

THE FAIR HOUSING ACT: ENACTED DESPITE THE MAINSTREAM MEDIA, NEUTERED BY THE FEDERAL GOVERNMENT'S UNWILLINGNESS TO ENFORCE IT

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"We cannot be satisfied as long as the Negro's basic mobility is from a smaller ghetto to a larger one."

—Dr. Martin Luther King, Jr., *I Have a Dream*¹

This Article examines the 1968 Fair Housing Act from two perspectives. The first Part discusses the urban riots of the mid-1960s; the failure of the white press to examine the connection between the riots and systemic social problems, particularly segregation; and the Kerner Commission's devastating indictment of mainstream media coverage of the riots, the Black ghetto, and African Americans. I argue the mainstream media's poor coverage of the problems caused by inner-city ghettos made it more difficult to win popular and political support for the Fair Housing Act. The second Part examines the creation of a separate and unequal system of federally-subsidized housing in the two decades following enactment of the 1964 Civil Rights Act and the 1968 Fair Housing Act. I argue erecting and maintaining a national system of taxpayer-assisted housing that blatantly violated federal fair housing laws, demonstrates the unwillingness of the U.S. Department of Housing and Urban Development and five presidential administrations to enforce the Fair Housing Act.

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¹ Martin Luther King, Jr., *I Have a Dream*, Keynote Address at the March on Washington for Jobs and Freedom (Aug. 28, 1963).

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I. WATTS EXPLODES

On August 6, 1965, President Lyndon Johnson signed into law the Voting Rights Act,² which eventually would lead to the enfranchisement of millions of African Americans. It was the high point of the Civil Rights Movement, its "Hallelujah, 'Tis Done" moment. Five days later, violence erupted in the largely Black community of Watts in Los Angeles after a white California Highway patrolman arrested Marquette Frye, a twenty-one-year-old Black man, for driving while intoxicated. The incident mushroomed into six days

² Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended in scattered sections of 52 U.S.C.).

of rioting as thousands of African Americans took to the streets.³ It was the worst urban riot in twenty years, one fueled by deep-seated anger over segregated housing, poor schools, and few job opportunities.⁴

A. *White Press Coverage*

The Los Angeles Times said little about these problems in its coverage of the Watts riot. Instead, the newspaper treated the riot as a combination crime and disaster story. Its reporters relied almost exclusively on white police and white elected officials for information, particularly Mayor Sam Yorty and Police Chief William Parker. In one story, Chief Parker—the sole person quoted—blamed Black “so-called leaders” for “getting us into this trouble,” describing them as “modern-day Pied Pipers of Hamelin.”⁵ The headline on another story proclaimed Watts “totally devoid of leadership.”⁶ Mayor Yorty denounced allegations of police brutality as a “big lie” used by “Communists, dupes and demagogues irrespective of the facts.”⁷ Some reporters went further, portraying the overwhelmingly white Los Angeles Police Department as free from racial prejudice. After spending three hours with police at a command post in Watts, Philip Fradkin wrote, “No officer I talked to, overheard or questioned referred to the residents of the area as ‘niggers’ or made derogatory comments.”⁸

³ GOVERNOR’S COMM’N ON THE L.A. RIOTS, VIOLENCE IN THE CITY—AN END OR A BEGINNING? 1, 10–11 (1965), <https://archive.org/details/ViolenceInCity> [<https://perma.cc/C5X9-LC7U>] [hereinafter *McCone Commission*].

⁴ NAT’L ADVISORY COMM’N ON CIVIL DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 1–13, 20–21 (1968) [hereinafter *Kerner Commission*].

⁵ *Parker Raps ‘False’ Negro Leadership*, L.A. TIMES, Aug. 15, 1965, at A4.

⁶ Jack Jones, *Area Appears Devoid of Community Leadership*, L.A. TIMES, Aug. 14, 1965, at A1, A13.

⁷ Edwin Baker, *Yorty Hits Brutality Charges as ‘Big Lie’*, L.A. TIMES, Aug. 18, 1965, at A3, A16.

⁸ Philip Fradkin, *Reporter Tells Violence, Fear During Rioting*, L.A. TIMES, Aug. 13, 1965, at A3, A24. Fradkin should have spoken to Norman Edelen, one of the few black cops in Watts in 1965. Recalling his first day, Edelen said, “When I checked in, I opened my locker and there was a shrunken head with an NAACP bumper sticker. . . . You should’ve seen the bulletin

White reporters provided few quotes from the rioters and, as the violence intensified, it became increasingly dangerous for them to cover events inside the riot-torn area. The Los Angeles Times, then one of the largest newspapers in the country, needed Black journalists to get this perspective but did not have a single Black reporter in its newsroom.⁹ Robert Richardson, a twenty-four-year-old Black advertising messenger, volunteered to go into Watts and report what he saw using pay phones.¹⁰ A reporter at the paper's downtown office took those unfiltered notes and refashioned them into sensational page-one stories with incendiary headlines like 'Get Whitey,' *Scream Blood-Hungry Mobs* and *Burn, Baby, Burn*.¹¹ No one is named, every scene is horrific. "Then everybody started drinking—even little kids 8 or 9 years old," one story said. "That's when the cry started, 'Let's go where Whitey lives!' That's when I began to see guns."¹² Nothing in the story—or in subsequent investigations—showed marauding Black mobs were about to invade white neighborhoods.¹³

B. *Black Press Coverage*

There was a local news organization that did a superb job of covering the riots—the Los Angeles Sentinel. It detailed the death and

board. You'd think it was the bulletin board for the Klan. There was a picture of Sammy Davis Jr. when he married [Swedish actress May Britt]. They put 'nigger lover' on it. [Black officers would] pull that stuff down; by the time we'd come back in, it'd all be back up." Patt Morrison, *Before Watts '65: A Black Cop's View of the LAPD*, L.A. TIMES (Aug. 5, 2015, 4:58 AM), <http://www.latimes.com/opinion/op-ed/la-oe-morrison-edelson-20150805-column.html> [https://perma.cc/3GCR-Q23V].

⁹ Doug Smith, *Stunned by the Watts Riots, the L.A. Times Struggled to Make Sense of Deadly Violence*, L.A. TIMES (Aug. 12, 2015), <http://graphics.latimes.com/watts-annotations> [https://perma.cc/AV3T-HC89].

¹⁰ *Id.*

¹¹ *Id.*; Robert Richardson, *Eyewitness Account: 'Get Whitey,' Scream Blood-Hungry Mobs*, L.A. TIMES, Aug. 14, 1965, at A1; Robert Richardson, *'Burn, Baby, Burn' Slogan Used as Firebugs Put Area to Torch*, L.A. TIMES, Aug. 15, 1965, at A1.

¹² Richardson, *Get Whitey*, *supra* note 11, at A13.

¹³ The McCone Commission's account of the Watts riot, the most thorough investigation of the upheaval, does not once mention rioters entering white neighborhoods. See *McCone Commission*, *supra* note 3, at 10–25. Later in his 'Get Whitey' story, Richardson wrote, "I believe the mobs would have moved into white neighborhoods, but it was getting late and many of them had to go to work Friday morning." Richardson, *Get Whitey*, *supra* note 11, at A13. The newspaper does not explain how Richardson was able to read the minds of the rioters.

destruction with firsthand accounts and official statements.¹⁴ It did not suggest marauding Black mobs were poised to invade white neighborhoods. Its reporters interviewed experts who detailed Watts' poverty, inadequate schools, high unemployment, and substandard housing. The group included Municipal Court Judge Loren Miller, one of the lead attorneys in *Shelley v. Kraemer*,¹⁵ the landmark case in which the U.S. Supreme Court unanimously ruled racially restrictive covenants unenforceable in court. Judge Miller told a commission investigating the riot that Watts was "a prototype of any ghetto in the nation" and warned that "until Los Angeles tackles its own ghetto problem, it will always be ripe for an accident like the one that triggered the riots in Watts."¹⁶ The newspaper did not publish one-source stories in which Mayor Yorty and Chief Parker excoriated African Americans without any response. It did give voice to local and national civil rights leaders who took issue with Mayor Yorty's myopic views and Chief Parker's racist diatribes, including James Farmer, National Director of the Congress on Racial Equality and the organizer of the 1961 Freedom Rides.¹⁷ Speaking to a teachers' convention, Farmer said Chief Parker's statement during the riot that "[w]e are on the top and they are on the bottom" was disheartening but not surprising given that the veteran police chief once called the people of Watts "savages."¹⁸ Mr. Farmer said national leaders must understand civil rights gains in the South had little impact on ghetto residents. "Recent legislative victories for the Negro have not affected the man in the street," he said, "and a person in the ghetto area such as Watts can hardly care less about such legislative victories when he looks at the depressed conditions around him."¹⁹ Because the Los Angeles Sentinel

¹⁴ See, e.g., Betty Pleasant, *I Dodged Bullets While L.A. Burned*, L.A. SENTINEL, Aug. 19, 1965, at A1; Howard Morehead, *Angel City Under Siege: Death Stared*, L.A. SENTINEL, Aug. 19, 1965, at A4.

