ARTICLES & ESSAYS: Washington Lawyers' Committee for Civil Rights and Urban Affairs: A Report on the Committee's Fair Housing Project, 1984-2017

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INTRODUCTION

In 2018, the Washington Lawyers' Committee for Civil Rights and Urban Affairs (formerly known as the Washington Lawyers' Committee for Civil Rights Under Law) will celebrate its 50th Anniversary. During the past forty-nine years, the Committee has been a national leader in enforcement of civil rights laws. Its leadership extends **[*52]** to enforcement of the Fair Housing Act of 1968 ("FHA") and corresponding local fair housing laws. Fair housing is widely regarded as a pivotal civil right because where you live often determines your access to quality education, well-paying jobs, nourishing food, and other important social and economic relationships. The impact of residential segregation on children in particular is well summarized by Richard Rothstein in Color of Law: The Forgotten History of How Our Government Segregated America:

The consequences of being exposed to neighborhood poverty are greater than the consequences of poverty itself. Children who grow up in poor neighborhoods have few adult role models who have been educationally and occupationally successful. Their ability to do well in school is compromised from stress that can result from exposure to violence. They have few, if any, summer job opportunities. Libraries and bookstores are less accessible. There are fewer primary care physicians. Fresh food is harder to get. Airborne pollutants are more present, leading to greater school absence from respiratory illness. The concentration of many disadvantaged children in the same classroom deprives each child of the special attention needed to be successful. [1]

The Committee's role in promoting fair housing in the D.C. metropolitan area and nationally has been significant, in part because the Department of Housing and Urban Development ("HUD") and the Department of Justice often lack the resources, and at times the political will, to rigorously enforce the FHA.

Although this report summarizes the Committee's Fair Housing project over the past thirty-three years, it is in effect an update of a report published in 1984 that discussed the first eight years of the project. [2] As Mr. Scanlon's and

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[1] See Richard Rothstein, The Color of Law: The Forgotten History of How Our Government Segregated America 187 (2017).

[2] See generally Kerry Alan Scanlon, Civil Rights Papers: Washington Lawyers' Committee for Civil Rights Under Law; A Report

this report document show, the fair housing efforts of the Committee have evolved over time to address the most cutting edge and critical civil rights issues as they arise. Housing discrimination against protected categories of citizens, such as discrimination based on race, national origin, disability and gender, has been a constant. Over the years, more subtle but nonetheless deleterious forms of discrimination have emerged, and the Committee has been quick to identify and combat them. Thus, cases challenging familial **[*53]** status discrimination were followed by challenges to lending discrimination (including predatory lending), insurance redlining, gender and racial harassment, source of income discrimination, violation of the design and construction standards of the FHA protecting disabled home-seekers, the adverse impact of gentrification of affordable housing, and the collateral consequences of criminal convictions on access to housing. Many of these more cutting edge enforcement actions were predicated on showing that facially neutral policies had a disparate impact on protected home-seekers. New trends in fair housing enforcement are discussed at the end of this report.

One of the innovations in fair housing enforcement pioneered by the Committee was the founding of a sister organization devoted to testing, enforcement, education and outreach in furtherance of equal housing opportunity. Thus, in 1983, the Committee was instrumental in creation of the Fair Housing Council of Greater Washington ("FHCGW"), which became the Equal Rights Center ("ERC") after its 1999 merger with the Fair Employment Council. The ERC has worked with the Committee in testing properties for compliance with the fair housing laws and investigating complaints of housing discrimination. Individual victims of discrimination sometimes had difficulty meeting their burden of proof because the trial devolved into a "he said-she said" scenario in which the outcome turned on the jury's evaluation of the credibility of the plaintiff's story versus that of the property manager's employees. As demonstrated by some of the case histories discussed below, testing by the ERC often provided crucial evidence of discriminatory practices that corroborated the plaintiff's story.

The Committee filed an amicus brief in the landmark case of Havens Realty Corp. v. Coleman, which established the standing of testers and testing organizations to bring actions against firms accused of violating the FHA. [3] This brief was one of a series of amicus briefs filed by the Committee that helped shape the development of fair housing law. Other examples are discussed after the section on case histories.

I. CASE HISTORY

The number of fair housing cases brought by the Committee over the past thirty-three years is too voluminous to discuss within the confines **[*54]** of this report. Thus, this report summarizes some selected key cases prosecuted by the Committee and cooperating counsel in the various categories of housing discrimination.

A. Discriminatory Advertising

The Scanlon article documented the Committee's efforts to promote equal housing opportunity by challenging use of all white models in advertising for housing. The Committee continued to devote resources to advertising cases in the 1980s and beyond. For example, in Saunders v. Gen. Servs. Corp., the Committee and cooperating counsel took Richmond, Virginia's largest apartment management company to trial for fair housing violations, resulting in a 45-page opinion ruling for the plaintiffs. [4] The court's decision found that the defendant had violated the FHA by using predominantly white human models in its advertising. The court also ruled that the defendant had committed civil fraud by failing to include a fair housing logo in its advertisements, in violation of an earlier settlement agreement with the Committee.

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on the Committee's Fair Housing Project 1975-1983, *27 How. L.J. 1457 (1984).*

[3] *Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982).*

[4] See generally *Saunders v. Gen. Servs. Corp., 659 F. Supp. 1042 (E.D. Va. 1987).*

The Committee and cooperating counsel achieved another significant victory in Spann v. Colonial Vill., Inc., involving another challenge to the use of all white models in advertising for housing. [5] In a ground-breaking decision, the D.C. Circuit applied Havens to uphold the standing of the FHCGW to challenge discriminatory advertising practices. [6] In so ruling, the court cited the FHCGW's allegations that:

Defendants' preferential advertising tended to steer Black home buyers and renters away from the advertised complexes and thus impelled the organizations to divert resources to checking or neutralizing the ads' adverse impact. The organizations also claimed that the advertisements required them to devote more time, effort, and money to endeavors designed to educate not only Black home buyers and renters, but the D.C. area real estate industry and the public that racial preference in housing is indeed illegal. [7]

This decision solidified the standing of the FHCGW to bring fair housing actions in its own name and became an important precedent for establishing the standing of fair housing organizations in subsequent cases.

