

# **The Origins of Fair Lending Litigation**

by Andrew Nash

*Abstract: This paper describes the origins of fair lending litigation in the 1970s. It documents two litigation strategies, one aimed at discriminatory lenders in local communities and a second at the federal lending regulators. Together, these two litigation strategies helped to establish the basic anti-lending discrimination framework that remains in place today. Rather than view these two strategies as distinct, however, this paper argues that they represented complementary efforts to establish an effective anti-discrimination strategy at local and national levels.*

*The research for this paper was conducted in a law school seminar at Washington University taught by Professor Margo Schlanger. The research for this paper drew on dozens of fair lending cases from the 1970s to the present; summaries for all of these cases can be found at the Civil Rights Litigation Clearinghouse, located on the Washington University School of Law's website.*

This paper describes the origins of “fair lending” litigation in the 1970s. Before that decade, it was unclear whether federal law prohibited lenders from discriminating against prospective borrowers based on the perceived race of the borrower or the borrower’s neighborhood. By 1980, it was settled that federal law prohibited such practices, at least when carried out overtly. Drawing on interviews and archival research, this paper offers a short history of the origins of this litigation category.

Fair lending lawsuits are closely related to fair housing cases. While the former involve lawsuits against lenders, the latter target property owners who refuse to rent or sell to minority buyers. Lawsuits over “redlining”—credit discrimination premised on the actual or perceived racial characteristics of a neighborhood’s residents<sup>1</sup>—are the most prominent type of fair lending cases. While some attorneys have brought fair lending cases to challenge denials of consumer credit,<sup>2</sup> this litigation category is typically associated with home finance. As such, the origins of fair lending litigation must be viewed in tandem with

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<sup>1</sup> “Redlining, although it has various definitions, may be broadly described as ‘credit discrimination based on the characteristics of the neighborhood surrounding the borrower’s dwelling.’” Jane McGrew, Thomas C. Collier, and Herbert E. Forrest, *Fair housing: an agenda for the Washington Lawyers’ Committee for Civil Rights*, 27 How. L.J. 1291, 1304 n.61 (1984) (quoting Conf. Fed. Sav. & Loan Ass’n v. Stein, 604 F.2d 1256, 1258 (9th Cir. 1979)).

<sup>2</sup> See, e.g., Cherry v. Amoco Oil Co., 490 F. Supp. 1026 (N.D. Ga. 1980) (plaintiff alleging violation of the Equal Credit Opportunity Act because of discrimination in consumer credit).

developments in fair housing litigation, particularly since many attorneys worked in both areas.

This paper does not describe in detail each major reported fair lending decision; several summaries of such cases already exist.<sup>3</sup> Instead, this paper tells the story of two types of fair lending litigation strategies that first emerged in the 1970s: damages suits against individual lenders that had engaged in race-based discrimination, and an alternative model of litigation in which federal bank regulatory agencies were forced to more rigorously monitor private lenders in order to detect and prevent racial discrimination. This paper argues that, rather than viewing these two litigation models as detached, they were essentially complementary efforts to force private lenders to abandon the use of race-based proxies in lending decision-making.

In the pages that follow, Part I provides a brief background on lending discrimination and early efforts to combat it. Part II describes the emergence of fair

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<sup>3</sup> See Willy E. Rice, *Race, Gender, 'Redlining,' and the Discriminatory Access to Loans, Credit, and Insurance: An Historical and Empirical Analysis of Consumers Who Sued Lenders and Insurers in Federal and State Courts, 1950-1995*, 33 San Diego L. Rev. 583 (1996); Robert G. Schwemm, *Introduction to Mortgage Lending Discrimination Law*, 28 J. Marshall L. Rev. 317 (1995). See also FAIR HOUSING CENTER OF METROPOLITAN DETROIT, \$225,000,000 AND COUNTING: A SUMMARY OF HOUSING DISCRIMINATION LAWSUITS THAT HAVE BEEN FILED BY THE EFFORTS OF PRIVATE, NON-PROFIT FAIR HOUSING ORGANIZATIONAL MEMBERS OF THE NATIONAL FAIR HOUSING ALLIANCE (2006).

lending damages lawsuits in the 1970s; *Laufman v. Oakley Building and Loan Company*,<sup>4</sup> the case that established that the Fair Housing Act prohibits redlining, receives extensive treatment. In Part III, the paper provides a detailed litigation case study of *National Urban League v. Comptroller of the Currency*,<sup>5</sup> the class action lawsuit filed in 1976 against the four federal bank regulatory agencies that sought to compel federal action to eliminate racial discrimination in lending. This case study is based upon the litigation files of lead plaintiffs' attorney William L. Taylor, which are stored at the Library of Congress, as well as upon interviews with several key litigation participants. Part IV provides a brief conclusion.

## **I. Introduction**

Housing discrimination has been described as the “parent” of lending discrimination.<sup>6</sup> Both phenomena originated in early twentieth century America,<sup>7</sup> in both the north and in the south,<sup>8</sup> although to some extent blacks were ‘insulated’ from discrimination in home finance for much of this period because many American blacks simply lacked access to the formal credit system and thus could

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<sup>4</sup> *Laufman v. Oakley Bldg. & Loan Co.*, 408 F. Supp. 489 (S.D. Ohio 1976).

<sup>5</sup> *National Urban League v. Comptroller of the Currency*, 76-0718 (D.D.C. 1976).

<sup>6</sup> Daniel A. Searing, *Discrimination in Home Finance*, 48 NOTRE DAME L. 1113, 1113 (1973).

<sup>7</sup> DOUGLAS S. MASSEY AND NANCY A. DENTON, *AMERICAN APARTHEID* 20 (1993) (noting that no major American city was significantly segregated before 1900).

<sup>8</sup> MASSEY AND DENTON, *supra* note 7, at 17, 24.

not suffer discrimination within it.<sup>9</sup> As others have shown, formal lending discrimination originated in the 1930s, when federal housing agencies majority-minority neighborhoods and declared them to be non-creditworthy. Private lenders later made use of these maps and underlying principles, denying credit to whole sections of cities and giving rise to a form of race-based financial discrimination termed “redlining.”<sup>10</sup>

The Supreme Court began to chip away at housing discrimination in 1948 when it ruled, in *Shelley v. Kraemer*, that racially restrictive covenants were legally unenforceable,<sup>11</sup> reversing its own precedent from two decades earlier.<sup>12</sup> *Shelley v. Kraemer*, however, only addressed the legality of racially restrictive covenants; the Court did not require landlords, banks, and home-sellers to treat racial minorities on equal terms with whites. Indeed, as late as the 1950s the Code of Ethics of the National Association of Real Estate Boards specifically prohibited Association members from facilitating a home purchase if the prospective owner’s “race or

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<sup>9</sup> David A. Skeel, Jr., *The Next Frontier: Racial Dimensions of Credit and Bankruptcy*, 61 WASH. & LEE L. REV. 1695 (2004).

<sup>10</sup> MASSEY AND DENTON, *supra* note 7, at 51-54; *see also* Adam Gordon, *Note: The Creation of Homeownership: How New Deal Changes in Banking Regulation Simultaneously Made Homeownership Accessible to Whites and Out of Reach for Blacks*, 115 YALE L.J. 186 (2005); McGrew, Collier and Forrest, *supra* note 1, at 1304-18.

<sup>11</sup> *Shelley v. Kraemer*, 334 U.S. 1 (1948).

<sup>12</sup> *Corrigan v. Buckley*, 271 U.S. 323 (1926).

nationality” would reduce surrounding property values.<sup>13</sup> A leading real estate appraisal textbook published in 1953 declared that “the infiltration of minority racial or nationalistic groups accelerates the obsolescence of neighborhoods and decreases the volume of home ownership appeal.”<sup>14</sup>

In 1968 Congress passed the Fair Housing Act (FHA), which specifically prohibits racial discrimination in real estate sales and rentals.<sup>15</sup> As would later be acknowledged by federal courts interpreting the FHA, Congress passed the Act in response to the Watts Riots and Kerner Commission Report.<sup>16</sup> Before the FHA’s passage, civil rights leaders had lobbied the Kennedy Administration to outlaw housing discrimination by executive order but were disappointed with the results.<sup>17</sup>

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<sup>13</sup> Brief of the Department of Justice as Amici Curiae Supporting Plaintiffs, at 8, *Laufman v. Oakley Bldg. & Loan Co.* (No. 74-153).

<sup>14</sup> Brief of the Department of Justice as Amici Curiae Supporting Plaintiffs, at 8, *Laufman v. Oakley Bldg. & Loan Co.* (No. 74-153) (quoting ARTHUR A. MAY, *VALUATION OF RESIDENTIAL REAL ESTATE* 73-74 (1953)).

<sup>15</sup> 42 U.S.C. §§ 3604, 3605 (2006).

<sup>16</sup> See *Laufman v. Oakley Bldg. & Loan Co.*, 408 F. Supp. 489, 496-97 (S.D. Ohio 1976) (discussing the legislative history of the FHA).

<sup>17</sup> See TAYLOR BRANCH, *PARTING THE WATERS* 679 (1988) (noting Dr. Martin Luther King, Jr.’s disappointment with President Kennedy’s “whittled down” Executive Order that only prohibited discrimination in housing in newly built homes, and even then only newly built homes financed in part by federal government assistance); William L. Taylor, *Federal Civil Rights Laws: Can They Be Made to Work?*, 39 GEO. WASH. L. REV. 971, 984-86 (1971) (expressing disappointment with President Kennedy’s anti-discrimination efforts).

