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HOUSING DISCRIMINATION IN THE CHICAGO METROPOLITAN AREA:
THE LEGACY OF THE BROWN DECISION

Pierre deVise*

Thirty years ago, the United States Supreme Court, in Brown v. Board of Education, placed at the forefront of this nation's political agenda the fight for racial equality. Congress followed the Court's lead with legislation aimed at ending racial discrimination. Nonetheless, today urban centers and surrounding suburbs remain highly segregated. Chicago, a battleground against housing bias during the 1960's, remains a prime example of continued racial segregation.

The Brown decision has resulted in the eradication of de jure segregation. De facto segregation, however, continues. Statutes, such as the federal Fair Housing Act and the equal protection clause, are the sole tools through

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In addition to citations in the footnotes, the reader is referred to a valuable compendium of 312 fair housing cases in Chicago and the nation. See F. CARUSO, CASE LAW MATRIX: GUIDE TO PRACTICE OPEN HOUSING LAW (1982). For a more extensive discussion of the implementation and effect of judicial policies on American society, see C. JOHNSON & B. CANON, JUDICIAL POLICIES: IMPLEMENTATION AND IMPACT (1984).

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1. 347 U.S. 483 (1954), enforced, 349 U.S. 294 (1955). In Brown, the Supreme Court invalidated state laws which required or permitted segregation based on a student's race. Specifically, the Court held that de jure segregation of students was "inherently unequal," and thus in violation of the equal protection clause. 347 U.S. at 495. The Brown decision is analyzed in Bickel, The Original Understanding and the Segregation Decision, 69 HARV. L. REV. 1 (1955), and Black, The Lawfulness of the Segregation Decisions, 69 YALE L.J. 421 (1960).

2. Fair Housing Act, 42 U.S.C. §§ 3601-3631 (1982). The Act, in part, makes it unlawful: [t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin.

Id. § 3604(a).

which discrimination can be fought and integration can be achieved. Unfortunately, the United States Supreme Court has effectively precluded aggressive use of the equal protection clause against state entities to combat segregation.

This article first briefly reviews the fight against segregation from *Brown* to the present date. Special emphasis will be given to events occurring in Chicago. Then, statistical data is presented which demonstrates that only minimal headway has been made in integrating the Chicago metropolitan area. Methods of documenting housing discrimination will also be addressed. This article concludes with the author's analysis of the impact of *Arlington Heights v. Metropolitan Housing Development Corp.*, a Supreme Court opinion, and *HOPE, Inc. v. County of DuPage*, a Seventh Circuit decision, which have, in part, enervated the battle against housing discrimination.

I. BACKGROUND

A. From *Brown* to Arlington Heights

The United States Supreme Court's 1954 decision in *Brown* was a major landmark and a turning point in American public policy. *Brown* overruled the separate but equal doctrine enunciated by the Court in 1896 in *Plessy v. Ferguson*. The *Brown* decision's impact on racial equality, however, has been slow and indirect because it takes a congruence of judicial, administrative, and legislative action, supported by the national mood, to advance new and controversial political agendas. To illustrate, ten years after the decision, only 1.2% of all black students attended non-segregated schools in the eleven states of the Confederacy. It took another dozen years for the Court to prohibit racial discrimination in private schools.

The Court's own timidity in setting forth guidelines to bring about school desegregation in 1955 was partly responsible for this slow implementation. The Court's plea for "deliberate speed" was an open invitation for delay and non-compliance. Thus, in 1956, the State of Arkansas declared the *Brown* decision unconstitutional and established a State Sovereignty Commission to prevent school integration. The following year, the Governor of Arkansas used National Guard troops to forcibly prevent the integration of Central High School in Little Rock. The Supreme Court was forced to

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5. 738 F.2d 797 (7th Cir. 1984) (en banc).
6. 163 U.S. 537 (1896).
reaffirm the Brown decision over the "violent resistance" of the State of Arkansas in Cooper v. Aaron.\textsuperscript{11}

It took a major shift in the national mood and a new presidential administration to bring about enforcement of the Brown decision. The decision's psychological impact on blacks was partly responsible for this shift. Martin Luther King, Jr. was foremost among civil rights leaders who exploited the opportunities presented both by the Brown decision and the Kennedy administration. In 1964, President Johnson's landslide victory against the states' rights conservative Barry Goldwater further signaled the new national mood. Democrats then held a better than two-to-one majority in the House, enabling liberals to wrest control of House committees from the conservative coalition of southern Democrats and Republicans.

This mandate made possible the civil rights and Great Society legislation unleashed by the eighty-eighth and eighty-ninth Congresses, beginning with the Civil Rights Act of 1964\textsuperscript{12} and culminating in the Fair Housing Act of 1968.\textsuperscript{13} A new jurisprudence of class action suits was begun, based on the power of injunction conferred on lower federal courts in Brown v. Board of Education (Brown II).\textsuperscript{14} The class action became the major vehicle of social change for those seeking implementation of the nation's goal of racial equality first declared by Congress in the Civil Rights Act of 1866.\textsuperscript{15}

Official school segregation in the South had been finally eradicated by the end of the 1960's, notably in Griffin v. School Board,\textsuperscript{16} a case in which the Court struck down state-subsidized private white school systems. Similarly, in Alexander v. Board of Education,\textsuperscript{17} the Court rejected "freedom-of-choice" school plans. Attention shifted to de facto school segregation resulting from residential segregation in northern cities. Segregation was fought with two weapons—student busing and open housing laws.

The assassination of Martin Luther King, Jr. led to the passage of the previously blocked Fair Housing Act, outlawing housing discrimination by

\textsuperscript{11} 358 U.S. 1 (1958).


\textsuperscript{14} 349 U.S. 294 (1955). In Brown II, the Court determined that the district courts should be charged with the responsibility of ensuring that school officials followed the dictates of the initial Brown decision. Id. at 299.


\textsuperscript{16} 377 U.S. 218 (1964).

\textsuperscript{17} 396 U.S. 19 (1969) (per curiam). For the lower court opinions of the cases with which the Alexander case was consolidated, see United States v. Hinds Co. School Bd., 417 F.2d 852 (5th Cir.), vacated and remanded sub nom. Alexander v. Board of Education, 396 U.S. 19, on remand, 423 F.2d 1264 (5th Cir. 1969).
realtors, lenders, and other institutions. Two months later, in Jones v. Mayer Co.,18 the Court reaffirmed its ruling that the Civil Rights Act of 1866 prohibited racial bias in all sales and rentals of housing, including private transactions. Thus, the way was paved for aggressive housing litigation to overcome de facto segregation.