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B. Race and National Origin Discrimination

As noted above, combatting discrimination on the basis of race and national origin has been a constant in the program of the Committee. The most blatant form of discrimination occurs when a management company tells a Black or Latino tester that no apartments are available in a complex while it shows a white testers available units in the same complex. Steering Black home-seekers to predominantly African American or Latino neighborhoods or apartment complexes is another more blatant scenario. Beyond these scenarios, testing investigations have revealed more subtle forms of discrimination, such as showing apartments to both Black and white testers but offering rent abatements or other favorable terms only to the white testers. In addition, as discussed below, the Committee has been called upon to combat insidious forms of racial harassment in housing complexes.

In an example of blatant discrimination and steering, the Committee and cooperating counsel represented Pamela Hendrickson, an African American employed by the U.S. Navy who was re-assigned to Washington. [8] When she searched for apartments on Capitol Hill, Yarmouth Management told her that none of the listed apartments in which she was interested were available and steered her to apartments in predominantly Black neighborhoods that were in poor condition. [9] Ms. Hendrickson contacted the FHCGW, whose testing demonstrated that some of the apartments listed by Yarmouth were in fact available. [10] Ms. Hendrickson brought suit in the U.S. District Court for the District of Columbia. [11] Ultimately, the case was settled for a payment of $ 150,000 and five-year consent decree that obligated Yarmouth to train its employees in fair housing, establish a complaint procedure for clients, and affirmatively market its properties to African Americans. [12]

In Tscherny v. Horning Bros., the Committee and cooperating counsel represented a bona fide claimant and the FHCGW in litigation arising out of discriminatory refusal to rent to a Latino tester. [13] The case was settled in 1990

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5 See generally *Spann v. Colonial Vill., Inc., 899 F.2d 24 (D.C. Cir. 1990).*

6 *Id. at 27.*

7 Id.

8 Wash. Law. Comm., Annual Report, 1996, at 19 (1996).

9 Id.

10 Id.

11 Hendrickson v. Yarmouth Mgmt., No. 1:95-cv-01528, (D.D.C. Aug. 11, 1995).

12 Wash. Law. Comm., supra note 8.

13 Tscherny v. Horning Bros., No. 1:88-CV-03426 (D.D.C. Nov. 29, 1998).

for one of the largest payments in a national **[*56]** origin discrimination case. [14] In addition, the parties entered into a Consent Order that contained innovative provisions requiring the defendant to affirmatively market apartments in the Hispanic community and provide brochures and applications in both Spanish and English. [15]

The Committee and cooperating counsel also established an important principle in Pinchback v. Armistead Homes Corp. [16] The board of Armistead had the power to veto the sale of any home in the Armistead Gardens community. [17] In thirty years, the community had never had a Black member. [18] The evidence at trial established that it was board policy to reject the offers of any Blacks who wanted to buy a home in Armistead Gardens. [19] Ms. Pinchback saw an ad for a home and contacted a real estate agent, who told her that Armistead Gardens would not allow Blacks in the community. [20] Pinchback therefore did not make an offer on the home, but she reported the incident to HUD and brought suit in the U.S. District Court under Title VIII and the Maryland Fair Housing Act. [21] Pinchback prevailed at trial and was awarded damages and injunctive relief. [22] On appeal, Armistead argued that Pinchback was not entitled to relief because she had never submitted an offer on the home, and the "futile gesture" doctrine established under employment law did not apply in the context of fair housing. [23] The Fourth Circuit affirmed the district court decision, holding that where it is clear that the defendant adheres to a policy of racial discrimination, the plaintiff need not engage in the "futile gesture" of making an offer for housing that she knows will be refused, and potentially suffer the humiliation of that refusal. [24] Pinchback was significant because the futile gesture doctrine had previously been applied only in the context of actions under Title VII, so it was the first case applying this important doctrine to fair housing claims under Title VIII.

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C. Harassment

1. Racial

The Committee broke ground in several cases involving disturbing racial harassment of African American tenants and home owners. In Bradley v. Carydale Enters, the Committee and cooperating counsel won a verdict after trial in a racial harassment and retaliation case. [25] The court ruled that Ms. Bradley had been harassed by a racist tenant and that the landlord had unlawfully retaliated against her. [26] The case was ultimately settled for a payment of $

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[14] Wash. Law. Comm., Annual Report, 1990-91, at 26 (1991).

[15] Id.

[16] See generally *Pinchback v. Armistead Homes Corp., 907 F.2d 1447 (4th Cir. 1990).*

[17] *Id. at 1449.*

[18] Id.

[19] Id.

[20] Id.

[21] Id.

[22] Id.

[23] *Id. at 1450-51.*

[24] *Id at 1452-53.*

[25] *Bradley v. Carydale Enters., 730 F. Supp. 709, 711 (E.D. Va. 1989).*

[26] Id.

120,000 and adoption of a company-wide affirmative action plan. [27] At the time, this was the largest settlement ever in a Virginia housing discrimination case. [28] This was the first case holding a landlord liable under *42 U.S.C. § 1981* for racial harassment of one tenant by another tenant.