¹⁵ *Shelley v. Kraemer*, 334 U.S. 1 (1948).

¹⁶ *Jurist Flays Ghetto: Watts Homes Inferior*, L.A. SENTINEL, Oct. 14, 1965, at A1, D1.

¹⁷ See *James L. Farmer Biography*, CONGRESS RACIAL EQUALITY, http://www.core-online.org/History/james_farmer_bio.htm [<https://perma.cc/7EEJ-VEM7>] (last visited Dec. 27, 2018).

¹⁸ *Farmer Raps Parker: Speaks Before Teachers*, L.A. SENTINEL, Aug. 26, 1965, at A1, A4.

¹⁹ *Id.*

is a Black newspaper, its unparalleled coverage went unnoticed by the white press and the public at large.

C. *The L.A. Times Blames Broken Families, Wins Pulitzer Prize*

For its part, the Los Angeles Times paid scant attention to the systemic problems in south central Los Angeles, a community struggling to accommodate an almost tenfold increase in the county's Black population between 1940 and 1965.²⁰ Instead, its journalists rushed to judgment and attributed the riot to the fractured psyche and broken family structure of the residents of Watts. In a page-one story three days after the riot began, Washington, D.C. correspondent Thomas J. Foley—relying on Daniel Patrick Moynihan's *The Negro Family* and quotes from President Johnson—attributed the unrest to the disintegration of the Black family.²¹ Two psychiatrists, neither of whom had talked to the rioters, told Los Angeles Times medical writer Harry Nelson that African Americans' "strong feelings of rejection, self-hatred and anxiety about the future are the key psychological ingredients in Los Angeles's race riots."²² Thus, the white journalists at the Los Angeles Times said the Black residents of Watts took to the streets because they came from broken families and felt rejected. The newspaper's coverage of the Watts riots so impressed the fourteen white men on that year's Pulitzer Prize Board that they awarded the 1966 Pulitzer Prize for Local Reporting to the Los Angeles Times.²³

Some congressional leaders in the nation's capital challenged that narrative. Few were more passionate or eloquent than Senator Walter Mondale of Minnesota. Speaking on the floor of the Senate on the day order was finally restored in Watts, Senator Mondale said, "our

²⁰ *McCone Commission*, *supra* note 3, at 75.

²¹ Thomas J. Foley, *Racial Unrest Laid to Negro Family Failure*, L.A. TIMES, Aug. 14, 1965, at A1.

²² Harry Nelson, *Feelings Behind Rioting Analyzed: Two Psychiatrists See Anger, Anxiety and Self-Hatred as Emotional Keys to Outburst*, L.A. TIMES, Aug. 14, 1965, at A3.

²³ Fifty years later, veteran Los Angeles Times reporter Doug Smith, a 1997 Pulitzer winner, analyzed his paper's reporting on the Watts riot and wondered, "How could this coverage have won a Pulitzer Prize?" Smith, *supra* note 9; for the 1966 Pulitzer Board makeup, see *Pulitzer Prize Board 1965–1966*, PULITZER PRIZES, <http://www.pulitzer.org/board/1966> [<https://perma.cc/R3SF-FVGW>] (last visited Dec. 27, 2018); for the Los Angeles Times' Pulitzer, see *Staff of Los Angeles Times: Winners in Local General or Spot News Reporting*, PULITZER PRIZES, <http://www.pulitzer.org/winners/staff-5> [<https://perma.cc/5LLV-UNK3>] (last visited Dec. 27, 2018).

deepest, most intransigent Negro problem is the slums of our great cities.”²⁴ He added, “The Negro of Los Angeles could already vote. But what good is this if he is born in a broken home, crowded into a filthy slum, sent to an inferior school which is but a reflection of the unhappy community where he is forced to live?”²⁵ Mondale understood better than most of his white colleagues that what happened in Watts might very well be repeated across the country because the Black urban ghetto could be found in virtually every big city. Indeed, scholars have shown that at the time, levels of Black residential segregation were higher than any group had ever experienced in the United States before or since.²⁶ By fashioning an intricate network of laws, regulations, and practices, White America had erected an apartheid system of racially segregated housing. The Watts riot revealed the awful reality of ghetto life: low-income African Americans trapped in high-crime, poverty-stricken areas with poor schools and few jobs. The white power structure in Los Angeles failed to recognize this. The Los Angeles Times, the city’s most powerful news organization, failed to communicate this.²⁷

D. *The Nation’s Inner-Cities Explode*

Los Angeles was no outlier. The inner-city violence—and the failure of the mainstream media to report on its structural causes—would be repeated in scores of American cities in the years immediately following the Watts riot.²⁸ It would reach a crescendo during the first nine months of 1967 when more than 160 urban

²⁴ 89 CONG. REC. 20,625 (1965) (statement of Sen. Mondale).

²⁵ *Id.*

²⁶ See Douglas S. Massey, *The Legacy of the 1968 Fair Housing Act*, 30 SOC. F. 571 (2015).

²⁷ The Los Angeles Times’ Washington bureau ignored Mondale’s speech. Instead, the newspaper gave front page coverage to an interview with California Senator George Murphy, who had just returned from a “flying inspection” of Watts. Murphy asserted “disrespect for law” rather than “ghetto conditions” caused the violence. The Senator said he “received reports that Communist groups are moving in to capitalize on the disorders.” He provided no evidence for this nor for his claim that “the looting was so expert” that there may have been “rehearsals.” See Don Irwin, *Significance of Riot Studied on Capitol Hill*, L.A. TIMES, Aug. 18, 1965, at A3.

²⁸ *Kerner Commission*, *supra* note 4, at 6.

uprisings struck the nation.²⁹ That summer, thirty-three cities experienced outbreaks of serious racial violence including Cincinnati, Milwaukee, Tampa, and Newark.³⁰ One of the worst outbreaks took place in July in Detroit. Like many of the riots, it began as a response to heavy-handed actions by white police in a poor Black neighborhood. The toll was horrific. Forty-three persons killed and 324 injured. More than 7,200 persons arrested. An estimated \$40 million in property damages (\$300 million in today's dollars).³¹ On July 27th—the same day thousands of National Guardsmen and U.S. Army troops restored order in Detroit—President Johnson told a national television audience that he would appoint a commission headed by Illinois Governor Otto Kerner to investigate the origins of the riots. Two days later, the President issued an Executive Order establishing the National Advisory Commission on Civil Disorders and charged it with answering three basic questions: “What happened? Why did it happen? What can be done to prevent it from happening again and again?”³²

E. *The Kerner Commission*

Johnson was convinced the riots were the result of a Communist conspiracy.³³ The Kerner Commission found otherwise. It said racial prejudice created the conditions that led to the riots. In its words, “White racism is essentially responsible for the explosive mixture which has been accumulating in our cities since the end of World War II.”³⁴ The Kerner Commission said this mixture included pervasive discrimination and segregation in employment, education, and

²⁹ *Id.* at 3, 66.

³⁰ *Id.* at 23–38, 65.

³¹ *Id.* at 47–61; Consumer Price Index, *Inflation Calculator*, U.S. DEP'T LABOR, <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=40%2C000&year1=196508&year2=201809> [<https://perma.cc/9MRV-8LCS>] (last visited Jan. 13, 2019).

³² *Kerner Commission*, *supra* note 4, at 1; *see id.* app. C, at 297–98 (Excerpts from President Lyndon B. Johnson's Address to the Nation on Civil Disorders, July 27, 1967); *id.* app. A, at 294–95 (Executive Order 11365, Establishing a National Advisory Commission on Civil Disorders, July 29, 1967).

³³ STEVEN M. GILLON, *SEPARATE AND UNEQUAL: THE KERNER COMMISSION AND THE UNRAVELING OF AMERICAN LIBERALISM* 25–27 (2018).