The Burger Court, however, failed to follow this lead. On the busing front, the Burger Court approved a lower court-ordered busing plan for Charlotte, North Carolina and struck down a state prohibition of busing in Swann v. Board of Education.19 Nonetheless, the Burger Court refused to approve an interdistrict busing plan in Detroit in Milliken v. Bradley.20 The Milliken decision, in effect, absolved white suburbs of responsibility for de facto school segregation.21

Similarly, on the housing front, the Burger Court’s application of the Washington v. Davis22 criteria to the Arlington Heights23 case dampened the use of housing discrimination actions to overcome segregation. The question of discriminatory intent was basic to these decisions. The Davis decision required proof of discriminatory intent in complaints of racial bias in qualifying tests for public jobs.24 The Arlington Heights decision extended the Davis ruling to complaints of racial bias in housing and zoning cases alleging violations of the equal protection clause.25

B. The Fight Against Segregation In Chicago

In January 1966 Martin Luther King, Jr. chose Chicago for a national campaign against housing bias. He moved into a flat in North Lawndale, commuting to Atlanta on weekends. Several exchanges between King and

21. See 418 U.S. at 745.
22. 426 U.S. 229 (1976); see infra text accompanying notes 80-89.
23. See infra text accompanying notes 90-99.
24. 426 U.S. at 239.
25. 429 U.S. at 264-65.
Mayor Richard Daley culminated in April when Daley and seven black committeemen told King to go back to Georgia. In frustration, King announced a massive campaign of civil disobedience to begin on July 10, 1966. King warned Daley of ‘‘social disaster’’ if nothing was done to relieve the ‘‘seething desperation’’ of Chicago’s blacks.

Almost in a self-fulfilling prophecy, Chicago’s west side was wracked by riots, looting, and arson over the next two days. In the next few weeks, King led marches in Chicago’s ethnic white areas, culminating in the march on Marquette Park on August 5, during which King was felled by rocks. In response to King’s actions and in order to defuse the racial anger ignited by King, Daley agreed to convene the Chicago Conference on Religion and Race. The resulting summit agreement led to the creation of the watchdog agency named the Leadership Council For Metropolitan Open Communities (Leadership Council).

After 1970, the Leadership Council brought a series of suits against local governments and institutions for housing discrimination, including two cases that led to important Supreme Court decisions—Arlington Heights and Gladstone, Realtors v. Village of Bellwood. The Arlington Heights decision allowed the Court to elaborate on the kinds of evidence required to prove discriminatory intent, following the Davis criteria. The Bellwood decision—reinforced by Havens Realty Corp. v. Coleman—gave black testers standing to sue real estate brokers accused of racial ‘‘steering.’’

The Leadership Council also became involved in the Supreme Court’s decision in Hills v. Gautreaux. The Gautreaux decision affirmed the lower
court ruling that the Chicago Housing Authority was guilty of operating a racially discriminatory housing program, and approved a metropolitan-wide remedy of scattered-site public housing. Through the actions of the Leadership Council, Chicago's position in the forefront of the housing discrimination battle shifted from the streets in the 1960's to the courtroom in the 1970's.

These civil rights victories were more symbolical than substantial. Their net impact has been minimal. Fewer than two hundred high-rise section eight units were built in Arlington Heights, and fewer than six hundred public housing units have been built since the original Gautreaux decision in 1969. This meager result is due in part to the fact that the scattered-site solution was politically and financially nonviable. Moreover, other local governments have seized upon the scattered-site remedy as a guise to prevent the construction of high-rise section eight family housing.

The local steering cases unleashed by the Bellwood and Havens decisions have so far resulted in nothing more than wrist-slapping penalties against brokers charged with steering. Here, too, the anti-steering strategy has fostered more active "benign steering" efforts by suburbs attempting to manage racial integration. Thus, the net effect of these decisions has been minimal at best. As will be shown in the next section, statistics demonstrate that the Chicago metropolitan area today remains highly segregated.

II. THE PATTERN OF RESIDENTIAL SEGREGATION: A STATISTICAL STUDY

Sixteen years after the Civil Rights Act of 1968, blacks remain highly concentrated in central cities and in a few suburban enclaves. Proportionally, the black suburban population is very low and is increasing at a snail's pace. Between 1970 and 1980, the black suburban population in the nation increased from 4% to 6%, and in Chicago from 4% to 5%. The great

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32. 425 U.S. at 296.
33. Id. at 305-06.
34. Linden Place Apartments, a 12 acre, $11 million § 8 development at Golf and Goebbert Roads in Arlington Heights, was opened in April 1982. The project has a four-story building with 109 one-bedroom units for the elderly, and ten two-story buildings with 80 townhouses for families. Battle Over; Subsidized Units Open, Chicago Tribune, May 15, 1982, § 14, at 1G.
35. The Chicago Housing Authority built 117 units during the 1970's. Between 1980 and 1983 another 200 units were built. An additional 500 existing private units are scheduled for § 8 rehabilitation. DeZutter, Neighborhood News—Behind the Myths: a Tour of CHA Scattered-site Housing, Reader (Chicago), July 22, 1983, at 3.
36. For example, in United States v. City of Birmingham, Mich., 538 F. Supp. 819 (E.D. Mich. 1982), aff'd as modified, 727 F.2d 560 (6th Cir. 1984), a city commission attempted to by-pass the construction of subsidized low-income housing by a promise to rehabilitate several scattered-site residences for low-income occupancy. 538 F. Supp. at 823. Ultimately, the Birmingham court restrained city officials from engaging in any activity which interfered with the construction of the subsidized housing. Id. at 831.
37. The figures were derived by comparing data in the 1970 Census and 1980 Census. See Bureau of the Census, U.S. Dep't of Commerce, 1980 Census of Population (1981-1983);
majority of Standard Metropolitan Statistical Area (SMSA) blacks are still confined to central cities—75% in 1980 as compared to 80% in 1970.  

In considering the existence and cause of residential segregation, it is useful to distinguish between the pattern of segregation and the degree of segregation. The pattern of segregation is usually measured by the centralization of blacks relative to that of whites. The proportions of metropolitan area blacks and whites living in the city may vary. More sophisticated measures of centralization include population-density gradients and mean distance to the central business district. The degree of segregation is usually measured by comparing the actual distribution of blacks and whites in urban neighborhoods to the expected distribution in a random, color-blind society. The most conventional index of the degree of segregation is called the "dissimilarity index."