The Committee extended the law on racial harassment of tenants to condominium associations in Reeves v. Carrollsburg Condo. Unit Owners Ass'n. [29] In that case, the Carrollsburg Association rules allowed eviction of a condominium owner if he was denying quiet enjoyment of the property to another owner. [30] A white Carrollsburg owner harassed Ms. Reeves, an African American fellow owner, with racial epithets and threats of lynching, but the Association took no action against him. [31] In its decision, the district court established the important principle that a condominium association can be held liable under the FHA for failing to take action to stop racial harassment of one condominium owner by another. [32]

2. Gender

In Williams v. Poretsky Management, Ms. Williams was sexually harassed by a maintenance worker at the apartment complex where she resided. [33] She complained to the resident manager, who refused to take action and in fact assigned the harasser to perform repairs on **[*58]** Ms. Williams's apartment. [34] The landlord also refused to release her from her lease. The Committee and cooperating counsel brought suit against the landlord for violating the FHA by failing to take action to protect Ms. Williams. [35] The landlord moved for summary judgment on the basis that Ms. Williams was never deprived of her right to rent her apartment. [36] The court denied the defendant's motions, upholding the right of the plaintiffs to bring suit against landlords under the FHA where sexual (or racial) harassment on the premises has become severe enough to create a "hostile housing environment." [37] This decision represented an extension of the hostile working environment doctrine established in employment discrimination cases involving sexual harassment. The court thus followed the precedent established in Pinchback regarding application of Title VII jurisprudence to Title VIII cases. As the court explained:

The Fourth Circuit has recognized that sexual harassment is actionable under Title VII. ...It also has recognized the shared purpose of Title VII and Title VIII to end discrimination. ...Moreover, in recognition of these similar aims, it has been willing to import doctrines or interpretations of language accepted under Title VII to Title VIII claims. [38]

As a result of these decisions, favorable developments in fair employment law can be utilized in developing the law on fair housing.

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[27] Va. Woman Gets $ 120,000 In Civil Rights Lawsuit, Jet, Nov. 13, 1989, at 9.

[28] Id.

[29] Reeves v. Carrolsburg Condo. Unit Owners Ass'n, No. CIV. A. 96-2495 RMU, 1997 WL 1877201, at 7-8 (D.D.C. Dec. 18, 1997).

[30] Id. at 8.

[31] Id. at 1.

[32] Id. at 4-5, 8.

[33] *Williams v. Poretsky Mgmt., 955 F. Supp. 490, 491 (D. Md. 1996).*

[34] Id.

[35] Id.

[36] *Id. at 491-92.*

[37] *Id. at 494-495, 498.*

[38] *Id. at 495.*

D. Familial Status Discrimination

The Committee and cooperating counsel have handled a series of groundbreaking cases challenging housing discrimination based on familial status. The 1988 amendments to the FHA added familial status as a protected category. [39] Even before that, however, courts recognized that discrimination against families with children often has a disparate impact on racial and ethnic minorities. For example, in Betsey v. Turtle Creek Associates, Turtle Creek management issued eviction notices to families in Building 3 of an apartment complex so that it could convert the building to an all-adult facility. [40] The district court found that the plaintiff had failed to make out a prima facie showing **[*59]** of intentional discrimination because, although the families evicted from Building 3 were predominantly African American, there was no showing that Blacks in the Turtle Creek complex as a whole or in the surrounding community were adversely impacted by the evictions. [41] The Fourth Circuit reversed, holding that the plaintiff had shown that the all-adult conversion policy had a disparate impact on African Americans who resided at Building 3, and that evidence of a broader impact was unnecessary to show discriminatory intent. [42] The Betsey decision was cited in support of the Fair Housing Amendments Act of 1988 ("FHAA"), which added "familial status" as a protected category under the FHA. [43]

The Committee and cooperating counsel won a significant victory at trial in Timus v. William J. Davis, Inc. [44] Plaintiff Carrie Timus was selecting an apartment in a complex managed by Davis pursuant to a settlement agreement resolving an earlier complaint of familial status discrimination. [45] An agent of the Davis told Ms. Timus that the apartment complex did not rent to families with children. [46] Subsequent testing by the FHCGW confirmed the discriminatory policy. [47] After a jury trial in July 1992, the jury found for Ms. Timus and awarded damages of $ 2,415,000. [48] Because the defendant lacked the resources to pay a judgment of this magnitude, the case was later settled for a payment of $ 765,000 and comprehensive injunctive relief. [49] The Timus verdict was the first and largest familial status damages award and sent shock waves through the housing industry. [50] It established familial status discrimination, which often adversely affects minority families, **[*60]** as equally egregious as racial dissemination. The magnitude of the award facilitated settlement of subsequent FHAA cases.

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[39] Fair Housing Amendments Act, *42 U.S.C. § 3604* (1988).

[40] *Betsey v. Turtle Creek Assocs., 736 F.2d 983, 985 (4th Cir. 1984).*

[41] Id.

[42] *Id. at 987-99.*

[43] Legislative History of the Fair Housing Amendments Act of 1988, P.L. 100-430I (1988), Fair Housing Amendments Act of 1987, Hearing before the Subcommittee on the Constitution of the Senate Judiciary Committee on S. 558, 100th Congress, March 31, April 2, 7, June 9, and July 1, 1987 at p. 196.

[44] Timus v. William J. Davis, Inc., No. 1:91-CV-00882 (D.D.C. Apr. 22, 1991).

[45] Wash. Law. Comm., supra note 14, at 25; Wash. Law. Comm., Making a Difference: Reflections on Equal Justice at 13-16 (1998). See Robert Pear, Accusation of Bias Against Children Leads to Big Award in Housing Suit, N.Y. Times (July 16, 1992), https://www.nytimes .com/1992/07/16/us/accusation-of-bias-against-children-leads-to-big-award-in-housing-suit.html; Christine Spolar, $ 2.4 Million Awarded in Housing Bias Suit, Wash. Post (July 15, 1992), *https://www.washingtonpost.com/archive/local/1992/07/15/24-million-awarded-in-housing-bias-suit/6b1e* aadd-02dd-4302-9fa9-9846e15778ac/?utm term=.3022371163c9.

