

Fair Housing In The United States

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Introduction

Throughout much of U.S. history, real estate agents and housing brokers have attempted to create racially segregated towns and cities. In doing this, they believed that they were keeping property values up and meeting the demands of the residents in these communities. The government's role concerning fair housing was constantly changing. At times, the government sought to create an atmosphere of equality in the housing market, while at other times it supported discrimination through Supreme Court decisions and the actions of the Federal Housing Administration. The changing opinions of the Federal Government concerning fair housing often led to the creation of weak and unenforceable policies to deal with discrimination. Since the Civil War, the Federal Government has passed various bills, acts, and executive orders concerning discrimination in the housing market. Racism and fear often caused court cases to be decided against minority groups in order to maintain the homogeneity of towns and cities. It was not until 1968, that the Federal Government passed the most inclusive piece of legislation concerning housing and racial discrimination. Although the Fair Housing Act of 1968 was a crucial part in helping put an end to residential segregation, its enforcement power was limited and did not fully end housing discrimination. After the Act was passed, many people remained victims of discrimination and had no way of fighting back against the system. It was not until the Fair Housing Amendments Act of 1988 that the government was willing to add strong enforcement mechanisms against discrimination in the housing market.

This paper will illustrate how Federal legislation has had only limited success in creating

equality in the housing market. My hypothesis is that these Federal Acts did not provide optimum conditions for integration, but provided only an opportunity for a few individuals to take action if they felt that were not given fair opportunities in the housing market. Many of these acts proved to be weak because the methods of enforcement were not clearly stated. Victims of discrimination often had nobody to turn to and remained helpless. Without enforcement mechanisms, discriminatory practices continued because there was no repercussion for one's action. Through both primary and secondary sources, this paper will show how wide spread housing discrimination is in the United States and on Long Island. It will trace the various acts and pieces of legislation passed by Congress, the Supreme Court, and the President to encourage equality in the housing market. This paper will shed light on the flaws of these acts and how they were unable to solve the issue of racial discrimination in the housing market.

Residential Segregation and Discrimination Prior to the 1960's

The Role of the Federal Government

In theory, the Civil War was fought to promote equality among the races in the United States. It ended slavery and the civilization that legally promoted the idea of superiority in terms of one's race. In April of 1866, Congress passed the Civil Right Bill. Although the President Andrew Johnson vetoed the Bill, Congress obtained the two-thirds majority to override the president's veto. The Civil Rights Bill of 1866 stated,

All Citizens of the United States shall have the same right in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

These Acts paved the way for equal housing for all Americans and convey real and personal property.

This Bill was found constitutional and was further enforced by the Thirteenth, Fourteenth, and Fifteenth Amendments, which were added to the United States Constitution. The Thirteenth Amendment ended slavery and prohibited private and public discrimination in the sale or rental of property.¹

The Civil Rights Bill and the Thirteenth Amendment contained two large weaknesses. First, discrimination was defined only in relation to race. This meant that people could still be discriminated against because of their national origin and religion. The second weakness was in the enforcement mechanisms of these acts. All conflicts were to be dealt with through private Civil Actions (Kemp 1986: 328). This left the Federal Government paralyzed and unable to take an active role in the interpretation of their acts.

The Supreme Court decision in the case of *Plessy v. Ferguson* (1896) did not bode well for the cause of integration. The case was brought forth by Plessy, a man of mixed ancestry, who was prosecuted for sitting in the all white car of a train. The decision made by the Supreme Court was that "separate but equal accommodations" are Constitutional. Justice Brown explained his decision by stating,

The object of the [Fourteenth] amendment was undoubtably to enforce the absolute equality of the two races before the law, but the nature of things it could not have been intended to abolish is distinction based upon color, or to enforce social, as distinguished from political equality, or commingling of the two races upon terms unsatisfactory to either (Hall 1996: 250).

¹ The 14th Amendment gave African Americans citizenship.

The 15th Amendment protected the voting rights given to African Americans after the Civil War.

This decision resulted in the philosophy that the Federal Government could not interfere with social segregation. This ruling allowed towns and cities to legally segregate public facilities as long as they believed that conditions were "equal" for both races.

In 1916 the Supreme Court made another landmark decision in the case of *Buchanan v. Warley*. This case was brought to the Supreme Court by the National Association for the Advancement of Colored People (NAACP). The NAACP was challenging municipal segregation ordinances that kept African Americans out of certain neighborhoods. *Buchanan v. Warley* questioned the constitutionality of the segregation ordinance instituted in Louisville, Kentucky. The court found segregation ordinances unconstitutional because it violated the Fourteenth Amendment, which protected the equality given to African Americans. This decision caused segregation ordinances to be unenforceable nationwide (Delaney 1993: 52).

The unconstitutionality of segregation ordinances made neighborhoods search for other tools that would allow them to legally deny homes to minority members. The decision of *Buchanan v. Warley* coincided with the emergence of racially restrictive covenants (Delaney 1993: 52). Covenants allowed a homeowner or developer to put restrictive clauses in their deeds and contracts. These contracts stipulated who would be allowed to rent or buy property. Many developers put racial covenants in their title deeds that denied African Americans the ability to purchase homes in suburbia. This became a new method for securing an area from migrating African Americans.

Migration and Housing Opportunities for African Americans

From 1900 to 1960 there was a mass migration of African Americans to central cities. In 1910, 73% of African Americans lived within rural areas. By 1960, 73% of African Americans had

taken up residence in urban areas (Kemp 1986: 332). This migration was mostly a south-north migration as African Americans attempted to escape the rural south for growing job opportunities in the industrial north. This migration coincided with another migration involving white-middle class families out of the central cities into the growing suburbs. As whites moved out of the central city areas and legislators worked to move their tax dollars from serving the central city, black ghettos were created. Characteristics of the ghetto included high crime rates, poor municipal services, and a poor education system. According to Kemp, "Individual economic resources are not felt to be the primary cause of suburbanization of white America and the ghettoization of black America" (Kemp 1986: 332). In reality, individual money or status did not get you a home where you desired, rather your opportunities were determined for you according to your race.