A. Measuring the Degree of Segregation

Underlying all explanations of racial residential segregation is a model of urban residential location. The standard econometric model of urban land use assumes that households trade off commuting costs and the price of housing within an urban area. It is also hypothesized that high-income households live farther from employment centers than low-income households because the former value low density, better air, and better neighbors above the time and cost of commuting.  

It is assumed that without discrimination black and white households of similar socioeconomic characteristics would live the same distances from employment centers. At least twenty separate indices have been proposed as measures of segregation. Only a handful have gained wide currency. These indices vary mainly with respect to whether they assume random distribution with or without socioeconomic differences.

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39. A recent survey of the state of the art in housing segregation and discrimination research is contained in Yinger, Galster, Smith & Eggers, The Status of Research into Racial Discrimination and Segregation in American Housing Markets, in 6 Office of Public Policy Development, U.S. Dep't of Housing and Urban Development, Occasional Papers in Housing and Community Affairs 55, 55-175 (1979). Yinger is a major contributor to housing discrimination analysis, and created the now conventional dichotomies of prejudice/discrimination as causes of the pattern/degree of segregation.

40. Id. at 76. Both market and Marxist economists use a monocentric model of urban rent to explain the relationship between commuting costs and preferences, and the pattern of residential location of poor and non-poor households. The monocentric model was developed by David Harvey and Edwin S. Mills. See D. Harvey, Society, the City, and the Space Economy of Urbanism (1972); E.S. Mills, Urban Economics (1972).

41. For a review of several segregation indices, see Yinger, Galster, Smith & Eggers, supra note 39, at 71-80.
The dissimilarity index, which is the most prevalent index of residential segregation, assumes that a color-blind distribution of households would be random. According to this index, over 80% of the blacks and whites in the average American city in 1970 would have had to move to equalize the proportion of black population in each neighborhood. In Chicago, 92% of the population would have had to move to achieve a proportional equality.

A variation of the dissimilarity index is the market segregation coefficient, which standardizes housing expenditures and tenure of black households with the cost and type of housing in each of 167 communities in the Chicago SMSA. In a color-blind housing market standardized to housing expenditures, about 66% of Chicago SMSA black households would have lived in predominantly white communities in 1970. A calculation of the segregation index of this hypothetical redistribution of households yields an index of 23. Given an actual segregation index in Chicago of 92, this suggests that differences in housing expenditures and income explain only about 25% of the segregation. Calculations of indices inspired by the market segregation coefficient for other cities suggest that housing expenditures and income differences explain 10% to 50% of the segregation measured by the dissimilarity index in the census year of 1970.

In 1970, Chicago was the most racially segregated large city in the nation. Because of the slowdown of black population growth and the increased dispersion of blacks to some previously all-white areas in Chicago and suburbs, three of four racial segregation indices have eased somewhat from their record-high levels in 1970.

Chicago's neighborhood segregation index was 90 in 1980, compared to 91 in 1970. This means that 90% of Chicago's blacks and whites would have had to move to achieve a hypothetical racial mix in which each of the city's 820 census tracts would have the identical 40% proportional black mix. To illustrate, 96% of the city's blacks and 6% of the city's whites live in tracts over 40% black. This, in turn, means that 94% of the city's whites and 4% of the city's black live in tracts under 40% black.

A relative measure of the rapidity of racial transition is the black consolidation index, calculated as follows. There were 54 census tracts in Chicago which passed from predominantly white to predominantly black during the 1970's compared to 85 tracts in the 1960's. The percentage of blacks in

42. The original calculations of the dissimilarity index for major American cities are found in K.E. Taeuber & A.F. Taeuber, Negroes in Cities: Residential Segregation and Neighborhood Change (1965).

43. The market segregation coefficient was originally proposed by Raymond E. Zelder. See Zelder, Racial Segregation in Urban Housing Markets, 10 J. REGIONAL SCI. 93, 93-105 (1970). The market segregation coefficient was adapted by this author in an analysis based on 1970 census tract data in the Chicago SMSA. deVise, The status of integration in suburban Chicago, Vol. 9 No. 61 FOCUS/Midwest 9, 9-18 (1973).


45. See P. deVise, Black Power and White Control in Chicago 5 (1981) (unpublished manuscript prepared at the School of Urban Sciences, University of Illinois at Chicago Circle).

46. Id.
this transitional belt rose from 12% to 89% during the last decade.\textsuperscript{47} The 77% gain in the decade yields a consolidation index of 77, compared to 80 in 1970. This projects an average six-year span from the time the first blacks move into a tract to the time the tract becomes predominantly black. The black centralization index for the Chicago SMSA declined from 90 in 1970 to 84 in 1980.\textsuperscript{48} This means that 84% of the six-county SMSA black population lived in Chicago in 1980, compared to 90% in 1970.

A calculation of the housing market coefficient for Chicago suburbs in 1970 reveals that Arlington Heights has a coefficient of 5.0—meaning that only 5% of the suburb’s population would be black in a color-blind housing market based on housing costs alone. This was the lowest coefficient for any of the area’s twenty suburbs of over 50,000 people.\textsuperscript{49} Thus, Arlington Heights is the most segregated housing market among the area’s largest suburbs.

\section*{B. The Causes of Segregation}

The above statistics demonstrate that Chicago and its surrounding suburbs remain highly segregated. The cause of such segregation can be explained in one of three ways: socioeconomic segregation, voluntary segregation, or prejudice. All three of these can result in racial segregation.

Socioeconomic segregation is based on marital status, family type and size, income, and assets.\textsuperscript{50} Generally, these characteristics would tend to explain part of the difference in the age, condition, cost, and tenure of black-occupied housing. To the extent that older, renter-occupied housing is clustered in certain inner areas of the city, low socioeconomic status also explains part of the residential concentration of blacks.

