

## TEACHING ABOUT INEQUALITY, RACE, AND PROPERTY\*

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That the federal government, including HUD, has a long history of having precipitated and perpetuated housing discrimination, there can be no question . . . . The federal government's home-ownership programs also reinforced discrimination and separation by income and race in our housing markets. The earliest Federal Housing Administration (FHA) mortgage insurance programs enabled and encouraged middle-class white families to obtain financing for new housing in the burgeoning suburbs . . . .<sup>1</sup>

It is virtually impossible to overstate the significance of this involvement in creating, sponsoring, and perpetuating the racially segregated dual housing markets that divide America. The federal government should acknowledge its role and move to right these tragic wrongs.<sup>2</sup>

From Tennessee an army officer asked for a copy of the last issue [of *The Liberator*] "as a relic . . . that our tale is true." Without such proofs, he said future generations would never believe "that there was once such a thing as slavery."<sup>3</sup>

One of the most salient facts about property is the inequality that characterizes its control: the United States, like the rest of the world, is divided

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\* This article is dedicated to the memory of Burton D. Fretz, who was Executive Director of the National Senior Citizen Law Center until he died on April 5, 2001. Burt began his distinguished legal services career with California Rural Legal Assistance, and then worked for the Migrant Legal Action Program. He always sought to improve the living conditions and life opportunities of people who were poor and oppressed. He is sorely missed by his colleagues, his family, and the millions of people whose lives he improved.

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1. Roberta Achtenberg, Keynote Address at the University of Pennsylvania Law Review Symposium, *Shaping American Communities: Segregation, Housing and The Urban Poor*, in 143 U. PA. L. REV. 1191, 1193 (1995). Achtenberg was HUD Assistant Secretary for Fair Housing and Equal Opportunity.

2. John O. Calmore, *Spatial Equality and the Kerner Commission Report: A Back-To-The-Future Essay*, 71 N.C.L. REV. 1487, 1509 (1993).

3. HENRY MAYER, *ALL ON FIRE: WILLIAM LLOYD GARRISON AND THE ABOLITION OF SLAVERY* 599 (1998).

between “haves” and “have-nots.” This inequality is great, and has been increasing in recent years.<sup>4</sup>

I think that we who teach about property ought to teach about this inequality, in both its international and domestic manifestations. Indeed, I think that teaching about this inequality is an important part of what we can do to respond to terrorism, for the international inequality surely is part of what fuels the fury that enables people to engage in the brutal, wide-scale murders that occurred in the United States on September 11, 2001, and in many other countries before and after that.<sup>5</sup>

This Article addresses a particularly striking aspect of the inequality: that it “is clearly color-coded.”<sup>6</sup> While this “color-coding” exists internationally as well as domestically, this Article focuses on the United States, where, by any measure, minorities, and in particular African-Americans, control substantially less property than do whites.<sup>7</sup>

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4. See, e.g., Lucy A. Williams, *Poverty, Wealth and Inequality through the Lens of Globalization: Lessons from The United States and Mexico*, 34 IND. L. REV. 1243, 1244-46 (2001) (discussing global inequality); Salih Booker & William Minter, *Global Apartheid*, THE NATION, July 9, 2001, at 11 (discussing “global apartheid,” “an international system of minority rule whose attributes include: differential access to basic human rights; wealth and power structured by race and place; . . . and the international practice of double standards that assume inferior rights to be appropriate for certain ‘others,’ defined by location, origin, race or gender”); CONGRESSIONAL BUDGET OFFICE, A CBO STUDY: HISTORICAL EFFECTIVE TAX RATES 1979-1997 (2001); ISAAC SHAPIRO ET AL., CENTER ON BUDGET AND POLICY PRIORITIES, PATHBREAKING CBO STUDY SHOWS DRAMATIC INCREASES IN INCOME DISPARITIES IN 1980S AND 1990S: AN ANALYSIS OF THE CBO DATA 1 (2000), available at <http://www.cbpp.org/5-31-01tax.htm>. This study shows “dramatic increases in income disparities . . . in both the 1980s and 1990s.” It further states: “[I]ncome disparities grew more sharply between 1995 and 1997 . . . than in any other two-year period since 1979. This suggests the possibility that the growth in disparities in after-tax income may have accelerated in the latter half of 1990s.” *Id.* at 5. See also WILLIAM JULIUS WILSON, THE BRIDGE OVER THE RACIAL DIVIDE: RISING INEQUALITY AND COALITION POLITICS 27 (1999) (“[T]he United States has had the most rapid growth of wage inequality in the Western world.”).

5. See George McGovern, *The Healing in Helping the World’s Poor*, N.Y. TIMES, Jan. 1, 2002, at A21 (“I am confident . . . that helping to feed more people can reduce the power of those who appeal to desperation and hopelessness.”); Letters to the Editor, *Is Poverty at the Root of Terror?*, N.Y. TIMES, Jan. 7, 2002, at A22 (expressing varied views).

6. Camille Zubrinsky Charles, *Processes of Racial Residential Segregation, in URBAN INEQUALITY: EVIDENCE FROM FOUR CITIES* 217, 265 (Alice O’Connor et al. eds., 2001).

7. See *infra* notes 9-39 and accompanying text. The terms “African-American,” “black,” and “Negro” are used interchangeably in this Article; the choice usually is dependent on historic context.

Although this Article focuses on “race,” it acknowledges the ambiguity of the term. As the Supreme Court has recognized, “[m]any modern biologists and anthropologists . . . criticize racial classifications as arbitrary and of little use in understanding the variability of human beings. It is said that genetically homogeneous populations do not exist and traits are not discontinuous between populations . . . .” *Saint Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 610 n.4 (1987). See also AUDREY SMEDLEY, RACE IN NORTH AMERICA: ORIGIN AND EVOLUTION OF A WORLDVIEW

Part I of this Article surveys the extent of the racial inequality and its causes and considers generally how to raise these issues in a Property course.<sup>8</sup> Part II discusses a specific context in which to explore racial disparities: The Federal Housing Administration (FHA) and Veterans Administration (VA) homeownership programs.

#### I. THE EXTENT AND CAUSES OF RACIAL DISPARITIES IN THE UNITED STATES

There is no question that in the United States there are large differences between whites and minorities, particularly African-Americans, with respect to control over property. These gaps characterize all measures of property control: income, wealth, and the particular form of wealth represented by homeownership.

The incomes of blacks and Hispanics lag behind those of whites “by wide margins.”<sup>9</sup> This is true not only for wages and salaries but also for income

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11, 319-38 (2d ed. 1999); RACE AND ETHNIC CONFLICT: CONTENDING VIEWS ON PREJUDICE, DISCRIMINATION, AND ETHNOVIOLENCE (Fred L. Pincus & Howard J. Ehrlich eds., 2d ed. 1999); THEODORE W. ALLEN, THE INVENTION OF THE WHITE RACE: THE ORIGIN OF RACIAL OPPRESSION IN ANGLO-AMERICA (1994 & 1997) (Vols. I & II); IAN F. HANEY LÓPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE (1996); RACE AND OTHER MISADVENTURES: ESSAYS IN HONOR OF ASHLEY MONTAGU IN HIS NINETIETH YEAR (Larry T. Reynolds & Leonard Lieberman eds., 1996); IVAN HANNAFORD, RACE: THE HISTORY OF AN IDEA IN THE WEST (1996); CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kinberlé Crenshaw et al. eds., 1995); CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado ed., 1995); F. JAMES DAVIS, WHO IS BLACK?: ONE NATION’S DEFINITION (1993).

8. It is, of course, also appropriate to address these issues in other courses. See, e.g., Veryl Victoria Miles, *Raising Issues of Property, Wealth and Inequality in the Law School: Contracts and Commercial Law School Courses*, 34 IND. L. REV. 1365 (2001); Frances Lee Ansley, *Race and the Core Curriculum in Legal Education*, 79 CAL. L. REV. 1511 (1991); Reginald Leamon Robinson, *Teaching From The Margins: Race as a Pedagogical Sub-Text: A Critical Essay*, 19 W. NEW ENG. L. REV. 151 (1997). At the Association of American Law Schools Annual Meeting in New Orleans, on January 4, 2002, the Poverty Law Section presented a panel on this topic, including Dean Jeffrey S. Lehman’s discussion of raising issues of inequality in tax courses. For materials that raise these and other social justice issues in Property, Housing Law, Homelessness and the Law, and Housing Discrimination and Segregation, see the Appendix to this Article.

9. JOINT CTR. FOR HOUS. STUDIES OF HARV. UNIV., THE STATE OF THE NATION’S HOUSING 2001, 12 (2001). See also Katherine Q. Seelye, *Poverty Rates Fell in 2000, but Income was Stagnant*, N.Y. TIMES, Sept. 26, 2001 at A12; CARMEN DENAVAS WALT ET AL., UNITED STATES CENSUS BUREAU, MONEY INCOME IN THE UNITED STATES 2000, at 4 (2001), at <http://www.census.gov/hhes/www/income00.html> (last revised Dec. 03, 2001) (stating that the average median incomes for 2000 were: Asian/Pacific Islanders, \$55,521; non-Hispanic Whites, \$45,904; Whites, \$44,226; Hispanics, \$33,447; Blacks, \$30,439); Reynolds Farley, *Metropolises of the Multi-City Study of Urban Inequality: Social, Economic, Demographic, and Racial Issues in Atlanta, Boston, Detroit and Los Angeles*, in URBAN INEQUALITY, *supra* note 6, at 34 (“in all four sites, black per capita income averaged between 55 and 62 percent that of whites”); *Id.* at 52;

from self-employment, farming, rents, interest, dividends, royalties, and government transfers.<sup>10</sup> Moreover, the racial income gap, like inequality generally, has increased in recent years.<sup>11</sup>

The racial wealth gap is even more dramatic. In 1998, for example, “the median wealth of black and Hispanic households was less than one-fifth the median wealth of white households.”<sup>12</sup>

The disparities are particularly striking with respect to characteristics of residence: whether one is a homeowner or a tenant, and the value of the home, in financial and other respects. The United States is called “a nation of

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DALTON CONLEY, *BEING BLACK, LIVING IN THE RED* 11 (1999) (“in 1997, the median income for black families was 55 percent that of white families (\$26,522 compared to \$47,023)”).