Pre-FHA federal regulatory agency policy statements prohibiting discrimination, while welcomed, also failed to curtail discriminatory practices.<sup>18</sup>

The passage of the FHA did not necessarily mean that lending discrimination was illegal.<sup>19</sup> It was not until 1976 that a federal court ruled that the FHA encompassed redlining claims,<sup>20</sup> and “[t]he original administrative enforcement mechanism [under the FHA] was limited to sanctionless conciliation, a process tantamount to voluntary compliance that the real estate industry largely ignored.”<sup>21</sup> Indeed, the Department of Housing and Urban Development (HUD) attempted, without success, to convince the federal banking regulatory agencies in 1969 that they should adopt meaningful rules against racial discrimination in lending.<sup>22</sup>

Thus when the organized effort to end lending discrimination began, in 1970, activist-litigators had to convince both the federal government, as well as the courts, that lending discrimination should be declared illegal under federal law.

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<sup>18</sup> See Searing, *supra* note 6, at 1115-16 (noting that the Federal Home Loan Bank Board’s 1961 policy statement denouncing racial discrimination had little effect on actual practices).

<sup>19</sup> At late as 1976, the legality of redlining was still being debated (by law students at least) in law journals. See Margaret S. Pfunder, *Comment: The legality of redlining under civil rights laws*, 25 AM. U. L. REV. 463 (1976).

<sup>20</sup> See *infra* note 58, and accompanying text.

<sup>21</sup> Leland B. Ware, *New Weapons for an Old Battle: The Enforcement Provisions of the 1998 Amendments to the Fair Housing Act*, 7 ADMIN. L.J. AM. U. 59, 62 (1993).

<sup>22</sup> Searing, *supra* note 6, at 1117.

## **II. The damages suit approach: *Laufman v. Oakley Bldg. & Loan Co.***

Reflecting on the problem of lending discrimination in the months immediately following the passage of the FHA, Bill Taylor did not think that more legislation was necessary.<sup>23</sup> Rather, Taylor thought that the federal agencies needed to be convinced to enforce existing laws. Taylor, a Yale Law graduate who had joined the NAACP Legal Defense Fund in 1954 and served as staff director of the U.S. Commission on Civil Rights in the 1960s,<sup>24</sup> decided to establish a Washington, D.C.-based organization to lobby Congress and the executive branch agencies to enforce federal civil rights laws. With \$150,000 in annual funding from the Ford Foundation<sup>25</sup> and institutional support from Catholic University Law School, Taylor created the Center for National Policy Review (CNPR) in 1970.

The CNPR was, for its time, an unorthodox civil rights organization. In addition to its Capitol Hill lobbying, the CNPR was apparently the first civil rights organization to lobby federal administrative agencies to adopt non-discrimination

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<sup>23</sup> Except where indicated, pages 5-8 are based on a telephone interview with Bill Taylor conducted on Mar. 14, 2007.

<sup>24</sup> Taylor's biographical profile is available at <http://www.cccr.org/about/staffdetail.cfm?staffid=11>.

<sup>25</sup> Letter from William L. Taylor, Director, Center for National Policy Review, to Robert E. Carter, Vice President for Development, Catholic University, December 12, 1979, at 1 ("Since our inception, the Ford Foundation has provided our basic operating budget – about \$150,000 of our annual budget of \$300-350,000."). [LOC Box 24] [Folder: CNPR C.U. Funding 1978-79]

rules and incorporate them within the Code of Federal Regulations.<sup>26</sup> Daniel Searing, a 1970 Catholic University Law School graduate, was Special Assistant at the CNPR in the early 1970s and recalls that the Center developed the idea of filing rulemaking petitions from studying private industry lobbying of executive branch agencies.<sup>27</sup> Writing in 1971, Taylor framed the petitioning as a response to Department of Justice civil rights lawyers' failure to advocate for a non-discrimination agenda throughout the federal government.

For the most part, the [DOJ] attorneys... [with civil rights responsibilities] have viewed their responsibility in the narrow terms of resolving legal issues and bringing lawsuits; they have not seen the need to persuade agencies to establish workable compliance systems, to design a system for monitoring agency performance, or to support agencies in their needs for greater staff and resources.<sup>28</sup>

Although the CNRP would focus on a range of issues during its fifteen-year lifespan, Taylor initially put the group's focus on fair lending. In March 1971, the CNPR filed rulemaking petitions with the Federal Home Loan Bank Board (FHLBB), the Comptroller of the Currency ("the Comptroller"), the Federal Reserve Board ("the Fed"), and the Federal Deposit Insurance Corporation

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<sup>26</sup> Searing, *supra* note 6, at 1120 n. 40.

<sup>27</sup> Telephone Interviews with Daniel A. Searing, Mar. 7 and Mar. 10, 2007; E-mail from Daniel A. Searing to Andrew Nash, Apr. 15, 2007 (on file with author).

<sup>28</sup> William L. Taylor, *Federal Civil Rights Laws: Can They Be Made to Work?*, 19 GEO. WASH. L. REV. 971, 987 (1971).

(FDIC).<sup>29</sup> At the time, these four agencies regulated lenders responsible for about eighty percent of home finance transactions in the United States.<sup>30</sup> The FHLBB, which at the time regulated virtually all savings and loan associations,<sup>31</sup> exercised jurisdiction over non-farm residential loans totaling 200 billion dollars, by far the largest chunk of home finance capital in the country.<sup>32</sup> The FDIC, which regulates state-chartered banks that are not members of the Federal Reserve System, oversaw a pool of residential lenders that controlled about 115 billion dollars in the 1970s. The Comptroller regulates national banks, which at the time were responsible for about 40 billion dollars worth of residential loans; the Fed, which regulates state-chartered banks that are members of the Federal Reserve System, only oversaw about 10 billion dollars worth of home loans.<sup>33</sup>

The CNPR's petitions alleged that the four agencies had a duty to prevent discrimination in lending under the Thirteenth Amendment and the Equal

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<sup>29</sup> For a detailed description of the CNPR's lobbying campaign, see Searing, *supra* note 6.

<sup>30</sup> John Herbers, *4 U.S. Agencies Urged to Act Against Bias in Home Financing*, NEW YORK TIMES, Mar. 9, 1971, at 21.

<sup>31</sup> In 1989, Congress abolished the FHLBB in response to several high-profile savings and loan scandals. Today the Office of Thrift Supervision (OTS) within the Department of the Treasury regulates savings and loan associations.

<sup>32</sup> Martin E. Sloane, *Mortgage Credit Discrimination*, published in DISCRIMINATION IN MORTGAGE CREDIT: REGULATION, LITIGATION, AND COMPLIANCE, edited by Warren L. Dennis and Donald G. Glascoff, at 57 (1979).

<sup>33</sup> Martin E. Sloane, *Mortgage Credit Discrimination*, published in DISCRIMINATION IN MORTGAGE CREDIT: REGULATION, LITIGATION, AND COMPLIANCE, edited by Warren L. Dennis and Donald G. Glascoff, at 57-58 (1979).

Protection Clause of the Fourteenth Amendment.<sup>34</sup> Writing in 1973, Searing called the federal agencies' failure to voluntarily develop non-discrimination policies "astonishing."<sup>35</sup> Although each agency reacted differently to the CNPR's proposals,<sup>36</sup> for the present discussion the important development was the FHLBB's decision to adopt some non-discrimination rules and codify them at 12 C.F.R. § 528. Although the FHLBB reneged on its initial decision to require disclosure of bank data on loan applications, the FHLBB's adopted rule explicitly prohibited discrimination in home lending based on the racial composition of a neighborhood.<sup>37</sup>

Meanwhile, litigators across the country were bringing the first cases under the FHA. By 1971, the Department of Justice had litigated its first FHA-premised cases alleging illegal discrimination in real estate transactions,<sup>38</sup> and private plaintiffs' attorneys were also making use of the Act. In Cincinnati, a young plaintiffs' attorney named Robert Laufman brought the first-ever lawsuit against a

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<sup>34</sup> CENTER FOR NATIONAL POLICY REVIEW, PETITION 1 (1971) (quoted in Searing, *supra* note 6, at 1122).

<sup>35</sup> Searing, *supra* note 6, at 1124.

<sup>36</sup> See *infra*, Part III.

<sup>37</sup> 12 C.F.R. 528.2(d).

<sup>38</sup> See *United States v. Northside Realty Assoc., Inc.*, 324 F. Supp. 287 (N.D. Ga. 1971); *United States v. Bob Lawrence Realty, Inc.*, 327 F. Supp. 487 (N.D. Ga. 1971).

real estate broker for racial steering practices by premising a claim on the FHA as well as other statutes.<sup>39</sup>

Laufman's steering case, *Brown v. Federle Realtors*, was a class action lawsuit on behalf of all current and prospective property owners in "racially integrated neighborhoods" in Cincinnati.<sup>40</sup> In addition to suing under the FHA and Sections 1981 and 1982, Laufman also premised a claim on the Thirteenth Amendment by arguing that "steering is a badge and incident of slavery."<sup>41</sup> The *Brown* plaintiffs sought an injunction against eighteen defendant-real estate agents to prohibit racial steering in the Cincinnati real estate market. The case was partially resolved through a settlement agreement which created a Cincinnati "Board of Review" to monitor real estate steering practices. More than thirty years later, the Board of Review still plays an active role in regulating the Cincinnati housing market.

Before the steering case settled, however, Robert Laufman needed a larger house for his growing family. Laufman and his wife Kathleen, a social worker, identified a three-story brick house at 3941 Beechwood Avenue in Cincinnati's

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<sup>39</sup> Except where indicated, pages 8-15 are based on a telephone interview with Robert Laufman conducted on March 22, 2007.

<sup>40</sup> Compl., *Brown v. Federle Realtors*, 73-9051 (S.D. Ohio Dec. 18, 1973).

