others with risky loan products more likely to result in a default upon that mortgage or loan.¹⁷⁶ This practice is commonly known as “reverse redlining.”¹⁷⁷ Where redlining, as described previously in this Article is the denial of an opportunity to purchase a home on racial grounds, reverse redlining is the exact opposite. Minority communities (an area with a large number of African Americans for example) are targeted with risky mortgage products because they are a minority such as African American or Latino.¹⁷⁸ At the center of the foreclosure crisis, African Americans were disproportionately sold “subprime” mortgage products.¹⁷⁹ This predatory lending was the front end of the current foreclosure crisis.¹⁸⁰

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² HOME OWNERSHIP, *supra* note 164.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ Jim Lampen, *Update on Mortgage Discrimination*, DOLLARS & SENSE <http://www.dollarsandsense.org/archives/2010/1110campen.html> (last visited July 1, 2011).

¹⁷⁷ This note requires two definitions to expand the discussion. “Reverse redlining” is the extension of credit (in this instance a home mortgage loan or home equity loan) “on unfair terms to particular geographic areas” on the basis of race or nationality. In addition, the home mortgage loans or home equity loans described herein as “risky” are new mortgage and equity products created by the financial institutions as a result of the Clinton initiative. These included on many occasions adjustable rate mortgage loans (ARM) where an initial fixed interest rate considerably lower than the market is initially offered on the loan only to be followed shortly thereafter by an adjustment in the rate to a higher adjustable rate. THE BLACK METROPOLIS IN THE TWENTY FIRST CENTURY: RACE, POWER, AND POLITICS OF PLACE 3 (Robert Doyle Bullard ed., 2007); Daniel Denvir, *Does Wells Fargo Hate Black People*, THE PHILADELPHIA WKLY., Aug. 3, 2010, <http://www.philadelphiaweekly.com/news-and-opinion/Does-Wells-Fargo-Hate-Black-People.html>.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ Back in the late 1990’s, the consumer advocacy organization ACORN predicted a future foreclosure crisis because of predatory lending practices in California where minorities and low-income communities were being targeted with loans with unfavorable default prone terms. See Robert Gammon, *ACORN Foresaw the Foreclosure Crisis in 2001*, THE E. BAY EXPRESS, Sept. 29, 2009, <http://www.eastbayexpress.com/ebx/acorn-foresaw-the-foreclosure-crisis-in-2001/Content?oid=1371384>.

Once consumers defaulted on these loans, the housing market collapsed followed by the entire global economy.¹⁸¹ When the evidence revealed that the surge in foreclosures was due to the intentional actions of financial institutions in selling deceptive loan products to African Americans, legal actions commenced.

For example, the City of Memphis sued Wells Fargo Bank specifically on this basis.¹⁸² In June 2010, the Pennsylvania Human Relations Commission (PHRC) filed a similar lawsuit against Wells Fargo alleging reverse redlining tactics towards African-Americans in the city of Philadelphia.¹⁸³ The PHRC complaint states, in pertinent part the following:

Since at least 2004 and continuing to the present, Respondents have been engaged in the unlawful discriminatory practice of reverse redlining by targeting African Americans and African American neighborhoods in Philadelphia for deceptive, predatory or otherwise unfair lending practices. Respondents' unlawful discriminatory practices have contributed significantly to the disproportionately large number of foreclosures found among African American borrowers and in Philadelphia's African American communities.¹⁸⁴

The details of the lawsuit are more understandable than a technical lawsuit when spoken in statistical terms. According to media reports during the legal dispute, about fifty-one percent of loans from 2004 to 2008 sold in the city of Philadelphia were to African Americans and were of the high-risk variety (subprime), prone to default and foreclosures.¹⁸⁵ This disproportionate concentration of lending was consistent with national figures dating back to the 1990's.¹⁸⁶ Only about nineteen percent of the loans to whites living in Philadelphia could be categorized as high risk.¹⁸⁷ Other cities and areas have reported similar statistics.¹⁸⁸ This lawsuit has recently been settled as part of a larger legal action against Wells Fargo by the U.S. Department of Justice. The settlement was estimated at \$175 million overall and \$2 million specifically to residents of the Philadelphia area.¹⁸⁹

The data is also quite detailed and is conclusive that there is a racial component to the lending patterns. According to data collected by the federal government pursuant to the Home Mortgage Disclosure Act (HMDA), subprime lending in communities of color played a role in the collapse of the mortgage market.¹⁹⁰ The data collected also indicated that individuals from communities of color were sold loans in a disproportionate manner that contained "toxic terms" and "unmanageable obligations."¹⁹¹ The data has also been fairly consistent that there is discrimination based upon race in the mortgage lending market.¹⁹²

The rate of subprime loans sold in 1998 to upper income African American communities was

¹⁸¹ David Leonhardt, *We're Spent*, N.Y. TIMES, July 16, 2011, at SR1.