10. WILLIAM A. DARITY & SAMUEL K. MYERS, JR., *PERSISTENT DISPARITY: RACE AND ECONOMIC INEQUALITY IN THE UNITED STATES SINCE 1945*, at 136 (1998) (concluding the comparison of all income yields a similar but slightly larger gap between blacks and whites). Transfer payments have been much less generous to blacks than to whites. Social Security, for example, “virtually excluded African Americans and Latinos, for it exempted agricultural and domestic workers from coverage and marginalized low-wage workers.” MELVIN L. OLIVER & THOMAS M. SHAPIRO, *BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* 38 (1995). Even the minority workers who were in jobs covered by social security often did not receive it because their wages were below the minimum:

Because minority wages were so low, minority workers fell disproportionately below the threshold of coverage in comparison to whites. In 1935, for example, 42 percent of black workers in occupations covered by social insurance did not earn enough to qualify for benefits compared to 22 percent for whites. Blacks were disadvantaged in New Deal legislation because they were historically less well paid, less fully employed, disproportionately ineligible for military service, and less fully unionized than white men.

*Id.*; *See also id.* at 114; CONLEY, *supra* note 9, at 36 (“Further, the lack of social insurance meant that many households had to care for and support indigent, elderly family members, directly diverting the next generation’s resources away from savings and capital accumulation.”); OLIVER & SHAPIRO, *supra*, at 114.

11. *See* DARITY & MYERS, *supra* note 10, at 7 (“[T]he black-white disparity in family incomes has widened over the past decades.”); Seelye, *supra* note 9, at A12; WALT, *supra* note 9, at 4 (“[T]he income gap . . . remained at a post-World War II high.”).

12. JOINT CTR. FOR HOUS. STUDIES OF HARV. UNIV., *supra* note 9, at 12. *See also* OLIVER & SHAPIRO, *supra* note 10, at 7 (“[M]iddle-class blacks . . . earn seventy cents for every dollar earned by middle-class whites but they possess only fifteen cents for every dollar of wealth held by middle-class whites.”); DARITY & MYERS, *supra* note 10, at 136 (“Even larger gaps between blacks and whites are found in asset holding and wealth. While black families may receive about 60 cents for every dollar of income whites receive, they hold seven cents of wealth for every dollar of wealth held by whites.”); CONLEY, *supra* note 9, at 25 (“[T]he typical white American family in 1994 had a nest egg of assets totaling a median of \$72,000. With a median net worth of approximately \$9,800 in that year, the typical black family had no significant nest egg to speak of.”); *Id.* at 26-27 (“[A]t every income level, blacks have substantially fewer assets than whites.”); *Id.* at 28 (“median assets for blacks, excluding home equity, total \$2,000; the corresponding figure for whites is \$28,816”).

homeowners,”<sup>13</sup> but minority homeownership is substantially lower than white homeownership. In the year 2000, the white homeownership rate was 73.8 percent; Asian/other, 53.9 percent; Black, 47.6 percent; and Hispanic, 46.3 percent.<sup>14</sup> Although minority homeownership experienced the fastest growth, the racial gap narrowed only slightly from previous years.<sup>15</sup>

Moreover, “even among homeowners, . . . African Americans consistently own homes of lower value, regardless of their socioeconomic status and household structure.”<sup>16</sup> And much of the minority homeownership is precarious, because of the state of the economy in general and the prevalence of subprime and often predatory lending.<sup>17</sup> The households most vulnerable to loss of their homes by foreclosure are minority households.<sup>18</sup>

This racial disparity means that minorities are disadvantaged with respect to what is for most middle-class households in the United States the greatest source of household wealth.<sup>19</sup> Homeownership affects the ability to finance

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13. See Sheryll Cashin, *Privatized Communities and the “Secession of the Successful”*: Democracy and Fairness Beyond the Gate, 28 FORDHAM URB. L.J. 1675, 1675 (2001); Miriam Wasserman, *Appreciating the House: Housing as an Investment*, 8 REG. REV. 20 (1998).

14. See, e.g., JOINT CTR. FOR HOUS. STUDIES OF HARV. UNIV., *supra* note 9, at 11, 13-14. See also Charles, *supra* note 6, at 220-21 (stating that the low rates of minority homeownership in the four cities studied mirror the national statistics).

15. JOINT CTR. FOR HOUS. STUDIES OF HARV. UNIV., *supra* note 9, at 13-14 (“At 25.7 percent, the gap between the minority and white homeownership rate narrowed by just one-tenth of a percentage point between 1999 and 2000. Indeed, both the black-white and Hispanic-white homeownership gaps have improved by just 1.3 percentage points since 1994.”).

16. Nancy A. Denton, *The Role of Residential Segregation in Promoting and Maintaining Inequality in Wealth and Property*, 34 IND. L. REV. 1199, 1207 (2001).

17. See, e.g., JOINT CTR. FOR HOUS. STUDIES OF HARV. UNIV., *supra* note 9, at 2. This report states:

Concerns about the . . . sustainability of homeownership gains are . . . mounting. A more severe or prolonged downturn in the economy that results in additional job losses would place more pressure on the many households that are already stretching to pay for housing. Moreover, with a growing number of homebuyers making down payments of five percent or less and relying on two incomes to make their monthly mortgage payments, a full-blown recession could leave many borrowers at risk of default.

*Id.* Moreover, “while special and subprime lending programs have boosted ownership, they also leave marginal buyers at risk of default if the economy contracts sharply.” *Id.* at 13.

18. See *id.* at 16-17. Between 1993 and 1999, subprime lending surged from 1% of purchase and refinance loans to 6% of purchase and 19% of refinance loans. “[D]efault rates on such loans tend to be relatively high . . . . In 1999, subprime refinancings were especially common in predominantly minority neighborhoods and among low-income blacks and women.” *Id.* See also *Assoc. Home Equity Serv., Inc. v. Troup*, 778 A.2d 529, 536 n.2 (2001). In this case, an expert testified that “urban areas of heavy minority concentration are being disproportionately serviced by subprime lenders.” *Id.* at 536-37. The court upheld the racial discrimination claim against predatory lending.

19. See OLIVER & SHAPIRO, *supra* note 10, at 6 (“[H]ome ownership makes up the largest part of wealth held by the middle class, whereas the upper class more commonly hold a greater

education, self-employment, and other capital development.<sup>20</sup> It is the principal source of family wealth that is transmitted from one generation to another, and family wealth, in turn, largely determines whether and to what extent homeownership is possible.<sup>21</sup>

The location of the home—in particular, whether or not it is in a predominantly minority neighborhood—has a substantial impact in determining the value of the home, both financially and with respect to whether the household lives in a well-served neighborhood with good schools, safe streets, and access to employment, or in an ill-served neighborhood with

degree of their wealth in financial assets.”); *Id.* at 8 (“[H]ome ownership is without question the single most important means of accumulating assets.”).

20. *See id.* at 8 (“The lower values of black homes adversely affect the ability of blacks to utilize their residences as collateral for obtaining personal, business, or educational loans.”).

21. *See* JOINT CTR. FOR HOUS. STUDIES OF HARV. UNIV., *supra* note 9, at 12. This report states:

Transfers of family assets can make the difference between buying a home and not, especially for minority and low-income households . . . . Because white households have more accumulated wealth than minority households, they can make substantial financial gifts to their children. Nearly 17 percent of white households have received assets from their parents, compared with only 5 percent of minority households. Moreover, the amounts minorities typically receive are considerably lower than those whites receive. These patterns reinforce differences in homebuying power, adding to the advantages of white households in the housing market.

*Id.* *See also* DARITY & MYERS, *supra* note 10, at 150 (“The racial disparity in net worth is linked most decisively to a gap in access to the major source of wealth in American society: inheritance . . . . Black parents and grandparents of earlier generations simply had less wealth to pass on to their descendants given the historical limitations confronting them.”); Denton, *supra* note 16, at 1208 (“Research shows that whites are much more likely to receive parental help with down payment on a home than [are] blacks.”). Regarding the “persistence of group advantage from one generation to the next via wealth accumulation,” Darity and Myers state:

Young home buyers, for example, do not begin with equal access to credit. Those from families with assets are able to secure loans through down-payments obtained from family gifts and loans. Those from poor families must struggle to obtain down-payments through savings. Even white poor families are more likely to own assets than black poor families . . . .

DARITY & MYERS, *supra* note 10, at 149-50. *See also* CONLEY, *supra* note 9, at 50-51 (stating that the single most important factor in predicting the wealth level of young adults is parental net worth); OLIVER & SHAPIRO, *supra* note 10, at 6-7.

Racial difference in inheritance is a key feature of our story . . . . The grandparents and parents of blacks under the age of forty toiled under segregation, where education and access to decent jobs and wages were severely restricted. Racialized state policy and the economic detour constrained their ability to enter the post-World War II housing market. Segregation created an extreme situation in which earlier generations were unable to build up much, if any, wealth.