The Dissimilarly Indexes of Towns and Cities

Demographer Karl Taeuber researched and measured integration in towns and communities by using the Dissimilarly Index. The Dissimilarly Index is a method used to measure the degree of segregation by studying how spread out African Americans and whites are in a neighborhood. Under the Dissimilarly Index, "evenness is defined with respect to the racial composition of a city as a whole." If a city was 10% African American, then to be seen as 100% integrated, all of the neighborhoods that make up that city must also have a 10% African American population. If a neighborhood has more than a 10% African American population, then the excess African American population would have to move to an area which has less than 10% African population to create evenness. "The index of dissimilarity gives the percentage of blacks who would have to move to achieve an 'even' residential pattern - one where every neighborhood replicates the racial

composition of the city” (Massey 1996: 20). A score of 100 represents a totally segregated town. This is because, 100% of the African Americans would have to move in order for the town to have an equal distribution of African Americans. A Dissimilarly Index of zero would represent a town which is totally integrated.

Using census data, Taeuber calculated the Dissimilarly Index for the United States between 1940 and 1960. In 1940, the Dissimilarly Index for the U.S. was 85. In 1950, the Dissimilarly Index for the U.S. increased to 87, which meant that towns were becoming more segregated. The 1960's census showed a one point drop in the Dissimilarly Index, to 86 (Chandler 1973: 166). These numbers represented a very high degree of segregation in towns and cities across the United States.

The Role of the Federal Housing Administration

The government did not become directly involved in the United States housing market until 1934, when the Federal Housing Administration (FHA) was created. The Federal Housing Administration sought to assist people in buying homes by granting mortgages and loans. The attitude of the Federal Housing Administration during the 1930's and 1940's was extremely negative towards and created conditions conducive to segregation. From 1934, the FHA became involved in insuring houses. They refused to issue insurance to areas where land was sold to African Americans or Mexican Americans. "Uninsurable" land also included land owned by whites adjacent to land owned by African Americans. The FHA attacked private developers who proposed interracial housing projects. These developers were forced to deal with a variety of obstructions and delays set forth by the FHA (Chandler 1973: 161). Three years later, the FHA loan program was created. According to Massey and Denton, the FHA loan program "contributed to a decline of the

inner city by encouraging the selective out-migration of middle-class whites to the suburbs." In order to grant loans, the FHA was required to appraise insured properties and rate the neighborhood. A minority presence in a neighborhood often led to the denial of loans. This is because the FHA believed that in order for a property to retain a stable value, the property had to be inhabited by the same race. These regulations resulted in the majority of FHA loans going to white middle class suburbs (Massey:1996, 54).

The FHA thus continued discriminating against African-Americans by making housing uninsurable and unaffordable. This was especially true during the Roosevelt and Truman administrations. The FHA facilitated racially segregated cities by allowing the use of racially restrictive covenants and the granting of FHA loans and mortgages. One critic stated that the "FHA mortgage insurance program was 'the most effective master plan in American land use in history' for racial segregation"(*Eradicating Housing Discrimination* 1992: 572).

While, not all FHA members approved of this type of segregation in housing, the Assistant Commissioner of the FHA, W.J. Lockwood, stated that the FHA did not want to insure any housing project consisting of more than one race. He continued by saying that the FHA policy was "Separate for whites, nothing for blacks" (Chandler 1973: 161). In making this statement he was claiming that the goal of the FHA was to create a separate housing area for whites free of African American influence.

The Role of Financial Institutions

The severe effects of redlining practices have also kept African American from attaining homes in the suburbs. Redlining is a practice used by banking institutions to deny loans to borrowers

in specific geographical areas. This practice occurs when mortgage lenders and banks deny loans to people living in racially mixed urban areas (Andrews 1976: 813). Redlining strove to keep communities homogenous, while maintaining stable property values in affluent areas.

During the 1930's, as the nation was experiencing the Great Depression, the Federal Government attempted to adopt a series of programs aimed at increasing employment in the construction industry and making housing affordable to the American people. The Home Owner's Loan Corporation (HOLC) created by the Federal Government in 1933, provided funds for refinancing mortgages in danger of default and also granted low income loans to people who had lost their homes through foreclosure (Massey 1995: 51).

The HOLC created a rating system that was used to evaluate the risk of providing mortgages to people desiring to live in specific urban areas. The HOLC system was made up of four tiers. The first tier consisted of communities that were described as 'new, homogenous, and in demand in good times and bad'. These areas were usually occupied by 'American business and professional men' with their families. The second tier was made up of areas that had reached their peak but were desirable by the HOLC. These areas were expected to remain stable in both price and race in the upcoming years. The HOLC granted a majority of their mortgages to homes in communities within the top two tiers because they were homogenous and considered stable (Massey 1996: 51). The third tier consisted of communities that were racially mixed or were located near a community that was heterogeneous. The final tier was coded red and represented an area that would not be considered stable according to HOLC criteria. These areas were primarily occupied by African Americans and other minority groups. The HOLC rating procedure drastically undervalued older central city neighborhoods that were heterogeneous. A study on various Jewish communities illustrate the racial

fears associated with redlining. A Jewish area was considered in the second tier if it had a solid economic base. However, if the community consisted of a large working class Jewish population or was located near an African American settlement, the community would fall into the third tier. Mortgage lenders saw the third category as a risk because they 'were within such a low price or rent range as to attract an undesirable element' (Massey 1996: 52). It is clear that the HOLC believed that African Americans and other minority groups threatened the property values of homogenous communities. The HOLC thus became one of the first loan corporations to institutionalize redlining on a large scale and created the blueprints that would later be used by other private lending organizations to decide if mortgages could be granted in various areas (Massey 1996: 51).

Redlining increased with the creation of the Federal Housing Administration and the Veterans Administration. These loan programs played a large role in the rapid suburbanization of the United States after World War II. These two organizations using the blueprints for investments created by the HOLC put millions of dollars into the housing industry (Massey 1996: 51). Later in the 1930's and 1940's, private banks and lending institutions relied on the criteria established by the HOLC and continued the practice of redlining. HOLC 'residential security maps' were often circulated around lending institutions when deciding if the institution should invest in certain areas. The power and reputation associated with the HOLC allowed for the continued systematic practice of racial discrimination by banks and loan corporations (Massey 1996: 53).

