

Housing and Race: The Continuing Crisis

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By **John Payton**

Editor's Note: These remarks were delivered by John Payton, President and Director Counsel of the NAACP Legal Defense and Educational Fund Monday to conference of the National Housing Law Project in Washington.

Yesterday was the official dedication of the Martin Luther King Memorial here in Washington. Some of you may have snuck away from this conference to be there. I was there. It was inspiring because the moral commitment of the civil rights movement is now center stage in at least part of our national culture.

But it was also challenging because we have a long way to go. We are, I hope, past the absurd claim that we are post racial. Nevertheless, we are in a space where issues of race and racism are met with skepticism. Housing is a good example of this. We read stories about how well off the black people are that live in Prince Georges County, not far from this conference. They have huge homes and high paying jobs. Their problems are the problems of upper middle class people who just happen to be black. Or we watch "The Wire" and see black people in Baltimore and wonder if they are victims of themselves. And the popular but defensive explanation of where we are today is that some of our problems related to race have become more complicated.



^[1]There is of course something to that thought, but sometimes that is used as an excuse to not address problems related to race. I think the reality is that many of our problems related to race were always very complicated, but official discrimination – laws that required or enforced racial inferiority – hid those complications. Do you know what I mean? Jim Crow laws required that people discriminate, but make no mistake, those laws were passed by white legislatures and enforced by white authorities on behalf of a society that denied racial equality as both a concept and a reality. Eliminating those laws did not end that deep-seated racism. Eliminating those laws brought that denial of equality, that denial of common humanity, into clear view.

I want to put housing discrimination into that context.

Sixty-five years ago, the Shelleys, an African-American family, decided to buy a house in a white St. Louis neighborhood. One of their soon-to-be neighbors, however, knew that the property the Shelley's had bought was subject to a restrictive covenant, explicitly barring the previous owners from selling to "people of the Negro or Mongolian Race."

It was a covenant that characterized the entire community. In effect, it was a community covenant. But understand the situation. White home owners could openly discriminate in not selling their homes to Black buyers; there was no fair housing act then. Those covenants were designed to prevent outlier white home owners from breaking ranks.

And so, the neighbor, Louis Kraemer, filed suit in state court to keep the Shelleys from taking possession of the property. Listen again. The Shelleys had purchased the property from a willing seller. It was a white neighbor, essentially on behalf of a white neighborhood, that sued to stop them from taking possession. So much for freedom of contract or even of property.

This is what I was referring to as deep-seated. Enforced by law; by courts. Eventually, the case made its way to the Missouri Supreme Court, and in a decision fully consistent with the jurisprudence of the day, the Court unanimously agreed to uphold the covenant, divesting title from the Shelleys and barring them from the home they had just purchased.

This set the stage for the Supreme Court's landmark 1948 decision in *Shelley v. Kraemer*, litigated by the Legal Defense Fund. In that case, the Supreme Court announced that courts could no longer enforce these racially restrictive covenants.

In the aftermath of the Supreme Court decision in *Shelley v. Kraemer* racial discrimination in housing remained lawful, but a covenant to require that discrimination was no longer enforceable. *That* is complicated.

The Fair Housing Act was not passed until 1968, in the aftermath of the assassination of Dr. Martin Luther King. Today, overt race discrimination in housing is illegal. So, too, are housing policies and practices that have unjustifiable discriminatory effects. But we continue to see the effects of systemic housing segregation and those effects continue to exert a pernicious influence. And that is not because the problem has become more complicated. It is because once we remove the layer of legalized discrimination or legally enforced discrimination we have to deal with how race operates in our society. That problem was always complicated and dynamic.

One obvious example: when previously stable white residential neighborhoods experience a modest influx of black families a dramatic phenomenon occurs – white flight. We now all know about tipping points and race. The effects are astonishing. Previously all white neighborhoods become black neighborhoods dramatically fast. It should surprise no one that the all-white neighborhood the Shelleys' moved into quickly became an all-black neighborhood. And, I would guess, a neighborhood whose property values fell.