*Id.*

inadequate schools, high crime rates, and diminished employment opportunities.<sup>22</sup>

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22. See Denton, *supra* note 16, at 1206 (“[S]egregated neighborhoods often lack access to job networks and transportation to available jobs.”); Sheryll D. Cashin, *Middle-Class Black Suburbs and the State of Integration: A Post-Integrationist Vision for Metropolitan America*, 86 CORNELL L. REV. 729 (2001) (discussing the relative insufficiency of even the middle-class black suburb); Emily Rosenbaum & Laura E. Harris, *Residential Mobility and Opportunities: Early Impacts of the Moving to Opportunity Demonstration Program in Chicago*, 12 HOUS. POL’Y DEBATE 321, 332 (2001) (discussing recent evidence of “dramatic improvements in neighborhood and housing conditions” for poor, African-American households that moved to more racially diverse, less poor neighborhoods); LEONARD S. RUBINOWITZ & JAMES E. ROSENBAUM, *CROSSING THE CLASS AND COLOR LINES: FROM PUBLIC HOUSING TO WHITE SUBURBIA* (2000) (discussing similar evidence with respect to the Gautreaux Housing Mobility Program); Alice O’Connor, *Understanding Inequality in the Late Twentieth Century Metropolis: New Perspectives on the Enduring Racial Divide*, in *URBAN INEQUALITY*, *supra* note 6, at 1, 22. This multi-city study shows “that residence in homogeneous neighborhoods carries stark and racially disparate consequences in all four metropolitan areas [studied] . . . . For minorities, it means low neighborhood socioeconomic status, housing quality, and access to services, and, for blacks, more limited proximity to jobs.” *Id.* Moreover, while studies indicate that the skills gap between whites and non-whites bears substantial responsibility for the racial disparity in employment and wages,

the meaning of the skills gap cannot be considered apart from the racial context within which skills acquisition and labor markets are formed and operate. Skills . . . are not race-neutral variables—not only because they originate in racially unequal educational opportunities but because they are embedded in social structures and processes . . . [such as]: the racially segregated networks that provide access to both jobs and skill acquisition, and the racialized perceptions through which employers filter workforce decisions.

*Id.* at 13. See also Charles, *supra* note 6, at 265 (“[L]iving in a particular neighborhood has a substantial effect on our overall life chances, including opportunities for upward social mobility . . . . Residential segregation is thus a central component of racial inequality . . . .”); Franklin D. Wilson & Roger B. Hammer, *Ethnic Residential Segregation and Its Consequences*, in *URBAN INEQUALITY*, *supra* note 6, at 272, 273.

When living among co-ethnics, minorities tend to reside in residential areas consisting of aging housing stock of poor quality, few residential amenities (such as parks and recreational facilities), crime and vandalism, poor-quality school facilities and police and fire protection, and limited availability of retail and financial establishments . . . .

*Id.* Wilson & Hammer refer to the “racially disparate consequences of segregated residential patterns” and state that “blacks and Hispanics pay a price for living in ethnically homogeneous neighborhoods.” *Id.*

[F]or both blacks and Hispanics, residence in a neighborhood with a high percentage of co-ethnics is associated with living in a neighborhood of low socioeconomic status and poor-quality housing, and which black respondents view as having limited access to services and where various kinds of problems exist.

*Id.* at 294. Conversely, “wherever whites live, the neighborhood environment is not likely to be viewed as problematic by whites, blacks, or Hispanics.” *Id.*; Chris Tilly et al., *Space as a Signal: How Employers Perceive Neighbors in Four Metropolitan Labor Markets*, in *URBAN INEQUALITY*, *supra* note 6, at 304, 306 (“Space is a signal to employers”: they locate their businesses and recruit and hire workers based on their perceptions about workers. “In many employers’ minds, white areas are linked to positive workforce and location attributes; black and

Minorities are segregated into predominantly minority neighborhoods. This segregation is particularly pervasive for African-Americans, who have been described as “hyper-segregated”—that is, scoring high levels on at least four of the five dimensions by which demographers measure racial segregation.<sup>23</sup> In predominantly minority neighborhoods, houses are less valuable. Recent studies show that “both blacks and whites are penalized for living in neighborhoods that are heavily black.”<sup>24</sup>

Whether the neighborhood is a predominantly minority neighborhood thus determines the extent to which individuals may accumulate property during their lifetimes. “Residential segregation limits individual accumulation of human capital via education and the job market.”<sup>25</sup> “By preventing residents of segregated neighborhoods from obtaining high quality educations and jobs, segregation imposes limits on how much wealth and property they can amass as a result of their own efforts . . . .”<sup>26</sup> Segregation also limits the extent of wealth accumulation by property appreciation.<sup>27</sup>

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Latino areas are linked to negative ones.”); *Id.* at 318 (“Employers in our four metropolitan areas are wary of the inner city as a business location and wary of the residents of the inner city as employees.”).

23. DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 74 (1993); Nancy A. Denton, *Are African-Americans Still Hypersegregated?*, in *RESIDENTIAL APARTHEID: THE AMERICAN LEGACY* 49 (Robert D. Bullard et al. eds., 1994).

24. Denton, *supra* note 16, at 1207 (reporting initial findings of current work). *See also*, e.g., Charles, *supra* note 6, at 221 (“Not only do fewer blacks and Hispanics own their homes, but the homes that they own tend to be of lesser value than those of whites, even when other socioeconomic status indicators are equal.”); CONLEY, *supra* note 9, at 38 (“[H]ousing in black neighborhoods has a lower rate of value increase (and in some cases may decrease in worth) when contrasted to similar units in predominantly white neighborhoods.”); OLIVER & SHAPIRO, *supra* note 10, at 8 (“we found that the great rise in housing values is color-coded. Why should the mean value of the average white home appreciate at a dramatically higher rate than the average black home?”).

25. Denton, *supra* note 16, at 1205. *See also* Mary J. Fischer & Douglas S. Massey, *Residential Segregation and Ethnic Enterprise in U. S. Metropolitan Areas*, 47 *SOC. PROBLEMS* 408 (2000) (demonstrating that racial segregation decreases entrepreneurship).

26. Denton, *supra* note 16, at 1206.

27. *Id.* at 1205 (showing the limited appreciation for minority homes and businesses). *See also id.* at 1208 (“Although there is no available research that documents the specific effects of segregation on business appreciation . . . [w]hen considered in conjunction with the lower disposable income of many non-white groups, it is hardly surprising that segregation limits the ability to establish businesses and accumulate wealth through business ownership.”). The limitation on property appreciation is related to the limitation on development of human capital. *See id.* at 1206 (“[S]egregation also negatively affects the chances of completing a college education because it limits home value, the asset that has the largest positive impact on college completion rates.”). *Id.* at 1205 (showing that each of the three major routes to property acquisition—“individual accumulation, appreciation, and inheritance”—is limited by racial segregation); OLIVER & SHAPIRO, *supra* note 10, at 109 (“The median home value among black

The direct advantages of homeownership are enhanced by tax preferences. There are four principal tax benefits for homeowners—the deductions for mortgage interest and real estate taxes, the exclusion of gain (within limits) on the sale of a home, and the fact that owner occupants do not have to include the rental value of the home as part of taxable income.<sup>28</sup>

The tax advantages associated with homeownership are by far the largest federal housing subsidies, many times greater than the housing subsidies for low-income people.<sup>29</sup> The tax advantages accrue more to whites than to minorities.

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homeowners [was] . . . \$31,000, but the average white home was valued at \$45,000, or one and [a] half times as much. The black share of home equity amounted to only 3.9 percent of the total.”)

28. See I.R.C. § 163 (1999) (home mortgage interest deduction), I.R.C. § 164 (1999) (real property tax deduction), and I.R.C. § 121 (1999) (exclusion of gain on sale of principal residence); Steven C. Bourassa & William G. Grigsby, *Income Tax Concessions for Owner-Occupied Housing*, 11 HOUS. POLICY DEBATE 521 (2000) (discussing the four tax benefits); OLIVER & SHAPIRO, *supra* note 10, at 44; Thomas E. Bier & Ivan Maric, *IRS Homeseller Provision and Urban Decline*, 16 J. URB. AFF. 141, 142 (1994) (explaining that when the I.R.C. § 1034 rollover provision was created, in the Revenue Act of 1951, it was supported by the National Association of Real Estate Boards (NAREB)). While the authors state that “no one could have anticipated that the new capital gain provision . . . could eventually restrict movement within cities,” NAREB was at the time encouraging the development of large suburban residential areas financed by FHA; this capital gains provision enhanced that push to the suburbs, and NAREB certainly was sophisticated enough to have sought that result. See GAIL RADFORD, *MODERN HOUSING FOR AMERICA: POLICY STRUGGLES IN THE NEW DEAL ERA* 48, 188-89 (1996); see also JOSEPH GYOURKO & TODD SINAI, *BROOKINGS INST. CTR. ON URB. AND METRO. POL’Y, THE SPATIAL DISTRIBUTION OF HOUSING-RELATED TAX BENEFITS IN THE UNITED STATES I* (July 2001).

State and local tax laws also may promote homeownership. See Bier & Maric, *supra*, at 143 (discussing provisions in California and Massachusetts). In addition, the federal benefits are magnified by state tax laws that mirror the federal provisions, providing state as well as federal benefits.