The criteria established by the HOLC had some devastating effects on African Americans and other minority groups attempting to buy homes in urban areas. The problems associated with redlining extended beyond people being denied loans. Redlining led to decreasing property values, deterioration of communities, vacancy, and abandonment. Without money being invested into a

community, it becomes difficult for people to sell their homes, and as a result property values would fall. Through the HOLC, capital was being taken out of minority areas and redistributed into areas that officers believed would not contain African Americans in the future. (Massey 1996: 55). This created a cycle in which banks and investors decided whether the city will flourish or deteriorate.

In 1950, Rose Helper conducted a study on discrimination of African Americans in housing. She discovered that sixty-two percent of real estate agents felt that few or very few banks were willing to grant loans to African Americans. Fifty percent of the agents believed that banks would not make loans to African Americans. Fifty percent of the agents also confirmed that banks would not offer loans to people in areas that were either predominantly black, turning black, or had the possibility of allowing the entry of African Americans (Massey 1996: 51). This study illustrates how the criteria established by HOLC remained in use for several decades through private organizations.

In 1961, the Federal Home Loan Banking System regulated approximately 97% of the nation's savings and loan insurance. In providing assistance for appraisers of neighborhoods and homes, the Federal Home Loan Bank (FHLB) created a rating scale, which suggested lower appraisal values for homes in integrated areas. A survey of regulators from the Federal Home Loan Bank (FHLB) revealed that race did have a negative impact in neighborhood values and was considered by mortgage lenders when deciding to grant loans (Andrews 1976: 824). Redlining practices established by the HOLC, and later incorporated into the practices of private lending institutions, limited the mobility of African American by discrimination in lending. Also, redlining severely limited the capital flowing into areas and without this needed capital, communities were unable to upgrade and fix their failing infrastructure, thus leading to the deterioration of the conditions in many heterogeneous ethnic and racial areas.

Changing Attitudes and the Desire to Create Equal Housing , 1948-1960

White attitudes toward African Americans and fair housing changed slowly. In 1948, the Supreme Court decided in *Shelley v. Kraemer*, that racial covenants were legally unenforceable. After this decision, the FHA was forced to remove racial references and covenants from its underwriting manual. Unfortunately, it took another two years before the FHA actually took action and stopped insuring mortgages with racial covenants (Chandler 1973: 162). This decision by the Supreme Court paved the way for some changes in housing discrimination by allowing African Americans into towns and cities that had legally excluded them through the use of covenants.

The tone set for integration in housing was not established by the Federal Government, but rather was first set by state and local governments. In the 1950's a new moral intergrationist ideology was beginning to break through and state and local governments began passing laws banning discrimination by race or religion in public housing. These new local laws reinforced Federal Court Acts which were often not enforced. Many cities believed that their tax dollars should not be used in the creation of closed communities. Closed communities were communities which were off limits to people of a particular race or religion. Cities often banned the establishment of closed communities in areas where their taxes were used (Eley 1968: 4). Local towns and cities thus set the stage for fair housing and within a short time the Federal Government followed their lead.

In April 1957, the FHA began to work with state and local agencies to promote integration within communities. The first agreement made by the FHA was with the state of New York. The FHA agreed to withhold federal funds from any company or builder who was found guilty of discrimination (Chandler 1973: 163). By 1967, the FHA had agreements with 22 states and more than 40 cities. These areas adopted various fair housing laws, which covered different aspects of

discrimination in the private housing market (Eley 1968: 7). The FHA with the help of state and local governments changed their policies on discrimination in housing and tried for the first time to encourage integration.

The 1960's - The Government Takes Steps to Create Fair Housing

The 1960's brought forth sweeping social change and the idea of Civil Rights for African Americans. President John F. Kennedy was a proponent for equality and worked hard to create legislation for Civil Rights. In November 1962, President Kennedy passed Executive Order 11,063 which prohibited discrimination due to race, creed, and national origin. The Order was aimed at eliminating discrimination in the federal housing market. It became a predecessor of the 1968, Fair Housing Act. However, the Executive Order contained many weaknesses which led to ineffectiveness. One problem with the Executive Order was that it had little impact because it pertained to less than one percent of the nation's total housing supply (Chandler 1973: 172). The Order strongly focused on newly developed housing with FHA or VA mortgages and loans. Older complexes and projects under the FHA continued under the previous conditions. The third weakness in the Executive Order was that it did not "prohibit discrimination in conventional housing financed by mortgage-lending institutions whose deposits are insured by the Federal Government" (Chandler 1973: 172).

Many of the weaknesses in Kennedy's Executive Order were fixed by the 1964 Civil Rights Act. Title VI in the Civil Rights Act of 1964, extended Kennedy's Order by withholding Federal

funds from state, local and private agencies which practiced forms of discrimination. It was estimated that Title VI strengthened the Executive Order so that it applied to one-fifth of the housing market (Eley 1968: 8).

African Americans are Unable to Enter the Suburbs

The actions of the FHA, the President, the Supreme Court and Congress did not have a large impact on the integration of housing. Although these Acts made discrimination illegal, integration did not come easily. Many obstacles kept African Americans from being able to integrate into suburbia. Studies have shown that African Americans face residential segregation due to poverty, preference, and racial discrimination (Chandler 1973: 166).

Poverty and the unavailability of jobs were one reason for the extreme segregation that was sweeping the United States. In the New York area, between 1959-1967, a large job market was being created in the suburbs. Out of 990,000 new jobs that were created during this era, more than 75% of them were located outside of the central city (Chandler 1973: 170). White middle class families were able to move away from the central city and settle in the suburbs in order to be closer to the new job opportunities. Many African Americans, unable to enter the new workforce, were left isolated in the central city. During this period, African American men made only a fraction of the average salary of a white middle class man. This left him unable to afford a house in the suburbs. The 1968 Kerner Commission discovered that even if a minority member was able to rent or buy a home outside of the central city, they were likely to pay higher rents and receive less housing value for their dollar (Chandler 1973: 167). It was estimated that between 1960 and 1969, nine million whites migrated to the suburbs. In the same nine-year period, only 170,000 African Americans were

able to move into America's growing suburbs. The 1970 Census uncovered that only five percent of the 75.5 million people living in the suburbs were African Americans (Chandler1973: 170).

Even if an African American was able to get a job outside of the central city, the transportation costs to and from work often made the cost prohibitive. Minority groups were the least able to afford these high transportation costs from the city to the suburbs. These groups, therefore, sustained the highest unemployment rate (Dubofsky 1969: 153). As job opportunities were increasing rapidly during this period, many African Americans were unable to reap the benefits due to the inaccessibility of the growing suburbs.