<sup>41</sup> Compl., *Brown v. Federle Realtors*, 73-9051, at 5-6, ¶ 4 (S.D. Ohio Dec. 18, 1973).

Avondale neighborhood. Before the 1970s, Avondale had been a predominantly Jewish neighborhood, but by early 1974 it was a racially mixed area. The Beechwood house was on the market for \$36,450 and Laufman did not anticipate any problems securing a loan. Not only did the Laufmans have more than \$35,000 in net assets and combined annual income in excess of \$29,000, but Robert Laufman had begun to make a name for himself as an aggressive plaintiffs' attorney.



*3941 Beechwood Avenue, Cincinnati, date unknown (photo courtesy Robert Laufman)*

On February 28, 1974, Robert Laufman submitted a written loan application to the Oakley Building and Loan Company to secure a loan to purchase the

Avondale house. Laufman had spoken with an executive vice-president at Oakley on February 26 and 28 and had received assurances that, given the Laufmans' financial standing, securing the loan would not be a problem. On March 6, however, the Laufmans were notified that they had been rejected. They later secured a loan from another lender at a higher interest rate than that which the Oakley vice-president had originally quoted them.

Robert Laufman was in certain respects an unlikely victim of lending discrimination. In addition to being white, wealthy, and a Naval Academy graduate, Laufman was already a newsworthy figure in Cincinnati. As Laufman explains it, when the vice-president began explaining the rejection over a telephone call, "I grabbed a pen and paper and said, 'tell me more.'" The vice-president said that the Laufmans had been rejected despite their good financial standing because Avondale was "not under control." In the vice-president's opinion, some Cincinnati neighborhoods were under control and some were not; you could tell the difference by driving through them. As their conversation progressed, Laufman solicited the names of other "bad" neighborhoods from the lending officer. All of them were predominantly black or racially mixed. "Good" neighborhoods, in the Oakley's estimation, were white neighborhoods.

Meanwhile, five hundred miles away in Washington, D.C., Daniel Searing had left the CNPR for the National Committee Against Discrimination in Housing, Inc. (NCDH), which focused more on litigation than lobbying.<sup>42</sup> Searing, now almost four years out of law school, had not litigated a case during his time at CNPR and was anxious to get some trial experience. The Laufmans' story was exactly that sort of fact pattern that Searing and the NCDH were looking for. As Searing explains:

[T]he CNPR as well as NCDH helped put the [*Laufman*] suit together, and although I don't recall, I believe NCDH 'found' the fact pattern and thus the plaintiff, Mr Laufman...we were all looking for a good fact pattern...although everyone 'knew' redlining was going on, it was very difficult to prove.

...NCDH was another Ford Foundation funded operation, but focused on litigation on housing discrimination issues only....unlike CNPR which worked on many issues.<sup>43</sup>

Marty Sloane, then-General Counsel at the NCDH, recalls that the D.C.-based housing group was already in contact with Laufman because of their joint participation in nationally coordinated fair housing efforts.<sup>44</sup> Securing support from the NCDH was also helpful for Laufman, as he had been unable to persuade the NAACP Legal Defense Fund to get involved in the case.

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<sup>42</sup> See UNITED STATES DEP'T. OF JUSTICE, THE ANNUAL REPORT OF THE ATTORNEY GENERAL OF THE UNITED STATES 114 (1979) (commenting on a housing discrimination lawsuit brought by the DOJ based on "testing" evidence provided by the NCDH).

<sup>43</sup> E-mail from Daniel A. Searing to Andrew Nash, Mar. 29, 2007 (ellipses in original) (on file with author).

<sup>44</sup> Telephone Interview with Martin Sloane, Apr. 25, 2007.

On April 24, 1974, Robert and Kathleen Laufman filed suit against Oakley Building and Loan Company for lending practices in violation of the FHA.<sup>45</sup> The sellers of the Avondale property, Andrea and Folke Kihlstedt, were co-plaintiffs in the suit.<sup>46</sup> A local attorney, Donald Colgrove, served as lead plaintiff counsel; three NCDH attorneys, including Jay Mulkeen and Daniel Searing, were also named as counsel in the Complaint. As in the redlining suit, *Laufman v. Oakley Building and Loan Company* was originally a class action lawsuit with two classes, in this case all current and prospective homeowners in Hamilton County, Ohio, although the case ended up as a private lawsuit between the Laufmans and the lender. The Complaint alleged that Oakley refused to lend, or extended loans under less favorable terms, for home purchases in racially integrated neighborhoods. The Plaintiffs premised their claim under the FHA and two sections of the Code of Federal Regulations (CFR). (Unlike as in *Brown*, Laufman did not bring 1981, 1982, or Thirteenth Amendment claims.)

The citations to the C.F.R. in the *Laufman* Complaint are worth pausing over, as they demonstrate the connection between the administrative lobbying in

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<sup>45</sup> Compl., *Laufman v. Oakley Bldg. & Loan Co.*, 74-153 (S.D. Ohio Apr. 24, 1974).

<sup>46</sup> The Kihlstedts dropped out of the lawsuit before the court entered judgment in the case. See discussion in Defendants' Mot. for Summ. J., at 1, *Laufman v. Oakley Bldg. & Loan Co.*, 74-153 (S.D. Ohio May 2, 1975).

Washington in 1970-73 and the *Laufman* suit, which was filed in 1974. The *Laufman* Complaint alleged that the defendant lender had violated the FHA as well as 12 C.F.R. 528 and 531. 12 C.F.R. 528.2(d), which the FHLBB adopted on April 27, 1972, required that “[n]o member institution shall deny a loan... because of the race, color, religion, or national origin of... the present or prospective owners of... other dwellings in the vicinity.”<sup>47</sup>

The defendant lender offered two primary responses to the *Laufman* Complaint. First, Oakley argued that the plain text of the FHA did not encompass redlining claims. Second, the lender argued that the agencies’ non-discrimination rules could not create or buttress a legal claim. “Interpretive regulations are not legally binding on Courts of law and when, as here, they presume to usurp the legislative function, they are of no effect,” Oakley argued in its Motion for Summary Judgment.<sup>48</sup> Oakley maintained that the CFR provisions “contradict not only the intent but the very provisions” of the FHA “by purporting to confer upon

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<sup>47</sup> “Nondiscrimination Requirements,” 37 Fed. Reg. 8436, 8437 (Apr. 27, 1972).

<sup>48</sup> Defendant’s Mot. for Summ. J., at 1, *Laufman v. Oakley Bldg. & Loan Co.*, 74-153 (S.D. Ohio May 2, 1975); *see also* Defendants’ Brief in Reply to Plaintiffs’ and Amicus Curiae Mem. Contra Defendants’ Mot. for Summ. J., at 4 *Laufman v. Oakley Bldg. & Loan Co.*, 74-153 (S.D. Ohio July 21, 1975) (arguing that the FHLBB had “usurp[ed] the legislative function” by promulgating the non-discrimination rules in the Code of Federal Regulations).

neighborhoods some heretofore unknown personal legal status that entitles them to protection from discrimination.”<sup>49</sup>

By this point in the litigation, both the Department of Justice and the FHLBB had filed amicus curiae briefs with the court.<sup>50</sup> The DOJ’s Brief was signed by Warren L. Dennis, a DOJ staff attorney who would later defend a lender in private practice<sup>51</sup> before playing an instrumental role in fair lending enforcement negotiations in Washington in the late 1970s.<sup>52</sup> The DOJ argued that the FHA should be broadly construed because it was “designed to eliminate all traces of racial discrimination from the housing field.”<sup>53</sup> In addition to extensively citing floor statements by liberal Senators in support of the FHA,<sup>54</sup> the DOJ’s Brief also cited Daniel Searing’s 1973 law review article about the CNPR’s lobbying campaign, suggesting that DOJ attorneys were essentially in agreement with the

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<sup>49</sup> Defendant’s Mot. for Summ. J., at 4, *Laufman v. Oakley Bldg. & Loan Co.*, 74-153 (S.D. Ohio May 2, 1975)

<sup>50</sup> *Laufman v. Oakley Bldg. & Loan Co.*, 404 F. Supp. 791 (S.D. Ohio 1975) (rejecting defendants’ attempt to prevent the United States from filing an amicus brief in the case).

<sup>51</sup> *United States v. Beneficial Corp.*, 492 F. Supp. 682 (D.N.J. 1980). As a side note, in 1998 Dennis represented the Department of the Treasury in its attempt to prevent Kenneth Starr from interviewing Secret Service agents in connection with Starr’s investigation of President Clinton. *See In re Sealed Case*, 148 F.3d 1073 (D.C. Cir. 1998).

<sup>52</sup> *See infra* note 231, and accompanying text.

<sup>53</sup> Brief of the Department of Justice as Amici Curiae Supporting Plaintiffs, at 2, *Laufman v. Oakley Bldg. & Loan Co.* (No. 74-153).

<sup>54</sup> Brief of the Department of Justice as Amici Curiae Supporting Plaintiffs, at 2, *Laufman v. Oakley Bldg. & Loan Co.* (No. 74-153) (quoting Senator Walter Mondale).