29. See GYOURKO & SINAI, *supra* note 28, at 1, 4. The tax benefit was almost \$164 billion in 1989, taking into account only the deduction for interest and property taxes and the immunity from imputed income. Sixty-two percent of the benefit is from the untaxed return on home equity; twenty-six percent (nearly \$43 billion) is due to mortgage interest, and the remaining \$20 billion is from the property tax deduction. *Id.* For Fiscal Year 2000, the U.S. Treasury estimated that the mortgage interest deduction would be \$55.1 billion and the property tax deduction \$19.5 billion. For fiscal year 2002, the estimate for the mortgage interest deduction was \$65.7 billion and the property tax deduction \$25.6 billion. *Id.* at 4 n.4; see also GENERAL ACCOUNTING OFFICE, *FEDERAL HOUSING PROGRAMS: WHAT THEY COST AND WHAT THEY PROVIDE I* (2001) (noting that the cost of direct housing assistance to moderate- and low-income people was about \$28.7 billion in budgetary outlays and tax credits in 1999); Thomas W. Hanchett, *The Other “Subsidized Housing”: Federal Aid to Suburbanization, 1940-1960’s*, in *FROM TENEMENTS TO THE TAYLOR HOMES* 163, 171-73 (John I. Bauman et al. eds., 2000). These homeownership subsidies are regressive: the more expensive one’s home, the higher one’s real estate taxes and mortgage interest payments, the more one benefits from these subsidies.

[S]ince blacks are less likely to own homes, they are less likely to be able to take advantage of these benefits. Furthermore, since black homes are on average less expensive than white homes, blacks derive less benefit than whites when they do utilize these tax provisions. And finally, since most of the benefits in question are available only when taxpayers itemize their deductions, there is a great deal of concern that many black taxpayers may not take advantage of the tax breaks they are eligible for because they file the short tax form.<sup>30</sup>

Thus, racial property disparities are maintained by everything in our property regime that makes minorities disproportionately renters rather than homeowners, or segregates them in neighborhoods where property values appreciate relatively little, and schools, safety and employment opportunities are relatively poor.

The causes of the racial disparities have been the subject of considerable analysis and discussion.<sup>31</sup> Although some argue that the racial disparities are due to choices or attributes for which minorities are responsible,<sup>32</sup> substantial scholarship shows that concepts of white supremacy, racial dominance, and similar racial attitudes, their implementation in racial discrimination and segregation, and their embodiment in social structures, all contribute to the racial disparities in control of property.<sup>33</sup> Thus, for example, a recent interdisciplinary, multi-year study of four metropolitan areas concluded that race is a major “shaping force in the distribution of opportunity” and works “in complex and varied ways that go beyond individual attitudes or acts of discrimination,” operating “even more pervasively at the institutional and

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30. OLIVER & SHAPIRO, *supra* note 10, at 44. See also GYOURKO & SINAI, *supra* note 28, at 4 (The requirement of itemization “skew[s] . . . the benefits toward higher income owners.”).

31. See, e.g., MASSEY & DENTON, *supra* note 23, at 17-59; OLIVER & SHAPIRO, *supra* note 10; CONLEY, *supra* note 9; WILSON, *supra* note 4; STEPHAN THERNSTROM & ABIGAIL THERNSTROM, *AMERICA IN BLACK AND WHITE: ONE NATION, INDIVISIBLE* (1999).

32. See, e.g., CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950-1980* (1985); RICHARD J. HERRNSTEIN & CHARLES MURRAY, *THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE* (1994); THERNSTROM & THERNSTROM, *supra* note 31.

33. See, e.g., DARITY & MYERS, *supra* note 10, at 147 (“[O]ur central conclusions suggest that the *cause* of the persistent inequality most probably lies in pre-labour market or extra-market forces, rooted most probably in historic discriminatory institutional forces.”); CHARLES TILLY, *DURABLE INEQUALITY* 6 (1998) (“[C]ategorical differences actually account for much of what ordinary observers take to be results of variation in individual talent or effort.”); *Id.* at 16 (“[S]erious trouble begins . . . when we search for the actual causal mechanisms that produce, sustain, or alter durable inequality.”); INTELLIGENCE, GENES, AND SUCCESS: SCIENTISTS RESPOND TO THE BELL CURVE (Bernie Devlin et al. eds., 1997); Charles, *supra* note 6, at 217 (“Racial residential segregation is the result of a complex set of individual- and institutional-level processes whose relative importance researchers continue to debate.”).

structural level—especially in the form of highly segregated housing and labor markets, along with the practices that keep them that way.”<sup>34</sup>

Many cases that appear in all parts of the Property curriculum illuminate ways in which white supremacist ideology and action have been a substantial cause of racial disparities in control of property. These involve, among other things: conquest; slavery; disposition of public lands to predominantly white, male, Anglo beneficiaries; explicit racial zoning; racially restrictive covenants; “manifest destiny”; “Negro removal” by the urban renewal and interstate highway programs; racially discriminatory donative transfers; the implementation of the public housing program; the treatment of farmworkers; and the use of zoning to establish and maintain exclusively white, Anglo settlements.<sup>35</sup> In addition to these cases and related material, I teach a class that explicitly “explor[es] the forces driving the larger distribution of advantage . . .”<sup>36</sup> and the “structural underpinnings of inequality,”<sup>37</sup> seeking to focus attention on “the ways in which th[e] opportunity structure has disadvantaged blacks [and other minorities] and helped contribute to massive wealth inequalities between the races.”<sup>38</sup> I also teach other material that is not part of the usual Property curriculum; Part II of this article discusses one such unit, that concerning the FHA and VA programs.<sup>39</sup>

## II. THE CREATION OF THE UNITED STATES AS A NATION OF [WHITE] HOMEOWNERS

The United States did not become a “nation of homeowners” by accident. Homeownership was promoted by deliberate government policy—deliberate

34. O'Connor, *supra* note 22, at 27; *Id.* at 5 (“[R]acial barriers . . . remain a powerful, albeit not always readily visible, social and structural dimension of contemporary inequality.”); *Id.* at 6. The study finds that “race is a major force in generating economic and social inequality.” See also, e.g., Derrick Bell, *Racism: A Major Source of Property and Wealth Inequality in America*, 34 IND. L. REV. 1261 (2001); Berta Esperanza Hernández-Truyol & Shelbi D. Day, *Property, Wealth, Inequality and Human Rights: A Formula for Reform*, 34 IND. L. REV. 1213, 1213-23 (2001).

35. See, e.g., *Johnson & Graham’s Lessee v. M’Intosh*, 21 U.S. 543 (1823) (conquest); *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272 (1955); *Dred Scott v. Sandford*, 60 U.S. 393 (1857) (slavery); *Buchanan v. Warley*, 245 U.S. 60 (1917) (racial zoning); *Shelley v. Kraemer*, 334 U.S. 1 (1948) (racial covenants); *Berman v. Parker*, 348 U.S. 26 (1954) (urban renewal); *Evans v. Abney*, 396 U.S. 435 (1970) (discriminatory donative transfers); *State v. Shack*, 277 A.2d 369 (N.Y. 1971) (farmworkers); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977) (zoning); *Southern Burlington County NAACP v. Township of Mt. Laurel*, 456 A.2d 390 (1983) (zoning).

36. O'Connor, *supra* note 22, at 17.

37. *Id.* at 17.

38. OLIVER & SHAPIRO, *supra* note 10, at 4.

39. A complete, current list of materials in my social justice supplement for Property is provided in the Appendix to this Article. I will be grateful for suggestions for additions, changes, and deletions.

government policy that provided homeownership much more for whites than for people of color and restricted homeownership to racially segregated communities.

Until the 1930s, “home loans had been short-term affairs available primarily to the relatively well-to-do[;] . . . barely 45 percent of U.S. housing units were owner-occupied.”<sup>40</sup> In the wake of the Great Depression, President Roosevelt

modernized the concept of Jeffersonian democracy by broadening it to include homeowners in an industrial society as well as the idealized yeoman farmer. Building on the Lockean notion of propertied citizenship, Roosevelt’s New Deal sought stability and security in a time of turmoil by making it easier to purchase—and keep—a house.<sup>41</sup>

This was accomplished through the Home Owners Loan Corporation (HOLC), the FHA, and the VA.<sup>42</sup>

These homeownership programs contrasted dramatically with the public housing program that was enacted in 1937.<sup>43</sup> As Gail Radford has documented, the federal government created a two-tiered housing policy, with FHA/VA the upper, homeownership tier and public housing, a “stingy, alienating, and means-tested” rental program, the lower.<sup>44</sup> The two tiers “held racial significance; the upper tier nourished a growing, virtually all-white constituency while public housing struggled to support primarily a fragment of the minority community with which it became identified.”<sup>45</sup>

The HOLC introduced longer term, fully amortized mortgages and the practice of “redlining.”<sup>46</sup> It was followed by the FHA, created by the National

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40. Hanchett, *supra* note 29, at 165.

41. Arnold R. Hirsch, *Choosing Segregation: Federal Housing Policy Between Shelley and Brown*, in *FROM TENEMENTS TO THE TAYLOR HOMES*, *supra* note 29, at 206, 208. Students who are not familiar with the ideas of Jefferson or Locke will find helpful: Stanley Katz, *Thomas Jefferson and the Right to Property in Revolutionary America*, 19 J. L. & ECON. 467 (1976), excerpted in *A PROPERTY ANTHOLOGY* 17 (Richard H. Chused ed., 2d ed. 1997).

42. Hirsch, *supra* note 41, at 208.

43. U.S. Housing Act of 1937, ch. 896, 50 Stat. 888 (current version at 42 U.S.C. § 1437 (1988)).

44. See RADFORD, *supra* note 28, at 189-91, 197-98; Gail Radford, *The Federal Government and Housing During the Era of Great Depression*, in *FROM TENEMENTS TO THE TAYLOR HOMES*, *supra* note 29, at 102.