Already cited\textsuperscript{51} were studies that attempted to measure the contribution of lower income and housing expenditures to segregation. As noted, the low income and housing expenditures can explain 10% to 50% of the segregation. With respect to other socioeconomic differences, no other ethnic group, including Puerto Ricans, exhibit a segregation index comparable to that of blacks. Moreover, unlike other groups, the improved socioeconomic status of blacks over time is not associated with integration.\textsuperscript{52}

Voluntary segregation is also often mentioned as an explanation of racial segregation.\textsuperscript{53} Thus, supposedly blacks prefer to live with other blacks and, negatively, blacks prefer not to live with whites. There is little evidence that

\begin{itemize}
  \item \textsuperscript{47} Id.
  \item \textsuperscript{48} Id. at 6.
  \item \textsuperscript{49} See Metropolitan Housing Dev. Corp. v. Village of Arlington Heights, 517 F.2d 409, 414 n.1 (7th Cir. 1975).
  \item \textsuperscript{50} See Yinger, Galster, Smith & Eggers, \textit{supra} note 39, at 76-79.
  \item \textsuperscript{51} See \textit{supra} note 43 and accompanying text.
  \item \textsuperscript{53} See deVise, \textit{supra} note 43, at 14.
\end{itemize}
whites moving into black areas precipitate "black flight" and there is no conventional wisdom to the effect that whites moving into the neighborhood will lower property values. The connection between voluntary segregation and racial prejudice does illustrate that racial prejudice may vary in degree and intensity. Black prejudice, however, does not typically translate into acts of discrimination in the housing market.

Racial prejudice, or aversion of racial contacts, becomes significant in the housing market when it translates into acts of discrimination. Not all housing discrimination, however, is the result of prejudice. Economic factors may exploit the prejudice of others by resulting in different prices in racially defined housing submarkets. Thus, housing discrimination is, one explanation of segregation.

III. DISCRIMINATION IN THE HOUSING MARKET

Discrimination in the housing market most commonly occurs when the price asked for property is dependent upon the prospective buyer's race. Market discrimination, seller prejudice, and buyer prejudice are three major sources of pricing discrimination. Price discrimination is determined by the presence of three factors. First, the market for housing must be divided into two or more submarkets. Second, there must be an inability to shift buyers from one market to another. Third, there must be differences in the price elasticity of demand between white and black buyers.

Market discrimination, such as that alleged in Bellwood, exemplifies these three conditions. Realtors steer white prospects into white areas, and black prospects into black or racially changing areas. White buyers bid only against whites, and black buyers bid only against blacks. If the price elasticity of demand by blacks is higher than for whites, sellers will receive lower prices in the black-designated submarkets than for comparable homes in white-designated submarkets. To the extent that prices in the black submarket are negatively associated with the percentage of blacks in the area or the length of time since the submarket became all black, blacks who bought in the early stages of racial transition would experience continuous price decline relative to prices in the white submarket.

There is substantial statistical evidence that housing market discrimination is taking place in the Chicago area. Such discrimination may be the result

54. See Yinger, Galster, Smith & Eggers, supra note 39, at 80.
56. See supra notes 28, 30 and accompanying text.
57. See infra notes 58-61 and accompanying text. For a review of other studies of the dual housing market in Chicago, see J. McDonald, ECONOMIC ANALYSIS OF AN URBAN HOUSING MARKET (1979).
of steering, panic peddling, or other acts by realtors. Most Chicago area neighborhoods that are over 10% black are closed to entry by white residents and become all-black in approximately a decade.

There are at least four sources of data evidencing black housing price decline relative to white housing prices in Chicago. Three of the four sources reflect the devaluation of black residences as compared to white residences. The fourth indicator suggests that black price discounts were a little larger in 1970 than in 1960.

The first indicator of relative price decline is the value of owner-occupied housing transferred from white to black occupancy. Using the 1960 valuation as a basis for comparison, the 1970 value of white-black transfers was $500 to $7,000 below the value of white-white transfers. Moreover, the higher the home value between 1960 and 1970, the lower the relative gain in value between 1960 and 1970. For example, white-occupied housing valued between $10,000 and $12,500 in 1960 had a median value in 1970 of $17,500 if white-owned and $16,575 if black-owned. White occupied housing valued between $20,000 and $25,000 in 1960 had a 1970 median value of $26,500 for white owners and $19,400 for black owners.

In a second exercise, Chicago's census tracts were grouped into five racial zones. Expressed in 1970 dollars, median home values in the 1960's increased by $2,400 in the white zone. In black zones, however, values declined by $1,600. Further, home values declined by $600 in the black expansion zone and by $1,300 in the bi-racial zone.

Residential sales data published by the Society of Real Estate Appraisers (SREA) Market Data Center provided the third source of data. Using SREA sales data for 1972 and controlling for forty variables of housing type, space, and condition, it was found that a single family home in the black expansion zone sold for $1,314 less than a similar house in the outlying white zone. In the 1960 black zone, the difference was $4,974.

The 1970 Census of Housing provides the fourth indicator of black housing discounts. In cross-tabulations between black and non-black owner-occupancy, it was found that black home prices were between 90% and 92% of white home prices after controlling for differences in number of rooms and bathrooms and in age of the structure. This corresponds to a discount of between $1,700 and $2,100 for the average house. In the 1960 census, black

61. See P. deVise, Chicago's Black Housing Market Revisited (1977) (unpublished manuscript prepared at the School of Urban Sciences, University of Illinois at Chicago Circle).
home prices were between 92% and 95% of white home prices, after controlling for size and year built. This corresponds to discounts of between $900 and $1,400 for the average home. Moreover, the price discount for blacks increased with the size of the unit, suggesting a relative surplus of larger houses in the black housing market. There also appears to be a slightly higher price discount to black owners of new homes. Some of this advantage, however, is attributable to a disproportionate number of small units for this class of housing.

Along with market discrimination, seller prejudice may also result in housing discrimination. The seller may not desire to deal with blacks. Though leaving the neighborhood, the seller may still respect the neighbors’ aversion to living with blacks. If the seller lists his or her house with a broker, the prejudice of white residents and of other brokers may result in the broker’s refusal to show homes to blacks. Any deviation from this kind of racial steering may bring charges of panic-peddling and the loss of business from future white owner-sellers. As recently as 1960, the customary penalty for a broker selling to a black in a white neighborhood was expulsion from the board of realtors. Still today, many black brokers are excluded from local real estate boards and multiple listing services. Sellers and their agents may also reflect the prejudice of white buyers who might lose interest in a house shown to black prospects.

Home buyers’ surveys show that blacks spend considerably more time in the housing search than whites, and depend more on “for sale” signs and word-of-mouth for locating available houses. Further, blacks are shown fewer listings by brokers and inspect fewer houses in fewer areas before making a purchase decision. Black home-buyers are perceived by brokers to have a different set of expectations than white buyers. According to such surveys, whether due to seller discrimination or to buyer perception of discrimination, information and options offered to black home-seekers by realtors are significantly below the level offered to white home-buyers.