The relationship between racial diversity and neighborhood stability – whether that is stability of racial composition or stability of property values – is dynamic and yes complicated.

Take another example. The case of Daphne Jones. A lifelong New Orleans resident, she survived the devastating Hurricane Katrina but her house did not. Louisiana, with HUD's approval, rolled out the largest federally-funded home rebuilding program in our nation's history—\$11 billion—to help homeowners rebuild. Yet Ms. Jones did not get nearly enough grant money to rebuild.

Why? The Road Home program, as it was called, was intended to put Katrina victims back into their homes as quickly as possible, but there was a huge problem in the way it distributed funds. The program's award formula calculated awards based on the lower of two figures: the pre-storm market value of the home or the cost to rebuild. And Ms. Jones, an African American, lived in the black Lower Ninth Ward. Her home's "pre-storm market value" was depressed because of the legacy of housing segregation: her house just wasn't worth as much as it would have been in a white neighborhood.

In fact, her "pre-storm market value" was lower than the cost to rebuild, and since the formula took the lower amount, she did not get enough to rebuild: The consequences of racial segregation impacting the property values in segregated black neighborhoods. Had Ms. Jones lived in the same exact house but in a white neighborhood, the grant she received would have been for thousands of dollars more. This reality was the result of the same forces I just discussed.

Thousands of African Americans in New Orleans were similarly affected. LDF and our co-counsel brought suit against both HUD and the state of Louisiana. As a result of our litigation, Ms. Jones and others like her were able to get the award that most white homeowners got—one based on the cost to repair her home.

Katrina's aftermath highlighted a number of critical racial issues in this country, but perhaps none more so than the issue of residential segregation. Katrina itself and the Road Home recovery effort shined a light on just how segregated we still are, even in spite of the tremendous progress we have made since Louis Kraemer filed his lawsuit against the Shelleys.

Here is a data point: In 1950 every major city in the United States was majority white. Atlanta, Detroit, Cleveland, Washington D.C., New Orleans. We have seen a dramatic shift in the populations of all of our major cities since then. Population shifts, business and jobs shifts, tax base shifts.

This is perhaps the most dramatic example of how dynamic we are as a society with respect to race. This seismic demographic shift happened right after and in response to *Brown v. Board of Education*. One of the results of this shift was that by the time there was any real effort to enforce *Brown – Swann* is decided in 1971 – by that time these population shifts had occurred. The facts on the ground had changed.

Just how segregated is our housing today? As recently as a few years ago, the average white person in a metropolitan area in this country lived in a neighborhood that was 80 percent white and only 7 percent black. That's not too much better than when *Shelley* was brought. Put another way, the average white American lives in a neighborhood that's about as white as the Nordic capitals of Norway and Sweden. By contrast, the typical African American lives in a neighborhood that is majority black.

As we saw with the Road Home program, this kind of segregation can have awful and varied effects.

We see the effect of residential segregation on even middle class or aspiring middle class African-American homeowners in the subprime loan and foreclosure crisis. If you are a minority, the mere fact that you live in a racially isolated neighborhood actually hinders your ability to buy a home and to stay in it. That's because black and Latino neighborhoods are often excluded from the best homeowners' insurance coverage and that means, of course, that you don't get to buy a house. As Seventh Circuit Judge Frank Easterbrook has recognized in a case challenging redlining by home insurance providers: "No insurance, no loan; no loan, no house; lack of insurance thus makes housing unavailable."

But even for African Americans who have managed to buy a home, their investment is not safe. More than half the subprime loans made during the height of the real estate bubble were for existing home loans.

This is today's story of Prince Georges County. A terrible story. Discriminatory subprime mortgages; that is, black people who were qualified for prime mortgagees being given subprime mortgages instead; a huge number of homes underwater; and with the deep recession, loss of income. Devastation. The subsequent foreclosure crisis decimated African-American wealth because black wealth is disproportionately comprised of home equity. A 2008 study by United for a Fair Economy estimated that the wealth loss for people of color due to the mortgage crisis was somewhere between \$164 billion and \$213 billion.