45. Hirsch, *supra* note 38, at 210.

46. See KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* 197 (1985), excerpted in *A PROPERTY ANTHOLOGY*, *supra* note 41, at 407, 408. The material relevant to this discussion ends at p. 411 of Chused. I add a few excerpts from Jackson that do not appear in Chused. Those additional excerpts are from pages 190-91, 209, and 213-17. The HOLC was created by the Home Owners’ Loan Act of 1933, ch. 64, 48 stat. 128 (current version at 12 U.S.C. § 1461 (1994)).

Housing Act of 1934.<sup>47</sup> The role of FHA was not to make mortgage loans, but to insure them. (One needs to emphasize to students that FHA insured the lender against loss of money, not the borrower against loss of the home.) Because FHA insured lenders against loss, lenders were willing to make loans on terms that were acceptable to FHA; and the terms that FHA set made homeownership affordable to middle-income people for the first time. When the VA was created in 1944, it “very largely followed FHA procedures and attitudes . . . .”<sup>48</sup>

In Kenneth Jackson’s words, the FHA and VA “revolutionized the home finance industry” in five ways.<sup>49</sup> FHA made three major financing changes: low downpayments,<sup>50</sup> a long repayment period (twenty-five or thirty years),<sup>51</sup> and full amortization rather than balloon payments.<sup>52</sup> Fourth, FHA focused its mortgage insurance on “new residential developments on the edges of metropolitan areas, to the neglect of core cities.”<sup>53</sup> FHA insurance required appraisals of the property, the borrower, and the neighborhood, and FHA instructed its underwriters that the characteristics of existing city neighborhoods made insuring housing in those neighborhoods unacceptably risky.<sup>54</sup>

The final important FHA policy was reflected in the appraisal standards. The FHA Underwriting Manual specifically instructed that the presence of “inharmonious racial or nationality groups” made a neighborhood’s housing undesirable for insurance.<sup>55</sup> The Underwriting Manual explicitly recommended racially restrictive covenants, and warned: “If a neighborhood

47. 12 U.S.C. § 1701 (1994).

48. JACKSON, *supra* note 46, at 204; Servicemen’s Readjustment Act of 1944, ch. 268, 58 Stat. 284 (current version at 38 U.S.C. § 3701 (1994)).

49. JACKSON, *supra* note 46, at 204. *But see* MARC A. WEISS, RISE OF THE COMMUNITY BUILDERS: THE AMERICAN REAL ESTATE INDUSTRY AND URBAN LAND PLANNING 32 (1987) (“[M]ortgage financing, which in 1890 was confined mainly to upper-income purchasers, had by 1920 extended to smaller, lower-priced, middle-income housing . . . . The revolutionary rise in higher loan-to-value debt financing for residential realty, often ascribed to the post-World War II era, clearly began in the early decades of this century.”).

50. Before the FHA began operating, “first mortgages were limited to one-half to two-thirds of the appraised value of the property,” requiring a down-payment of one-half to thirty percent. FHA financing, by contrast, required down-payments of less than ten percent. JACKSON, *supra* note 46, at 204.

51. *See* WEISS, *supra* note 49, at 146. Weiss notes that FHA made “80 percent loans for 20 years (soon increased to 90 percent for 25 years) when the previous norm by commercial banks was 50 percent loans for three years . . . .” *Id.* Weiss further noted that loans were made “at a maximum 4½ percent interest plus ½ percent mortgage insurance premium.” *Id.* at 151.

52. JACKSON, *supra* note 46, at 204.

53. *Id.* at 208.

54. *Id.* at 207.

55. *Id.* at 208 (stating that the FHA “was extraordinarily concerned with ‘inharmonious racial or nationality groups’”).

is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes . . . .”<sup>56</sup> As Charles Abrams wrote:

FHA adopted a racial policy that could well have been culled from the Nuremberg laws. From its inception FHA set itself up as the protector of the all white neighborhood. It sent its agents into the field to keep Negroes and other minorities from buying houses in white neighborhoods.<sup>57</sup>

FHA “not only insisted on social and racial ‘homogeneity’ in all of its projects as the price of insurance but became the vanguard of white supremacy and racial purity—in the North as well as the South.”<sup>58</sup>

Even after the Supreme Court ruled, in *Shelley v. Kraemer*,<sup>59</sup> that racially restrictive covenants were judicially unenforceable, FHA and VA continued to require the covenants. Initially, FHA Commissioner Franklin D. Richards asserted that the Court’s action would “in no way affect the programs of this agency.”<sup>60</sup> Later, Richards elaborated, stating that it was not “‘the policy of the Government to require private individuals to give up their right to dispose of their property as they [saw] fit, as a condition of receiving the benefits of the National Housing Act.’”<sup>61</sup>

After vigorous advocacy by the NAACP,<sup>62</sup> “FHA grudgingly agreed, . . . only after Presidential intervention, . . . to drop its flat ban against integrated

56. *Id.* FHA expressed its practice not only in the Underwriting Manual but also “in its technical bulletin, *Planning Profitable Neighborhoods*,” which “strongly recommended . . . that builders aim at a particular market, based on similarities of age, race, and economic level.” BARBARA M. KELLY, *EXPANDING THE AMERICAN DREAM: BUILDING AND REBUILDING LEVITTOWN* 60 (1993). “FHA also included a recommendation for ‘adequate zoning and protective covenants’ among its Subdivision Standards.” *Id.* at 206 n.5; FHA LAND PLANNING BULLETIN NO. 2, *SUCCESSFUL SUBDIVISION* 9 (1940).

57. CHARLES ABRAMS, *FORBIDDEN NEIGHBORS: A STUDY OF PREJUDICE IN HOUSING* 229 (1955).

58. *Id.* at 230.

59. 334 U.S. 1 (1948).

60. HIRSCH, *supra* note 41, at 211. This was not the only situation in which the Housing and Home Finance Agency (HHFA) considered that major Supreme Court decisions would have no impact on its operations. After the Supreme Court’s decision in *Brown v. Board of Education*, “HHFA General Counsel B.T. Fitzpatrick doubted that the invalidation of the ‘separate but equal’ doctrine in education applied to housing at all . . . .” *Id.* at 218; *see also* Randall Kennedy, *Martin Luther King’s Constitution: A Legal History of the Montgomery Bus Boycott*, 98 *YALE L.J.* 999, 1049-52 (1989) (discussing the gradual extension of *Brown v. Board* from public education to other areas).

61. HIRSCH, *supra* note 41, at 212.

62. Much of the credit for this change is due to Dr. Frank S. Horne, Racial Relations Adviser in the HHFA and a special assistant to HHFA Administrator Raymond M. Foley. *See* Arnold R. Hirsch, *Searching for a “Sound Negro Policy”: A Racial Agenda for the Housing Acts of 1949 and 1954*, 11 *HOUS. POL’Y DEBATE* 393, 397 (2000). Horne, an African-American, had worked on racial issues in the federal housing programs for a decade and had been a consistent opponent of racial discrimination. *See* Hirsch, *supra* note 41, at 210; Hirsch, *supra*, at 396.

projects . . . .”<sup>63</sup> Solicitor General Perlman announced in December 1949 that FHA would refuse to issue mortgage insurance on properties “bound by racially restrictive covenants recorded after February 15, 1950.”<sup>64</sup> But “that did not signify that [FHA] encouraged open occupancy . . . .”<sup>65</sup> As “former housing administrator Nathan Straus noted, “the new policy in fact served only to warn speculative builders who had not filed covenants of their right to do so, and it gave them a convenient respite in which to file.”<sup>66</sup>

“This new policy could not, however, undo the damage already done, and it said nothing about barring aid to builders who practiced discrimination by other means.”<sup>67</sup> Three days after Perlman’s announcement, “the FHA’s

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In the Summer of 1947, Horne prepared a report for President Truman’s Committee on Civil Rights. Hirsch, *supra* note 41, at 211. He attended the September 6, 1947 conference called by the NAACP to discuss the restrictive covenant cases. See CLEMENT VOSE, CAUCASIANS ONLY: THE SUPREME COURT, THE NAACP, AND THE RESTRICTIVE COVENANT CASES 161, 274 n.40, 172-73 (1959) (documenting the work of Horne and Phineas Indritz on those cases). A November 4, 1947 letter from HHFA Administrator Foley to the Department of Justice was included in the amicus brief filed in *Shelley v. Kraemer* by the Solicitor General. See TOM C. CLARK & PHILIP B. PERLMAN, PREJUDICE AND PROPERTY: AN HISTORIC BRIEF AGAINST RACIAL COVENANTS 92 n.2, 24-30 (1948). It is likely that the draft, if not the final version, of this letter was the work of Frank Horne.

Immediately after the decision in *Shelley*, Horne wrote to Walter White, Executive Secretary of the NAACP: “FHA will need to be *blasted* . . . out of its barnacled position . . . . We’ve cracked the draft open and applied a spark or two on the inside . . . . If the NAACP pours on the *proper oil*, applied at the *proper points*, we [can] set this whole business afire.” Hirsch, *supra* note 41, at 212 (quoting Frank [Horne] to Walter [White], July 20, 1948, as documented in certain NAACP papers).

Thurgood Marshall, of course, was Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc. See Julius L. Chambers, *A Tribute To Justice Thurgood Marshall: Thurgood Marshall’s Legacy*, 44 STAN. L. REV. 1249, 1252 n.30 (1992) (“The designation of Special Counsel to LDF was changed by LDF’s Board in 1940 to Director-Counsel in order to insure that Thurgood rather than the NAACP was in charge of LDF’s litigation programs.”). In February 1949, Marshall sent a lengthy memorandum to President Truman, urging an end to the use of restrictive covenants and other discriminatory and segregatory devices. HIRSCH, *supra* note 41, at 212.