[46] See Pear, supra note 45; Spolar, supra note 45.

[47] See Pear, supra note 45.

[48] See id.; Spolar, supra note 45.

[49] Wash. Law. Comm., Annual Report, 1994, at 33 (1994).

[50] Id.

E. Lending Discrimination

The Committee pioneered litigation challenging denial by financial institutions of credit sought by African Americans to buy or improve their homes. In Boyer v. First Virginia Bank, the plaintiff was a law professor at Howard University who owned a beautiful home in Silver Spring, Maryland, had a net worth over $ 1 million, and had the highest possible credit rating. [51] He applied for a $ 50,000 home equity loan by appearing in person at a branch of First Virginia Bank. [52] To his amazement, the bank denied this modest loan despite his spotless credit history. [53] Sensing discrimination, Professor Boyer then applied to several other banks by mail and was approved by all of them, including a sister bank of First Virginia Bank. [54] After defeating a motion for summary judgment, Professor Boyer settled the litigation for $ 210,000, which at that time was the largest settlement ever achieved in a lending discrimination case. [55] The settlement also provided for comprehensive injunctive relief that included training of bank employees, solicitation of minority homeowners to apply for home equity loans, and retention of loan records to permit monitoring of loan practices. [56]

In Lathern v. NationsBanc and Stackhaus v. NationsBanc, the Committee and cooperating counsel brought one of the largest pattern and practice cases against a major lending institution. [57] The suits alleged that a class of African Americans and twenty-four individuals in the Washington, D.C. area were denied loans or otherwise treated unfairly in underwritingdecisions by NationsBanc dating back to 1990. [58] The suit was based in part on statistical evidence compiled in a path-breaking report issued by the Committee in 1994 documenting **[*61]** discriminatory lending practices in the Washington area. [59] Settlement of the suits provided monetary relief to the individual plaintiffs and putative class members who filed claims with a mediator. [60]

Both of these Committee cases were groundbreaking because as of the early 1990's, the Department of Justice was just starting to implement a program for challenging lending discrimination in the housing market. [61] In particular, there was no precedent for the decision in Boyer recognizing that disparate treatment could be established by evidence that a financial institution did not fairly apply its underwriting standards.

F. Redlining

Another insidious form of housing discrimination occurs when property management firms, lenders, or insurance companies adopt policies that deny housing opportunities to persons who live in certain communities, usually predominantly African American areas. This practice is referred to as "redlining," which the Committee has

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[51] Boyer v. First Virginia Bank of Maryland, No. 92-3632 (D. Md. filed Dec. 23, 1992).

[52] Complaint for Declaratory Judgment, Permanent Injunctive Relief and Damages PP 22-3, Boyer v. First Virginia Bank of Maryland, No. 92-3632 (D. Md. 1992).

[53] Id. P 27.

[54] Id. P 28.

[55] Wash. Law. Comm., Annual Report, 1995 at 24 (1995); Wash. Law. Comm., Fall 1996 Update 2 (2010) at 8.

[56] Wash. Law. Comm., Annual Report, 1995, supra note 55.

[57] See Lathern v. NationsBanc Corp, No. 95-01805 (D.D.C. filed Sept. 21, 1995); Stackhaus v. NationsBanc Corp., No. 96-1077 (D.D.C. filed May 10, 1996).

[58] Wash. Law. Comm., Annual Report 1995, supra note 55, at 25; Wash. Law. Comm., Annual Report 1996, at 20-21 (1996).

[59] Wash. Law. Comm., Annual Report 1996, supra note 58; Wash. Law. Comm., Annual Report, 1997, at 24 (1997); Wash. Law. Comm., 30th Anniversary Report 1968-1998 at 27.

[60] Wash. Law. Comm., Annual Report, 1999, at 24 (1999).

[61] Fair Lending Enforcement, U.S. Dep't of Justice (Jan. 2001), https://www.justice.gov/crt/fair-lending-enforcement-program.

vigorously challenged in a number of actions over the decades. [62] Wilson v. NV Homes is an example of an unusual redlining practice. [63] The Wilsons owned a house in the Shaw neighborhood in D.C., which at the time was a predominantly African American area. [64] They wished to buy a home in suburban Maryland, and were attracted to houses built by NV Homes. [65] They were also attracted by the company's "Guaranteed Buy" program, which promised that if the prospective new home buyers were unable to sell their existing house within a certain period after making an offer on an NV home, the company would purchase the existing house for a significant percentage of its appraised value, thus allowing the sellers to purchase a new NV home. [66] However, when NV Homes' appraiser visited the Wilsons' home in **[*62]** the Shaw neighborhood, she left the engine in the car running and completed her "inspection" within a few minutes of arriving. [67] NV Homes subsequently denied the Wilsons' application to participate in the Guaranteed Buy program, undercutting their ability to move into a new home. [68] The Committee and cooperating counsel brought suit alleging that NV Homes' denial of participation in the Guaranteed Buy program constituted unlawful redlining. [69] The parties settled the case for the largest cash payment ever received in a case involving denial of financial assistance by a home builder, as well as injunctive relief ensuring that if the defendant continued its Guaranteed Buy program, it would administer the program in a non-discriminatory manner. [70]

The Committee took on a more expansive and higher impact case in National Fair Housing Alliance, Inc. v. Travelers Property Casualty Corp. [71] The National Fair Housing Alliance, the ERC, four other fair housing organizations, and an African American resident of D.C. alleged that Travelers and two other companies engaged in pervasive discriminatory practices and policies that restricted or denied access to homeowners insurance in predominantly African American neighborhoods throughout the United States. [72] Evidence from testing and other investigations conducted by the fair housing organizations had confirmed that Travelers implemented and maintained discriminatory guidelines and practices. [73] In 2001, the plaintiffs and Travelers entered into a settlement involving a substantial cash payment and injunctive relief. [74]

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[62] Lawyers' Committee and Washington Lawyers' Committee Applaud Supreme Court's Decision Upholding the Fair Housing Act's Disparate Impact Standard, Wash. Law. Comm., (June 25, 2015), https://washlaw.org/news-a-media/430-upholding-fair-housing-act.