Washington activists.<sup>55</sup> The FHLBB's Brief argued that its authorizing statute, enacted in 1932, empowered it to issue rules to give effect to federal civil rights statutes.<sup>56</sup>

On February 13, 1976, Judge David S. Porter denied the Defendants' Motion for Summary Judgment, dispensing with the Defendants' two principal arguments.<sup>57</sup> First, the court held that the FHA prohibits redlining. Although some sections of the FHA relied on by the plaintiffs are "not altogether unambiguous," the court held that "a denial of financial assistance in connection with a sale of a home would effectively 'make unavailable or deny' a 'dwelling,'" thus proving a violation of the FHA.<sup>58</sup> The district court emphasized the legislative history of the FHA and noted that Congress passed it in response to the Kerner Commission's Report. Because the Kerner Commission focused on the problem of white flight, and because denial of credit to racially mixed neighborhoods reinforces white flight, the court reasoned that the FHA should be construed to prohibit redlining.<sup>59</sup> Second, the court ruled that the power of the FHLBB to create a private cause of

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<sup>55</sup> Brief of the Department of Justice as Amici Curiae Supporting Plaintiffs, at 19, *Laufman v. Oakley Bldg. & Loan Co.* (No. 74-153) (citing Daniel Searing, *Discrimination in Home Finance*, 48 NOTRE DAME L. 1113 (1973)).

<sup>56</sup> Brief of the Federal Home Loan Bank Board as Amici Curiae Supporting Plaintiffs, at 8, *Laufman v. Oakley Bldg. & Loan Co.* (No. 74-153) (June 18, 1975).

<sup>57</sup> *Laufman*, 408 F. Supp. 489.

<sup>58</sup> *Laufman*, 408 F. Supp. at 493 (quoting 42 U.S.C. § 3604).

<sup>59</sup> *Laufman*, 408 F. Supp. at 496-97.

action through its administrative rulemaking was irrelevant because the plaintiffs' statutory causes of action were all valid.<sup>60</sup>

The court's decision made national headlines.<sup>61</sup> As Robert Laufman recalls, before the judge rejected the Defendant's Motion, "a lot of people didn't realize that redlining was illegal." Laufman and the NCDH did not litigate the case to final judgment. Instead they settled, content that they were able to get a federal court to declare redlining illegal under the FHA.<sup>62</sup> Three months later, in *Harrison v. Otto G. Heinzerth Mortg. Co.*, another federal district court judge held that the FHA prohibits lender discrimination based on a neighborhood's racial composition.<sup>63</sup> Jay Mulkeen, an NCDH lawyer, represented the *Harrison* plaintiffs, a white couple in the northern district of Ohio who eventually recovered \$7,500 in damages without proving any out-of-pocket losses, making *Harrison* the first redlining lawsuit in which plaintiffs recovered money damages.<sup>64</sup> In 1979, plaintiffs in

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<sup>60</sup> *Laufman*, 408 F. Supp. at 500.

<sup>61</sup> Charles A. Krause, "Racial 'Redlining' of Loans Held Illegal," WASH. POST, Feb. 21, 1976, at A-2 (stating that case participants believed that the *Laufman* court's ruling "will have far-reaching effects in cities throughout the nation"); Charles Kaiser, "Banks 'Redlining' of an Area For Racial Reason Ruled Illegal," NEW YORK TIMES, Feb. 21, 1976, at C-13 (noting that *Laufman* was the "first time" redlining had been found to be illegal); "The law closes in on mortgage discrimination," BUSINESS WEEK, Feb. 22, 1976 (stating that the *Laufman* decision is the "latest victory" in the nationwide campaign against redlining).

<sup>62</sup> Telephone Interview with Martin Sloane, Apr. 25, 2007; E-mail from Robert Laufman to Andrew Nash, Apr. 30, 2007 (on file with author).

<sup>63</sup> *Harrison v. Otto G. Heinzerth Mortg. Co.*, 414 F. Supp. 66 (N.D. Ohio 1976).

<sup>64</sup> Martin E. Sloane, *Mortgage Credit Discrimination*, published in DISCRIMINATION IN MORTGAGE CREDIT: REGULATION, LITIGATION, AND COMPLIANCE, edited by Warren L. Dennis

Dallas filed a similar class action lawsuit in *Fisher v. Dallas Federal Savings and Loan Association*.<sup>65</sup> The DOJ filed an amicus brief in *Fisher*, and the district court held in an unreported decision that redlining violates the ECOA in addition to the FHA and the Civil Rights Act of 1866.<sup>66</sup> *Laufman* also influenced discovery practices in discrimination lawsuits. In the years after 1976, courts cited *Laufman* for the proposition that individual applicants alleging discrimination can use civil discovery to obtain more general information about a defendant's application and approval practices.<sup>67</sup>

In addition to winning his case, Robert Laufman also took satisfaction from the fact that racially-mixed Avondale did not spiral into poverty, as the Oakley vice-president had predicted in 1974.

The home at 3941 Beachwood was the home Oakley found to be in the wrong neighborhood. It had three floors and a basement, a beveled glass vestibule, oak and red pine floors, pocket doors, a carved banister leading to the a landing... It had 4000 feet of useable floor space. We purchased it in 1974 for \$36,000 and sold it in one day [in 1979] to two black doctors for

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and Donald G. Glascoff, at 54 (1979). The court awarded the Harrisons \$5,000 in compensatory damages, \$2,500 in punitive damages, and attorneys' fees.

<sup>65</sup> *Fischer v. Dallas Federal Sav. and Loan Ass'n*, 79-0565 (N.D. Tex.), 106 F.R.D. 465 (N.D. Tex. 1985) (certifying class action). Notably, as in *Laufman* and *Harrison*, the named plaintiffs in *Fischer* were white.

<sup>66</sup> UNITED STATES DEP'T. OF JUSTICE, 1981 ANNUAL REPORT OF THE ATTORNEY GENERAL OF THE UNITED STATES 126 n.76 (1981).

<sup>67</sup> See *Dunn v. Midwestern Indem.*, 88 F.R.D. 191, 196 (S.D. Ohio 1980) (citing *Laufman* to support the right of plaintiffs to obtain general data on an insurance company's application and approval practices in a suit alleging insurance redlining).

\$89,000. We moved three blocks to the house in Red Bud... We paid \$122,500 in 1979 [for the Red Bud house] and sold it for \$495,000... [in] May [2006].<sup>68</sup>

Laufman spent his entire professional life in the Cincinnati area and remains active in civil rights enforcement.<sup>69</sup>

ANOTHER IMPORTANT, if tangential, off-shoot from *Laufman* was the Department of Justice's decision to prosecute discriminatory appraisal techniques in *United States v. American Institute of Real Estate Appraisers*.<sup>70</sup> Filed in 1976, the DOJ alleged that the American Institute of Real Estate Appraisers (AIREA or "the Institute"), the Mortgage Bankers Association of America (MBA or "the Association"), and two other appraiser associations had long directed their members to under-assess the value of houses in predominantly minority or racially integrated neighborhoods, and that such assessment practices constituted illegal

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<sup>68</sup> E-mail from Robert Laufman to Andrew Nash, Mar. 22, 2007 (on file with author).

<sup>69</sup> After 1976, Laufman represented plaintiffs in housing discrimination cases, such as *Pollitt v. Bramel*, 669 F.Supp. 172 (S.D. Ohio 1987) (awarding compensatory and punitive damages for an interracial couple that had suffered housing discrimination in violation of the FHA). He argued on behalf an employment discrimination plaintiff before the Supreme Court in *Public Employees Retirement System of Ohio v. Betts*, 492 U.S. 158 (1989), and testified at the congressional hearings for the Older Workers Benefit Protection Act. As of March 2007, Laufman is semi-retired and oversees law students at North Kentucky University Salmon P. Chase College of Law working on prisoner rights cases. His current legal interests include challenging state and municipal laws that restrict where ex-sex offenders can live.

<sup>70</sup> *United States v. Am. Inst. of Real Estate Appraisers*, 76-1448 (N.D. Ill. 1976).

discrimination prohibited by the FHA.<sup>71</sup> The defendants did not coordinate their strategies: the AIREA quickly settled with the DOJ, while the MBA fought the government's case in court.

The government's settlement agreement with AIREA required the appraisal group to prohibit its members from "bas[ing] a conclusion or opinion of value upon the premise that the racial, ethnic, or religious homogeneity of the inhabitants of an area or of a property is necessary for maximum value." Under the agreement, the Institute agreed to include information on civil rights laws in its popular appraiser textbook and to add ethical rules requiring members to note, in writing, what facts they relied upon when determining that a neighborhood is in decline; casual drive-by assessments like those practiced by the Oakley vice-president would henceforth be prohibited. The Institute also agreed to revise its ethical rules to require members to grant access to government agents investigating illegal activities, and to allow the district court to retain jurisdiction over the case during the period of the settlement agreement.<sup>72</sup>

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<sup>71</sup> Mem. Op., *United States v. Am. Inst. of Real Estate Appraisers*, July 24, 1979, *published in* REINVESTMENT IN URBAN COMMUNITIES: REDLINING, MORTGAGE DISCLOSURE, CREDIT ALLOCATION AND NEIGHBORHOOD PRESERVATION 505 (1979) (citing 42 U.S.C. §§ 3604, 3617).

<sup>72</sup> *United States v. Am. Inst. of Real Estate Appraisers*, 422 F. Supp. 1072, 1077-78 (N.D. Ill. 1977).

Despite the Institute's leaders' best efforts to settle the case, they found themselves in court in 1977 defending the settlement agreement against a protesting member. In his ruling upholding the validity of the agreement, District Court Judge George Leighton held that, contrary to the objecting member's assertion, the FHA covers appraisers. In reaching this conclusion, Judge Leighton noted that the *Laufman* court had broadly construed the FHA's "otherwise make unavailable or deny" language to encompass redlining.<sup>73</sup> "Given a broad interpretation of these provisions, it becomes clear that the United States has stated a claim for relief under their terms."<sup>74</sup> Judge Leighton also rejected the objecting member's claim that AIREA had failed to adequately represent his interests in the settlement negotiations. Although the objecting member wished to continue to use neighborhoods' racial profiles as proxies for economic vitality, he failed to show that the Institute had inadequately represented his interests.<sup>75</sup>

Unlike the AIREA, the MBA refused to deal, and in July 1979 Judge Leighton ruled on the Association's Motion for Summary Judgment. The MBA argued that it had never directed its members to discriminate on the basis of race; that it had in fact adopted an ethical rule in April 1976 prohibiting such

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<sup>73</sup> *Am. Inst.*, 422 F. Supp. at 1079.