³⁴ *Id.* at 5. “Specifically, the Commission has found no evidence that all or any of the disorders or the incidents that led to them were planned or directed by any organization or group, international, national, or local.” *Id.*

housing—particularly in the Black ghettos where, in its words, “segregation and poverty converge on the young to destroy opportunity and enforce failure.”³⁵ President Johnson refused to accept the report; the American public had other ideas. In the first three days after its release on February 29, 1968, the Kerner Commission report sold an astonishing 300,000 copies. In the first two weeks, almost one million copies were sold.³⁶

F. *The White Press Failed Black Americans*

One can only imagine the dismayed reaction of white journalists when they read the Kerner Commission report’s Chapter 15, *The News Media and the Disorders*. It represented nothing less than an indictment of mainstream media coverage of the riots, the ghetto, and African Americans. The Kerner Commission found white reporters relied almost exclusively on white officials for information on the riots and, in the process, grossly exaggerated the scale of destruction. The Commission said the central problem was their failure in reporting on race. In its words, “Our second and fundamental criticism is that the news media have failed to analyze and report adequately on racial problems in the United States and, as a related matter, to meet the Negro’s legitimate expectations in journalism.”³⁷ The primary reason for this, according to the Commission, was the mainstream media’s refusal to understand the enduring struggle of Black Americans: “The media report and write from the standpoint of a white man’s world. The ills of the ghetto, the difficulties of life there, the Negro’s burning sense of grievance, are seldom conveyed.”³⁸ White editors aggravated the problem by refusing to diversify their newsrooms. As the Commission put it, “The journalistic profession has been shockingly backward in seeking out, hiring, training and promoting Negroes.”³⁹ For Senator Mondale, Senator Edward Brooke of Massachusetts, and others trying to

³⁵ *Id.*

³⁶ *Id.* at 256–59, 269.

³⁷ *Kerner Commission, supra* note 4, at 203.

³⁸ *Id.*

³⁹ *Id.* at 211.

shepherd the Fair Housing bill through Congress, the mainstream media had made their work infinitely harder. The wonder is that they succeeded.⁴⁰

II. THE FAIR HOUSING ACT AND FEDERALLY-ASSISTED HOUSING

“Federal housing programs must be given a new thrust aimed at overcoming the prevailing patterns of racial segregation. If this is not done, those programs will continue to concentrate the most impoverished and dependent segments of the population into the central-city ghettos where there is already a critical gap between the needs of the population and the public resources to deal with them.”

—Kerner Commission, “Recommendations for National Action”⁴¹

On April 11, 1968, President Johnson signed into law the Fair Housing Act.⁴² The landmark legislation prohibited racial discrimination in the sale and rental of housing, and authorized the U.S.

⁴⁰ A host of mainstream newspapers published pieces on the fiftieth anniversary of the Kerner Commission report, lamenting what one called the nation’s “minimal racial progress” while avoiding any mention of their own journalistic failures. See Fred Harris & Alan Curtis, *The Unmet Promise of Equality*, N.Y. TIMES (Feb. 28, 2018), <https://www.nytimes.com/interactive/2018/02/28/opinion/the-unmet-promise-of-equality.html>; Carlos Lozada, *50 Years Ago, A Presidential Commission Called Out America’s ‘White Racism.’ It Didn’t Go Over Well.*, WASH. POST (Mar. 2, 2018), https://www.washingtonpost.com/news/book-party/wp/2018/03/02/50-years-ago-a-presidential-commission-called-out-americas-white-racism-it-didnt-go-over-well/?noredirect=on&utm_term=.fad683a982de [<https://perma.cc/U2HV-HUAX>]; Richard Rothstein, *50 Years After the Kerner Commission, Minimal Racial Progress*, N.Y. DAILY NEWS (Feb. 28, 2018, 5:00 AM), <http://www.nydailynews.com/opinion/50-years-kerner-commission-minimal-racial-progress-article-1.3845540> [<https://perma.cc/QRW9-L87X>].

Colorlines, a non-profit website focused on race and investigative reporting, published two superb pieces analyzing the mainstream media’s lack of progress in covering race. See Janine Jackson, *The Kerner Report Called for More Black Journalists. Major Newsrooms Remain a ‘White Man’s World’*, COLORLINES (Feb. 28, 2018, 2:56 PM), <https://www.colorlines.com/articles/kerner-report-called-more-black-journalists-major-newsrooms-remain-white-mans-world-opinion> [<https://perma.cc/A6PC-W5PU>]; Joseph Torres, *50 Years After the Landmark Kerner Report Called Out Media Racism, the Power Structure Persists*, COLORLINES (Feb. 28, 2018, 2:29 PM), <https://www.colorlines.com/articles/50-years-after-landmark-kerner-report-called-out-media-racism-power-structure-persists> [<https://perma.cc/2X3P-FVXZ>]. See also Russell Contreras, *Report: Inequality Remains 50 Years After Kerner Report*, U.S. NEWS (FEB. 27, 2018, 10:54 PM), <https://www.usnews.com/news/us/articles/2018-02-27/report-inequality-remains-50-years-after-kerner-report>; E.R. Shipp, *Reflection and Renewal 50 Years After Kerner Report, King Assassination*, L.A. TIMES (Mar. 6, 2018, 8:35 AM), <http://www.latimes.com/bs-ed-op-0307-shipp-kerner-20180306-story.html> [<https://perma.cc/BA95-LZMM>].

⁴¹ *Kerner Commission*, *supra* note 4, at 13.

⁴² 42 U.S.C. §§ 3601–19 (2018).

Department of Housing and Urban Development (HUD) to enforce the Act. Unlike the Voting Rights Act of 1965, progress in desegregating the nation's apartheid system of housing has been uneven at best and non-existent in many metropolitan areas.⁴³ Activists and scholars have vigorously debated whether HUD's central problem has been inadequate enforcement powers or a lack of will.⁴⁴ One way of addressing this question can be found by looking at the nation's vast system of federally-assisted housing. HUD controls the funding for each federally-subsidized unit and thus exercises final authority. Title VI of the 1964 Civil Rights Act prohibits discrimination in all federally-funded programs.⁴⁵ That same year, HUD issued regulations prohibiting any action that would "[s]ubject a person to segregation or separate treatment in any matter related to his receipt of housing."⁴⁶ In the Fair Housing Act, Congress mandated HUD's "duty to affirmatively further fair housing," which includes "meaningful actions to be taken to overcome the legacy of segregation, unequal treatment, and historic lack of access to opportunity in housing."⁴⁷ How effective has HUD been in ensuring that African Americans have not been subjected to segregation and other forms of discrimination in taxpayer funded housing? Fifteen years after the Fair Housing Act became law, I began researching a story for the Dallas Morning News that sought to answer that question.

⁴³ A 2015 study showed African Americans remained hyper-segregated in twenty-one metropolitan areas in 2010 with no apparent movement toward integration. See Douglas S. Massey & Jonathan Tannen, *A Research Note on Trends in Black Hypersegregation*, 52 DEMOGRAPHY 1025 (2015). A 2014 study found high levels of housing segregation in metropolitan areas with large Black populations and older housing stock in 2010; the five most segregated metropolitan areas were Milwaukee, Gary, Detroit, Newark, and New York. See Jacob S. Rugh & Douglas S. Massey, *Segregation in Post-Civil Rights America: Stalled Integration or End of the Segregated Century?*, 11 DU BOIS REV. 205, 211, 221 (2014).

⁴⁴ Massey and Nancy A. Denton argue the Fair Housing Act "was intentionally designed so that it would not and could not work." DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 195 (1993); Jonathan Zasloff contends the act "contained ample authority for vigorous prosecution from the very beginning—authority that received quick blessing and augmentation from federal courts." Jonathan Zasloff, *The Secret History of the Fair Housing Act*, 53 HARV. J. ON LEGIS. 247, 249 (2016).

⁴⁵ 42 U.S.C. § 2000d (2018).

⁴⁶ 24 C.F.R. § 1.4 (1972).

⁴⁷ See *Affirmatively Furthering Fair Housing*, 80 Fed. Reg. 42,272 (July 16, 2015).

A. *Judge Justice Integrates Public Housing in Clarksville, Texas*

It began in the small East Texas town of Clarksville in December 1983. Clarksville had three public housing projects; two were all-Black, one all-white. The white men and women who ran the Clarksville Housing Authority (CHA) maintained racially segregated projects since the inception of the CHA in 1961.⁴⁸ They said they were simply doing what both races wanted.⁴⁹ However, it was not what Lucille Young, a Black mother with six children, wanted. It was not what Virginia Wyatt, a Black mother with five children, wanted. Ms. Young applied for public housing in Clarksville in 1975; Ms. Wyatt in 1978.⁵⁰ Both had been repeatedly passed over because CHA officials would not allow African Americans to move into vacant apartments in the white project even if they were first on the waiting list.⁵¹ In 1980, Ms. Young and Ms. Wyatt sued the CHA and HUD. Their lawsuit, *Young v. Pierce*,⁵² asked U.S. District Court Judge William Wayne Justice to order Clarksville officials to stop segregating prospective tenants on the basis of race.⁵³ In 1981, CHA officials signed a compliance agreement with HUD in which they vowed to stop assigning tenants on the basis of race and to act affirmatively to desegregate the projects. Two years later, Judge Justice found Clarksville's housing projects were still rigidly segregated, while Ms. Young and her family were about to be evicted from a seriously dilapidated house with no hot water or gas utility service and a collapsed ceiling in one room.⁵⁴ The judge ordered the housing authority to assign

⁴⁸ FRANK R. KEMERER, WILLIAM WAYNE JUSTICE: A JUDICIAL BIOGRAPHY 340 (1991).