¹⁸² Andrew Martin, *Judge Allows Redlining Suits to Proceed*, N.Y. TIMES, May 5, 2011, at B9.

¹⁸³ Daniel Denvir, *Does Wells Fargo Hate Black People*, THE PHILADELPHIA WKLY., Aug. 3 2010, <http://www.philadelphiaweekly.com/news-and-opinion/Does-Wells-Fargo-Hate-Black-People.html>.

¹⁸⁴ See Plaintiff's Complaint, Pennsylvania Human Relations Commission v. Wells Fargo Bank N.A. (July 1, 2010), available at <http://www.scribd.com/doc/34936127/PHRC-Wells-Fargo-Complaint>.

¹⁸⁵ See Martin, *supra* note 182.

¹⁸⁶ U.S. DEP'T OF HOUSING & URB. DEV., *UNEQUAL BURDEN: INCOME & RACIAL DISPARITIES IN SUBPRIME LENDING IN AMERICA* (1998).

¹⁸⁷ Complaint, *supra* note 184, at 7.

¹⁸⁸ NAT'L COMM'N ON FAIR HOUS. & EQUAL OPPORTUNITY, *THE FUTURE OF FAIR HOUSING* 33 (2008).

¹⁸⁹ Jeff Blumenthal, *Wells Fargo to Pay \$175 M to Settle Lending Discrimination Accusations*, PHILADELPHIA BUS. J., July 12, 2012, <http://www.bizjournals.com/philadelphia/blog/jeff-blumenthal/2012/07/wells-fargo-to-pay-175m-to-settle.html>.

¹⁹⁰ Raymond H. Brescia, *Subprime Communities: Reverse Redlining, The Fair Housing Act & Emerging Issues In Litigation Regarding The Subprime Mortgage Crisis*, 2 ALB. GOV'T L. REV. 164, 168 (2009).

¹⁹¹ *Id.*

¹⁹² *Id.*

thirty-nine percent while the rate for whites was only six percent.¹⁹³ The rate for low-income whites was only eighteen percent, meaning upper income African Americans were much more likely to be sold an expensive, foreclosure prone loan than a low-income white person.¹⁹⁴ In 2005, half of the loans sold to African Americans were subprime loans.¹⁹⁵ In 2006, similar statistics have been recorded by HMDA.¹⁹⁶ The Clinton initiative encouraged lenders to extend mortgages to African Americans and other minorities, which, as previously mentioned, were often subprime loans.

The by-product of this evolutionary cycle in the housing market is that African Americans are losing their homes to foreclosures and as a result, losing the wealth they had accumulated or were attempting to accumulate.¹⁹⁷ According to the Economic Policy Institute, the statistics over the last few years on the issue of wealth loss during this foreclosure crisis are clear:

In 2004, the median net worth of white households was \$134,280, compared with \$13,450 for black households, according to an analysis of Federal Reserve data by the Economic Policy Institute. By 2009, the median net worth for white households had fallen 24 percent to \$97,860; the median net worth for black households had fallen 83 percent to \$2,170, according to the institute.¹⁹⁸

Thus, private actors who implemented their programs at the urging of the federal government have decimated existing family wealth during this housing crisis and economic recession as a result of the racial discrimination.

But the other component of this latest crisis that involves race and the housing market and how mortgage financing was administered involves government oversight. Specifically, President Clinton called for fair lending practices by the institutions involved in the initiative in his homeownership strategy.¹⁹⁹ There is no indication that President Clinton called for these private actors to discriminate or to disobey existing anti-discrimination laws to accomplish his goals of increased homeownership.²⁰⁰

According to a Democratic Policy Committee report prepared in October 2008 with respect to oversight of subprime mortgage selling practices, the Bush Administration ignored the warning signs regarding the problems arising relating to these practices.²⁰¹ The report adds that the Republicans who controlled Congress during the burgeoning years of the creation of the crisis (1994–2006) harbored hostility towards regulation.²⁰²

In addition, the Bush Administration not only resisted any regulation; the administration remained committed to more deregulation even as problems began to arise in the mortgage market.²⁰³ There was little oversight during this period and speculators were encouraged to continue their risky practices that would eventually result in a collapse of the housing market and the economy.²⁰⁴ To a certain degree, the government has taken action on this issue.²⁰⁵ This includes the passage of a new

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ Brescia, *supra* note 187, at 168.

¹⁹⁶ *Id.*

¹⁹⁷ Jesse Washington, *The Disappearing Black Middle Class*, CHI. SUN TIMES, July 10, 2011.

¹⁹⁸ *Id.*

¹⁹⁹ Exec. Order No. 12,892, 24 C.F.R. 107 (1994).