<sup>74</sup> *Am. Inst.*, 422 F. Supp. at 1079.

<sup>75</sup> *Am. Inst.*, 422 F. Supp. at 1081 (citing *Trbovich v. United Mine Workers of America*, 404 U.S. 528 (1972)).

discrimination; that its directives to members, even if discriminatory, were only advisory and thus had no real world impact; and that, even if it had once promoted or even if it continued to promote racial discrimination, such discrimination was protected by the First Amendment.<sup>76</sup> The government disputed the MBA's factual characterization of its past and current practices but argued that, irrespective of the MBA's individual actions, there existed "a material fact question about the interrelationship of all defendants' conduct and whether it resulted in an industrywide pattern and practice, the natural consequence of which is to base home loan decisions on considerations of race and national origin."<sup>77</sup>

In an unpublished memorandum opinion, Judge Leighton denied the MBA's Motion for Summary Judgment. He noted that "the parties disagree radically as to certain facts and inferences,"<sup>78</sup> but that the government had presented credible evidence of the MBA's past and ongoing racial discrimination as well as evidence

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<sup>76</sup> Mem. Op., *United States v. Am. Inst. of Real Estate Appraisers*, July 24, 1979, *published in* REINVESTMENT IN URBAN COMMUNITIES: REDLINING, MORTGAGE DISCLOSURE, CREDIT ALLOCATION AND NEIGHBORHOOD PRESERVATION 512 (1979).

<sup>77</sup> Mem. Op., *United States v. Am. Inst. of Real Estate Appraisers*, July 24, 1979, *published in* REINVESTMENT IN URBAN COMMUNITIES: REDLINING, MORTGAGE DISCLOSURE, CREDIT ALLOCATION AND NEIGHBORHOOD PRESERVATION 514 (1979).

<sup>78</sup> Mem. Op., *United States v. Am. Inst. of Real Estate Appraisers*, July 24, 1979, *published in* REINVESTMENT IN URBAN COMMUNITIES: REDLINING, MORTGAGE DISCLOSURE, CREDIT ALLOCATION AND NEIGHBORHOOD PRESERVATION 506 (1979).

that the MBA forced its individual members to follow its directions.<sup>79</sup> In particular, Judge Leighton focused on the fact that many MBA members indicated in response forms that they took racial data into consideration when making appraisal decisions. He then cited his decision from two years earlier approving the AIREA's settlement agreement for the proposition that the FHA's "make unavailable or deny" clause should be broadly construed.<sup>80</sup> All four defendants in *American Institute* eventually settled by the close of 1980.<sup>81</sup>

In sum, the essential framework of the fair lending cause of action emerged in a few short years in the mid-1970s. Private plaintiff and government attorneys in *Laufman*, *Harrison*, and *American Institute of Real Estate Appraisers* convinced federal courts to broadly construe the FHA's statutory prohibition on discrimination to cover home financing and provided a roadmap for future private plaintiffs. Building on this momentum, in 1979 a federal court in Cincinnati cited *Laufman* and *American Institute* when ruling that the FHA should be broadly

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<sup>79</sup> Mem. Op., *United States v. Am. Inst. of Real Estate Appraisers*, July 24, 1979, *published in* REINVESTMENT IN URBAN COMMUNITIES: REDLINING, MORTGAGE DISCLOSURE, CREDIT ALLOCATION AND NEIGHBORHOOD PRESERVATION 514 (1979).

<sup>80</sup> Mem. Op., *United States v. Am. Inst. of Real Estate Appraisers*, July 24, 1979, *published in* REINVESTMENT IN URBAN COMMUNITIES: REDLINING, MORTGAGE DISCLOSURE, CREDIT ALLOCATION AND NEIGHBORHOOD PRESERVATION 515 (1979) (citing *United States v. Am. Inst. Of Real Estate Appraisers*, 442 F. Supp. 1072, 1079 (N.D. Ill. 1977)).

<sup>81</sup> UNITED STATES DEP'T. OF JUSTICE, THE ANNUAL REPORT OF THE ATTORNEY GENERAL OF THE UNITED STATES 1980 130 (1980).

construed to prohibit redlining in insurance sales.<sup>82</sup> However, while these cases were effective in establishing the fair lending private cause of action, they could not force federal government agencies (outside the DOJ) to take an aggressive stance against lending discrimination; another struggle, drawing on another set of tactics, was still required.<sup>83</sup>

IN ADDITION to Washington and Cincinnati, fair lending activists and litigators were active in many other parts of the country. Chicago, in particular, was a major location for fair housing and lending activism. Dr. Martin Luther King, Jr., focused attention on housing discrimination problems in Chicago in the mid-1960s<sup>84</sup> and he cultivated relationships with Chicago business leaders to create a community consensus that housing discrimination was both a serious problem and morally

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<sup>82</sup> *Dunn v. Midwestern Indem., Mid-American Fire and Cas. Co.*, 472 F. Supp. 1106, 1108 (S.D. Ohio 1979) (“...§ 3604(a) has been construed to proscribe the following practices: refusal to provide financing in racially integrated areas, “mortgage redlining,” (*Laufman v. Oakley Bldg. & Loan Co.* 408 F. Supp. 498 (S.D. Ohio 1976))... the assignment of lower appraisal values to homes in racially integrated neighborhoods (*United States v. American Institute of Real Estate Appraisers* 422 F. Supp. 1072 (N.D.Ill.1977))...”).

The application of the Fair Housing Act to insurance redlining claims has not been universally accepted. *See Mackey v. Nationwide Ins. Co.*, 724 F.2d 419, 424 (4th Cir. 1984) (characterizing as “unnecessary” *Laufman*’s conclusion that the “otherwise make unavailable or deny” language in 42 U.S.C. § 3604 encompasses redlining claims and concluding that the FHA does not reach insurance-related transactions).

<sup>83</sup> *See infra*, Part III.

<sup>84</sup> *See generally* TAYLOR BRANCH, AT CANAAN’S EDGE 407-08 (2006).

wrong. One product of Dr. King's efforts in Chicago was the creation of the Leadership Council for Metropolitan Open Communities.<sup>85</sup>

As F. Willis Caruso, the Leadership Council's General Counsel from 1970 to 1991 explains, the Leadership Council started out by cultivating relationships with many of Chicago's top business executives, and its ties to the business community influenced the group's litigation strategy. Rather than seeking injunctive remedies, the Leadership Council attempted to make housing and lending discrimination unprofitable by bringing hundreds of high-dollar damage cases. "It is my belief that the best thing to do is to sue as many people as possible—sooner or later people will change their behavior," Caruso states.

Chicago was something of a fair lending activist hotbed in the early 1970s. A law review article from the period describes pickets outside of Savings and Loan offices by activists demanding the disclosure of loan application data.<sup>86</sup> Several fair lending litigators from this period recall, with a mix of fondness and amusement, a firebrand Chicago activist named Gail Cincotta who picketed the homes of her

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<sup>85</sup> Except where indicated, pages 19-20 are based on a telephone interview conducted with F. Willis Caruso on Mar. 21, 2007.

<sup>86</sup> Freddi L. Greenberg, "Redlining—The Fight Against Discrimination in Mortgage Lending," 6 Loy. U. Chi. L. J., 71, 71 (1975).

opponents.<sup>87</sup> (In 1976 *Business Week* described Cincotta's National People's Action on Housing as "militant."<sup>88</sup>) But Cincotta was effective in her own way: she convinced the Federal Reserve Bank in Chicago to meet with her<sup>89</sup> and she ended up testifying before Congress near the end of her life.<sup>90</sup>

Chicago-based litigation from this period reveals experiments with alternative, non-FHA theories of fair housing and lending litigation. The creatively pled Complaint in *Clark v. Universal Builders, Inc.* accused real estate contractors of exploiting a dual market for housing in the 1960s. The *Clark* plaintiffs alleged that real estate developers built functionally equivalent houses in predominantly white and black neighborhoods but imposed more onerous purchase terms on black homebuyers. As the Complaint alleged violations from 1958 and 1968, before the FHA went into effect, the plaintiffs sued under the Thirteenth Amendment and the Civil Rights Act of 1866. In 1974 the Seventh Circuit reversed the district court's dismissal of the *Clark* suit and held that the "exploitation theory" of discrimination supported claims under the Thirteenth Amendment and 42 U.S.C. § 1982.<sup>91</sup>

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<sup>87</sup> Telephone Interviews with Bill Taylor, Mar. 14, 2007, and Robert Laufman, Mar. 22, 2007.

<sup>88</sup> "The law closes in on mortgage discrimination," *BUSINESS WEEK*, Feb. 22, 1976.

<sup>89</sup> [no author], "Reclaim America," Aug. 20, 1982,  
<http://www.nader.org/template.php?archives/1030-Reclaim-America.html>

<sup>90</sup> Gail Cincotta, "Statement of Gail Cincotta before the Subcommittee on Housing and Community Opportunity," Apr. 1, 1998,  
<http://financialservices.house.gov/banking/4198cinc.htm>

<sup>91</sup> *Clark v. Universal Builders, Inc.*, 501 F.2d 324 (7th Cir. 1974).