⁴⁹ As CHA attorney Pat C. Beadle put it, "We never denied the housing units were segregated. There's no question about that, but it was that way by the residents' choice." Steve Blow, *Unsettling Move*, DALLAS MORNING NEWS, Dec. 8, 1983, at A1, A20.

⁵⁰ Complaint at 2, *Young v. Landrieu*, No. P-80-8-CA (E.D. Tex. March 14, 1980), https://tarltonapps.law.utexas.edu/exhibits/ww_justice/documents_4/Young_complaint_1_1980.pdf [<https://perma.cc/99CH-WEPK>].

⁵¹ *Id.* at 4; see KEMERER, *supra* note 48, at 340-42.

⁵² 544 F. Supp. 1010 (E.D. Tex. 1982).

⁵³ Attorneys for the plaintiffs brought the case as a class action lawsuit against 111 racially identifiable housing projects in thirty-six East Texas counties on behalf of some 40,000 Black households. For the initial complaint, see Complaint, *Young v. Landrieu*, *supra* note 50. On July 1, 1982, Judge Justice upheld the class action lawsuit against HUD under Title VI, Title VIII and the Fifth Amendment. See *Pierce*, 544 F. Supp. at 1010, 1013 n.2, 1015, 1017, 1022, 1032; KEMERER, *supra* note 48, at 341-42.

⁵⁴ Findings of Fact, Conclusions of Law and Preliminary Injunction at 1-3, 5, *Young v. Whiteman*, No. P-82-37-CA (E.D. Tex. Oct. 11, 1983), <https://tarltonapps.law.utexas.edu/>

Ms. Young's family a suitably-sized apartment and to devise an integration plan in which the racial make-up of each project would match the half-white, half-Black composition of CHA's entire tenant population.⁵⁵ On November 29, 1983, Judge Justice approved the housing authority's plan, which called for twenty-five tenants in the all-white College Heights project to swap apartments with twenty-five tenants in the all-Black Cheatham-Dryden project.⁵⁶

1. White Press Coverage

The order got the attention of white reporters from across the country. Many newspapers rushed to Clarksville and promptly portrayed the ruling as the worst form of social engineering. *Newsday* published a story with the headline *Home-Swap Outrages Races*.⁵⁷ The *Washington Post* described the order as “[a]n apartment-swapping scheme.”⁵⁸ Several stories focused on tenants who were forced to move from the white project, many of whom were elderly. As Judge Justice later recalled,

It was raining the day the moves began. It was a really bad day, just ideal fodder for the TV cameras to come up there and show the poor pitiful old people being moved from place to place, and listen to their plaintive cries about how much they didn't want to move, didn't want to live with blacks.⁵⁹

Others featured Clarksville Mayor L.D. Williamson, who presented himself as a reasonable spokesman for the wisdom of maintaining segregation. “We don't have any racial problems,” the mayor told one wire service reporter. “The whites are not mad at the blacks. The blacks

exhibits/ww_justice/documents_4/Young_injunction_3_1983.pdf [https://perma.cc/74VZ-C52Y].

⁵⁵ *Id.* at 6–7.

⁵⁶ Order, *Young v. Whiteman*, No. P-82-37-CA (E.D. Tex. Nov. 30, 1983), https://tarltonapps.law.utexas.edu/exhibits/ww_justice/documents_4/Young_order_8_1983.pdf [https://perma.cc/3ZQ2-T25M].

⁵⁷ Peter Larson, *Home-Swap Outrages Races*, *NEWSDAY*, Dec. 10, 1983, at A4, A9.

⁵⁸ *Desegregation Order Is Forcing Tenants to Switch*, *WASH. POST*, Dec. 8, 1983, at A20.

⁵⁹ *KEMERER*, *supra* note 48, at 344–48.

are not mad at whites. They're all mad at William Wayne Justice. If given the choice, none of them would have moved."⁶⁰ In a story headlined *Desegregation Stirs Dismay in 2 Texas Housing Projects*, Wayne King of the New York Times echoed Williamson's view.⁶¹ King quoted two tenants forced to move, an outraged white ("I don't know of a man in town who doesn't think it's the dirtiest thing that ever happened") and a reluctant African American ("I didn't want to move").⁶² He did not quote Ms. Young, who was finally able to move her family into a public housing unit as a result of the ruling. The New York Times story said conditions in and around the white and Black projects were "similar."⁶³

What struck me as I read the national press accounts of what happened in Clarksville was how much they ignored. Their stories included little information about the history of the housing discrimination lawsuit or southern race relations. And I was astonished by the repeated assertion that conditions at the Black project were no different than at the white complex. As the Washington Post reported, "The two housing projects, built in 1965, are equal in size and appearance."⁶⁴ I found that hard to believe. I asked my editors if I could spend a few days in Clarksville, a community of 4,500 near the Texas-Oklahoma border, to see if what the national press reported was accurate. They agreed. I found that while College Heights and Cheatham-Dryden were within walking distance of one another, the two public housing projects could hardly have been more different. The tenants in College Heights lived in well-kept, ranch-style buildings with manicured lawns, sidewalks, and paved streets. Cheatham-Dryden was situated on a dirt road and surrounded by rutted, overgrown yards. Its tenants had to contend with cracked floors, decrepit kitchens, and unvented wall heaters. Rosemary Caviness, Executive Director of the CHA, said that conditions in Cheatham-Dryden threatened tenants'

⁶⁰ *City Housing Officials Said They Have Complied with Today's Deadline*, UNITED PRESS INT'L (Dec. 15, 1983), <https://www.upi.com/Archives/1983/12/15/City-housing-officials-said-they-have-complied-with-todays/2441440312400> [<https://perma.cc/7QEW-DA9V>].

⁶¹ Wayne King, *Desegregation Stirs Dismay in 2 Texas Housing Projects*, N.Y. TIMES, Dec. 12, 1983, at A18.

⁶² *Id.*

⁶³ *Id.* A New York Times editorial took Judge Justice to task for his "heavyhanded decision," arguing it achieved desegregation at the expense of "[d]isrupting the lives of elderly, infirm people." The Times mistakenly identified Clarksville as "Wrightsville." *Housing Message from Texas*, N.Y. TIMES, Dec. 16, 1983, at A34.

⁶⁴ *Desegregation Order Is Forcing Tenants to Switch*, *supra* note 58.

health, and that a modernization campaign was needed to bring “the condition of that (black) project up to the white.”⁶⁵ Clearly, Clarksville’s public housing projects were segregated and unequal. But was this an isolated example or part of a pattern? I asked my editors if I could visit other East Texas towns to answer that question. They agreed.⁶⁶

B. *Separate and Unequal Federally-Assisted Housing in East Texas*

I visited thirteen East Texas cities and towns. In each one, I found the federally-subsidized housing was racially segregated and, without exception, the Black projects were inferior to the white developments in location, condition, amenities, and services. The disparity was less pronounced in small towns such as Gilmer and Cleveland, where white and Black families lived in older public housing projects. Many of the white men and women who oversaw smaller housing authorities told me racial segregation was needed to protect white folks from Blacks. As Irma Powers, the chain-smoking chairperson of the CHA Board of Commissioners, said of African Americans, “If I had a rent house, I wouldn’t want to rent to them. . . . They . . . don’t have any morals, really, the biggest part of them don’t. They don’t.”⁶⁷

⁶⁵ George Rodrigue, *Clarksville Adjusts to Order to Integrate Projects*, DALLAS MORNING NEWS, Feb. 12, 1985, at A10.