[63] See generally Wilson v. NV Homes, No. 90-1128 (D.D.C. 1990).

[64] Complaint for Declaratory Judgment, Permanent Injunctive Relief and Damages P 16, Wilson v. NV Homes, No. 90-1128 (D.D.C. 1990).

[65] Id. PP 17, 19

[66] Wash. Law. Comm., 25th Anniversary Report 1968-1993, at 35 (1993).

[67] Id.

[68] Wash. Law. Comm., 25th Anniversary Report 1968-1993, at 35 (1993); Compl. for Declaratory Judgment, Permanent Injunctive Relief and Damages P 27, Wilson v. NV Homes, No. 90-1128 (D.D.C. 1990).

[69] See generally Complaint for Declaratory Judgment, Permanent Injunctive Relief and Damages, Wilson v. NV Homes, No. 90-1128 (D.D.C. 1990).

[70] Wash. Law. Comm., 25th Anniversary Report 1968-1993 at 35.

[71] See generally Nat'l Fair Hous. All., Inc. v. Travelers Prop. Cas. Corp., No. 00-1506 (D.D.C. filed June 26, 2000).

[72] See generally Compl., Nat'l Fair Hous. All., Inc. v. Travelers Prop. Cas. Corp., No. 00-1506 (D.D.C. 2000).

[73] Id.

[74] Id.

The Committee has also taken a leading role in the jurisprudence on reverse redlining, also referred to as predatory lending. The most notable example is Hargraves v. Capital City Mortg. Corp. [75] This suit alleged that Capital City engaged in fraudulent, usurious, and predatory **[*63]** lending practices in African American census tracts in D.C. The company marketed loans to African Americans with poor credit but equity-rich properties, including a Baptist church. [76] The interest rates for these loans were as high as 30%. [77] The suit alleged that once borrowers fell behind, Capital City relied on hidden accelerator clauses to add penalties and attorneys' fees that forced the borrowers into default, allowing Capital City to foreclose on the properties. [78] The suit alleged that Capital City targeted African American neighborhoods for its predatory lending practices in violation of the FHA. [79]

In 2000, the district court denied the defendants' motion for summary judgment regarding their fair housing claims. [80] The court focused on the plaintiffs' allegations of reverse redlining, which the court defined as follows: "Redlining is 'the practice of denying the extension of credit to specific geographic areas due to the income, race, or ethnicity of its residents … . Reverse redlining is the practice of extending credit on unfair terms to those same communities.'" [81] In other words, reverse redlining is the practice of offering bad loans in predominantly minority areas with the intent of forcing default and foreclosure, allowing the lender to, in effect, rob the borrower of his or her property. The court ruled that the plaintiffs had made a prima facie showing that: (1) Capital City had engaged in several predatory lending practices that could "make housing unavailable by putting borrowers at risk of losing the property which secures their loans," [82] and (2) its lending practices had a disparate impact on African Americans, based on statistical evidence that Capital City made a greater percentage of its loans in majority Black census tracts than other subprime lenders. [83] The Federal Trade Commission (FTC) filed a companion case that was settled for a substantial monetary payment into a victims' fund and comprehensive injunctive relief. [84] Hargraves was the **[*64]** first and seminal decision in the country to hold that targeting minority areas for bad loans in order to steal homes was a denial of housing in violation of § 3604(a) of the FHA.

G. Disability Discrimination

The Committee has been in the forefront of advocating for fair housing opportunity for persons with disabilities. In a series of recent cases, the Committee and cooperating counsel have challenged large real estate firms that have failed to provide sufficient accessibility to the disabled in the design and construction of multi-unit housing complexes. These suits are brought under the FHA and Americans with Disabilities Act ("ADA") and are typically based on testing the complexes conducted by the ERC. Settlement of these cases has resulted in making tens of

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[75] See generally *Hargraves v. Capital City Mortg. Corp., 140 F. Supp. 2d 7 (D.D.C. 2000).*

[76] *Id. at 15.*

[77] Amended Compl. at P24, Hargraves v. Capital City Mortg. Corp., 1998 WL 35288126 (D.D.C. Oct. 14, 1998) (No. 98-1021 (JHG/AK)).

[78] *Hargraves, 140 F. Supp. 2d at 18.*

[79] *Id. at 14.*

[80] Id.

[81] *Id. at 20.*

[82] Id.

[83] *Id. at 21.* The Federal Trade Commission ("FTC") filed a companion case that was settled for a substantial monetary payment into a victims' fund and comprehensive injunctive relief. See generally FTC v. Capital City Mortg. Corp., No. CIV. A. 98-237 (JHG), 1998 WL 1469619 (D.D.C. July 13, 1998).