63. MARK I. GELFAND, *A NATION OF CITIES: THE FEDERAL GOVERNMENT AND URBAN AMERICA 1933-1965*, at 221 (1975).

64. HIRSCH, *supra* note 41, at 212. See also GELFAND, *supra* note 63, at 221 (“Only after the White House applied strong pressure did FHA finally announce” that it would change its rule.).

65. GELFAND, *supra* note 63, at 221.

66. JACKSON, *supra* note 46, at 208. See also HIRSCH, *supra* note 41, at 213. Hirsch notes Thurgood Marshall’s expression of shock at press accounts quoting FHA officials as stating that “there would really be no serious change in policy.” Marshall wrote to Commissioner Richards that FHA had given “more than ample time and more than ample notice to persons who desire to flaunt the intent of the amendments to record covenants on land before the effective date of the amended rules.” *Id.*

67. GELFAND, *supra* note 63, at 221.

executive board met and agreed that 'it should be made entirely clear that violation [of the new rules] would not invalidate insurance.' By 1951, responding to the charge that the FHA engaged in a 'clear evasion' of the president's intent, a high agency official blandly responded that 'it was not the purpose of these Rules to forbid segregation or to deny the benefits of the National Housing Act to persons who might be unwilling to disregard race, color or creed in the selection of their purchasers or tenants.'"<sup>68</sup> President Truman rejected a request that he "bar FHA aid to any segregated housing . . ."<sup>69</sup> The Eisenhower Administration also continued to "reject . . . demands that FHA require open occupancy in its insured projects . . ."<sup>70</sup> Thus, long after FHA revised its Underwriting Manual, "FHA continued to deny housing insurance to Negroes except in Negro neighborhoods and commitments in such areas were rare."<sup>71</sup>

The FHA and VA support for homeownership almost exclusively for whites in exclusively white communities continued at least until 1962, when President Kennedy issued Executive Order 11063.<sup>72</sup>

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68. HIRSCH, *supra* note 41, at 213 (alteration in the original).

69. GELFAND, *supra* note 63, at 426 n.64.

70. *Id.* at 221. FHA did, however, approve some open-occupancy developments, apparently "following local custom in the matter of housing discrimination, lending its active support in areas where law or opinion favor desegregation, but elsewhere allowing private builders and lenders to discriminate or not as they see fit." EUNICE AND GEORGE GRIER, *PRIVATELY DEVELOPED INTERRACIAL HOUSING: AN ANALYSIS OF EXPERIENCE* 125 (1960). These may have been multi-family rental rather than single-family homeownership projects.

71. ABRAMS, *supra* note 57, at 232. The non-white developments probably were in the South. See NATIONAL HOUSING AGENCY, *MINORITY GROUP CONSIDERATIONS IN ADMINISTRATION OF GOVERNMENTAL HOUSING PROGRAMS: STATEMENT SUBMITTED TO PRESIDENT'S CIVIL RIGHTS COMMITTEE* 22 (1947) (stating that more than 13,000 of 20,000 units for minorities were located in Southern areas); CHRISTOPHER SILVER & JOHN V. MOESER, *THE SEPARATE CITY: BLACK COMMUNITIES IN THE URBAN SOUTH, 1940-1968*, at 9 (1995) (noting that in Atlanta, Memphis, and Richmond, cities with relatively large black populations, "the planning process took into account the future needs of blacks."); *Id.* at 125 ("In all three cities expansion of the public planning function in the 1940s aimed both at stabilizing an increasingly volatile racial situation and at speeding the process of neighborhood separation by class and race."); THOMAS W. HANCHETT, *SORTING OUT THE NEW SOUTH CITY: RACE, CLASS, AND URBAN DEVELOPMENT IN CHARLOTTE, 1875-1975*, at 235-36 (1998) (In Charlotte, in "a concerted policy on the part of the city's white leaders, in association with the FHA . . . real estate developers in Southern cities typically built houses for black buyers on the suburban fringe."); *Id.* at 330 n.4 ("[B]y offering opportunities in one specified sector, developers met FHA requirements to protect their subdivisions elsewhere from the threat of invasion by nonwhites.").

72. Executive Order Number 11063 did not apply to conventionally financed housing, but did require that agencies like FHA and VA "take appropriate action to insure that their financial assistance programs would not be used to create racially separate housing facilities." ROBERT G. SCHWEMM, *HOUSING DISCRIMINATION: LAW AND LITIGATION* 3-10 (1996); Exec. Order No. 11,063, 27 Fed. Reg. 11517 (Nov. 24, 1962).

The FHA/VA standards had immense impact. “By the start of the 1970s, eleven million Americans had purchased dwellings thanks to FHA-VA financing.”<sup>73</sup> The influence of the FHA-VA policies extended to housing financed otherwise than through those agencies. “A developer might sell just a few houses in a subdivision through the FHA-VA, but only if the whole subdivision met federal standards. As a result, FHA-VA ideas quickly became the accepted wisdom among American developers and ordinary home buyers as well and as such remained in force long after federal policy officially changed.”<sup>74</sup>

Almost all of those millions of federally-insured and federally-guaranteed home mortgage loans went to whites; almost all of those millions of homes were available only to whites. “[L]ess than 2 percent of the housing financed with federal mortgage assistance from 1946 to 1959 was available to Negroes.”<sup>75</sup>

The exclusion of African-Americans from the FHA and VA programs not only deprived them of the advantages of particular homes and property appreciation, but also, to a very large extent, excluded them from suburban areas. Since FHA and VA were deeply committed to financing housing in the suburbs, not in cities, by excluding blacks from FHA and VA assisted housing, the federal government excluded blacks from suburbs. The exclusion of blacks and other minorities from the FHA- and VA-financed homes—and from subdivisions that had some FHA- and VA-financed homes—had immense significance for whites and for minorities:

FHA’s racial policies meant that whites who previously lacked the means to remove themselves to racially homogeneous communities could now do so with public support. As Gunnar Myrdal concluded in *An American Dilemma* (1944), New Deal programs extended racial “protection” to areas and groups of white people who were earlier without it.’ The result was that the emergent sense of entitlement that appeared after World War II embraced not merely the fact of property ownership, but a broader conception of homeowners’ rights that included the assumption of a racially exclusive neighborhood.<sup>76</sup>

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73. HANCHETT, *supra* note 29, at 165-66 (“[A]lmost one-fourth of new houses in the United States during the 1940s-1960s received FHA-VA subsidy, with the high point at 40.7 percent in 1955.”).

74. *Id.* at 166; HANCHETT, *supra* note 71, at 234 (“[T]he Ervin Company always plans its subdivisions according to the standards set by the FHA.”).

75. GELFAND, *supra* note 63, at 221. See also Raymond A. Mohl, *Whitening Miami: Race, Housing, and Government Policy in Twentieth-Century Dade County*, 79 FLA. HIST. Q. 319, 327 n.14 (2001). This source quotes Frank S. Horne to Albert M. Cole, Administrator of the Housing and Home Finance Agency, as saying in 1953: “When I first went to Miami several years ago in collaboration with the FHA program, there had been only *one* family among the entire Negro population (40,000) who had been able to receive FHA mortgage insurance.”

76. Hirsch, *supra* note 41, at 209. For a similar point, see THOMAS J. SUGRUE, *THE ORIGINS OF THE URBAN CRISIS: RACE AND INEQUALITY IN POST WAR DETROIT* 78-79 (1996)

The houses that whites bought with FHA and VA help provided an extraordinary opportunity for wealth appreciation—an opportunity that was denied to non-whites.

White homeowners who had taken advantage of FHA financing policies saw the value of their homes increase dramatically, especially during the 1970s when housing prices tripled. . . . Those who were locked out of the housing market by FHA policies and who later sought to become first-time homebuyers faced rising housing costs that curtailed their ability to purchase the kind of home they desired. The postwar generation of whites whose parents gained a foothold in the housing market through the FHA will harvest a bounteous inheritance in the years to come. Thus the process of asset accumulation that began in the 1930s has become layered over and over by social and economic trends that magnify inequality over time and across generations.<sup>77</sup>

As this quotation suggests, even if those who were locked out of the FHA/VA subdivisions managed to buy homes elsewhere, they were losing out on a particularly advantageous opportunity.<sup>78</sup> For example, the Levittown

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(describing a campaign in Detroit which evidenced, as one observer said, that “the white population has come to believe that it has a vested, exclusive, and permanent “right” to certain districts.’ The government, they believed, had an obligation to protect that ‘right.’”).

77. OLIVER & SHAPIRO, *supra* note 10, at 51-52. *See id.* at 108 (“The value of the average housing unit tripled from 1970 to 1980, far outstripping inflation. . . . Thus households that owned homes before the late 1970s had an opportunity to accumulate wealth in the form of home equity, while those who did not missed an excellent opportunity.”).