The 1968 Fair Housing Act

The Fair Housing Act of 1968 took the largest step in order to stop segregation in the housing market. The act was part of the 1968 Civil Rights Act and Title VIII of this legislation was known as the Fair Housing Act. Prior to 1968, other bills calling for fair housing had been defeated in Congress by groups who did not believe in fair housing and integration. These special interest groups believed that an individual had control over his own property and that the federal government had no right to interfere with the use or selling of their own private property (Kemp 1986: 332). The first successful effort for fair housing was proposed by Walter Mondale in August of 1967. The proposal, known as S.1358 was to occur in three distinct stages, and would eventually cover the entire housing market. It would first effect federally assisted housing. Gradually, it would stretch to cover all multi-unit housing and finally cover all single family residences (Dubofsky 1969: 149). Proponents of the Act believed that fair housing was constitutional and needed to be strengthened

by a congressional act. These liberals felt that the goal of the Fair Housing Act was to create a situation in which a landlord, seller, or real estate agent must treat all customers equally. The seller should not be punished by citizens or other local groups if they sold to a minority group in a racially segregated area.

Members of Congress also felt that it was their duty to dispel myths on property values and give blacks an equal opportunity to gain adequate housing. Various studies were conducted to see the effects on property values in neighborhoods which were beginning to integrate. The study illustrated that property values in what were once all white neighborhoods did not decrease, and in more than 85% of the cities studied, property values increased with the addition of minority groups into the neighborhood (Dubofsky 1969: 154).

Opponents of the legislation took a different stance on equal housing opportunities. They claimed that "it was the right of the individual to control the disposal of his property" (Dubofsky 1969: 149). These congressional members believed that a congressional act deeming discrimination illegal was denying people their own individual rights concerning who they could sell their homes to. The conflict of ideas and philosophies slowed down the process of creating a Fair Housing Act that met the needs of both sides.

It was not until 11 April 1968 that Title VIII of the Civil Rights Act was approved. The Act prohibited discrimination in the housing market due to race, color, religion, or national origin. This Act stretched beyond federally funded housing and was able to reach private housing in the United States. It was estimated that Title VIII covered 80% of the nation's 70 million housing units (Chandler:1973, 174). Title VIII attacked the many biases which were used to perpetuate housing discrimination. The Fair Housing Act defines discrimination as:

- (1) The refusal, after making a bonafide offer, to negotiate on or sell or rent a dwelling on the basis of a person's race, color, religion, or national origin
- (2) A differentiation in the terms of sale or rental or in the services provided because of a person's race, color, religion, or national origin
- (3) Telling anyone that a dwelling is not available for inspection, sale, or rental because of a person's race, color, religion, or national origin
- (4) An advertisement indicating a preference based on race, color, religion, or national origin
- (5) The practice of "blockbusting" which commonly consists of a profiteer inducing people to sell because of the "threat" of blacks moving into a neighborhood (Dubofsky 1969: 162)

The Fair Housing Act was enacted in three stages. On the date of its adoption discrimination in the sale or rental of houses owned or operated by the Federal Government was prohibited. Under this stage, it became illegal to deny loans or grants due to race, color, religion, or national origin.

The second stage was enacted on January 1, 1969. This stage encompassed discrimination in the rental or sale of multi-unit housing. Finally on January 1, 1970, the coverage of the Fair Housing Act included all single family dwellings. This meant that discrimination would be illegal in the sale of a house through a real-estate broker or in advertisements (Dubofsky 1969: 161).

Effects of the Fair Housing Act

Steering

The Fair Housing Act made an effort to stop actions and tactics used by real estate brokers which were discriminatory and played upon people's racist fears. Steering was a tactic used by real estate agents to discriminate and make a profit by playing the race card in various communities.

Steering was 'probably the single most widely practiced form of racial discrimination in the [housing] sales market' (Kemp 1986: 338). Steering involved a real estate broker directing a buyer towards or away from a certain community depending upon his or her race. Sections 3604 (a) and 3604 (b) of the Fair Housing Act prohibited steering in the housing market.

Blockbusting

Blockbusting is a real estate tactic which uses a communities' prejudice to sell houses and make a profit. A blockbuster will go to a community in or near a transitional area in which minorities are moving into. The blockbuster convinces people in the area, that property values will decrease with the arrival of minorities. Blockbusters also tell the homeowners that when minorities move into an area it is likely that municipal services will decrease and crime rates will increase. This often makes property owners sell their home at reduced prices to the blockbuster because of fear. The blockbuster makes a profit by buying the home himself and selling it at a higher rate (Kemp 1986: 334).

Tipping

Tipping is a process that occurs in towns where steering and blockbusting is practiced. It occurs when whites depart from neighborhoods once the minority population reaches a certain point. Blockbusters often intentionally brought communities to their 'tipping' point by bringing minority groups into a neighborhood. At this point, there is an irreversible emigration of whites out of the community and influx of blacks into that community. Real estate agents then have the power to steer whites away from certain areas in which they are hoping to create a tipping point and induce panic

selling (Kemp 1986: 334).

Advertising

Title VIII of the Civil Right Act helped put an end to blatant discrimination by real estate agents. The Fair Housing Act made it illegal to blockbuster, steer, and deliberately bring a town to its tipping points. Another attack made in the Fair Housing Act was against discrimination in advertisements. In the early 1960's discriminatory practices in advertising flourished. Available housing was advertised and often indicated that a home was "a white home," meaning that it was only available to whites (Wells 1988: 813). Congress sought to address fair housing on many different levels in order to be sure that there would be little room for loopholes conducive to discriminatory behavior.

Section 3604c of the 1968 Fair Housing Act was targeted at ending the use of discriminatory housing campaigns. The Section stated that it was unlawful to,

Make, print, or publish, or cause or be made printed or published any notice, statement, or advertisement, with the respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, or national origin, or any intention to make any such preferences, limitation, or discrimination.

The goal of Section 3604c was to eliminate housing advertisements suggesting a preference for a specific race or ethnicity for a community (Rubin 1988: 165).