⁶⁶ Jet, the legendary Black news magazine, provided superb coverage of the situation in Clarksville. Unlike white publications, Jet examined legal records documenting unequal conditions: “[A]ccording to court papers, the White housing site has paved streets and sidewalks. The Black housing site has unpaved streets and no sidewalks.” *Blacks, Whites Ordered to Swap Housing in Texas*, JET, Jan. 9, 1984, at 22, 23. Jet also found dramatically different reactions to Judge Justice’s desegregation order. It reported that most of the twenty-five Black families ordered to move quickly packed up their belongings, but “only five of their 25 White counterparts chose to comply Rather than live on the Black side of town, they opted to seek more expensive private housing.” *Id.* at 22. The magazine interviewed three Black tenants who moved from the Cheatham-Dryden project into College Heights. None voiced opposition. Some said the desegregation of public housing was long overdue. “It’s O.K. with me. I don’t like being contrary. I’m old. Wherever they send me, it’s fine,” said Dora B. Lawrence. “But personally, I feel that voluntary integration should have come a long time ago.” *Id.* at 23. Because Jet is a Black publication, the vast majority of white reporters, including myself, were unaware of its findings.

⁶⁷ Craig Flournoy & George Rodrigue, *Separate and Unequal: Illegal Segregation Pervades Nation’s Subsidized Housing*, DALLAS MORNING NEWS, Feb. 10, 1985, at A1, A24–26; see Craig

The inequities were more dramatic in cities. In Texarkana and Port Arthur, “almost 600 black households—families and elderly alike—live[d] in four 30- to 40-year-old [public housing] projects,” each located in a predominantly Black neighborhood.⁶⁸ African Americans occupied all of the units at three of these projects including Port Arthur’s Carver Terrace, which had refineries as neighbors on the north and west.⁶⁹ Since 1974, local and federal housing officials built four federally-assisted developments in Port Arthur and Texarkana. Whites occupied 95 percent of the nearly 800 apartments in the four elderly-only complexes.⁷⁰ Officials equipped each one with central air conditioning and heating, community centers, and sophisticated emergency alarm systems monitored by security guards. None of the Black-occupied projects enjoyed these amenities.⁷¹ Robert Mosely, an African American real estate broker and former Port Arthur City Council member, told me the disparities were not accidental. “It seems as if they are trying to revive segregation informally,” he said. “Why can’t that monitor (from HUD) see these things?”⁷² Documents and depositions obtained by Michael Daniel and Elizabeth Julian—the two civil rights attorneys who filed *Young v. Pierce*—showed HUD funded new developments in East Texas knowing full well that local officials segregated tenants and planned to continue doing so.⁷³ In a 1980 deposition, Irving Statman—who served as “director of HUD’s Dallas-area office during the last three years of his 1971–1982 tenure there”—said he approved funding for public housing projects throughout East Texas, knowing many housing authorities would illegally segregate tenants by race.⁷⁴ In an interview with the Dallas Morning News, Statman said he was hardly alone. In his words, “HUD contributed as

Flournoy, *Can Integration Work? Some Officials Say No, Some Yes*, DALLAS MORNING NEWS, Feb. 12, 1985, at A 9.

⁶⁸ Craig Flournoy & George Rodrigue, *Houses Divided: Officially Sanctioned Segregation Is Rule, Not Exception, in East Texas*, DALLAS MORNING NEWS, Feb. 12, 1985, at A1, A8–9.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ The author wishes to express his deep appreciation to Ms. Julian, Mr. Daniel, and Laura Beshara, the plaintiffs’ attorneys in *Young v. Pierce*. By allowing me to research HUD’s Title VI investigations and other documents in their voluminous files, I gained a detailed understanding of federally-subsidized housing in each East Texas town before visiting them. The information was invaluable.

⁷⁴ Flournoy & Rodrigue, *Houses Divided*, *supra* note 68.

much to creating segregated housing patterns as any institution in America, because we knew (HUD policies were contributing to racial segregation) and we went along with it.”⁷⁵

This was not how the national press had portrayed what was happening in East Texas.⁷⁶ Not surprisingly, my editors insisted I publish my findings. I pushed back. No one would be surprised, I said, if we published a story that said East Texas good old boys were segregating Black and white public housing tenants in blatant violation of the 1964 Civil Rights Act. Or that the housing provided to African Americans was substandard. For years, the mainstream media had portrayed public housing as a failure epitomized by high-rise ghettos like Chicago’s Cabrini-Green and sprawling low-rise slums like the West Dallas project where thousands of poor Black families struggled to survive. I found scaled-down versions of these all-Black projects in Texarkana and Port Arthur and something else: four recently-constructed, elderly-only developments—one, the O.W. Collins Apartments, built with public housing dollars; the other three erected under the Section 8 New Construction program.⁷⁷ Officials equipped each with the latest conveniences. Each was overwhelmingly white. The tenants told me they loved their apartments. “This is ideal for me,” said sixty-eight-year-old Irene Wright, who lived at the Collins Apartments for three years. “I’m going to stay here until they run me off.”⁷⁸ Federally-subsidized housing in Port Arthur and Texarkana was separate and unequal—a stunning success story for white tenants, a failed promise for African Americans. This was new. What if, I asked my editors, this was true in San Francisco and Chicago, in Seattle and Atlanta, in Omaha and Los Angeles? They reluctantly agreed that would be a far more important story. They also gave me a terrific partner, George Rodrigue.

⁷⁵ Craig Flournoy & George Rodrigue, *Fair-Housing Failure: 5 Administrations Have Refused to Enforce Anti-Discrimination Laws*, DALLAS MORNING NEWS, Feb. 15, 1985, at A1, A16–17.

⁷⁶ For a first-rate analysis of how the mainstream media framed public housing as a failed program exclusively serving African Americans, see A. Scott Henderson, “*Tarred with the Exceptional Image*”: *Public Housing and Popular Discourse, 1950–1990*, 36 AM. STUD 31 (1995).

⁷⁷ Craig Flournoy, *White Port Arthur Families Pinched by Housing Separation*, DALLAS MORNING NEWS, Feb. 12, 1985, at A10.

⁷⁸ *Id.*

Over the next twelve months, Mr. Rodrigue and I examined federally-assisted housing in forty-seven cities and towns from the Northeast to the West Coast. We interviewed hundreds of tenants in subsidized housing; current and former officials with housing authorities, HUD, and the U.S. Department of Justice; and public and private housing experts. We also obtained thousands of documents from federal agencies and local governments through the federal Freedom of Information Act. We found almost ten million Americans lived in a system of federally-subsidized housing that was separate and unequal: whites in newer developments in mostly-white neighborhoods with relatively little crime; Blacks and other minorities in older public housing projects in high-crime, predominantly-minority areas.⁷⁹ In most cities, federally-assisted housing was a throwback to the days of the Antebellum South: the deteriorating, barely habitable housing went to Blacks, while the newer and sometimes lavish housing went to whites.⁸⁰ Astonishingly, whites occupied nearly two-thirds of the nation's 3.7 million federally-subsidized rental units, almost ninety percent of which were provided after Congress approved the 1964 Civil Rights Act prohibiting racial discrimination in all federally funded programs.⁸¹ The explosion of federally-subsidized housing spawned a new pattern of segregation, disproportionately benefitting elderly whites and ignoring the needs of minority families. Consider Los Angeles, home to the largest housing authority west of the Mississippi.⁸²

C. *Separate and Unequal Federally-Assisted Housing in Los Angeles*

I found that during the previous four decades, local officials erected forty-two federal rent-subsidy projects in which races were segregated and the buildings starkly unequal in condition, location, amenities, and services.⁸³ The separate-and-unequal symmetry was remarkable. There were twenty-one family public housing projects and twenty-one elderly-

⁷⁹ Flournoy & Rodrigue, *Separate and Unequal*, *supra* note 67.

⁸⁰ See *id.*; Craig Flournoy & George Rodrigue, *14-Month Inquiry Began in Texas, Covered Nation*, DALLAS MORNING NEWS, Feb. 10, 1985, at A1.

⁸¹ Flournoy & Rodrigue, *Separate and Unequal*, *supra* note 67.

⁸² See Craig Flournoy, *Los Angeles Tenants Live in Fear of Gang Violence*, DALLAS MORNING NEWS, Feb. 11, 1985, at A16.