The racial prejudice of white sellers, brokers, and buyers is reinforced by the prejudice of other real estate interests. Brokers steer blacks to black areas and black transitional areas and whites to all-white areas because they perceive racial segregation as the preference of both the home buyer and the receiving community. Violation of this perceived preference can threaten the

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63. See R. Helper, supra note 62; Yinger, Galster, Smith & Eggers, supra note 39, at 84.
64. See Yinger, Galster, Smith & Eggers, supra note 39, at 84-85.
65. These findings are found in Lake, Housing Search Experiences of Black and White Suburban Homebuyers, in America’s Housing: Prospects and Problems 439, 439-84 (1980).
66. Id.
future business of the broker. Mortgage lenders, appraisers, underwriters, and insurers also tend to discriminate racially. Such discrimination may be carried out in recognition of the community's preference for segregation, as a perceived mechanism of economic screening, or to profit from price discrimination.

Real estate interests are among the economic interests most affected by housing segregation and rapid racial change. Property owners and mortgage lenders are more often victims than beneficiaries because of declining property values and housing abandonment. Real estate brokers benefit in the transitional stage when sales are high but lose in the racial consolidation stage when sales activity slows down.

IV. DOCUMENTING RACIAL STEERING PRACTICES

Illegal steering consists of practices by realtors of "steering" black homebuyers to all-black areas or to areas that are changing from all-white to all-black. Steering is undertaken against the preferences of whites and blacks who wish to live in stable, integrated areas. The Bellwood decision and the Haven decision stand as the most important Supreme Court decisions in this area.

Evidence of racial steering by realtors comes from a number of sources. One source is the home buyer survey which compares search information and costs for blacks and whites of similar tastes and socioeconomic status who have recently purchased a house. Another type of survey utilizes white and black "testers." These testers attempt to represent similar housing tastes and reflect the same socioeconomic status as the targeted test area's inhabitants.

A. Problems in Documenting Racial Steering

Many steering surveys suffer from deficiencies of data, methodology, or validity. Surveys of recent home buyers cannot entirely control for variables other than race when comparing the housing search experiences of white and black home buyers. Attitudes and expectations of buyers are particularly hard to measure. Surveys using teams of white and black testers can overcome the problems of controlling for variables other than race, depending on the training and competence of the testers.

67. See Howe, deVise & Caruso, Commentary, Land Use Law and Zoning Dig., June, 1979, at 4-10.
69. See supra notes 28-30 and accompanying text.
70. See Lake, supra note 65.
71. Examples of tester surveys of steering are reported in Pearce, Gatekeepers and Home-seekers: Institutional Patterns in Racial Steering, 26 Soc. Prob. 325, 325-42 (1979).
Additionally, the selection of a broker or a homebuying location poses a problem of random sampling for both kinds of surveys. Testing surveys conducted by community and civic groups dedicated to stabilizing housing integration will tend to be concentrated in areas where racial steering is taking place. Results from such surveys cannot be projected for brokers in an entire urban area. On the other hand, testing surveys covering a larger urban area where most housing submarkets are white would tend to understate brokers' propensities to steer. Brokers located in areas where all the home seekers are white have little opportunity to steer. Moreover, the appearance of a black home seeker in a broker's office in such areas may lead to the presumption that the prospect is a tester. The cautious broker may thus treat the black home seeker with unusual care and courtesy.

Because of the testing activity by community groups, even brokers in areas with inter-racial housing markets have become wary of black home seekers. In the 1979 and 1980 testing audits monitored by the South Cook County Suburban Housing Center, an increasing number of black testers were asked point-blank if they were testers. Few white testers were asked. Thus, experimental bias increasingly contaminates testing surveys as this activity is pursued by community groups. But an unanticipated benefit of broker awareness of testing activity is that brokers will be more restrained in steering bona fide home buyers as well as testers. Thus, the use of testers has resulted in the classic example of the experiment changing the behavior of the subject of the experiment.

Both research objectivity and methodology are strained in steering surveys designed for suits charging certain brokers with illegal racial steering. Researchers involved in steering surveys take special precautions to be scientifically objective in the use of matched tester teams, in the selection of brokers, and in the delineation of neighborhoods that are the targets of steering. But it is not practical to sue the dozens of brokers who are perceived to practice illegal steering by their victims. Thus, a handful of the offending brokers are chosen as examples of the larger group of brokers perceived to be engaging in steering, which can lead to methodological problems in regard to the representativeness of the samples.

**B. Proof of Racial Steering**

Even isolated cases of racial steering are illegal. Additionally, the continuation of such illegal steering practices on the part of the accused brokers may lead to the solid ghettoization of the targeted steering areas. This presupposes either that the accused brokers control all the sales in the affected areas or that illegal steering practices are replicated by most, or all, brokers active in these areas. A necessary, if not a sufficient, proof that illegal
steering is universal within a black steering area is to show that most, or all, sales are made to black buyers.

A typical defense made by brokers accused of steering is that black home buyers have housing preferences that differ from those of white home buyers. One such preference would be for less costly housing because of lower assets and income. Another preference would be for areas where the majority is black. Economic segregation and voluntary segregation, discussed earlier, are labels that often describe these sets of preferences.

To counter these arguments, plaintiffs in housing discrimination suits must show that black steering target areas are comparable to white steering target areas in the cost of housing and in racial composition. The availability of Multiple Listing Service (MLS) lists of single-family home sales by street address and municipality provides a source for comparison of the price distribution of homes sold in the white and integrated areas. But the definition and delineation of the racial composition of such areas are more problematic.

Steering surveys must measure the racial composition of households in neighborhoods that are perceived to be the target for black home buyers steered by brokers. This is especially true for neighborhoods that were all white at the time of the 1980 census. It is not enough to say that brokers and residents "perceive" some neighborhoods to be white and other neighborhoods to be racially changing. These perceptions are no doubt important for the behavior of brokers and households. But they must be buttressed by more objective evidence, especially when the brokers deny that they have such perceptions. Estimates of both the racial composition and the turnover of housing units over time should be made for the areas delineated as steering targets.