The African American population in the United States remains heavily underrepresented in the advertising media. Many advertising agencies avoid using African American models because they believe that whites may react adversely to the advertising campaign. The race of models in a

campaign impacts the recipient's reaction to the advertisements therefore advertisers attempting to target a specific group will choose models that best represent their target audience. Many times African Americans are not fully represented in the media because they do not make up a large percentage of a campaign's target audience. In 1992, a survey conducted by the New York City Consumer Affairs Commission found that only 5.2% of 2,108 advertisements studied contained African American models (Smith 1993: 1537).

The language of section 3604c describing discrimination in housing campaigns is broad so that plaintiffs are not limited in what they must prove to the court. The language also allows judges to interpret the Act in their own manner. Section 3604c claims that any advertisement which 'indicates' a racial preference is prohibited. The phrasing in the section increases the number of advertisements that can be brought to court. The broad outline for Section 3604c assists in the fulfilling of the Fair Housing Act by making all types of housing advertisements fall under its broad umbrella (Rubin 1988: 170).

Courts use the 'ordinary reader' approach when assessing if advertisements are of a discriminatory nature. Under the ordinary reader approach, plaintiffs must prove that the advertisement in question 'suggests to an ordinary reader that a particular race is preferred or dispreferred' (Smith 1993: 1523). The plaintiff under the ordinary reader approach is described as 'nothing more or nothing less, then the common law's reasonable man: that familiar creature by whose standards of human conduct had been judged for by centuries' (Smith 1993: 1526). This definition of an ordinary reader allows any person to bring a case of discrimination in home advertising to court.

The most common way in which discrimination in advertising takes place is by the

suggesting of a racial preference for housing through the use of specific human models. Most cases brought forward dealing with Section 3604c concern the use of all white models in housing advertisements. Previous court judges have stated that all white human models only send a discriminatory message when the advertisements feature a large number of models and fail to include African Americans and other minority groups. Cases brought to court featuring a single or small number of white models are decided according to the judge's own interpretation of Section 3604c (Smith 1993: 1530).

Discrimination in advertising is still being challenged in courtrooms today. The broad definition of Section 3604c has often created conflicting decisions concerning racial discrimination in advertising. The establishment of such a broad definition allows many cases to be brought to courts concerning the issue of discrimination in advertisements. With many cases being brought to court, advertising agencies are becoming careful of the way they present their campaigns.

Redlining

The 1965 Civil Rights Act and section 804 of the Fair Housing Act targeted federal and private lending institutions and made it illegal to use race as a determining factor when deciding to invest in various areas. Nevertheless, in the years after the Fair Housing Act, redlining still remains a problem in many communities.

Beginning in 1964, the Federal Government took active steps in eliminating discrimination in Federal financial programs. Section 601 of the Civil Rights Act stated that "no person . . . shall on the grounds of race be subjected to discrimination under any program . . . [including] receiving federal financial assistance"(Andrews 1976: 834). The Civil Rights Act began paving the way for

equality in federal programs. The act attempted to secure equality in all facets of American society.

The 1968 Fair Housing Act was written specifically to stop discriminatory practices in the housing market. Real estate agents, bankers and members of mortgage brokers were targeted under the Act. The Act made it illegal to deny people loans and mortgages on the basis of race and ethnicity. Section 804(a) made it illegal 'refuse to sell or rent . . . or otherwise make unavailable a dwelling to any person because of race . . . '. This section focused on granting all people the opportunity to enter homogenous communities without being denied rental or ownership of a home based on race, ethnicity, or religion. Section 805 made it illegal for 'Any bank or building and loan associate, to deny a loan . . . to a person applying . . . because of the race . . . of such person . . . or of the present or prospective owners . . . or occupants of the dwelling or dwellings in relation to which such loan . . . is to be made or given . . . ' (Andrews 1976: 834). Section 805 was specifically targeting the redlining practices of real estate agents, banks, and mortgage brokers. This section of the Fair Housing Act reinforced and expanded Section 601 of the Civil Rights Act by eliminating discrimination on all types of financial assistance. The elimination of redlining was also a goal of the Federal Home Loan Bank Board. The Board prohibited member institutions from denying loans because of race. The Federal Home Loan Bank Board stated, 'because of the race . . . of an applicant for any such loan . . . or the present or perspective owners . . . or occupant of other dwellings in the vicinity of the dwelling . . . in relation to which such loan . . . is to be made' (Andrews 1976: 834).

Problems with the Fair Housing Act

The Fair Housing Act was not a perfect remedy to housing discrimination. There were many loopholes which allowed real estate agents and homeowners to take discriminatory actions when selling their homes. If an owner of a home or rental space sold their own property without the assistance of a real estate broker or salesman, they would not be bound to the law established by Congress (Chandler 1973: 174). Another loophole in the Fair Housing Act was that it did not apply to buildings which rented fewer than four units, one of which was occupied by the owner (Kemp 1986: 329). Other loopholes included houses operated by religious groups and 'lodgings' operated by private institutions (Chandler 1973: 174). Thus, while Title VIII became the most effective Act concerning fair housing, its flaws allowed for some cases of discrimination in housing to continue.

The Lack of Enforcement of the Fair Housing Act

Enforcement of the Fair Housing Act was left up to the Department of Housing and Urban Development (HUD). The secretary of the department was to appoint an assistant secretary whose job was to administer the law and perform studies on discrimination (Dubofsky 1969: 162). An individual who wished to take action against discriminatory practices in fair housing was to submit a complaint to the Department of Housing and Urban Development. HUD would then decide if the matter would best be dealt with through state or local agencies. They would then refer the complaint to the state or local agencies for an investigation. If these agencies did not begin investigating within thirty days, the matter could be returned to HUD for further investigation. The goal of HUD or the state and local agencies was to investigate the claim and seek to conciliate and resolve the allegation

in any on going problems (Kemp 1986: 330). HUD became the primary enforcer of Title VIII of the Fair Housing Act and often experienced problems with this enforcement role. The role of HUD was weakened in the process of getting Title VIII passed in order to appease the opponents of the Fair Housing Act. According to Title VIII, complainants were only able to sue for up to \$1,000 in damages. In addition those suing were forced to pay the legal fees. Many victims of discrimination were unable to provide attorney fees and hence, were unable to press charges (Denton 1993: 189). The limits on damage awards coupled with attorney fees discouraged utilization of the law. There was also a lack of public enforcement at the state and local levels (Krushner 1988: 354). Another weakness in the Fair Housing Act was that HUD was limited on the compensation that they were allowed to reward. This further discouraged individuals from pressing charges because their attorney fees were likely to be larger then the amount that they were rewarded.