78. *See* OLIVER & SHAPIRO, *supra* note 10, at 8 (“The lower values of black homes adversely affect the ability of blacks to utilize their residences as collateral for obtaining personal, business, or educational loans.”); CONSUMER’S UNION, I’LL BUY THAT!: 50 SMALL WONDERS AND BIG DEALS THAT REVOLUTIONIZED THE LIVES OF CONSUMERS 183-188 (1986) (“Levittown was the American dream come true.”); Barry Checkoway, *Large Builders, Federal Housing Programs, and Postwar Suburbanization*, in CRITICAL PERSPECTIVES ON HOUSING 124 (Rachel G. Bratt et al. eds., 1986) (“The best house for the money in the United States”); *Id.* at 133 (“Houses in suburbs like Levittown were a bargain and did offer a version of the suburban ideal to consumers who had never before been able to achieve it”; “given the suburban orientation of FHA and other federal housing programs, suburban homeownership offered virtually the only sensible investment location.”); *Id.* at 125 (“Veterans Using the G.I. Bill of Rights Could Buy in Levittown with No Down Payment and Installments of Only \$56 a Month.”). *Compare* Hanchett, *supra* note 29, at 166 (“No Cash down for Veterans, \$65 monthly buys your home!” trumpeted Levitt’s newspaper ads. With an FHA mortgage, civilians need only \$790 down, \$68 monthly!”) with Barbara Ferman et al., *West Mount Airy, Philadelphia*, 4 CITYSCAPE 29, 40 (1998) (“The post-World War II experience of continuous appreciation of property values transformed homeownership, for vast segments of the working and middle classes, into a solid form of preretirement savings. Their houses constituted their financial security.”) There were many Levittowns—in New York, Pennsylvania, New Jersey, Maryland, and elsewhere. *See* Checkoway, *supra*, at 124-26; HERBERT J. GANS, THE LEVITTOWNERS: WAYS OF LIFE AND POLITICS IN A NEW SUBURBAN COMMUNITY 3-5, 380 (1982); William J. Levitt, *A House is Not Enough: The Story of America’s First Community Builder*, in BUSINESS DECISIONS THAT CHANGED OUR LIVES 59, 71 (Sidney Furst & Milton Sherman eds., 1964).

houses, the prototype of the FHA/VA financed homes, were known as “the buy of the century.”<sup>79</sup> “Life magazine reported that it was cheaper to move out to Levittown and buy a new house than to keep renting an existing apartment in the city, an astonishing testimonial to the power of the federal mortgage subsidy.”<sup>80</sup> The Levittown and other FHA/VA financed houses increased dramatically in value. The basic house in Levittown, New York, more than doubled in value by 1957; “improved houses almost tripled in value.”<sup>81</sup> Blacks did not share in this appreciation.

As Oliver and Shapiro concluded:

The FHA’s actions have had a lasting impact on the wealth portfolios of black Americans. Locked out of the greatest mass-based opportunity for wealth accumulation in American history, African Americans who desired and were able to afford home ownership found themselves consigned to central-city communities where their investments were affected by the “self-fulfilling prophecies” of the FHA appraisers: cut off from sources of new investment their homes and communities deteriorated and lost value in comparison to those homes and communities that FHA appraisers deemed desirable.<sup>82</sup>

The personal impact of the exclusion was substantial and long-lived. In 1952, Frank Horne visited the Pennsylvania Levittown. Arnold Hirsch, whose research in the federal archives enables him to paint a vivid picture, tells us that

Horne, an exceptionally fair-skinned African American, reported that a Levittown sales agent leaned over a counter to confide to him in a whisper: “You know, we’ve got to keep the colored out.” Horne repeatedly brought the situation to Foley’s attention and claimed that the slur placed both himself and the agency in an “untenable position.” “[I]t is more than an anomaly,” Horne wrote, “that a representative of the Federal agency is subject to affront and insult by a developer who is receiving assistance from the same Federal agency.” Like [Thurgood] Marshall, he urged that federal aid “be withheld from Levitt until he shall cease and desist from his brazen racial discrimination.” Horne’s complaints, like Marshall’s, were brushed aside.<sup>83</sup>

On the fiftieth anniversary of the Long Island Levittown, in 1997, the New York Times reported the reaction of Mr. Eugene Burnett, a retired Suffolk County police sergeant, “who was among thousands of military veterans who”

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79. Jon Kalish, *Dreams Cost More as a Suburban Prototype Reaches a Milestone*, CHI. TRIB., March 31, 1997, at C2 (“While many elderly people living in Levittown complain of high property taxes today, they still say their homes were, as they were hyped at the time, ‘the buy of the century.’”).

80. HANCHETT, *supra* note 29, at 166.

81. KELLY, *supra* note 56, at 113. FHA also assisted with home improvement loans. *Id.* at 114.

82. OLIVER & SHAPIRO, *supra* note 10, at 18.

83. Hirsch, *supra* note 41, at 214 (alteration in the original).

sought housing in Levittown “[b]ut . . . was turned away because he is black.” “The anniversary leaves me cold,” Mr. Burnett is quoted as saying. “He said he still stings from ‘the feeling of rejection on that long ride back to Harlem.’”<sup>84</sup> Similar stories were told by others. Ms. Ann Gilmore recalled that “she and her husband had taken two different buses to get to the model homes in Levittown [New York], only to receive the cold shoulder:

It was a Sunday, . . . sometime in 1948, well, it was strange, because when we finally approached a salesman to ask for an application, well, he didn’t say anything, but just walked away from us. It was as if we were invisible . . .<sup>85</sup>

In 1997, Mr. Burnett recalled the 1949 visit that he and his wife had made to Levittown New York:

“I found the salesman and said, ‘I like your house and I’m considering buying one. Could you give me the application?’”

“He said, ‘It’s not me. But the owners of this development have not yet decided to sell to [N]egroes.’ I was shocked out of my shoes.”

The drive back to Harlem was grim. “I don’t know how I didn’t start World War III that day.”<sup>86</sup>

Levittown’s refusal to allow black homeownership “proved potent and long-lasting. . . . Decades after [the racially exclusionary clause in the deed] lost any legal force, it might as well remain in effect.”<sup>87</sup> In 1990, the Levittown on Long Island, New York, “remain[ed] overwhelmingly white—97.37 percent.”<sup>88</sup> “The black population has never neared 1 percent.”<sup>89</sup> One white resident expressed “a feeling there’s a stigma related to Levittown. . . .

84. Bruce Lambert, *At 50, Levittown Contends with its Legacy of Bias*, N.Y. TIMES, Dec. 28, 1997, at A1.

85. Sidney C. Schaer, *Long Island: Our Story/Levittown at Fifty; Ronek Park, Equal-Opportunity Suburb*, NEWSDAY, Sept. 28, 1997, at H19.

86. Paula Span, *Mr. Levitt’s Neighborhood; After 50 Years, It Still Offers the Good Life—for Some*, WASH. POST, May 27, 1997, at C1.

87. *Id.* A May 1998 *Newsday* story reports that “the de facto segregation would establish housing patterns which have persisted to this day.” David Behrens, *Long Island: Our Story*, NEWSDAY, May 24, 1998, at A12. The truly telling aspect of this statement is its characterizing as “de facto” segregation in housing that was “100 percent dependent on Government.” See *infra* note 94 and accompanying text. When the government agency “exhorted the use of” racially restrictive covenants, and a private builder “was obliged to adopt it as a condition for obtaining FHA insurance.” ABRAMS, *supra* note 57, at 230; *Id.* at 234.

88. Lambert, *supra* note 84, at 23 (citing 1990 census figures). The story reports that “Although blacks account for 8 percent of Long Island’s population, . . . of Levittown’s 53,286 residents in 1990, there were 51,883 whites, 2,184 Hispanic people, 950 Asians and Pacific Islanders, 137 blacks (0.26 percent), 31 American Indians and Aleuts and 285 ‘other.’” *Id.*

89. Span, *supra* note 86.

A kind of ‘They didn’t want us; we don’t want them.’”<sup>90</sup> This is buttressed by another recent report: “[A]sk Ann Gilmore about Levittown [in 1997] and she still bristles. ‘If they gave me a Levittown house today,’ she said, ‘I wouldn’t take it.’”<sup>91</sup>

I teach the case of *Levitt & Sons v. Division Against Discrimination*, which illustrates nicely the way in which the FHA process worked, the importance of the FHA financing, and the ordinary, matter-of-fact exclusion of “Negroes.”<sup>92</sup> The case also illuminates the absence of any federal protection from racial discrimination: in states that did not have fair housing laws, “Negroes” would have no recourse from the refusal to allow them to purchase homes until 1968, when Congress enacted Title VIII of the 1968 Civil Rights Act, and the Supreme Court held in *Jones v. Alfred H. Mayer Co.* that the 1866 Civil Rights Act prohibited private discrimination.<sup>93</sup>

The case involves three African-Americans, Franklin D. Todd, Willie R. James, and Luther Gardner. Each sought to purchase a home in a large development of FHA-insured homes, Todd and James from Levittown, in Burlington County, and Gardner from Green Fields Village, in Gloucester County. Each alleged that he was rejected as a purchaser because of his race. The three men then filed complaints with the New Jersey Division Against Discrimination (DAD), charging that the defendants had violated the New Jersey Law Against Discrimination, which prohibited racial discrimination in publicly assisted housing. The Division found probable cause to process the complaints.

Levittown and Green Fields filed suit, challenging the jurisdiction of the DAD to hear these complaints and attacking the constitutionality of the New Jersey law. The New Jersey Supreme Court discussed the nature of the two developments and their close association with the FHA, quoting the Congressional testimony of William Levitt, president of the corporation, that “We are 100 percent dependent on Government.”<sup>94</sup> The court held that the

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90. *Id.*

91. Sidney C. Schaer, *Long Island: Our Story/Levittown at Fifty/Ronek Park, Equal-Opportunity Suburb*, *NEWSDAY*, Sept. 28, 1997, at H19.

92. *Levitt and Sons v. Div. Against Discrimination*, 158 A.2d 177, 181 (N.J. Super. Ct. App. Div. 1960), *cert. denied*, 363 U.S. 418 (1960).

Thus it is apparent that FHA financing is a large factor in stimulating home buying, since the low down payment opens the home market to persons who have accumulated only small savings and the extended term of the loan allows home ownership to be achieved by payments from income by a much larger proportion than would ordinarily be the case.