But the avalanche of events that led to unprecedented wealth loss has not fully run its course. Last year, according to the National Fair Housing Alliance, 2.9 million homeowners received default notices, lost their property at auction, or suffered bank repossessions. Because predatory lenders target black and brown communities and predatory subprime loans are more likely to end in foreclosure, subprime foreclosures have been disproportionately concentrated in poor black neighborhoods. This fact carries with it consequences not just for the individual homeowners affected, but for entire communities.

It's well-documented, and fairly obvious, that if you live next to a property that's been foreclosed on, then the value of your home decreases. That's true across all neighborhoods regardless of ethnicity or economic status. And what happens if you live next to an abandoned house? An empty house. What if there are several abandoned homes – unoccupied homes – on your block? You know the answer.

Adding insult to injury, a recent study by the National Fair Housing Alliance found that banks don't maintain foreclosed properties in black communities as well as those in white communities – compounding the foreclosure penalty.

Black people that own their homes still face significant racial discrimination. The Fair Housing Act has made that discrimination unlawful, but that in turn has merely revealed the substantial problems we have to address.

What about public housing? What about poor people of color?

Their options are much more limited.

As civil rights advocates, we must continue the fight to open up integrated and affordable housing opportunities for people of color. LDF has increasingly focused on pushing the federal government to use its unique enforcement abilities to address entrenched segregation. Under the Fair Housing Act, HUD, as well as public housing authorities and other federal grantees, not only have a duty to redress housing discrimination after it occurs, they also have a duty to use their authority proactively to affirmatively further fair housing and create integrated housing opportunities. Too often, however, government agencies at all levels have fallen short of fulfilling this particular duty and one of the civil rights community's primary goals should be to aggressively confront that issue.

We commend our friends at HUD for their recognition of the importance of “affirmatively encouraging integrated development” to create “a geography of opportunity,” but there is much more the federal government must do to make this goal a reality. On that front, LDF has joined many other civil rights organizations in advocating for the quick enactment of an affirmatively furthering fair housing regulation.

It bears emphasis, however, that the provision of more affordable housing is not the same thing as “affirmatively furthering fair housing.” A strong enforcement regulation would require HUD and federal grant recipients to consider residential integration and the fair housing effects of any new government action. Expanding access to the infrastructure of opportunity – quality schools, employment, health care services, transportation, and environmental protections – in all neighborhoods is a vital objective of federal policy, which LDF strongly supports.

But today HUD should not simply repeat old patterns of promoting community investment without an equally robust strategy for expanding housing opportunities for racial and ethnic minorities in non-minority and non-poor areas. HUD should not shy away from strong race-conscious approaches that encourage racial integration, and that open up opportunities for low income families in higher-opportunity areas.

As much as we would all like to see *all* neighborhoods, including neighborhoods that are now predominantly occupied by African Americans, become communities of opportunity, we must acknowledge that we have a very long way to go to assure that result, and the outcome is uncertain. There are inner-city neighborhoods in some of our older cities with large African American populations—places like Baltimore, Detroit, Cleveland, Newark, Philadelphia, St. Louis and others—where market driven investment is absent and has been for a long time.

The level of public investment that would be required to revitalize those neighborhoods is massive, and our nation has not been willing to make that level of investment in the past and is even less likely to do so in today's crisis budget environment.

This is not say we should give up the long-term hope that these communities can someday be revitalized. But people are living in those neighborhoods now, and each day they are exposed to environmental hazards and violence, suffer with failing schools, and experience shockingly disparate health outcomes and lives cut short.

We have to make sure that they have other options that offer a better quality of life and education for their children. And that requires expanding affordable housing opportunities in the high opportunity communities that for decades have been able to collect federal dollars while getting away with exclusionary housing policies. It requires that the federal government use its still massive financial leverage to push the nation's cities and local housing authorities to adhere to their fair housing obligations.