Ultimately the *Clark* defendants prevailed when the Seventh Circuit affirmed the district court's ruling that the facts of the case did not prove an "exploitation theory" of illegal discrimination.<sup>92</sup>

To summarize, *Laufman* and its progeny established the fair lending damage cause of action in the mid-1970s. Whether brought on a case-by-case basis (as in Laufman's personal suit), or in a more systematic fashion (as in Willis Caruso's practice), the fair lending litigation lawsuit provided a remarkably flexible, durable, and relatively easy-to-litigate model of private civil rights enforcement.<sup>93</sup> While its major drawback was that it could only provide a post-hoc monetary remedy, as Caruso understood, a sustained effort to litigate a large portfolio of damages cases could restructure the economic calculus in a local lending market. The relative advantages and weaknesses of the *Laufman* model are considered at greater length in Part IV and compared with the *National Urban League* approach described in Part III.

### **III. The fair lending injunctive experiment: *National Urban League v. Comptroller of the Currency***

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<sup>92</sup> Clark v. Universal Builders, Inc., 706 F.2d 204 (7th Cir. 1983).

<sup>93</sup> See FAIR HOUSING CENTER OF METROPOLITAN DETROIT, *supra* note 3, for a summary of the hundreds of fair lending and housing damages lawsuits that have been brought by non-profits since the early 1980s.

Judge Porter's decision in *Laufman* to sidestep ruling on the legal effect of the FHLBB's non-discrimination rules underscored the uncertain position of the Washington activists in early 1976. Of the four federal agencies that had received rulemaking petitions in 1971, only the FHLBB taken a meaningful response by early 1976,<sup>94</sup> and Porter's ruling called in question the significance of that modest achievement. The CNPR knew that litigation against the agencies was an option from the very moment the petitions were filed; in March 1971 the *New York Times* paraphrased Bill Taylor as saying that "if the agencies declined to comply with the petitions the petitioning organizations would probably take the matter to Federal court."<sup>95</sup> Internal CNPR records reveal that the Center seriously considered filing suit against the agencies as early as 1972,<sup>96</sup> and in early 1976 the Center faced a strategic crossroads. It could continue to try its luck with the agencies through

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<sup>94</sup> First Amended Compl., *National Urban League v. Comptroller of the Currency*, 76-0718 (July 13, 1976), at 32, ¶ 50 ("Only one of these agencies, the FHLBB, has adopted regulations dealing in any significant way with the issues raised by the petitions, but... even in that one case the adoption of regulations has not been followed by effective implementation and enforcement."). [LOC Box 133] [Folder: Amended Complaint for Declaratory, Injunctive and Other Relief] (hereinafter "First Amended Complaint")

<sup>95</sup> John Herbers, *4 U.S. Agencies Urged to Act Against Bias in Home Financing*, NEW YORK TIMES, Mar. 9, 1971, at 21.

<sup>96</sup> Memorandum from Dan [Searing] and Steve [?] to Staff, Center for National Policy Review, [no date listed], at 1 (suggesting that the Center "start preparation for litigation against one or more of the agencies"). [LOC Box 59] [Folder: Fair Housing-Lending Practices Federal Home Loan Bank Board, 1972]. Note: This memo can be dated to the late spring or early summer of 1972 by its opening statement that it was drafted "in light of the issuance by the Federal Home Loan Bank Board of anti-discrimination regulations," which occurred in April 1972.

rulemaking petitions,<sup>97</sup> abandon the issue entirely in favor of action by Congress, or bring a lawsuit against the agencies and try to force their hands.

In April 1976, five years after filing the rulemaking petitions with the regulatory agencies,<sup>98</sup> ten of the original rulemaking petitioners brought suit against the four agencies and their chief officials.<sup>99</sup> The plaintiffs—in total, thirteen civil rights organizations, with the CNPR serving as the litigation coordinator<sup>100</sup>—stated that they brought the lawsuit “to remedy the continuing failure and refusal of these agencies to take action to end discriminatory mortgage lending practices by institutions which they regulate and to which they provide substantial federal benefits.”<sup>101</sup> The plaintiffs argued that race- and gender-based discrimination were

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<sup>97</sup> Letter from Bill Taylor to James Smith, Comptroller of the Currency, February 3, 1975, at 1 (following up on petitioners’ rulemaking petitions and inquiring about the Comptroller’s “pilot program of collecting data on mortgage lending patterns by race, neighborhood and other variables”). [LOC Box 133] [Folder: RACIAL DATA SURVEY – FDIC]

<sup>98</sup> First Amended Complaint, at 31, ¶ 48 (noting that ten of the *National Urban League* plaintiffs had filed rulemaking petitions under 5 U.S.C. § 553(e) with the four defendant agencies on March 8, 1971). [LOC Box 133] [Folder: Amended Complaint for Declaratory, Injunctive and Other Relief]

<sup>99</sup> First Amended Complaint [LOC Box 133] [Folder: Amended Complaint for Declaratory, Injunctive and Other Relief]

<sup>100</sup> First Amended Complaint [LOC Box 133] [Folder: Amended Complaint for Declaratory, Injunctive and Other Relief]. The plaintiffs listed on the First Amended Complaint are the National Urban League, the National Committee Against Discrimination in Housing, the National Association for the Advancement of Coloured People, American Friends Service Committee, League of Women Voters of the United States, National Neighbors, Housing Association of Delaware Valley, Leadership Council for Metropolitan Open Communities, Metropolitan Washington Planning and Housing Association, Rural Housing Alliance, and the National Association of Real Estate Brokers.

<sup>101</sup> First Amended Complaint, at 1, ¶ 1. [LOC Box 133] [Folder: Amended Complaint for Declaratory, Injunctive and Other Relief]

illegal,<sup>102</sup> that the defendant agencies had an affirmative obligation to ensure lender compliance with the law,<sup>103</sup> and that the defendants had breached their duty by failing to ensure lender non-discrimination.<sup>104</sup> In essence, the plaintiffs' lawsuit was administrative lobbying by other means; the court case was merely a new strategy to accomplish the origin rulemaking goal launched in 1971.

The plaintiffs requested both declaratory and injunctive relief. In particular, the First Amended Complaint<sup>105</sup> requested the court to declare the defendants'

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<sup>102</sup> First Amended Complaint, at 26, ¶ 36 (alleging that discriminatory lending violates the Fifth Amendment, Sections 1981 and 1982, Title VI of the Civil Rights Act of 1968, the National Housing Act, and Title VIII of the Civil Rights Act of 1968 (otherwise known as the Fair Housing Act)).

<sup>103</sup> First Amended Complaint, at 33, ¶ 51. [LOC Box 133] [Folder: Amended Complaint for Declaratory, Injunctive and Other Relief]

<sup>104</sup> First Amended Complaint, at 32, ¶ 50. [LOC Box 133] [Folder: Amended Complaint for Declaratory, Injunctive and Other Relief] *See also* Mem. and Order, National Urban League v. Office of the Comptroller of the Currency, 76-0718 (May 3, 1978), at 2 [LOC Box 132] [Folder: National Urban League v. Off. of Comptroller Summary Judgment Motions Defendants' (Off. of Comptroller) 1978] (summarizing the three underlying assumptions of plaintiff's lawsuit), 78 F.R.D. 543 (D.D.C. 1978); Statement of Martin Sloane, Transcript of Proceedings, National Urban League v. Comptroller of the Currency, Sept. 15, 1976 (Robert M. Weber, Official Reporter), at 36 [LOC Box 127] [Folder: National Urban League v. Off. of Comptroller of Currency Chronological file, 1976-77 folder 3].

<sup>105</sup> The plaintiffs made three changes in their First Amended Complaint: (1) they added the National Association of Real Estate Brokers as a plaintiff; (2) they clarified their injury claims in paragraphs 5 through 14; and (3) they added a new paragraph 33 concerning the 1971 FHLBB survey of mortgage lending practices. As Martin Sloane explained in a letter to defense counsel, the "amendments are relatively minor..." Letter from Martin E. Sloane, General Counsel, National Committee Against Discrimination in Housing, to Harold B. Shore, Assistant General Counsel, Federal Home Bank Loan Bank Board, July 13, 1976. [LOC Box 127] [Folder: National Urban League v. Off. of Comptroller of Currency Chronological file, 1976-77 folder 1].

conduct to violate plaintiffs’ and their members’ rights under federal law;<sup>106</sup> to enjoin the defendants from failure to enforce non-discrimination laws;<sup>107</sup> and to order the Comptroller, the Fed, and the FDIC to promulgate non-discrimination rules.<sup>108</sup> The plaintiffs also included more detailed requests concerning “procedures for the detection and investigation of potential discriminatory practices.”<sup>109</sup> Under this heading the plaintiffs requested the court to require data collection on mortgage applicants’ race and sex;<sup>110</sup> to require the development of procedures for reviewing that data to detect discrimination;<sup>111</sup> to develop “[s]pecial investigation procedures”;<sup>112</sup> to train loan examiners in non-discrimination laws;<sup>113</sup> to establish schedules and deadlines for investigations of discrimination complaints;<sup>114</sup> and to require “lending institutions which have engaged in discriminatory practices or

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<sup>106</sup> First Amended Complaint, at 35, Request Relief ¶ A [LOC Box 133] [Folder: Amended Complaint for Declaratory, Injunctive and Other Relief]

<sup>107</sup> First Amended Complaint, at 35, Request Relief ¶ B [LOC Box 133] [Folder: Amended Complaint for Declaratory, Injunctive and Other Relief]

<sup>108</sup> First Amended Complaint, at 35, Request Relief ¶ C [LOC Box 133] [Folder: Amended Complaint for Declaratory, Injunctive and Other Relief]

<sup>109</sup> First Amended Complaint, at 35, Request Relief ¶ D [LOC Box 133] [Folder: Amended Complaint for Declaratory, Injunctive and Other Relief]