For purposes of delineating steering target areas, the racial turnover rate is the critical measure. This rate permits the calculation of the consolidation index discussed earlier. The projection of this index yields an estimate of the time it will take for a neighborhood to become entirely black. Not only is the racial turnover rate per year more important than the racial composition of a group of households, it is also easier to measure. Such data can be garnered from a community's newcomer welcome program. Normally, community groups in integrated suburbs have a reliable count of the number of transfers from white to black occupancy.

MLS listings of homes sold are the major source of information on exits and entries of households. These listings also include information on the sales price and the selling broker. Combining these items of information, it is possible to plot home sales and prices to black and white buyers by broker, street, and subdivision. Such records can be used to delineate white and integrated areas, to measure the stock and flow of black households, and

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73. See supra notes 50-53 and accompanying text.
74. See supra notes 46-48 and accompanying text.
to identify the brokers that steer black and white homebuyers to target areas. The above discussion has delineated methodologies and explained problems in attempting to prove racial steering. Such proof is clearly needed to bring a successful housing discrimination suit against a housing broker. Discrimination actions can also be brought against municipalities and other state agencies. These actions are usually based on the equal protection clause. Use of the equal protection clause in housing discrimination actions, however, has been effectively precluded due to constraints imposed by the courts.

V. PROVING HOUSING DISCRIMINATION

A. Discriminatory Purpose Versus Discriminatory Effect

Laws and actions by the state can be both overtly and covertly racially discriminatory in their effect. Overtly discriminatory laws, such as the Jim Crow laws,75 were made illegal by the Brown decision of 1954 and the civil rights laws of the 1960's. But many laws today are racially neutral on their face and yet exert a disproportionate impact on blacks. Poll taxes in the South were racially neutral; yet, the Voting Rights Act76 was required to remedy the laws' disproportionate impact on blacks and the laws' inferred discriminatory intent.

There are many other facially neutral laws and programs that affect blacks disproportionately. In large cities like Chicago, the overwhelming majority of beneficiaries of public schools, public housing, and public assistance programs are black. Laws and actions restricting these programs have a disproportionate impact on blacks. But in spite of many attempts by civil rights groups, the Supreme Court has steadfastly refused to extend a special status under the equal protection clause to education,77 housing,78 and poverty.79 Before 1976, lower courts struggled with the question of whether discriminatory impact alone was sufficient to challenge a facially neutral law without proving that the law was racially motivated.

In 1976, the Supreme Court squarely tackled the purpose-effect dichotomy in the Davis40 case. The plaintiffs in Davis challenged the validity of a literacy test used by the City of Washington in hiring police officers. The plaintiffs contended that the test disqualified many blacks and thus discriminated against them on the basis of race. The defendants convinced the district court that they affirmatively recruited blacks and that the literacy skills were

75. Jim Crow laws were laws passed by states to promote or require segregation or promote suppression of blacks. For a comprehensive collection of these state statutes, see SEGREGATION AND THE FOURTEENTH AMENDMENT IN THE STATES: A SURVEY OF STATE SEGREGATION LAWS 1865-1953 (B. Reams & P. Wilson eds. 1975).
80. See supra notes 22, 24 and accompanying text.
necessary to maintain professional standards.\textsuperscript{81} The Court of Appeals for the District of Columbia Circuit reversed the district court’s decision on the grounds that discriminatory impact superseded criteria of professional standards. The appellate court found that lower black literacy scores reflected segregated and inferior schooling more so than an inability to be a police officer.\textsuperscript{82}

The Supreme Court held that the appellate court and similar lower court findings of racial discrimination based solely on discriminatory impact were erroneous.\textsuperscript{83} Such a rule, the Court said, could ultimately invalidate tax, welfare, regulatory, and licensing statutes merely because of claims of disproportionate impact on blacks.\textsuperscript{84} In lieu of discriminatory impact, the Court ruled that proof of discriminatory purpose is required to show violation of the equal protection clause.\textsuperscript{85} Recognizing that discriminatory intent may be disguised or may be among a number of legitimate and illegitimate motives, the Court suggested ways that a plaintiff could prove discriminatory intent as a dominating purpose. The impact of the official action—whether it bears more heavily on one race than another—may be an important starting point.\textsuperscript{86} “Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution.”\textsuperscript{87} Proof of discriminatory impact, thus, must be supplemented by evidence bearing on intent. Professor Ely, six years earlier, set out guidelines for proof of such intent. One must weigh elements from “various evidentiary sources [including]: the terms of the law in issue, those effects which must have been foreseen by the decision makers, the historical context in which the law was passed, and the legislative history and other recorded statements of intention.”\textsuperscript{88}

Prior to the \textit{Davis} decision, the Supreme Court and lower courts were divided, ambiguous, or vague on the purpose-effect issue.\textsuperscript{89} In spite of the unanimity of the \textit{Davis} decision, the Court failed to fully elaborate on the methods of proving discriminatory intent. In \textit{Arlington Heights}, the Court attempted to set out factors which could be indicative of discriminatory intent.

\begin{itemize}
\item \textsuperscript{81} \textit{Id.} at 235-36. The district court opinion appears at 348 F. Supp. 15 (D.D.C. 1972).
\item \textsuperscript{82} \textit{Davis}, 512 F.2d 956, 961 (D.C. Cir. 1975).
\item \textsuperscript{83} 426 U.S. at 244-45.
\item \textsuperscript{84} \textit{Id.} at 248.
\item \textsuperscript{85} \textit{Id.} at 239.
\item \textsuperscript{86} \textit{Id.} at 242.
\item \textsuperscript{87} \textit{Id.}
\item \textsuperscript{88} \textit{Id.}
\item \textsuperscript{89} \textit{Ely, Legislative and Administrative Motivation in Constitutional Law}, 79 \textit{Yale L.J.} 1205, 1220 (1970).
\end{itemize}
B. The Arlington Heights Decision: An Evaluation

One year after Davis, the Supreme Court applied the discriminatory intent requirement of Davis to the Arlington Heights zoning case. In Arlington Heights, the Court addressed a claim that Arlington Heights discriminatorily blocked the passage of a rezoning application to bar the influx of a multi-family housing project. The Court elaborated on the mechanics of proving intent. It recognized that such an attempt "demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." Acknowledging the multiplicity of purposes in legislation, the Court said that the plaintiff need not show that a racial purpose was the sole or even dominant motivating factor. Citing Mt. Healthy City Board of Education v. Doyle, however, the Court held that proof of discriminatory purpose alone was not sufficient to challenge the compelling interest of the state's action. The Court determined that the plaintiffs failed to prove discriminatory purpose, and thus dismissed the equal protection claim.