⁸³ *Id.*

only developments.⁸⁴ African Americans and Hispanics, both families and the elderly, lived in over ninety-five percent of the apartments in the public housing projects.⁸⁵ The elderly-only developments were mostly white. The family projects were built before 1955, and the elderly complexes came later.⁸⁶ Most family projects were located in low-income, high-crime minority areas. Most elderly developments were in middle-class, mostly-white, and integrated neighborhoods with relatively little crime.⁸⁷ I interviewed twenty-five tenants at five family complexes. Virtually all said fear pervaded their lives.⁸⁸ Tenants at several elderly-only developments said they did not worry about street crime, including those at Angelus Plaza in downtown Los Angeles.⁸⁹ With more than 1,000 apartments, Angelus Plaza was and is the nation's largest federally-subsidized development for the elderly. Completed in 1980 under the Section 8 New Construction program at a cost of \$150 million (\$460 million in today's dollars), it is also among the most expensive.⁹⁰ Security measures include twenty-four-hour protection by guards, closed-circuit cameras, and a multi-story parking garage. In an emergency, a computerized system allows each resident to notify the building manager, who receives a printout with the tenant's medical history, physician, and hospital.⁹¹ While Angelus Plaza residents praised these amenities along with the central air conditioning and wall-to-wall carpeting, they raved about the social services and recreational activities at the terraced, six-story community center next door.⁹² The 11,000-volume library. The ceramics studio with two kilns. The recreation area with pool and ping pong tables, large color television set, piano, jukebox, pinball machines, and a stereo-equipped stage. The medical clinic staffed by two physicians. The free psychological counseling. The

⁸⁴ *Id.* The Los Angeles CHA's thirty-year focus on elderly-only developments stood in stark contrast to its waiting list: 38,000 families compared to just 3,000 elderly applicants. *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* (tenants revealed they "live[d] in fear" in these projects).

⁸⁹ Craig Flournoy & George Rodrigue, *Winners and Losers: Some Elderly Whites Reap Lavish Benefits in Subsidized Housing*, DALLAS MORNING NEWS, Feb. 11, 1985, at A1.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

free legal assistance. The interest-free loans. The dollar lunches and three-dollar dinners. The vans to take them shopping. Joe Rybacki summarized living in Angelus Plaza in three words: “just like heaven.”⁹³

Like Angelus Plaza, the Nickerson Gardens public housing project in Watts has more than 1,000 units, but no one would confuse it with heaven. When I visited the project, there was no central air conditioning or wall-to-wall carpeting. No ceramics studio or library. No free psychological counseling, no free legal assistance, no interest-free loans. No guards or closed-circuit cameras, though street gangs like the Bounty Hunter Bloods openly sold crack cocaine, heroin, and PCP, terrorizing the African Americans who lived there including Willie Lewis and his wife Birdell.⁹⁴ They were grateful their children were grown and no longer lived in Nickerson Gardens. “You’re in fear all the time,” said Mr. Lewis, a slender fifty-six-year-old with iron-gray hair and black-rimmed glasses.⁹⁵ Security for the Lewises and the other 1,000 Black families and elderly individuals at Nickerson Gardens was a twelve-foot high, grease-coated fence erected by the housing authority.⁹⁶ “You know why they put that fence up?” said Lewis, gesturing at the black wrought-iron fence with menacing spikes that point inward. “They think we’re animals, so they’re fencing us in.”⁹⁷

D. *Separate and Unequal Federally-Assisted Housing Nationally*

In February 1985, the Dallas Morning News published *Separate and Unequal: Subsidized Housing in America*. The eight-part series showed that in the years following enactment of the 1964 Civil Rights Act and 1968 Fair Housing Act, HUD officials approved and funded a vast system of deeply segregated federally-subsidized housing in which conditions were more unequal than in previous decades.⁹⁸ The responsibility for this extended beyond a single agency or president. The series found that five presidential administrations—Johnson, Nixon,

⁹³ *Id.*

⁹⁴ Flournoy, *Los Angeles Tenants Live in Fear of Gang Violence*, *supra* note 82.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ See Craig Flournoy, *Bias in Housing Didn't Halt Flow of HUD Funds*, DALLAS MORNING NEWS, Feb. 15, 1985, at A19; Flournoy & Rodrigue, *Separate and Unequal*, *supra* note 67; George Rodrigue, *U.S. Knowingly Helped Yonkers Build High-Rise Ghettos*, DALLAS MORNING NEWS, Feb. 15, 1985, at A17–18.

Ford, Carter, and Reagan—refused to use the strongest penalties provided under federal law to remedy racial discrimination in the nation’s subsidized housing.⁹⁹ For example, the 1964 Civil Rights Act authorized HUD to cut off federal assistance to an agency or individual who engages in racial discrimination. Yet the series revealed no HUD secretary had ever used that authority despite evidence in federal lawsuits and HUD’s own records detailing rampant racial discrimination.¹⁰⁰ Under the Housing and Community Development Act of 1974, HUD is empowered to refer violations of fair housing laws and the 1974 act to the Justice Department for prosecution. Yet the series reported federal housing officials had never asked the Justice Department to sue a locality for violating the 1974 act despite what the U.S. Commission on Civil Rights said were HUD’s own “well-documented findings of discrimination.”¹⁰¹ In a 1979 report that represented its most comprehensive examination of fair housing enforcement, the Commission concluded, “For more than a decade, the Departments of Housing and Urban Development and Justice, which have the primary roles in administering and enforcing Title VIII of the Civil Rights Act of 1968, have largely failed in their responsibilities to prevent and eliminate discrimination and segregation in housing.”¹⁰²

1. HUD Turns a Blind Eye . . .

The *Separate and Unequal* series prompted outrage on Capitol Hill.¹⁰³ Three Dallas congressmen asked the chairman of the House Subcommittee on Housing and Community Development to investigate the newspaper’s findings of pervasive racial discrimination in federally-

⁹⁹ Flourney & Rodrigue, *Fair-Housing Failure*, *supra* note 75.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² U.S. COMM’N ON CIVIL RIGHTS, THE FEDERAL FAIR HOUSING ENFORCEMENT EFFORT 231 (1979).

¹⁰³ Mr. Rodrigue and I were awarded the 1986 Pulitzer Prize for National Reporting for the *Separate and Unequal* series, the first Pulitzer awarded to the Dallas Morning News. See Craig Flourney and George Rodrigue of the Dallas Morning News, PULITZER PRIZES, <http://www.pulitzer.org/winners/craig-flourney-and-george-rodrigue> [https://perma.cc/SUX6-6PDS] (last visited Dec. 29, 2018).

subsidized housing.¹⁰⁴ Representative Henry B. Gonzalez promptly agreed. In a letter to HUD Secretary Samuel R. Pierce, Jr., Congressman Gonzalez said he was shocked by the extent of “racial segregation in housing financed by the federal government.”¹⁰⁵ The February 27, 1985 letter directed Secretary Pierce to address each finding and to “identify the steps the department plans to take in each of the major housing and community developments programs administered by the department to assure and improve compliance with the anti-discrimination requirements of the (1968) Civil Rights Act in general and the federally assisted housing and community development programs specifically.”¹⁰⁶ Representative Gonzalez asked Secretary Pierce to provide a detailed response by April 15th.¹⁰⁷ HUD finally submitted its report in late November, a few days before the hearings. HUD’s written response said the Dallas Morning News series “reports in a generally accurate manner the multi-faceted problems of segregation in subsidized housing.”¹⁰⁸ In his testimony, HUD General Counsel John Knapp said deliberate segregation in public housing “undeniably exists in a great number of housing authorities,” and added that “[t]he persistence of that condition is an enforcement failure, and hardly explainable otherwise.”¹⁰⁹ Massachusetts Representative Barney Frank noted HUD records showed the agency had denied or reduced Community Development Block Grant funds just four times over the past decade for fair housing violations. “That is an outrage, and that is why we have this problem,” Congressman Frank said. “Anybody who reads this says, ‘Hey, we can discriminate all we want, and there will be no administrative enforcement.’”¹¹⁰

¹⁰⁴ See Craig Flournoy, *Lawmakers Seek Probe of Subsidized Housing*, DALLAS MORNING NEWS, Feb. 23, 1985, at A1, A18.