<sup>110</sup> First Amended Complaint, at 35, Request Relief ¶ D(1) [LOC Box 133] [Folder: Amended Complaint for Declaratory, Injunctive and Other Relief]

<sup>111</sup> First Amended Complaint, at 35, Request Relief ¶ D(2) [LOC Box 133] [Folder: Amended Complaint for Declaratory, Injunctive and Other Relief]

<sup>112</sup> First Amended Complaint, at 35, Request Relief ¶ D(3) [LOC Box 133] [Folder: Amended Complaint for Declaratory, Injunctive and Other Relief]

<sup>113</sup> First Amended Complaint, at 35, Request Relief ¶ D(4) [LOC Box 133] [Folder: Amended Complaint for Declaratory, Injunctive and Other Relief]

<sup>114</sup> First Amended Complaint, at 36, Request Relief ¶ D(5) [LOC Box 133] [Folder: Amended Complaint for Declaratory, Injunctive and Other Relief]

have historically financed and done business primarily with... white clientele [to] take affirmative action to overcome the effects of such practices...”<sup>115</sup>

From the outset, the plaintiffs faced three major hurdles. First, they had to counter what CNPR Director Bill Taylor characterized as “the government’s argument that the agencies have wide discretion and can’t be mandamus’d.”<sup>116</sup> As the defendants’ counsel would argue before U.S. District Court Judge Gerhard Gesell in a preliminary hearing, “[w]e don’t believe it is the function of a Court to undertake to compare and say which procedures may or may not be more effective in the absence of an expressed Congressional demand that they do so.”<sup>117</sup> Judge Gesell seemed sympathetic to this line of argument, stating that the “trouble is that

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<sup>115</sup> First Amended Complaint, at 36, Request Relief ¶ D(6) [LOC Box 133] [Folder: Amended Complaint for Declaratory, Injunctive and Other Relief]

<sup>116</sup> Memorandum from Bill Taylor to Martin Sloane, Jay Mulkeen, Dan Searing and Karen Krueger, July 28, 1976, at 1. [LOC Box 127] [Folder: National Urban League v. Off. of Comptroller of Currency Chronological file, 1976-77].

<sup>117</sup> Statement of Robert Rader, Transcript of Proceedings, National Urban League v. Comptroller of the Currency, Sept. 15, 1976 (Robert M. Weber, Official Reporter), at 12 [LOC Box 127] [Folder: National Urban League v. Off. of Comptroller of Currency Chronological file, 1976-77 folder 3]. “And that’s the simple point—Congress hasn’t said so; only the plaintiffs have said so. And we don’t believe that the injunctive power of the Court ought to be used to implement the statutory preferences of the plaintiffs.” Statement of Robert Rader, Transcript of Proceedings, National Urban League v. Comptroller of the Currency, September 15, 1976 (Robert M. Weber, Official Reporter), at 20 [LOC Box 127] [Folder: National Urban League v. Off. of Comptroller of Currency Chronological file, 1976-77 folder 3].

you [plaintiffs] have taken such an enormous gobble at this extremely important pie that I don't know whether anybody is going to be able to masticate it.”<sup>118</sup>

Second, Judge Gesell was skeptical of the plaintiffs' standing claims. The defendants' common Motion to Dismiss, filed in July 1976, argued that the plaintiffs failed to demonstrate injury-in-fact.<sup>119</sup> Internally, the CNPR lawyers expressed concern about the standing issue and requested the plaintiff civil rights organizations to inform the Center of specific instances of illegal credit denials experienced by their members.<sup>120</sup> In September, Judge Gesell ordered the plaintiffs to provide concrete evidence of standing;<sup>121</sup> in December, he dismissed eight plaintiffs from the suit for failure to do so.<sup>122</sup> The case stayed alive, but only on behalf of the National Urban League, the NCDH, National Neighbors, the Metropolitan Washington Planning and Housing Association, and the National

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<sup>118</sup> Statement of Judge Gerhard Gesell, Transcript of Proceedings, *National Urban League v. Comptroller of the Currency*, Sept. 15, 1976 (Robert M. Weber, Official Reporter), at 63 [LOC Box 127] [Folder: National Urban League v. Off. of Comptroller of Currency Chronological file, 1976-77 folder 3].

<sup>119</sup> *National Urban League v. Comptroller of the Currency*, Defendants' Motion to Dismiss, July 23, 1976, at 1. [LOC Box 129] [Folder: Urban League v. Comptroller (Motion to Dismiss)].

<sup>120</sup> Memorandum from William L. Taylor, Roger S. Kuhn, Martin Sloane, Daniel Searing and Charles Williams to Plaintiffs in *National Urban League v. Office of the Comptroller*, June 15, 1976, at 1 (“Because of recent Supreme Court rulings, it may be necessary to identify specific individuals who are members of your organization who believe they have been discriminating against... [This may be necessary] to establish the requisite legal standing...”) [LOC Box 127] [Folder: National Urban League v. Off. of Comptroller of Currency Chronological file, 1976-77 folder 1]

<sup>121</sup> *National Urban League v. Comptroller of the Currency*, Mem. and Order, Sept. 20, 1976, at 1.

<sup>122</sup> Order, *National Urban League v. Office of the Comptroller of the Currency*, Dec. 9, 1976, at 1 [LOC Box 128] [Folder: Urban League v. Comptroller (Motion to Dismiss)]

Association of Real Estate Brokers.<sup>123</sup> CNPR Director Bill Taylor, CNPR Co-Director and George Washington University Law Professor Roger Kuhn,<sup>124</sup> along with NCDH General Counsel Martin (“Marty”) Sloane, continued to represent the plaintiffs in court and in negotiations with the agencies.

Third, beyond the legal merits of their case, by filing the lawsuit the plaintiffs risked alienating whatever allies they had inside the bank regulatory agencies. Immediately after the suit was filed, the FDIC Chairman wrote to Senator William Proxmire, Chairman of the Senate Banking Committee, stating that he was sympathetic to the plaintiffs’ concerns but that the lawsuit “complicates my efforts to accomplish what all of us would like to see accomplished – more effective enforcement of the fair lending laws.”<sup>125</sup> The FDIC Chairman stated that he had previously directed his subordinates to schedule

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<sup>123</sup> Order, *National Urban League v. Office of the Comptroller of the Currency*, Dec. 9, 1976, at 1 [LOC Box 128] [Folder: Urban League v. Comptroller (Motion to Dismiss)]

<sup>124</sup> Roger Kuhn, a 1951 law school graduate, spent his first decade as a lawyer in private practice in New York and Washington before joining the Office of the General Counsel at the newly established Peace Corps in 1961. He became a professor at George Washington University Law School in 1966 and soon thereafter approached the Dean about teaching a class on civil rights. The Dean assented, but only on the condition that Kuhn teach three large sections of trusts and estates; Kuhn agreed to this arrangement. Kuhn’s academic work at GW continued on and off for the next fifteen years, until he gave up the practice of law entirely in 1980-81 to become a jeweler. Most of his work at the CNPR in the 1970s occurred while he was on sabbatical from GW. Telephone Interview, Roger Kuhn, Apr. 22, 2007.

<sup>125</sup> Letter from Robert E. Barnett, Chairman, Federal Deposit Insurance Corporation, to Senator William Proxmire, Chairman, Committee on Banking, Housing and Urban Affairs, United States Senate, Apr. 30, 1976, at 2. [LOC Box 59] [Folder: Fair Housing-Lending Practices Federal Deposit Insurance Corp. 1972-76]

meetings with the civil rights groups, but now he ordered FDIC staffers “to postpone meeting with those groups until we can understand the lawsuit... as well as coordinate with the other bank regulatory agencies on the ‘defense’ philosophy...”<sup>126</sup> Senator Proxmire responded:

I can understand that in the short run the lawsuit complicates things, but we can hardly blame the civil rights groups, who have been stalled by the agencies for eight years. As you know, their critique of the regulatory agencies in this area is almost identical to that made by the Justice Department and the Senate Banking Committee.

Rather than harden battle lines, I would hope that the suit will provide one more inducement for the speedy development of a real enforcement program. Certainly, it would be ironic if the suit became one more pretext for delay.<sup>127</sup>

Senator Proxmire remained an ally throughout the *National Urban League* lawsuit, and his work on behalf of the plaintiffs from its opening days underscores the fact that the lawsuit was, in a sense, administrative lobbying by other means. As negotiations with the Fed would prove, however, the plaintiffs’ ability to effect

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<sup>126</sup> Letter from Robert E. Barnett, Chairman, Federal Deposit Insurance Corporation, to Senator William Proxmire, Chairman, Committee on Banking, Housing and Urban Affairs, United States Senate, Apr. 30, 1976, at 2. [LOC Box 59] [Folder: Fair Housing-Lending Practices Federal Deposit Insurance Corp. 1972-76]

<sup>127</sup> Letter from William Proxmire, Chairman, Committee on Banking, Housing and Urban Affairs, United States Senate, to Robert E. Barnett, Chairman, Federal Deposit Insurance Corporation, May 10, 1976, at 1. [LOC Box 59] [Folder: Fair Housing-Lending Practices Federal Deposit Insurance Corp. 1972-76]. Proxmire’s statement about “eight years” appears to be a reference to the FHA, which was passed in 1968. The plaintiffs, of course, had ‘only’ been waiting for five years since the rulemaking petitions were filed in 1971.

change depended in large part on their ability to establish working relationships with agency officials, a goal that combative litigation might undermine.