[84] See generally FTC v. Capital City Mortg. Corp., No. CIV. A. 98-237 (JHG), 1998 WL 1469619 (D.D.C. July 13, 1998).

thousands of additional apartments accessible nationwide. [85] For example, in Equal Rights Ctr. v. AvalonBay Communities, Inc., the ERC alleged that 100 complexes owned and operated by AvalonBay failed to comply with the FHA and ADA in that many units were inaccessible. [86] AvalonBay filed a motion to dismiss, which the court denied in 2009. [87] The parties thereafter entered into a settlement agreement under which AvalonBay agreed to survey and remediate up to 8,250 units across the United States, along with public and common use areas associated with those units. [88] AvalonBay also made a commitment of $ 50,000 per year for ten years to the ERC's Multifamily Housing Resource Program. [89] Finally, the settlement included payment of damages, attorneys' fees, and costs. [90] Similar results were reached as a result of suits against large nationwide real estate firms such as Bozzuto, Archstone, Trammell Crow, Camden Properties and Equity Residential. [91]

[*65] The Committee has also advocated for disabled individuals who were denied equal housing opportunities. The Committee and cooperating counsel established an important precedent on reasonable accommodations for the disabled in United States v. California Mobile Home Park Mgmt. [92] Ms. Cohen-Strong leased a mobile home from the defendant, which customarily charged a daily fee for the presence of long-term guests and a monthly parking fee for such guests. [93] Ms. Cohen-Strong's infant daughter had a respiratory condition that required care from a home health care aid. [94] She requested that the defendant waive the customary guest and parking fees for her daughter's aid. [95] The defendant refused. [96] The district court granted the defendant's motion to dismiss on the ground that a landlord cannot violate the FHA by refusing to waive generally applicable fees on behalf of a handicapped person. [97] The Ninth Circuit reversed, stating: "As the language of § 3604(f)(3)(B) makes clear, the FHAA imposes an affirmative duty upon landlords reasonably to accommodate the needs of handicapped persons." [98] The court rejected the notion that because the requested waivers applied only to financial costs, as opposed to other forms of accommodation to the tenant, they could not be considered a "reasonable accommodation" under the Act: "The history of the FHAA clearly establishes that Congress anticipated that landlords would have to shoulder certain costs involved, so long as they are not unduly burdensome." [99]

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[85] See Equal Rights Center, Press Releases 2018-2014, *https://equalrightscenter.org/press-releases/*.

[86] Equal Rights Ctr. v. AvalonBay Cmtys., Inc., No. CIV.A.AW-0502626, 2009 WL 1153397, at 9 (D. Md. Mar. 23, 2009).

[87] Id. at 10.

[88] 16 Wash. Law. Comm., Spring 2010 Update 3 (2010).

[89] Id.

[90] Id.

[91] See e.g., Wash. Law. Comm., Equal Rights Center and Equity Residential Settle Litigation and Agree to Expand Accessible Housing (Jan. 4, 2017), *https://www.washlaw.org/news/541-equal-rights-center-and-equity-residential-settle-litigation-and-agree-to-expand-accessible-hous* ing; Ashley White, Equal Rights Center and AvalonBay Settle Litigation and Agree to Expand Accessible Housing, Equal Rights Center (Nov. 2, 2009), *https://equalrightscenter.org/pr-archives/2009/06-10.08.09* AvalonBay Press Release.pdf.

[92] See generally *United States v. Cal. Mobile Home Park Mgmt. Co., 29 F.3d 1413 (9th Cir. 1994).*

[93] *Id. at 1415.*

[94] Id.

[95] Id.

[96] Id.

[97] Id.

[98] *Cal. Mobile Home Park Mgmt., 29 F.3d at 1381-82.*

Wright v. Rocks, was a unique case in which the Committee and cooperating counsel obtained an unusually powerful result. [100] Mr. Wright, who was hearing and visually impaired, applied for an apartment in Prince George's County, Maryland, and was told that his income was insufficient to rent the apartment. [101] He offered to pay one year's rent in advance, but was still rejected. [102] A disability counselor subsequently spoke with a rental agent at the complex, who made discriminatory **[*66]** remarks about Mr. Wright and offered to steer him to another complex. [103] The counselor recorded the conversation, which led to a settlement between the parties. [104] The settlement entailed a payment of $ 160,000 in damages and a five-year consent decree that obligated the defendant to affirmatively market apartments to persons with disabilities and establish a procedure for offering them reasonable accommodations. [105] Most noteworthy was that Mr. Wright was provided with an apartment, rent-free, for the rest of his life. [106]

Another disability discrimination case helped shape the law on insurance redlining. [107] The plaintiffs were homeowners who rented their house out to groups of disabled persons. [108] When they sought to convert their homeowners' insurance policies to landlord policies, the insurance companies refused to do so and cancelled the existing policies. [109] The Committee and cooperating counsel brought suit on behalf of the landlords and the FHCGW alleging violations of the FHA and the Americans with Disabilities Act. [110] The district court denied defendants' motion to dismiss the FHA claim arguing that denial of insurance does not make housing unavailable. [111] The court reasoned:

If, in order to rent to disabled persons, a landlord must risk losing her home through loss of mortgage financing, loss of catastrophic insurance, and loss of liability insurance, she will be disinclined to rent to disabled persons. Such powerful disincentives to rent to disabled persons, make housing unavailable to them. [112]

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[99] Id.

[100] Wright v. Rocks, No. 8:94-cv-03506 (D. Md. Dec. 19, 1994).

[101] Wash. Law. Comm., Annual Report, 1996, at 25 (1996); Wash. Law. Comm., Making a Difference: Reflections on Equal Justice at 10-13 (1998).

[102] Id.

[103] Id.

[104] Id.

[105] Id.

[106] Id.