*Id.* For a discussion of the case, and Levittown’s generally segregatory policy and eventual desegregation in New Jersey, see GANS, *supra* note 78, at 371-84. See also KELLY, *supra* note 56; LYNDY ROSE DAY, *MAKING A WAY TO FREEDOM: A HISTORY OF AFRICAN-AMERICANS ON LONG ISLAND* (1997); JACKSON, *supra* note 46, at 203-18.

93. 42 U.S.C. § 3601 (1995); *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968).

94. *Levitt and Sons*, 158 A.2d at 181.

housing was publicly assisted housing, the DAD did have jurisdiction, the law was constitutional, and the developments could not lawfully exclude African-Americans.

My goal in teaching this material is to enable students to trace today's racial disparities in wealth and endowments to the government's provision of wealth-creating advantages to whites and denial of those advantages to blacks and other people of color. I hope that students who learn these facts will accept Professor John Calmore's challenge, and move the federal government to "acknowledge its role and . . . right these tragic wrongs."<sup>95</sup>

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95. Calmore, *supra* note 2, at 1509.

## APPENDIX

Table of Contents to Social Justice  
Supplemental Materials for Property Course<sup>96</sup>

1. Fran Quigley, *Growing Pain: Indiana's Migrant Farmworkers Toil Without Workplace Protections*, NUVO, Oct. 18-25, 2001, at 14.
2. Andrew Kosegi, *Child Labor Stories*, INDIANAPOLIS STAR, January 12, 1998, at A7.
3. Martin DeAgostino, *Fields and Dreams: Hispanics Organized and Built a Community in the 1970s*, SOUTH BEND TRIBUNE, April 25, 1999, at A1.
4. Maria Nape, *The Plight of the Migrant Farm Worker*, INDIANAPOLIS STAR, September 15, 1996, at D4.
5. Housing Assistance Council, 2000Abundant Fields, Meager Shelter: Findings A Survey of Farmworker Housing in the Eastern Migrant Stream, available at <http://www.ruralhome.org/pubs/farmworker/ecoast/execsummary.htm>.
6. *In re Lee Sing*, 43 F. 359 (N.D. Cal. 1889).
7. *Buchanan v. Warley*, 245 U.S. 60 (1917).
8. *City of Birmingham v. Monk*, 185 F.2d 859 (5th Cir. 1950).
9. *Hurd v. Hodge*, 334 U.S. 24 (1948).
10. *Shelley v. Kraemer*, 334 U.S. 1 (1948).
11. CLEMENT E. VOSE, CAUCASIANS ONLY: THE SUPREME COURT, THE NAACP, AND THE RESTRICTIVE COVENANT CASES 83-90 (1959).
12. CHARLES ABRAMS, FORBIDDEN NEIGHBORS: A STUDY OF PREJUDICE IN HOUSING 156 (1955).
13. RICHARD KLUGER, SIMPLE JUSTICE: THE HISTORY OF *BROWN V. BOARD OF EDUCATION* AND BLACK AMERICA'S STRUGGLE FOR EQUALITY (1976).
14. LORRAINE HANSBERRY, TO BE YOUNG, GIFTED AND BLACK 20-21 (1969).
15. LORRAINE HANSBERRY, A RAISIN IN THE SUN (Act II, Scene 3).
16. TOM C. CLARK & PHILIP B. PERLMAN, PREJUDICE AND PROPERTY: AN HISTORIC BRIEF AGAINST RACIAL COVENANTS (1969).
17. Mr. J. D. Shelley, *I Ain't Moving Nowhere!*, in Peter Irons, THE COURAGE OF THEIR CONVICTIONS (1988).
18. *Irving Trust Co. v. Day*, 314 U.S. 556 (1942).
19. *Hodel v. Irving*, 481 U.S. 704 (1987).

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96. This is very much a work-in-progress; I am eager to have critical comments and suggestions for additions, substitutions, changes, or deletions. The cases have been edited and excerpts from the books have been provided, although this table of contents does not always indicate which pages have been furnished.

These and materials for courses in Housing and Community Development Law, Homelessness and the Law, and Housing Discrimination and Segregation are available from Ms. Mary Deer, [mdeer1@iupui.edu](mailto:mdeer1@iupui.edu) or 317.274.1909.

20. Gail Radford, *The Federal Government and Housing During the Great Depression*, in FROM TENEMENTS TO THE TAYLOR HOMES 102-03, 110-18 (John I. Bauman et al. eds., 2000).
21. Thomas W. Hanchett, *The Other "Subsidized Housing": Federal Aid to Suburbanization*, in FROM TENEMENTS TO THE TAYLOR HOMES 164-176 (John I. Bauman et al. eds., 2000).
22. Arnold R. Hirsch, *Choosing Segregation: Federal Housing Policy Between Shelley and Brown*, in FROM TENEMENTS TO THE TAYLOR HOMES (John I. Bauman et al. eds., 2000).
23. KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* (1985).
24. *Levitt & Sons, Inc. v. Division Against Discrimination*, 31 N.J. 514 (1960), *app. dismissed*, 363 U.S. 418 (1960).
25. *Gautreaux v. Chicago Hous. Auth.*, 503 F.2d 930 (7th Cir. 1974), *aff'd sub nom. Hills v. Gautreaux*, 425 U.S. 284 (1976).
26. *Walker v. City of Mesquite*, 169 F.3d 973, *cert. denied*, 528 U.S. 1131 (1999).
27. *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964).
28. David Benjamin Oppenheimer, *Kennedy, King, Shuttlesworth and Walker: The Events Leading to the Introduction Of the Civil Rights Act of 1964*, 29 U.S.F. L.REV. 645 (1995).
29. *In re the Application of New York State Comm'n Against Discrimination, Petitioner v. Pelham Hall Apartments*, 170 N.Y.S.2d (N.Y. 1958).
30. *Jones v. Mayer*, 392 U.S. 409 (1968).
31. 42 U.S.C. § 1982 (Civil Rights Act of 1866).
32. Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. §3601 *et seq.*
33. Timeline with Respect to *Jones v. Mayer* and the Enactment of Title VIII (on file with author).
34. TOI DERRICOTTE, *THE BLACK NOTEBOOKS: AN INTERIOR JOURNEY* (1997).
35. *I See the Promised Land*, in A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS OF MARTIN LUTHER KING, JR. (James M. Washington, ed., 1986).
36. Robert F. Kennedy, On the Death of the Reverend Dr. Martin Luther King, Jr. (April 4, 1968), *reprinted in RFK: COLLECTED SPEECHES* 352 (Erwin O. Guthman & C. Richard Allen eds., 1993).
37. Gwendolyn Brooks, *The Ballad of Rudolph Reed*, in *BLACKS* 376 (Third World Press 1991).
38. *Evans v. Abney*, 396 U.S. 435 (1970).
39. Robert Burt, *Constitutional Law and The Teaching of the Parables*, 93 YALE L.J. 455, 457 (1984).

40. *Hermitage Methodist Homes v. Dominion Trust Co.*, 387 S.E.2d 740 (Va. 1990).
41. Pathbreaking CBO Study Shows Dramatic Increases in Income Disparities in 1980s and 1990s: An Analysis of the CBO Data, Center on Budget and Policy Priorities, May 31, 2001.
42. MELVIN OLIVER AND THOMAS SHAPIRO, *BLACK WEALTH WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* 1-10, 15-18 (1995).
43. J.W. HARRIS, *PROPERTY AND JUSTICE* 258-64 (1996).
44. Susan E. Mayer, *How Did the Increase in Economic Inequality between 1970 and 1990 Affect Children's Education Attainment?*, 107 AM. J. SOCIOLOGY 1 (2001).
45. Langston Hughes, *Ballad of the Landlord*, in *SELECTED POEMS OF LANGSTON HUGHES* (1974).
46. Edith Abbott, *Eviction Riots in 1830*, in *THE TENEMENTS OF CHICAGO 1908-1935* (1936).
47. *Altz v. Liberson*, 233 N.Y. 16 (1922).
48. *Brown v. Southall Realty*, 237 A.2d 834 (D.C. 1968), *cert. denied*, 393 U.S. 1018 (1969).
49. *Javins v. First National Realty*, 428 F.2d 1071 (D.C. Cir. 1970), *cert. denied*, 400 U.S. 925 (1970).
50. Timeline re: Development of the Implied Warranty of Habitability (on file with author).
51. *Freshcut v. Fazli*, 629 N.E.2d 944 (Ind. Ct. App. 1994).
52. *Williams v. Hittle*, 629 N.E.2d 944 (Ind. Ct. App. 1994).
53. *Johnson v. Scandia Assoc.*, 717 N.E.2d 24 (Ind. 1999).
54. *David Properties, Inc. v. Selk* 151 So.2d 334 (Fla. Dist. Ct. App. 1963).
55. *Kline v. 1500 Massachusetts Ave.*, 439 F.2d 477 (D.C. Cir. 1970).
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58. *Chapman v. Silber*, 760 N.E.2d 329 (N.Y. 2001).
59. Mac Daniel, *Child's Death Spotlights A Hidden Menace Lead Paint Kills Young Refugee*, THE BOSTON GLOBE, December 20, 2001.
60. *Edwards v. Habib*, 397 F.2d 687 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1016 (1969).
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62. *Jancik v. HUD*, 44 F.3d 553 (7th Cir. 1995).
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68. Pinnacle Props. v. Saulka, 693 N.E.2d 101 (Ind. Ct. App. 1998).
69. Goldberg v. Kelly, 397 U.S. 254 (1970).
70. Joy v. Daniel, 479 F.2d 1236 (4th Cir. 1973).
71. Washington Legal Clinic for the Homeless v. Barry, 107 F.3d (D.C. Cir. 1997).
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79. Southern Burlington County NAACP v. Township of Mount Laurel, 456 A.2d 390 (N.J. 1983).
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