This is why the Westchester litigation, for example, is so important. As I'm sure all of you are aware, in a 2009 suit filed under the False Claims Act, a federal judge found, as a matter of law, that Westchester County had "utterly failed" to meet its affirmatively furthering fair housing obligations, and that Westchester had repeatedly lied to HUD about its fair housing activities.

You're probably also aware of Westchester's current public intransigence and resistance to correcting its behavior, in defiance of a court-approved consent decree. In order to make settlements and consent decrees like the one entered in Westchester meaningful, HUD must be prepared to join fair housing advocates to enforce consent decrees when they are violated. And HUD must get its own house in order. HUD can not exercise moral leadership over local governments unless it begins to take seriously its own duty to affirmatively furthering fair housing, and consider the fair housing and environmental justice implications of its own decisions and policies.

We are involved in a current case, *Thompson v. HUD* litigation in Baltimore, which illustrates the possibilities here. In January 2005, a federal district court held that HUD violated the Fair Housing Act by unfairly concentrating African-American public housing residents in the most impoverished, segregated areas of Baltimore City. Judge Marvin Garbis, found that HUD violated the Fair Housing Act by failing to desegregate public housing in Baltimore through an effective region-wide strategy. Judge Garbis did not mince words. He faulted HUD for treating Baltimore City as "an island reservation for use as a container for all of the poor of a contiguous region." In short, the federal government was illegally restricting the housing choices poor people could make and preventing them from being able to live closer to jobs, decent schools, and better neighborhoods – keeping them down when they are trying to move up.

Although the judge's decision on remedies is still pending, *Thompson* has already established a nationally recognized model for promoting integration. As the result of a partial consent decree that resolved some, but not all, of the issues in this case, 2,000 families have voluntarily chosen to move out of segregated Baltimore public housing or neighborhoods into what we call Communities of Opportunity throughout the Baltimore Region.

In their new neighborhoods, participants say they feel safer, healthier, less stressed, more motivated, and more confident in the future facing their children. Parents also report that their children are doing better in school and that their health has improved. To be sure, their financial and other struggles are not over. But as one participant said, she now sees a "path beyond poverty" for herself and her family.

We have proposed that the ultimate remedy in *Thompson* build upon the universally-acknowledged success of this mobility program, giving public housing residents the choice to

“communities of opportunity” as well as the resources, support, and access to schools, transportation, and health care that will be needed to guarantee that they benefit from the move.

Significantly, we have also proposed that HUD change the way it does business in the Baltimore region. We’ve asked that HUD actually affirmatively further fair housing as it is required to do by statute. Our hope is that this case can ultimately provide a model for bringing civil rights to the forefront of all HUD decision-making. Because this approach is entirely consistent with this Administration’s fair housing agenda, I am hopeful that very soon I will be able to report significant positive developments in this case. *Thompson* provides an opportunity to advance the sort of regional equity initiatives that the Administration, and all of us, wants to accomplish nationwide. Such action is long overdue.

Finally I want to mention a case that we brought as part of our criminal justice project. We have filed an action against New York City challenging the NYPD’s unlawful practice of “vertical sweeps” – stopping, searching and, often, arresting residents and guests of the New York City Housing Authority for trespassing.

These are mostly black and Latino residents and youth who are clearly denied the full enjoyment of their homes. Trespassing is the charge if a black kid, for example, cannot show identification or reason for being in a common place in public housing. Once they are arrested there is pressure to just plead out and walk away with a permanent record.

But this is a public housing case. These are people’s homes. Policing has to be consistent with the dignity and respect people are owed in their homes. It is about making public housing more hospitable to its residents. I mention this to point out how interrelated many of our issues are. Public housing has issues of health, or policing, of access to transportation, of access to jobs. Public housing requires thinking about all of those things.

There is certainly no shortage of work left for us to do here, and for the federal government to do. But every day we fight, we come closer to achieving real and lasting housing justice. Perhaps even more than when the Fair Housing Act was passed, communities in which Americans live, work, learn and play together across lines of difference are crucial to the future of our democracy, and to our success in an increasingly global economy. These are core issues in the fight to make us a just and inclusive democracy.

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