Differences in the way the Fair Housing Act was dealt with at different state and local governments promoted problems. According to Massey and Denton (1993:197), "depending on the state in which the alleged violation occurred, enforcement was handled by a regional HUD office, a state or local office with stronger enforcement powers than HUD, or a poorly funded and badly managed agency with a 'substantially equivalent' statue but little interest in enforcement". States and local governments created different interpretations of Title VIII and often created their own limited forms of punishment for those who did practice discrimination in housing.

The Department of Housing and Urban Development was unable to enforce a solution in many cases. If it was reveled that a victim had been subject to discrimination in the housing market, HUD was unable to enforce the penalty. The only form of action that HUD could take was to hand the decision over to the Justice Department for possible prosecution, however, the Justice

Department had little leverage in handling the case. They were only able to act if there was a 'pattern of practice' or if the discrimination was an issue of 'general importance' (Massey 1993: 197). It was hard to claim that the discrimination against a single person was an act of general importance, so most people were forced to prove that discrimination they experienced was a 'pattern of practice'. This lack of enforcement ability was due to the wording within Title VIII and the unclear of forms of action that could be taken within the act.

One final problem with the Fair Housing Act was that discrimination was often difficult to prove in a court room. It was hard to prove that a person had been discriminated against because it was a person against person attack. Cases were torn apart in order to find the underlying cause of the case to make sure it did have a basis on discrimination. All of this legal red tape discouraged people from taking action against those who had discriminated against them. According to Massey and Denton, ". . . when discrimination could be documented, the Act's reliance on individual lawsuits provided a piecemeal attack on a deeply ingrained, institutional process" (Massey 1993: 198).

In 1969, the Department of Housing and Urban Development received 979 complaints of fair housing violations. A year later the number of complaints had risen to 1,025. Within two years of the passing of Title VIII the department processed 1,570 complaints for discrimination in housing (Chandler 1973: 168). However, between 1968 and 1993 only four hundred fair housing cases had been decided (Massey 1993: 200). This is a very small number considering that within the first year of the Fair Housing Act, more than twice that many complaints were filed. It is estimated that there are more than two million incidents of housing discrimination each year (Massey 1993: 200). The Department of Housing and Urban Development along with state and local

governments have had little power and authority in solving cases of discrimination. This led to many cases not being resolved or damages not being paid to the rightful party.

The Fair Housing Act did have some successes. The home ownership rates for African Americans increased from 42% to 44% between 1970 and 1975. However, this increase was still significantly less than the 67% rate of home ownership for whites (Bullard 1984: 344).

African Americans faced many challenges in trying to gain a home outside of central cities. Affordability was one of the largest factors for African Americans not being able to move into the suburbs. In 1969, the median household income for whites was \$9,794. This is significantly more than the median incomes for blacks which was only \$6,191. It was estimated that 39% of minority families had incomes less than \$5,000. Only 18% of whites experienced the same conditions of poverty (Chandler: 1973, 166). Without equal pay in the job market, it was hard to create equality in towns and cities.

Redlining

Although Redlining has been declared illegal, it has not completely ended. One problem is that redlining can be difficult to prove. Currently courts are using statistics of individual real estate agents, banks, and mortgage lenders to discover a pattern of redlining. In the 1976, case of *The United States v. Northside Realty Associates, Inc.*, the Fifth Circuit Court took into consideration the previous record of the defendant before reaching their decision. Since the passage of the Fair Housing Act, the defendant had sold 3,000 homes and not one was sold to an African American. The Court stated that 'figures of this kind, while not necessarily satisfying the whole case, have

critical, if not decisive significance' (Andrews 1976: 838). In order to prove that an agent was discriminatory by not granting a mortgage, a plaintiff must often prove a record of discrimination of the behalf of the defendant.

Redlining can also be practiced if it is done with the sole purpose of maintaining stable property values. The Supreme Court ruled in *Griggs v. Duke Power Company* that redlining can be legal if it is done to protect investment in areas, known as a 'business necessity'. The Court commented that lenders may be able to practice redlining if:

the business purpose must be sufficiently compelling to override any racial impact; the challenged practice must effectively carry out the business purpose it is alleged to serve; and there must be available no acceptable alternative policies or practices which would better accomplish the practice advanced, or accomplish it equally well to a lesser differential racial impact

Lenders must prove that their actions are 'necessary to the safe and efficient operation of the business'. Lenders must also establish that there may be an increased risk and show that this risk will affect the community and their own business (Andrews 1976: 841). Lenders cannot always use 'business necessity' as a reason for disinvestment in areas. Mortgage brokers can be liable if their past practices have led to the use of redlining through 'business necessity' (Andrews 1976: 815).

Although at times it may be difficult to prove 'business necessity' practices, this loophole may allow lenders to practice discrimination in order to protect their own businesses.

The practice of redlining continues today even though it has been deemed illegal by the Civil Rights Act, the Fair Housing Act, and the Federal Home Loan Board. One problem with redlining is that proving it can be difficult. Cases brought up against lenders and banks concerning redlining must be part of a distinct pattern. Plaintiffs must often prove a history of redlining had taken place.

Defendants may be held unaccountable occasionally because their actions were conducted within the parameters of 'business necessity'. The complicated criteria in which redlining is evaluated by makes it hard to prove that agencies are still redlining.

Integration Maintenance Programs

Integration Maintenance Programs were another action which kept African Americans from entering certain communities. The intent of Integration Maintenance was not to segregate cities, but rather, to protect them from becoming part of the expanding ghetto. The idea behind Integration Maintenance was to keep neighborhoods from reaching their tipping point and causing white flight. With this in mind, many minority members were prohibited from entering a town fearing that each minority member would bring a community closer to its tipping point. Some lower courts have upheld the processes of Integration Maintenance, claiming that it is "acceptable to give up individual freedoms in order to do the greatest good for the greatest number" (Kemp 1986: 341). However, many people believe that the Integration Maintenance is unconstitutional. One critic of the Integration Maintenance program is Smolla who believes the plan goes against the Constitutional Rights of African Americans. Smolla claims that Integration Maintenance ". . . attempts to adjust to racial balance by putting restraints on black entry into a neighborhood, which denied blacks a choice as concerns ethnic identity while promoting assimilation into white culture" (Kemp 1986: 341). Opponents of this action believe that in limiting the amount of minority members into a community, it makes the minority give up their own culture in order to conform to the majority.