[107] *Wai v. Allstate Ins. Co., 75 F. Supp. 2d 1 (D.D.C. 1999).*

[108] *Id. at 2.*

[109] *Id. at 3.*

[110] *Id. at 1.*

[111] *Id. at 6, 8.*

[112] *Id. at 6.*

The court also held that denial of insurance violated the provision of the FHA prohibiting discrimination in the "provision of services or facilities" in connection with a dwelling. [113]

[*67]

H. Source of Income Discrimination

Many jurisdictions, including D.C. and suburban Maryland, have enacted ordinances that prohibit discrimination based on source of income. [114] This means that a property owner cannot lawfully refuse to rent to persons who hold Housing Choice Vouchers, formerly known as Section 8(a) vouchers. [115] These vouchers are issued under a federal program and administered by local public housing agencies ("PHAs"), which receive funds from HUD to administer the vouchers. [116] The vouchers are designed to assist low income, elderly and disabled persons and families to obtain safe, decent and sanitary housing in the private market. [117] The PHA pays a subsidy to the property owner on behalf of the voucher holder covering a substantial portion of the rent, with the voucher holder paying the balance. [118] Because of the nature of voucher holders, discrimination against them has a disparate impact on minorities and disabled persons. Thus, the Committee has been active in challenging source of income discrimination, with the assistance of testing by the ERC. For example, in Equal Rights Center v. E & G Prop. Servs., Inc., the ERC brought suit challenging E&G's admitted refusal to accept vouchers under the D.C. Human Rights Act ("DCHRA"). [119] The court rejected E&G's legal challenges to application of the DCHRA's prohibition of source of income discrimination to its refusal to accept vouchers, and granted the ERC's partial motion for summary judgment on liability. [120] The case settled on the eve of trial, ensuring that nearly 1,500 apartment units in D.C. will be made available to Housing Choice Voucher holders. [121]

[*68]

II. AMICUS BRIEFS

Apart from direct litigation of precedent-setting fair housing cases, the Committee and cooperating counsel have historically contributed to the development of fair housing law by authoring a series of amicus briefs in important

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[113] *Wai, 75 F. Supp. 2d at 7;* see Section II below discussing the amicus brief filed by the Committee and cooperating counsel in *Nat'l Ass'n for Advancement of Colored People v. Am. Family Mut. Insur., 978 F.2d 287 (7th Cir. 1992),* which resulted in a similar holding on application of the FHA to insurance redlining.

[114] See Poverty & Race Research Action Council (PRRAC), Keeping the Promise: Preserving and Enhancing Housing Mobility in the Section 8 Housing Choice Voucher Program, Appendix B: State, Local, and Federal Laws Barring Source-of-Income Discrimination, 1 [hereinafter PRRAC Report], *https://prrac.org/pdf/AppendixB.pdf*; U.S. Dep't of Housing and Urban Dev. and U.S. Dep't of Justice, Joint Statement, Reasonable Accommodations Under the Fair Housing Act, *https://www.justice.gov/crt/us-department-housing-and-urban-develop* ment.

[115] See PRAAC Report, at 1.

[116] U.S. Dep't of Housing and Urban Development, Housing Choice Vouchers Fact Sheet, *https://www.hud.gov/program* offices/public indian housing/programs/hcv/about/fact sheet (last visited Oct. 10, 2018).

[117] Id.

[118] Id.

[119] Order Denying Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction and Denying Plaintiff's Motion for Leave to Supplement the Complaint, Center v. E & G Property Servs., No. 05-2761, 2006 WL 6365413, at 1 (D.C. Sup. Ct. Nov. 1, 2006).

[120] Id. at 5.

[121] 13 Wash. Law. Comm, Fall 2007 Update 7 (2007).

housing cases. [122] The Introduction refers to the Committee's brief in Havens Realty Corp. v. Coleman, which established the standing of testers and testing organizations to bring actions against firms accused of violating the FHA. [123] There are many other examples, but two cases bear mention.

In Nat'l Ass'n for Advancement of Colored People v. Am. Family Mut. Ins. Co., the Committee and cooperating counsel filed an amicus brief on behalf of the National Fair Housing Alliance in an important case establishing insurance redlining as a violation of the FHA. [124] The NAACP brought suit alleging that insurance redlining--"charging higher rates or declining to write insurance for people who live in particular areas" - violated the FHA. [125] The district court dismissed the claims under the FHA, and the Seventh Circuit reversed. [126] The court held that insurance redlining violates the prohibitions in both § 3604(a) against refusing to sell or rent to protected classes or acting to "otherwise make [housing] unavailable" and in § 3604(b) against discriminating "in the provision of services" relating to the sale or rental of a dwelling. [127] In a memorable formulation of the impact of insurance redlining, the court stated: "No insurance, no loan; no loan, no house; lack of insurance thus makes housing unavailable." [128]

In City of Edmonds v. Oxford House, Inc., the Committee and cooperating counsel filed a brief in support of a group home for the disabled that was accused by the City of violating zoning ordinances by leasing a home in an area zoned for single family housing. [129] Oxford House complained that the City of Edmonds had violated the FHA by refusing to make a reasonable accommodation allowing Oxford **[*69]** House to lease a single-family home for care of 10-12 substance abusers. [130] The district court dismissed the complaint on the basis that the City ordinance's definition of "family," which included "a group of five or fewer persons who are not related," fell within the FHA exemption for "any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." [131] The Ninth Circuit reversed and remanded for further consideration of the claims asserted by Oxford House and, in a consolidated case, the United States. [132] In affirming the Ninth Circuit's decision, the Supreme Court held that the City's definition of "family" did not fall within the maximum occupancy exemption of the FHA, reasoning as follows:

The defining provision at issue describes who may compose a family unit; it does not prescribe "the maximum number of occupants" a dwelling unit may house. We hold that § 3607(b)(1) does not exempt prescriptions of the family-defining kind, i.e., provisions designed to foster the family character of a neighborhood. Instead, §

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122 See e.g., *Brief for the Lawyers' Committee for Civil Rights Under Law, Havens Realty Corp. v. Coleman, 455 U.S. 363, 367 (1982).* See generally Brief of Amici Curiae Washington Lawyers' Committee for Civil Rights & Urban Affairs, Montgomery Cnty. v. Glenmont Hills Assocs. Privacy World at Glenmont Metro Ctr.