¹⁰⁵ Craig Flournoy, *House Panel to Probe Subsidized Housing: Chairman Decries Racial Segregation*, DALLAS MORNING NEWS, Feb. 28, 1985, at A1.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ George Rodrigue, *HUD Offers Strategies to Fight Housing Bias*, DALLAS MORNING NEWS, Nov. 22, 1985, at A1.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

2. . . . Judge Justice Does Not

A federal courtroom, particularly one presided over by Judge William Wayne Justice, is a different matter. On July 31, 1985, Judge Justice ruled federal and local housing officials in thirty-six East Texas counties violated the Fifth Amendment to the Constitution, Title VI of the 1964 Civil Rights Act, and the Fair Housing Act, by intentionally segregating minorities and whites in federally-subsidized housing.¹¹¹ In his words, “HUD’s intent to discriminate is established by the combination of HUD’s disingenuous assertions of ignorance, its actual knowledge of segregation, and its continuing financial support of each public housing site in the class counties.”¹¹² Legal experts said the ruling was unprecedented. Previous findings of constitutional violations against HUD were limited to a single city and a single housing program. Judge Justice’s ruling covered 36 counties, 62 housing authorities, and 219 projects funded under three rent-subsidy programs.¹¹³ The scope of the ruling raised an obvious question: what sort of remedy would the judge fashion? Eighteen months earlier, Judge Justice ordered white and Black public housing tenants to swap apartments in Clarksville, prompting several mainstream reporters to suggest he might order thousands of subsidized housing tenants in East Texas to do the same. Wayne King of the New York Times wrote, “The [Clarksville] order could set a precedent for 10,000 other public housing units in 36 Texas counties.”¹¹⁴

Such rank speculation proved unfounded. As the judge’s biographer Frank Kemerer observed, “It was clear from the [final] order that forced integration as a remedy had retreated.”¹¹⁵ In July 1986, Judge Justice appointed Francis E. McGovern, a law professor at the University of Alabama, to serve as special master—the first time this

¹¹¹ *Young v. Pierce*, 628 F. Supp. 1037, 1057–58 (E.D. Tex. 1985).

¹¹² *Id.* at 1056.

¹¹³ See Craig Flournoy, *Judge Finds Bias in East Texas Public Housing*, DALLAS MORNING NEWS, Aug. 1, 1985, at A1; see also Craig Flournoy, *Attorney to Seek Quick Integration of E. Texas Projects*, DALLAS MORNING NEWS, Aug. 2, 1985, at A1.

¹¹⁴ King, *supra* note 61, at A18.

¹¹⁵ KEMERER, *supra* note 48, at 354.

happened in a federal housing desegregation case.¹¹⁶ Over the next eighteen years, the judge and the special master sought to implement a deeply ambitious remedial plan: the equalization of housing conditions, including equipping the Black projects with air conditioning; desegregation of the white and Black projects; funding and the use of the public housing and Section 8 programs to provide more than 5,000 desegregated housing opportunities in predominantly white areas; injunctions against cities seeking to block the development of public housing in predominantly white neighborhoods; and equalization of neighborhood conditions around the predominantly Black projects, including the allocation of \$13 million in state funding for improvements.¹¹⁷ Many of the accomplishments were achieved despite HUD's obstructionist tactics. According to Mr. Daniel and Ms. Beshara, "Most of the relief was obtained only after the record of HUD's violations of previous remedial orders was compiled and presented to the Court."¹¹⁸

E. *Separate and Unequal Federally-Assisted Housing in Dallas*

Following publication of the *Separate and Unequal* series, the U.S. Commission on Civil Rights—created by Congress in 1957 to monitor federal efforts to enforce civil rights laws—held two days of hearings. What they heard from HUD General Counsel Knapp and William Bradford Reynolds, head of the Justice Department's Civil Rights Division, could hardly have been more dispiriting. Mr. Knapp and Mr. Reynolds told panel members that the federal government cannot adequately enforce fair housing laws. Instead, they said the federal government must rely on private lawsuits and investigations to desegregate the nation's cities.¹¹⁹ Events in Dallas would disprove the former and substantiate the latter. A few months before the hearings, Debra Walker and six other poor Black women sued HUD and the Dallas Housing Authority. The class action suit, *Walker v. HUD*,¹²⁰ said federal and local officials had created a separate and unequal system of

¹¹⁶ *Id.* at 351.

¹¹⁷ Young v. Pierce, DANIEL & BESHARA, P.C., <https://www.danielbesharalawfirm.com/young-v-pierce> [<https://perma.cc/3LTB-3YZW>] (last visited Dec. 29, 2018).

¹¹⁸ *Id.*

¹¹⁹ George Rodrigue, *Housing Act Unenforceable, Panel Told*, DALLAS MORNING NEWS, Nov. 14, 1985, at A1, A19.

¹²⁰ Walker v. HUD, 734 F. Supp. 1231 (N.D. Tex. 1989).

federally-subsidized housing in Dallas, forcing thousands of poor African American families to live in taxpayer-supported slums—epitomized by the 3,500-unit West Dallas public housing project.¹²¹ In 1987, the parties agreed to a settlement. The housing authority would renovate 832 apartments at the West Dallas project. The rest were to be demolished and replaced with Section 8 certificates that poor families could use to rent apartments in Dallas and several suburbs.¹²² That is until HUD Secretary Jack Kemp blew up the consent decree.

Before a packed news conference at the Loews Anatole Hotel in Dallas, Secretary Kemp said he committed \$65 million for the largest public housing redevelopment effort in the country: the renovation or construction of an additional 1,200 units at the West Dallas project.¹²³ “Like Nehemiah, I want to be a builder,” said Kemp, comparing himself to the biblical prophet who rebuilt the walls of Jerusalem. He said the plan represented a “new day in public housing,” one that would revitalize one of the city’s poorest and most violent neighborhoods.¹²⁴ I covered Kemp’s press conference. His announcement stunned me. Three-quarters of the units at the West Dallas project were vacant. U.S. District Court Judge Jerry Buchmeyer, who was presiding over *Walker v. HUD*, said the sprawling project—built ostensibly as a “solution” to the “Negro Housing Problem”—was in fact “a gigantic monument to segregation and neglect.”¹²⁵ If Kemp made good on his plan, the rebuilt project would house 2,000 African American families in the city’s poorest neighborhood—and its most polluted.¹²⁶ An abandoned lead smelter next door had saturated the soil in the project with lead particles for decades.¹²⁷ Implementation of the Kemp plan also would eliminate 1,200 Section 8 certificates African American families could use to rent

¹²¹ *Id.* at 1263–69 (Appendix B).

¹²² *Id.* at 1247–62 (Appendix A).

¹²³ Randy Lee Loftis & Craig Flournoy, *Public Housing, Private Dealing: Plan for W. Dallas Project Involved Secrecy, Trade-Off; Kemp Defends Actions*, DALLAS MORNING NEWS, May 10, 1993, at A1.

¹²⁴ *Id.*

¹²⁵ *Walker v. HUD*, 734 F. Supp. 1289, 1306 (N.D. Tex. 1989) (emphasis in original).

¹²⁶ Loftis & Flournoy, *Public Housing, Private Dealing*, *supra* note 123.

¹²⁷ *See id.*; Randy Lee Loftis & Craig Flournoy, *New Project, Old Problems: Segregation, Lead Taint \$67 Million Housing Plan, but Backers Defend Project as Good for W. Dallas*, DALLAS MORNING NEWS, May 9, 1993, at A1.

apartments of their choosing.¹²⁸ I began interviewing housing experts. They were appalled. “This is tragedy in the making,” said Dr. Gary Orfield, one of the country’s leading authorities on segregation and its social effects. “It is totally predictable that it will produce social isolation, inferior education and serve as a breeding ground for gangs.” He added, “The idea that it will redevelop the neighborhood is truly crackpot. . . . This is just madness.”¹²⁹ Dr. Douglas S. Massey and Dr. Nancy A. Denton were then researching what would become their classic work, *American Apartheid: Segregation and the Making of the Underclass*. When I asked Dr. Massey his opinion of the Kemp plan, he said: “It freezes the ghetto in concrete.”¹³⁰

Secretary Kemp had some prominent supporters. Dallas Mayor Steve Bartlett said HUD’s plan “will lead to good housing, to a safe environment (and) to freedom of choice.”¹³¹ Attorneys for the Justice Department “told Judge Buchmeyer in court papers that the plan would eliminate all vestiges of segregation in West Dallas.”¹³² HUD also had an expert witness, Kurt Wehbring in Portland, Oregon. In a memorandum to Wehbring, HUD attorneys said they wanted “court approval of our plan to retain 2,000 units.” To do this, the memo said, “we wish to have our arguments supported by expert testimony.”¹³³ Five months later, Wehbring’s firm, Sextant Consultants Inc., presented its conclusion: West Dallas should have 2,000 units of public housing. HUD paid Sextant \$330,000.¹³⁴ Wehbring did not ask West Dallas residents what they wanted. Nor did he ask anyone on the public housing waiting list. Dr. Richard Scotch, a sociology professor at the University of Texas at Dallas, did. He asked 261 families on the waiting list whether they wanted a Section 8 certificate or an apartment in a renovated West Dallas project. Eighty percent rejected the project.¹³⁵ The attorneys for the plaintiffs—Ms. Julian, Mr. Daniel, and Ms. Beshara—hired Dr. Scotch. They paid him \$2,600.¹³⁶ In an interview, Dr. Scotch said he was puzzled by HUD’s failure to ask the opinion of those most affected by

¹²⁸ See Loftis & Flournoy, *Public Housing, Private Dealing*, *supra* note 123; Loftis & Flournoy, *New Project, Old Problems*, *supra* note 127.