Continued Discrimination After the 1968 Fair Housing Act

As the preceding sections clearly show, there was widespread avoidance of various provisions in the Fair Housing Act. This is backed by a 1976 study conducted by the Department of Housing and Urban Development concerning fair housing in more than 40 metropolitan cities. The study found that discrimination was still widely practiced, ten years after Title VIII was passed. The study found that 72% of African Americans seeking to rent homes experienced discrimination. That number was significantly higher than the 48% of African Americans experiencing discrimination, who were potential home buyers (Bullard 1984: 346). It seems as if people owning rental space feared a decrease in property value if they rented space to an African American. Renters also feared that they would have trouble attracting other renters if an African American lived in their apartment buildings. In 1979, HUD also brought to light discriminatory actions practiced by rental and sales agents. The study uncovered that 27% of rental agents and 15% of sales agents practiced discrimination in the selling and buying of a home (Bullard 1984: 346). The results of this study illustrated the lack of enforcement power of the Fair Housing Act.

The Department of Housing and Urban Development along with state and local agencies were often ineffective in stopping cases of discrimination in the housing market. In 1979, the U.S. Commission on Civil rights gave the following statement concerning the status of Title VIII of the Fair Housing Act:

Title VII of the Civil Rights Act of 1968, the primary Federal fair housing law, does not provide effective enforcement mechanisms for ensuring fair housing. Those federal departments and agencies charged with ensuring equal housing opportunity have not adequately carried out this duty. The government's appropriations in support of fair housing have been inadequate to meet the Nation's needs in this critical area of civil rights enforcement (Bullard 1984: 346).

This statement confirmed the feelings that the Fair Housing Act had no power of enforcement. This led to the department being unable to reach its goal to create equal housing opportunities for all people, regardless of race.

The 1988 Fair Housing Amendment Act

Throughout the 1980's Congress tried hard to amend the Fair Housing Act. They desired to make Title VIII stronger by creating better enforcement mechanisms and establishing harsher punishment for those who practiced discrimination. Opposition was met in the early 1980's by the Republican Senate and amending the bill was put on hold until the Democrats regained the Senate (Massey 1996: 211).

The chance to amend the Title VIII came in 1987, as the Democrats regained power in the Senate. In 1987, Fair Housing Act Amendment was introduced to the House of Representatives and the Senate. It was passed by the House of Representative in June of 1988. Within twelve days the bill was slightly altered in the Senate and passed by a landslide. President Reagan sought to veto the bill, however he did not, because he knew that Congress could easily override his veto (Denton 1996: 211). After twenty years, Title VIII was finally being strengthened and would be more capable to stop discrimination.

The Fair Housing Amendments Act strengthened the role of The Department of Housing and Urban Development. HUD Secretaries were given the ability to do their own investigations without worrying about private suits. Another action that HUD was allowed to take was to file complaints

with the Attorney General, who was forced to deal with each single case quickly and efficiently.

The most significant change to HUD was that they became required to try each and every case before a judge. The judges in these cases were granted the ability to award higher monetary awards to the plaintiff. The higher awards made it worth it for minority members to press charges against real estate agents and brokers (Denton 1996: 211). The empowerment of HUD made housing discrimination a crime with larger punishments and stronger repercussions.

Damages for victims found guilty of being discriminated against was also increased with the 1988 Fair Housing Act Amendment. Civil fines in a housing discrimination case could reach up to \$10,000 for the first violation. Attorney Generals were given the ability to seek a penalty of \$50,000 for the offence of a 'pattern and practice case' and fines could reach as much as \$100,000 for continuous violations (Denton 1996: 210). The increased fines for offences made real estate agents and brokers more fearful of being caught using discrimination. Under the new regulation, being slapped with a discrimination case could financially destroy an entire real estate agency.

Some Preliminary Conclusions of the Effects of the Fair Housing Act on Three Communities on Long Island

In a study of three Long Island towns, Hempstead, Freeport, and Garden City, we can see various effects of the 1968 Fair Housing Act. These three towns are considered lower to upper middle-class communities on Long Island. By analyzing New York State Census Data, we can uncover the percentages of the population that owns and rents housing units. This data can be further broken down to discover the racial composition of people who rent and own housing units. In

compiling these pieces of data, some effects of the Fair Housing Act and its implications on Long Island will be uncovered. Census data, however, provides a limited amount of information. The data does not always give the researcher the reasons for the shift in population and the factors that cause homeowners to sell their homes. According to the data, the direct effects of the 1968 Fair Housing Act are not one hundred percent conclusive.

Hempstead experienced a large increase in their African American population between 1950 and 1960. In 1940, African Americans made up eight percent of the Hempstead population. One decade later, African Americans made up more than twenty-two percent of the population. Since 1960, the African American population of Hempstead has been greatly increasing. Compared to other communities on Long Island, the percentage of African Americans in the Hempstead community was large before the introduction of the Fair Housing Act.

By analyzing the data, there is evidence of whites leaving the community of Hempstead. In 1970, the total percentage of African Americans in the community was thirty-five percent. By 1980, African Americans made up more than fifty percent of the community and according to the 1990 New York State Census, African Americans currently make up more than fifty-nine percent of the population. The rapidly increasing number of African Americans in the Hempstead community makes me believe that Hempstead may be experiencing a large amount of white flight. This will have a large impact on the future of the community.

To analyze the effects of the Fair Housing Act, researchers must look at the shift in home ownership in the community. In Hempstead in 1960, there were 10,874 housing units. Of that number, homeowners occupied 6,232 of the units. Of the owner occupied housing units, African Americans owned only sixteen percent. Caucasians predominantly occupied the rental units in 1960

and African Americans rented only eighteen percent of the houses in Hempstead. The analysis of the 1970 housing census could not provide a true picture of the effects of the Fair Housing Act because the Act was put into effect only one year prior to the census. Therefore, the best data to analyze the change in race and population would be the 1980 housing data.