Previous court differences on the purpose-effect issue varied with the type and importance of the law being challenged. Thus, the Supreme Court readily subordinated purpose to effect in complaints of discrimination affecting voting and first amendment rights. Fair employment and housing rights were apparently regarded as less deserving of such treatment. The Supreme Court tipped the balance between legitimate state interests and minority rights in favor of the state in Davis. Perhaps the Court believed that an affirmation of the appellate court's finding in Davis would have been interpreted as an endorsement of racial quotas in public employment hiring. In deference to the Court, the condemnation of reliance on discriminatory effect in Davis may well have been sparked by the relatively weak case presented by the petitioners in light of the strong state interest.

The Supreme Court's application of the discriminatory purpose requirement in Arlington Heights, however, was more distressing. Arlington Heights presented the Court with a stronger case than Davis, yet the Court applied

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90. 429 U.S. at 254.
91. Id. at 266.
92. Id. at 265.
94. 429 U.S. at 270 n.21.
95. Id. at 270.

Court decisions involving ideologies for and against racial equality, based upon the first amendment, include Brandenburg v. Ohio, 395 U.S. 444 (1969) (first and fourteenth amendment violated by a statute outlawing advocacy, as opposed to incitement, of violence); Cox v. Louisiana, 379 U.S. 536 (1965) (freedom of speech includes the right to assemble to protest segregation); and New York Times Co. v. Sullivan, 376 U.S. 254 (1964) (actual malice required in a libel action involving the purchase of newspaper ads critical of state officials).
the same criteria to each case. The exclusion of moderate and low income households should have outweighed the alleged state interest in maintaining property values.

Indeed, the appellate court had rejected Arlington Heights’s claim that protecting the integrity of its zoning plan was a compelling interest for equal protection purposes. Moreover, the city of Arlington Heights lacked any of the evidence of minority involvement and affirmative action presented by the Washington Police Department in Davis. The Supreme Court overlooked the statistical proof of racial impact and the historical record that had convinced the Seventh Circuit that discrimination had occurred.

The statistical proof of discriminatory impact and the historical record considered by the appellate court are described as follows by Robert Schwenn, co-counsel for the plaintiffs in Arlington Heights:

The historical context included the facts that Arlington Heights had grown from a small village in 1950 to the most residentially segregated city in the Chicago area among municipalities with over 50,000 residents; that the village’s spectacular and highly segregated growth patterns paralleled those of the suburban area where it was located, which from 1960 to 1970 had also taken some 100,000 jobs from the City of Chicago; and that Arlington Heights had never permitted or supported any subsidized housing within its borders, even though the massive growth in its area had created a desperate and growing need for low- and moderate-income housing there. With one judge dissenting, the court of appeals also found that the ultimate effect of the village’s refusal to permit construction of the MHDC development was to block the only opportunity to have any subsidized, integrated housing in Arlington Heights and thus to perpetuate massive residential segregation in the area.

The plaintiffs were not allowed to document discriminatory intent by the district court. Even if they had, statements in the public record of discriminatory intent on the part of officials engaged in policies with disproportionate racial impact are rare. One court, remarking on the decline of bigotry in the lexicon of politicians, has stated:

Municipal officials acting in their official capacities seldom, if ever, announce on the record that they are pursuing a particular course of action because of their desire to discriminate against a racial minority. Even individuals acting from invidious motivations

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98. Schwemm, supra note 89, at 1014-15.
99. The Arlington Heights decision was tried at the district court level before the Supreme Court’s Davis decision. Thus, the plaintiffs did not address the issue of discriminatory purpose. 429 U.S. at 268. The Supreme Court did not believe it necessary to remand the case to allow the plaintiffs an opportunity to prove discriminatory intent. Id. at 270.
realize the unattractiveness of their prejudices when faced with their perpetuation in the public record. It is only in private conversation, with individuals assumed to share their bigotry, that open statements of discrimination are made.\(^{100}\)

Thus, *Arlington Heights* requires plaintiffs to prove discriminatory intent without acknowledging that public officials will rarely provide plaintiffs with the requisite evidence. The Court of Appeals for the Seventh Circuit, however, has recently addressed a housing discrimination case where public officials, arguably, made statements indicative of discriminatory purpose.

**C. HOPE, Inc. v. County of DuPage**

In *HOPE, Inc. v. County of DuPage*,\(^{101}\) the Court of Appeals for the Seventh Circuit reviewed a district court's finding that DuPage County discriminated against low-income persons through exclusionary housing practices. The lawsuit was brought by individual plaintiffs representing a class and HOPE, Inc., a not-for-profit housing organization. The plaintiffs alleged that the county, its board members, certain land owners, and developers deprived the plaintiffs of their rights secured by the thirteenth and fourteenth amendments.

At the district court level, Judge Hubert Will, using the criteria announced in *Arlington Heights*,\(^{102}\) determined "that DuPage County zoning practices effectively excluded non-white residents."\(^{103}\) The court found that there was a series of official acts which evidenced discriminatory intent and that the county's zoning laws did not serve a legitimate state interest.\(^{104}\) Thus, the defendants were found to have engaged in discriminatory housing practices.

The *HOPE* litigation at the district court level resulted in over 2800 pages of evidence.\(^{105}\) DuPage County was found to have the lowest percentage of inexpensive housing in the Chicago metropolitan area.\(^{106}\) Further, only 0.26% of the county's population was black.\(^{107}\) The DuPage County Housing Authority, in charge of low income housing, was found to enjoy "the

\(^{100}\) Smith v. Town of Clarkton, 682 F.2d 1055, 1064 (4th Cir. 1982).
\(^{101}\) 738 F.2d 797 (7th Cir. 1984) (en banc), rev'g, 771 F.2d 1061 (7th Cir. 1983).
\(^{102}\) 717 F.2d at 1066-67. The appellate court noted that the district court "considered statements of public officials, reports of publications, actual decisions of County agencies, as well as reasonable inferences which can be drawn from all factors." Id. at 1067. In *Arlington Heights*, the Supreme Court suggested that discriminatory intent could be shown through investigation of the historical background of a challenged decision, the sequence of events leading to the decision, departures from normal operating procedure, and statements of the decisional body. 429 U.S at 267-68.
\(^{103}\) 717 F.2d at 1069.
\(^{104}\) Id.
\(^{105}\) Id. at 1066.
\(^{106}\) Id. at 1064.
\(^{107}\) Id.
distinction of having done less for fewer people over a longer period of time than any other such authority." These facts, standing alone, did not evidence the requisite discriminatory intent necessary for a successful housing discrimination suit. The district court, however, was presented with statements of various officials which the court determined evidenced such intent.