²⁰⁰ *Id.*

²⁰¹ *Senate Democrats are Committed to Change*, DEMOCRATIC POLICY COMMITTEE (October 2008), http://dpc.senate.gov/dpcdoc.cfm?doc_name=fs-110-2-166.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ In July 21, 2010, President Barack Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act which sought to address some of the abuses of the market that led to the foreclosure crisis and the current economic recession. *Brief Summary of the Dodd-Frank Wall Street Reform and Consumer Protection Act*, UNITED STATES

comprehensive consumer protection act that purports to address some of the abuses.²⁰⁶

B. Government Inaction and Delay: the 1962 Hearings

One problem with today's foreclosure crisis and the racial issues in that crisis is a delay by the government to act or to correct problems. Eugene Davidson, former President of the Washington, D.C. Real Estate Broker's Association, testified regarding discrimination at the 1962 hearings, stressing why delaying to correct racial problems is destructive:

I have been disturbed very much today by statements of some witnesses that time is going to cure this. I was disturbed by one of them talking about 10 years and another talking about 3 years, and I think we have got to realize that we have before us an urgent problem, that the time is past for the luxury of discrimination and people having to discriminate against fellow people.²⁰⁷

In addition, the Commission issued findings and recommendations following the hearings and only a portion of the recommendations were ever implemented though many years later.²⁰⁸ For example, the Commission recommended, among other things, a "regulation prohibiting discrimination on the basis of race, color, religion, or national origin, in the sale, rental, or financing of housing accommodations within the District of Columbia."²⁰⁹ This recommendation is, by its language, the Fair Housing Act of 1968.²¹⁰ Other recommendations also shared some connection with the Fair Housing Act, including Recommendations 2 and 3 which also prohibited discrimination by real estate brokers and salesmen (Recommendation 2), and attempted to correct the use of racial covenants in titles to property (Recommendation 3). No recommendations were offered to address past injustices.²¹¹

Other laws such as the Community Reinvestment Act and the Home Mortgage Disclosure Act followed within the decade and these laws as well possessed some connection to recommendations of the Commission.²¹² But these laws were also passed over a decade later and also did not address past injustices and lacked the ability to actually address discrimination in the housing market. This provides the other lesson that can be gathered from the hearings: the government should act quickly to address racial problems in the housing market.

Of course, this inequality, unlike civic inequality (right to vote, public accommodations, public education, etc.), has never been addressed. The Fair Housing Act addressed some of the systemic problems but the inequality that was created has been ignored. There is barely any discussion regarding what to do about the problem even though the facts are available.

With respect to the current mortgage crisis and the racial component, it is apparent that the racial chasm is growing judging by the wealth gap evidence gathered by Professor Shapiro and others.²¹³

SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS, http://banking.senate.gov/public/_files/070110_Dodd_Frank_Wall_Street_Reform_comprehensive_summary_Final.pdf (last visited Dec. 4, 2012).

²⁰⁶ HOUSING IN WASHINGTON, *supra* note 12, at 189.

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 35.

²⁰⁹ *Id.*

²¹⁰ 42 U.S.C. § 3601 (1968).

²¹¹ No effort has ever been made to provide African Americans with monetary restitution for being forced to reside for decades as second class citizens with no rights under the law or by custom.

²¹² The Community Reinvestment Act was adopted into law in 1977 and is intended to encourage depository institutions to help meet the credit needs of the communities in which they operate. Community Reinvestment Act, Pub.L. 95-128, 91 Stat. 1147 (1977); Home Mortgage Disclosure Act, Pub.L. 94-200, 89 Stat. 1125 (1975).

²¹³ Kai Wright, *The Racial Wealth Gap's Larger Than Ever*, THE SAN FRANCISCO BAY VIEW, July 31, 2011, at 1.

VI. CONCLUSIONS AND RECOMMENDATIONS

Based upon the historical discussion in this Article and modern evidence of housing discrimination, only aggressive action will address the problem created at least, in part, by the federal government. In addition, discrimination that has occurred in the past in the housing market must be addressed in some manner quickly.

Due to rapid developments in the current foreclosure crisis, recommendations for action evolve quickly. To its credit, the federal government has even implemented a few recommendations that were discussed earlier in this Article.²¹⁴ However, even with these improved efforts there is no government focus upon the wealth disparity of the past or the loss of wealth stemming from the current foreclosure crisis. The efforts of the government are limited in scope and will not address the problem completely or to a significant degree.

The following recommendations would add more intensity to the effort to address the overall problem of economic inequality and reform of the housing market into the future:

1. *Truth and Reconciliation Commission*

A Truth and Reconciliation Commission should thoroughly examine the available evidence regarding the policy of the Federal Housing Administration from 1934, and how that policy led to the denial of home purchases by African Americans and anyone else of any other race or ethnicity. Monetary restitution for past policies of the federal government should not be ruled out for any individual or family regardless of race or ethnicity, but that is not the stated goal. Considering the enormous racial gap between the races due to past abuses in the housing market, those who would have benefited from equal treatment in the past can receive that benefit now.²¹⁵

The Commission should investigate the actions of the government and financial institutions, and the contemporary effects of these historical actions. The Commission should attempt to identify individuals who actually were denied equal treatment in the housing market in order to compare outcomes.