The New York Census Data of 1980 provides the best insight into the possible effects of the Fair Housing Act. Between 1960 and 1980, the white population of Hempstead had decreased by almost 30%. Due to this white flight, homeownership in by African Americans has increased. In 1980, African Americans had ownership of more than fifty-two percent of the housing units in Hempstead. The rental of housing by African Americans also increased significantly. African Americans rented approximately forty-eight percent of the rental units. The rest of the units are rented out to whites and Hispanics.

Housing tracts in Hempstead provide a greater understanding of the ownership and rental rates of housing. In Hempstead, some tracts are integrated, while in the majority of the tracts, a single race occupies the area. It appears that while white flight has occurred in certain housing tracts, while other tracts maintain a predominantly white population.

Over the last forty years, Hempstead has experienced a radical transformation in terms of its racial population. The white population has decreased over time and the African American population is steadily growing. Home ownership among blacks has significantly increased in certain tracts of the community since 1960. Some of this may be attributed to the Fair Housing Act along with the increasing number of African Americans receiving loans and mortgages to buy homes.

Freeport is a community very different from Hempstead. Freeport is a more ethnically diverse community with a smaller African American population. Currently, African Americans

make up thirty-one percent of the community's total population. A large portion of this increase has taken place since 1960. In 1960, African Americans made up only seven percent of the total population. By 1970, African Americans accounted for more than eighteen percent of the total population.

Since 1960, African Americans in Freeport have increased their rates of home ownership and their ability to rent housing in the community. Before the Fair Housing Act, whites owned more than ninety-seven percent of homes in the community, while African Americans owned only two percent. During this period, African Americans owned and occupied 205 houses in a community consisting of 34,374 people. African Americans in Freeport had a higher rate of occupying rental homes compared to their rate of home ownership. African Americans in the area rented out more than ten percent of the rental units.

Twenty years later, the home ownership of minority groups in Freeport has significantly increased. According to the 1980 New York State Census Data, African Americans own twenty-four percent of the owner occupied housing units. The data also reveals that people of Spanish origins own five percent of the homes owned in Freeport. The shift in the racial composition of home ownership in Freeport may reveal that the Fair Housing Act has assisted minority groups in gaining loans and mortgages needed to buy homes. Freeport has not experienced a great amount of white flight in their community. Rentals of housing units to African Americans and other minority groups have also increased since the enactment of the 1968 Fair Housing Act. Although whites still maintain the majority of rental units, African Americans have increased their rental of housing units in Freeport to twenty-three percent.

Freeport has become more ethnically and racially diverse since the passage of the 1968 Fair

Housing Act. Although some of Freeport's housing tracts show slight segregation in the village, the overall effect is that the community is becoming more integrated. The large increases in home ownership and rental occupancies over the last thirty years brings me to the conclusion that the Fair Housing Act has played a role in the integration of Freeport.

Garden City is an upper-middle class, community on Long Island. Since 1940, the African American population of Garden City has been very small. In 1930, the population of Garden City consisted of 7,180 people. Only three percent of the population was African American. In 1960, the African American population of Garden City fell to 0.8%. In 1980, the African American population remained less than one percent. In 1980, Garden City had 6,350 owners occupied housing units out of 7,146 housing units. African Americans own only four of these homes, while one of the 796 rental units was rented to an African American family.

According to this New York State Census Data, the 1968 Fair Housing Act had done little to nothing for African Americans seeking housing in Garden City. Home ownership among African Americans in Garden City is very low. Garden City represents a community that is very racially homogeneous, and there is no evidence of a trend altering the racial make up.

All three case studies provide different outcomes, which may be associated to the enactment of the Fair Housing Act. Hempstead is currently experiencing a large portion of African American home ownership, while white flight is taking place around them. Freeport is an example that the Fair Housing Act is allowing minorities to move into communities in greater numbers. Finally, a city such as Garden City has managed to become totally segregated and not much has changed since the passing of the Fair Housing Act. The low percentages of African American home ownership and rental space leads me to believe that the Fair Housing Act did not affect Garden City in any way.

These three communities show that not all communities reacted the same way to the 1986 Fair Housing Act.

Conclusion

As this paper has argued, despite Federal intervention to prevent discrimination in housing, problems continue. As late as 1997, 90% of HUD's total complaints rested on the basis of race. It is thus incorrect to say that previous laws, acts, and legislation have stopped discrimination in the housing market. It is safe to say these laws have only accomplished laying the groundwork to stop discrimination. It is up to citizens, real estate agents, and housing brokers to report instances of discrimination to agencies equipped to deal with these problems. The actions of officials will assist in putting an end to housing discrimination.

Discrimination in housing has been a problem that has plagued the Federal Government for over a century. Various Legislative attempts to create fair housing were often weak because they were forced to appease both opponents and proponents of fair housing. Their ineffectualness was also brought on by poor enforcement mechanisms. Decisions made by local city courts were likely to be influenced by the attitudes toward discrimination in the town. It was not until the Fair Housing Act of 1968, that the Federal Government made discrimination in the housing market a primary concern. Title VIII clearly defined the role of the government and governmental agencies concerning fair housing proceedings. It established HUD to monitor fair housing and provide a legal course of action for those who had been discriminated against. The 1988 Fair Housing Amendment Act further strengthened the role of government in the housing market.

This paper has addressed the various actions taken by the United States Federal Government to eliminate discrimination in the housing market. The various bills, acts, and laws discussed have attempted to curb instances of racial discrimination. However, through clauses, loopholes, and specific regulations, many of these acts have allowed for the continuation of racial segregation in towns and communities.

Communities on Long Island responded differently to the passage of the 1968 Fair Housing Act. In communities such as Hempstead and Garden City, the Act was unable to fulfill its goal. Although home ownership increased among African Americans in Hempstead, the community has experienced a significant amount of white flight. The Fair Housing Act in Hempstead assisted African Americans in buying homes but failed to promote integration within the community. Garden City remained unchanged by the Fair Housing Act and the community remains predominantly white. The community of Freeport did experience integration and an increase in minority home ownership after the passage of the Fair Housing Act. Freeport is one community in which the Fair Housing Act did achieve its goal. The study of these three communities illustrates the wide range of effects the Fair Housing Act had.

Discriminatory practices in the housing market still occur today. The government must keep a watchful eye on the housing situations and must be ready to make further amendments if they are necessary. Equality among all people was granted in the Thirteenth Amendment and the government must continue to make sure this right is not taken away.

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