Foremost among this evidence was the statement made by the Collector and Treasurer of DuPage County. He stated in a 1971 Chicago Tribune article that "[l]ow income housing in DuPage County is like buying a case of cancer." Further, a county board member was quoted as saying that low-income "housing will not be welcome 'if they want us to lift the laws so they can build fire traps and slums.'" Another board member flatly opposed low-income housing. A member of the City Council of Wheaton stated that although housing for the elderly presented no problem, Wheaton residents did not want low income housing. Based on these and other statements, the district court concluded that the defendants knowingly and intentionally excluded low-income persons from living in DuPage county.

On appeal to the Seventh Circuit, the defendants raised three arguments. First, they contended that the plaintiffs lacked standing to challenge the county's practices. Second, they believed that the plaintiffs failed to establish that their constitutional rights were violated. Finally, the defendants argued that the district court's judgment was not related to the violations as alleged.

In affirming the district court's decision, the appellate court determined that the plaintiffs had the requisite standing to allege and demonstrate an injury due to the defendants actions. The court also found that the trial court's finding of discriminatory intent was not erroneous. Finally, the appellate court determined that the district court order correctly targeted the cause of the discrimination—the county zoning laws. Thus, the HOPE decision represented a housing case in which discriminatory intent was proven.

The Seventh Circuit, however, accepted the defendants' petition for rehearing. In its second opinion on the case, the appellate court held that the plaintiffs lacked standing to bring the housing discrimination suit. The

108. Id. at 1065.
109. Id. at 1067.
110. Id.
111. Id.
112. Id. at 1068.
113. Id. at 1069.
114. Id. at 1069-70.
115. Id. at 1073.
116. Id. at 1076.
117. Id. at 1077.
118. HOPE, 738 F.2d 797 (7th Cir. 1984) (en banc).
119. Id. at 816.
court relied on the Supreme Court decision of *Warth v. Seldin*. Specifically, the court found that none of the plaintiffs were directly injured by the actions of the defendants. According to the court, there were "no allegations nor proof offered by the individual plaintiffs establishing that a single proposed project for low or moderate income housing was in any way impeded, much less denied, by any discrete and concerted activity on the part of the DuPage County Board." The court also distinguished the *Arlington Heights* case, stating that unlike the plaintiffs in that case, the HOPE plaintiffs were unable to point to a single project that the defendants had impeded.

Regarding the statements relied on by the trial court in determining that the defendants had intentionally discriminated, the appellate court found that these statements did not bear on the litigation. First, the County Treasurer was neither a board member nor a defendant in the suit. The board member's remark regarding "fire traps and slums" was tempered by that member's explanation that he was referring to local building codes, not the county zoning laws. Thus, thirteen years after the filing of the HOPE suit, the appellate court dismissed the case based on its analysis of the threshold issue of standing.

This diametrically opposed interpretation of the same factual foundation illustrates the disconcerting, zigzagging propensities of the courts in rulings on housing bias cases. Future plaintiffs cannot hope to match the overwhelming direct and circumstantial evidence of discriminatory intent and impact in the HOPE case. The use of the equal protection clause in housing discrimination suits to overcome residential segregation in the Chicago area has been greatly curtailed by the Arlington Heights and HOPE decisions.

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120. 422 U.S. 490 (1975). The HOPE court found that the plaintiffs failed to prove that they were directly injured by the activity of the county board. 738 F.2d at 807. The Supreme Court in *Warth* stated that "a plaintiff who seeks to challenge exclusionary zoning practices must allege specific, concrete facts demonstrating that the challenged practices harm him, and that he personally would benefit from the court's intervention." 422 U.S. at 508 (emphasis in original) (footnote omitted), quoted in *HOPE*, 738 F.2d at 806. The Warth decision is reviewed in Powell, *Sitting and Standing in the Supreme Court: Warth Standing and the Problem of Distributive Justice*, 33 De Paul L. Rev. 429-(1984), and Sager, *Insular Majorities Unabated: Warth v. Selden and City of Eastlake v. Forest City Enterprises, Inc.*, 91 Harv. L. Rev. 1373 (1978).

121. 738 F.2d at 807.

122. *Id.*

123. *Id.* at 812.

124. *Id.* at 800.

125. *Id.* at 801.

126. *Id.* at 816. Interestingly, the appellate court indicated that the plaintiffs may have failed in their attempt to demonstrate invidious discrimination. The court stated:

> While we have decided not to reach the merits of the discrimination claim as we find no standing, we have grave doubts as to whether the plaintiffs sufficiently established the necessary intentional and invidious discriminatory purpose on the County Board's part necessary in order to meet the burden under . . . *Davis* and *Arlington Heights*.

*Id.* at 816 n.9 (citations omitted).
VII. Conclusion

Brown is a landmark decision that overturned the Supreme Court’s previous “separate but equal” doctrine and gave lower courts the unprecedented power of the injunction in cases of racial equality. During the 1950’s and 1960’s, the courts and Congress took steps to close all avenues used by the southern states to escape the new laws outlawing de jure acts of racial desegregation and discrimination. The courts, however, were less effective and consistent in curtailing more subtle effects of racial discrimination resulting from intense de facto residential segregation in large northern cities and suburbs.

The minimal impact of Brown’s mandate on racial segregation in schools and housing in large urban areas like Chicago reflects both a neoconservative swing of the pendulum in the national ideology and the traditional mechanisms used by the courts in moderating the impact of policies of social change. New rules of reception can open the door somewhat; but, if too many unwelcome guests enter, rules of refusal can shut the door again. The frequent use of the rule of refusal in fair housing cases is in response to both negative political feedback and the ever expanding work-load of the courts.

The exercise of the right of refusal in Arlington Heights and HOPE has effectively shut the door for housing complaints grounded on the equal protection clause. This, in turn, has forced plaintiffs to rely on the Fair Housing Act, which has but a limited remedial impact. Narrow and equivocal interpretations by the courts have conspired with weak and uncoordinated enforcement by the Department of Justice and the Department of Housing and Urban Development to blunt the attack against housing bias. Thus, exclusionary zoning laws and racial steering perpetuate segregation even though outlawed by the fourteenth amendment, the civil rights acts, and the Brown decision.