123 *Havens Realty Corp. v. Coleman, 455 U.S. 363, 367 (1982).*

124 *Nat'l Ass'n for Advancement of Colored People v. Am. Family Mut. Insur. Co., 978 F.2d 287, 290 (7th Cir. 1992).*

125 Id.

126 *Id. at 302.*

127 *Id. at 297.*

128 Id.

129 *City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 730 (1995).*

130 *Id. at 729.*

131 *Id. at 730* (citing *42 U.S.C. § 3607*(b)(1) (1995)).

132 Id.

3607(b)(1)'s absolute exemption removes from the FHA's scope only total occupancy limits, i.e., numerical ceilings that serve to prevent overcrowding in living quarters. [133]

City of Edmonds thus established an important precedent regarding the application of residential zoning ordinances to group homes for the disabled.

III. EMERGING ISSUES

A. Collateral Consequences of Criminal Convictions

The Committee has recently begun focusing on ways to address the collateral consequences of incarceration on access to employment and housing. Nationwide, the prison population consists predominantly of African American males, who upon release encounter many forms of discrimination that deter their re-integration into society. [134] This problem is particularly acute in the D.C. area and has a disparate impact on African Americans who are disproportionately represented **[*70]** in the prison population. [135] Ninety-one percent of the District's prison population is African American, despite the fact that the City is almost half white. [136] The highest rates of incarceration are from wards 7 and 8. [137] The impact on families is significant and is a driving factor not only in income and wealth inequality but also in limiting social mobility.

The Committee and cooperating counsel are pursuing a series of investigations and legal actions challenging policies discriminating against persons with criminal records in the provision of housing. In Alexander v. Edgewood Mgmt., the Committee brought an action alleging that the defendant's denial of Mr. Alexander's application for an apartment at three complexes under its management was discriminatory. [138] The complaint alleged that Edgewood's denial of housing violated its own Tenant Selection Plan ("TSP") since the complexes acted on the basis of an overturned conviction from the 1990s and a 2007 misdemeanor conviction, both of which were outside the timeframe for consideration under the TSP. [139] More importantly, application of the TSP would have a disparate impact on African Americans given their disproportionate representation in the prison community. In July 2016, the court denied the defendants' motion to dismiss. [140] The court ruled that Mr. Alexander had appropriately cited prison population statistics from D.C. in support of his disparate impact claim: "Given the demographics in the area and historical conviction rates, African Americans are statistically more likely to fall into that category and thus be excluded by defendants' unpublished policy." [141] The court further ruled that the defendants' broad policy of excluding persons with non-violent, non-drug-related convictions, such as Mr. Alexander's 2007 misdemeanor conviction, "may explicitly run afoul of the law as articulated in recent HUD guidance." [142] The Alexander ruling will

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133 *Id. at 728* (emphasis in original).

134 Sophia Kerby, The Top 10 Most Startling Facts About People of Color and Criminal Justice in the United States, American Progress (Mar. 13, 2012), https://www.americanprogress .org/issues/race/news/2012/03/13/11351/the-top-10-most-startling-facts-about-people-of-color-and-criminal-justice-in-the-united-states/.

135 A Capitol Concern: The Disproportionate Impact of the Justice System on Low-income Communities in DC, Just. Pol'y Inst., 5 (2010), *http://www.justicepolicy.org/uploads/justicepolicy/documents/10-07* exs capitolconcern ac-ps-rd-dc.pdf.

136 Id.

137 Id. at 1; see also DC Dep't of Corrections Facts and Figures 11 (2013), https://doc .dc.gov/sites/default/files/dc/sites/doc/publication/attachments/DC%20Department%20of%20 Corrections%20Facts%20n%20Figures%20June%202013.pdf.

138 Alexander v. Edgewood Mgmt., No. 15-01140 (RCL), 2016 WL 5957673, at 1 (D.D.C. July 25, 2016).

139 Id.

140 Id. at 4.

141 Id.

142 Id. at 4.

be applicable to similar cases challenging **[*71]** denial of housing opportunities based on prior convictions, some of which are being evaluated by the Committee as of this writing.

B. Affordable Housing and Gentrification

Apart from discrimination against individuals and families, the availability of affordable housing has diminished as a result of gentrification, particularly in some formerly low-income areas of D.C. like the Shaw-U Street neighborhoods. [143] The Committee and cooperating counsel have challenged attempts to eliminate affordable housing for low income families in cases such as One DC v. Mid-City Financial Corporation. [144] As described in the 2017 Wiley A. Branton Awards program honoring One DC with the Alfred McKenzie Award:

In August of 2016, ONE DC, along with a group of families, filed a class action lawsuit challenging the discriminatory redevelopment of Brookland Manor, an affordable housing complex located in Northeast DC. More than 150 of the units house large families that have made their home on the property for generations. Brookland Manor is one of the few remaining DC communities with the four-and five-bedroom apartments necessary to provide safe, adequate housing for these families. Appallingly, the developer "justified" this discrimination claiming that large families are "not consistent with the creation of a vibrant new community. [145]

Litigation of this case is ongoing. [146]

Whether discrimination in the provision of housing or housing services is exposed by complaints from individuals who are injured by the discrimination or tests conducted by such organizations as the ERC, the Committee will continue to use its own resources, as well as leveraging the resources of cooperating law firms that provide pro bono services, to combat housing discrimination in all of its forms.

End of Document

143 Sam Gringlas, Old Confronts New in A Gentrifying D.C. Neighborhood, Nat'l Pub. Radio, (Jan. 16, 2017), https://www.npr.org/2017/01/16/505606317/d-c-s-gentrifying-neighbor hoods-a-careful-mix-of-newcomers-and-old-timers.

144 Borum v. Brentwood Village, 218 F. Supp. 3d 1, 6 (D.D.C. 2016).

145 Civil Rights, Anti-Poverty, And Equal Just. Advoc., 5 (2017), http://www.wash law.org/pdf/wlc annual luncheon program 2017.pdf.

146 Id.