¹²⁹ Loftis & Flournoy, *New Project, Old Problems*, *supra* note 127.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ Flournoy & Loftis, *Public Housing, Private Dealing*, *supra* note 123.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* (“less than 1 percent of what the government paid Sextant”).

the redevelopment project: “If they really wanted to know what people wanted . . . they would have asked them.”¹³⁷

1. Judge Buchmeyer Orders HUD to Replace the Ghettos it Built in Dallas

The Dallas Morning News reported these and other findings in a series of stories in May 1993. Later that year, Henry Cisneros, who replaced Kemp as the head of HUD, scrapped his predecessor’s plan for a 2,000-unit West Dallas project. Instead, Secretary Cisneros proposed a 1,600-unit West Dallas project.¹³⁸ The plan dismayed attorneys for the plaintiffs. As they wrote, “The absurdity of the proposal was highlighted by a series in the Dallas Morning News on the proposal. West Dallas at the time was an EPA Superfund site for lead pollution from a lead smelter that still adjoined the proposed site for the 1,600 units.”¹³⁹ In 1994 and 1996, Judge Buchmeyer ruled that HUD purposefully violated the Fifth Amendment to the Constitution, Title VI of the 1964 Civil Rights Act, and the Fair Housing Act.¹⁴⁰ “HUD does have the Title VIII obligation to replace the ghettos of Dallas’ publicly assisted housing with truly integrated and balanced living patterns free from segregation and inequality,” Judge Buchmeyer wrote.¹⁴¹ However, the judge said that “based on the uncontested facts, HUD and its federal predecessors knowingly and willingly perpetuated and maintained racial segregation in DHA’s low-income housing programs.”¹⁴² Like Judge Justice, Judge

¹³⁷ *Id.* The author again wishes to express his deep appreciation to Ms. Julian, Mr. Daniel, and Ms. Beshara, the plaintiffs’ attorneys in *Walker v. HUD*. Their files documented in detail the decades-long effort by local and federal officials to erect and maintain a separate and unequal system of subsidized housing in Dallas. As in East Texas, I gained an invaluable understanding in what I learned and the questions I should ask.

¹³⁸ *Walker v. HUD*, DANIEL & BESHARA, P.C., <https://www.danielbesharalawfirm.com/walker-v-hud> [<https://perma.cc/JM7P-GCVU>] (last visited Dec. 30, 2018).

¹³⁹ *Id.*; see Randy Lee Loftis & Craig Flournoy, *W. Dallas Lead Project to be an EPA Priority: Superfund Plan to be Announced Today*, DALLAS MORNING NEWS, May 8, 1993, at A1.

¹⁴⁰ Findings of Fact and Conclusions of Law: HUD Motion to Modify Remedial Order Affecting HUD, *Walker v. HUD*, No. 85-CV-1210-R (N.D. Tex. June 12, 1996) (unreported decision).

¹⁴¹ *Id.* at 3–4.

¹⁴² *Id.* at 3.

Buchmeyer appointed a special master who would oversee new remedial orders issued in the case.¹⁴³ The results were nothing short of astonishing: approximately 9,900 new assisted units for poor minority families and the elderly; approximately \$22 million for the creation of housing opportunities in predominantly white areas of Dallas and its suburbs; HOPE VI funding for 950 units in the West Dallas project—the number set by the consent decree; \$94 million from Dallas for neighborhood equalization and economic development in the Black public housing project neighborhoods; HUD agreed to provide approximately \$10 million for mobility counseling; and Dallas agreed to provide \$2 million for the operation of a fair housing organization focused on the problems of low-income minority families.¹⁴⁴ According to an Urban Institute study published in 2000, “*Walker* is the largest desegregation settlement against a housing authority in the United States.”¹⁴⁵ Taken together, *Young v. Pierce* and *Walker v. HUD* represent civil rights litigation and judicial decision-making of the highest order matched in magnitude only by the federal government’s willful abdication of its statutory and regulatory responsibilities to enforce the nation’s fair housing laws.¹⁴⁶

F. *Robert Weaver on Title VIII: “There Wasn’t the Will to Enforce It”*

In East Texas, in Los Angeles, in Dallas, in cities and towns across the country, HUD failed to ensure African Americans were not

¹⁴³ Memorandum Opinion—*Walker I: DHA Violations of the Consent Decree and Appointment of a Special Master*, *Walker v. HUD*, 734 F. Supp. 1231 (1989); Remedial Order Affecting DHA, *Walker v. HUD*, No. 85-CV-1210-R (N.D. Tex. Feb. 7, 1995). A modified order was agreed to in 1997. Modified Remedial Order Affecting HUD, *Walker v. HUD*, No. 85-CV-1210-R (N.D. Tex. Dec. 5, 1997).

¹⁴⁴ *Walker v. HUD*, *supra* note 138.

¹⁴⁵ Susan J. Popkin, Elise Richer & Carla Herbig, *Baseline Case Study: Dallas, in*, URBAN INSTITUTE BASELINE ASSESSMENT OF PUBLIC HOUSING DESEGREGATION CASES 3-1, 3-10 (George Galaster & Malcolm Drewery eds., 2000), https://www.clearinghouse.net/chDocs/resources/caseStudy_GeorgeGalsteretal_1228063598.pdf [<https://perma.cc/42GH-BL4H>].

¹⁴⁶ Assessing HUD’s performance thirty years after Congress approved the Fair Housing Act, the distinguished constitutional legal scholar Florence Wagman Roisman said the record showed HUD would not address its own separate and unequal system of federally-subsidized housing unless forced to do so by private lawsuits. In her words, “The few desegregative steps HUD has taken generally have been motivated by civil rights suits filed against the Department.” Florence Wagman Roisman, *Long Overdue: Desegregation Litigation and Next Steps to End Discrimination and Segregation in the Public Housing and Section 8 Existing Housing Programs*, 4 CITYSCAPE 171, 172 (1999).

subjected to segregation and other forms of discrimination in taxpayer-funded housing. Indeed, the federal housing agency and several presidential administrations erected and continue to maintain a separate and unequal system of federally-subsidized housing in blatant violation of Title VI of the 1964 Civil Rights Act and the 1968 Fair Housing Act. Why have these officials not used their statutory and regulatory powers to enforce the nation's fair housing laws? While researching the *Separate and Unequal* series, I put that question to Robert Weaver, whose career in civil rights and housing then spanned fifty years. Mr. Weaver, the first secretary of HUD and the first African American to serve in a Cabinet-level position, said the Fair Housing Act provided the federal government with the tools to dismantle the ghettos that trapped millions of African Americans. "But those tools were never seriously enforced," he said. "The reason that it wasn't enforced to the degree that it could be enforced was because there wasn't the will to enforce it."¹⁴⁷

¹⁴⁷ Flournoy & Rodrigue, *Fair-Housing Failure*, *supra* note 75. Over the past three decades, the Low-Income Housing Tax Credit Program—administered by the U.S. Treasury Department and state housing finance agencies—replaced public housing as the nation's largest source of affordable housing. As with public housing, federal and local officials have used the tax credit program to create a separate and unequal system of low-income housing. See Florence Wagman Roisman, *Keeping the Promise: Ending Racial Discrimination and Segregation in Federally Financed Housing*, 48 *HOW. L.J.* 913, 926–28 (2005). Consider the two programs in Dallas. Of the city's 6,400 family public housing units in 1994, 95 percent were located in poor, minority areas, the result of what the U.S. Fifth Circuit Court of Appeals termed "a sordid tale of overt and covert racial discrimination and segregation." Brief for Respondent at 15, *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507 (2015) (No. 13-1371); *Walker v. City of Mesquite*, 169 F.3d 973, 976 n.4 (5th Cir. 1999), *cert. denied*, 528 U.S. 1131 (2000); see *Racially Segregated Dallas: Housing Segregation*, DANIEL & BESHARA, P.C., <https://www.danielbesharalawfirm.com/racially-segregated-dallas> [https://perma.cc/V42B-2TJY] (last visited Dec. 30, 2018). Of the approximately 17,400 family tax-credit apartments in Dallas in 2008, more than 92 percent were in low-income, minority areas, and many are plagued by high crime and environmental threats. See Brief for Respondent, *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507 (2015) (No. 13-1371).





The Dallas Morning News, David Woo

The lights at night cast a warm glow over the modern, well-appointed Angelus Plaza

housing project for the elderly in downtown Los Angeles.