But the true significance of the formation of such an entity is it is an acknowledgement that the racial problems of the past present lingering economic challenges that must be addressed. Even if no monetary restitution is provided, the information uncovered by the effort could also contribute to a healing process as the nation seeks to move forward. In much the way South Africa made use of a Truth and Reconciliation Commission in the post-apartheid era, the United States can make use of a commission to investigate financial abuses over the past seventy to eighty years.²¹⁶ While the South African commission addressed racial violence, the model is relevant because of the impact of the violence upon the lives of ordinary citizens on the basis of race. This commission would have a similar goal of investigating the impact upon the lives of ordinary citizens.

2. *Bankruptcy Reform*

²¹⁴ This paper was originally presented in November 2011. Since that time, the Obama administration has implemented a limited principal reduction effort on mortgages in a settlement with some of the largest mortgage holding banks in the nation. The administration has also become slightly more aggressive in bringing legal actions against some of the financial institutions accused of racial discrimination in mortgage lending.

²¹⁵ JOHN LESCOTT-LESCZYNSKY, *THE HISTORY OF ETHNIC POLICY AND ITS EFFECT UPON EUROPEAN ETHNICITY* 106 (1984).

²¹⁶ THE TRUTH AND RECONCILIATION COMMISSION, <http://www.justice.gov.za/trc/> (last visited Dec. 4, 2012).

Amend the bankruptcy code enabling bankruptcy judges to “cram down”²¹⁷ the principal amounts on the mortgage loans of consumers filing bankruptcy. This will allow many consumers to emerge from bankruptcy in a better financial position and will also afford them the opportunity to refinance their homes with more affordable interest rates and at prices they can afford. This recommendation has been presented numerous times to lawmakers in Congress and it has failed to pass into law each time due to intense political pressure from financial institutions.²¹⁸

3. *Principal Reduction*

Reduce the principal on mortgages on homes in areas where the foreclosure rate is exceedingly high and/or the drop in value of the home is quite excessive. Provide these homeowners (if reasonably credit worthy) with a new mortgage on fair, manageable terms that take into account the risk and the ability to satisfy the mortgage. As alluded to above, this recommendation has been partially adopted on a small scale by the Obama administration. The important aspect is it would allow homeowners to retain their homes and maintain their asset and the possibility of building future wealth.

4. *Housing Discrimination Enforcement*

Invigorate housing discrimination enforcement with a real commitment to reduce the level of discrimination currently in existence with additional funding and resources with which to address housing discrimination. The National Fair Housing Alliance has sought increased funding for enforcement of the nation’s housing discrimination laws. Current funding is inadequate.

In 2010, Congress held hearings on the Housing Fairness Act and this Act’s purpose was to strengthen housing discrimination enforcement efforts.²¹⁹ Some who testified at the hearings on the bill proposed additional funding for fair housing enforcement above the current amounts provided over the last few years.²²⁰ However, before the law could be presented for a congressional vote, the Democrats lost control of Congress and the bill has had no activity since that time.

While there are many other actions that can be taken to address the housing crisis and the problem of economic inequality, these recommendations have been circulated in various advocacy circles. Resistance to these proposals has been fierce; it is not likely any of these recommendations has any chance of becoming law or policy for reasons political and philosophical. However, the resistance has ramifications beyond the housing market.

As the writer and human rights lawyer Randall Robinson has written, if the problem of economic inequality amongst the races is not addressed, it is not likely that racial problems will disappear.²²¹ In other words, a post-racial America will remain elusive.²²²

²¹⁷ A cramdown in bankruptcy is when the debtor only pays the value of the item they have financed. In reality, it is a court-approved way to get out of some of your contractual obligations. The court replaces the value that you are contracted to pay on a certain item with an approved current value of that item.

²¹⁸ Alex Ulam, *Why Mortgage Cramdowns Are Still The Best Bet To Save The Economy*, THE NATION, Oct. 20, 2011, <http://www.thenation.com/article/164096/why-mortgage-cramdown-bill-still-best-bet-save-economy>.

²¹⁹ H.R. 476, 111th Cong. (2009).

²²⁰ The author testified at the hearing and attended the hearing on January 20, 2010.

²²¹ See generally RANDALL ROBINSON, *THE DEBT: WHAT AMERICA OWES TO BLACKS* (2002).

²²² “Post-racial” is a term that has come into more common usage since the election of Barack Obama as the first Black President of the United States. It is not generally known what this term means other than it suggests that the country will be beyond its problems of the past centered around race.