With five of the original thirteen plaintiffs still in the case after Judge Casell's ruling on standing, the parties were in a position to begin settlement negotiations. On December 8, 1976, in response to an order from Judge Gesell, three of the defendant agencies—the FHLBB, the FDIC, and the Comptroller—entered into settlement talks with the plaintiffs. Attorneys from all parties met twice in January 1977, and a defense attorney reported to the judge that the “discussion appears productive.”<sup>128</sup> Internal CNPR records from this period indicate that the plaintiffs initially wanted the court to retain jurisdiction over the case after settlement, but that by early February Judge Gesell was on the verge of dismissing the entire action. On February 15, Taylor and Kuhn met in the judge's chambers with representatives of the three agencies. An internal CNPR record of the meeting captures the plaintiffs' attorneys' impressions:

The judge expressed his displeasure that the case wasn't moving as required by his December 8 order, [and] commented that he suspected that plaintiffs had brought the suit (prematurely in light of ECOA) to secure leverage against the agencies... [Judge Gesell] indicated that he was unwilling to get

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<sup>128</sup> Letter from Harold B. Shore, Associate General Counsel, Federal Home Loan Bank Board, to Judge Gerhard A. Gesell, Jan. 18, 1977, at 1. [LOC Boc 129] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements 1976-77].

involved in monitoring the details of an agreement or to enter [a] consent decree whose enforcement he'd be responsible for without a factual record on which to base it. He talked of dismissing the case unless it was going to be litigated in earnest.

... We indicated that we were still prepared to litigate but hoped to avoid it through settlement, that we did not seek to involve the court in monitoring the agreement although we did want the case held on the court's inactive calendar – which [the] judge ruled out. The judge indicated that if we reached an agreement, the case should be dismissed...<sup>129</sup>

The late winter months of 1977 were the hinge moment of the case, a time when no defendant had settled and the terms of any possible agreement(s) were subject to negotiation. A clear division of opinion existed in February 1977 over the scope of data reporting that might be required under possible settlements with the agencies. The plaintiffs believed that one of the clear shortcomings of the existing system of data collection was that many (perhaps most) loan-seekers did not indicate any race on their applications, seriously undermining the effort to create reliable statistical samples through voluntary reporting.<sup>130</sup> The plaintiffs' proposed solution to this problem was for "loan officers [to] be required to note the

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<sup>129</sup> [Unknown author,] "SUMMARY OF CONFERENCE IN JUDGE GESELL'S CHAMBERS 2/15/77," February 16, 1977. [LOC Box 129] [Folder: National Urban League v. Office of Comptroller of the Currency, Settlement Negotiations + Agreements 1976-77]

<sup>130</sup> The CNPR felt that the Fed's Regulation B was inadequate for precisely this reason. "Reg B. voluntary data showing 50% nonresponse rate; staff says this is serious problem making data largely useless..." Unknown author, "NOTES ON MEETING WITH HART, KLUCKMAN, LACOSTE AND OTHER FRB STAFF DEC. 28, 1978 re my letter of Dec. 1," [unknown date], at 1. [LOC Box 131] [Folder: National Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements Federal Reserve Board, 1978]

desired information to the best of their ability in cases where the applicants fail to do so.”<sup>131</sup> The FHLBB was open to considering this suggestion, while the other defendants resolutely opposed mandatory race-reporting but “indicated a willingness to re-consider the matter in light of experience.”<sup>132</sup> Building on earlier efforts, the Comptroller and the FDIC had started a voluntary race-reporting pilot program involving 300 banks in January 1977; the FDIC was extending its program to cover all banks under its jurisdiction in late March 1977.<sup>133</sup> Only the Fed did “not contemplate any collation or comparative analysis of race/sex data,” but would instead review files on a case-by-case basis to detect discrimination.<sup>134</sup> The plaintiffs indicated that they were willing to go along with the agencies’ proposals as long as a reassessment was conducted after one year.<sup>135</sup>

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<sup>131</sup> Roger S. Kuhn, “Summary of Status of Settlement Negotiations in National Urban League v. Comptroller of the Currency,” Feb. 16, 1977, at 1 [LOC Box 129] [Folder: National Urban League v. Office of Comptroller of the Currency, Settlement Negotiations + Agreements 1976-77].

<sup>132</sup> Roger S. Kuhn, “Summary of Status of Settlement Negotiations in National Urban League v. Comptroller of the Currency,” Feb. 16, 1977, at 1 [LOC Box 129] [Folder: National Urban League v. Office of Comptroller of the Currency, Settlement Negotiations + Agreements 1976-77].

<sup>133</sup> Roger S. Kuhn, “Summary of Status of Settlement Negotiations in National Urban League v. Comptroller of the Currency,” Feb. 16, 1977, at 2 [LOC Box 129] [Folder: National Urban League v. Office of Comptroller of the Currency, Settlement Negotiations + Agreements 1976-77].

<sup>134</sup> Roger S. Kuhn, “Summary of Status of Settlement Negotiations in National Urban League v. Comptroller of the Currency,” Feb. 16, 1977, at 2 [LOC Box 129] [Folder: National Urban League v. Office of Comptroller of the Currency, Settlement Negotiations + Agreements 1976-77].

<sup>135</sup> Roger S. Kuhn, “Summary of Status of Settlement Negotiations in National Urban League v. Comptroller of the Currency,” Feb. 16, 1977, at 2 [LOC Box 129] [Folder: National Urban League v. Office of Comptroller of the Currency, Settlement Negotiations + Agreements 1976-77].

There existed other stumbling blocks to an agreement. All four defendants rejected the plaintiffs' demand for attorney's fees, the possibility of a consent decree under which the court would retain jurisdiction over the case,<sup>136</sup> as well as "joint consultation concerning the development and implementation of the enforcement programs once a settlement is arrived at."<sup>137</sup> Likewise, the other three defendants refused to follow the FHLBB's example of issuing interpretive guidelines explaining what constitutes unlawful discrimination.<sup>138</sup>

If substantive disagreements existed, however, the parties were closer to each other on some issues. In 1975 Congress had passed the Home Mortgage Disclosure Act (HMDA), a law which requires federally insured lenders with specified asset holdings to provide limited amounts of data to federal regulatory

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<sup>136</sup> Roger S. Kuhn, "Summary of Status of Settlement Negotiations in National Urban League v. Comptroller of the Currency," Feb. 16, 1977, at 7 [LOC Box 129] [Folder: National Urban League v. Office of Comptroller of the Currency, Settlement Negotiations + Agreements 1976-77].

<sup>137</sup> Roger S. Kuhn, "Summary of Status of Settlement Negotiations in National Urban League v. Comptroller of the Currency," Feb. 16, 1977, at 6 [LOC Box 129] [Folder: National Urban League v. Office of Comptroller of the Currency, Settlement Negotiations + Agreements 1976-77].

<sup>138</sup> Roger S. Kuhn, "Summary of Status of Settlement Negotiations in National Urban League v. Comptroller of the Currency," Feb. 16, 1977, at 6 [LOC Box 129] [Folder: National Urban League v. Office of Comptroller of the Currency, Settlement Negotiations + Agreements 1976-77].

authorities.<sup>139</sup> As demanded by the plaintiffs, the defendants agreed to make use of HMDA data, although since HMDA only covered approved loans, such data would be of little use in detecting discriminatory rejections.<sup>140</sup> Without coming to final agreement, the plaintiffs also expressed support for the FDIC's approach to hiring civil rights specialists and urged the other defendants to create positions to be filled by professionals with experience in civil rights enforcement.<sup>141</sup> Likewise, the plaintiffs endorsed the FDIC's and Comptroller's proposals to formalize complaint procedures with time-bound investigations.<sup>142</sup> Finally, all the defendants agreed to treat civil rights violations as seriously as other violations under their jurisdictions.<sup>143</sup>

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<sup>139</sup> HMDA has been amended several times since 1975 to compel greater data disclosures. Although this was not the case under its original design, today HMDA reports on individual reports are available at <http://www.ffiec.gov/reports.htm>. For a concise history of HMDA's development, see Federal Financial Institutions Examination Council, "History of HMDA," available at <http://www.ffiec.gov/hmda/history2.htm>

<sup>140</sup> Roger S. Kuhn, "Summary of Status of Settlement Negotiations in National Urban League v. Comptroller of the Currency," Feb. 16, 1977, at 3 [LOC Box 129] [Folder: National Urban League v. Office of Comptroller of the Currency, Settlement Negotiations + Agreements 1976-77].

<sup>141</sup> Roger S. Kuhn, "Summary of Status of Settlement Negotiations in National Urban League v. Comptroller of the Currency," Feb. 16, 1977, at 4-5 [LOC Box 129] [Folder: National Urban League v. Office of Comptroller of the Currency, Settlement Negotiations + Agreements 1976-77].

<sup>142</sup> Roger S. Kuhn, "Summary of Status of Settlement Negotiations in National Urban League v. Comptroller of the Currency," Feb. 16, 1977, at 5 [LOC Box 129] [Folder: National Urban League v. Office of Comptroller of the Currency, Settlement Negotiations + Agreements 1976-77]. For its part, the Fed advocated a more flexible system under which a complaint would receive within fifteen days of filing a complaint either a substantive response or a letter indicating when such a response would be received.

<sup>143</sup> Roger S. Kuhn, "Summary of Status of Settlement Negotiations in National Urban League v. Comptroller of the Currency," Feb. 16, 1977, at 5-6 [LOC Box 129] [Folder: National Urban

From this point forward, the four defendant-agencies negotiated at their own paces. The plaintiffs reached agreements with the FHLBB (March 1977)<sup>144</sup> and the FDIC (May 1977)<sup>145</sup> soon after the February meeting in Judge Gesell's chambers. Unable to reach agreement with the Comptroller or the Fed, the plaintiffs filed a Motion for Summary Judgment against those two defendants in September 1977.<sup>146</sup> In late October Bill Taylor, Roger Kuhn, and Marty Sloane met with Comptroller John Heimann, removing "the logjam in our settlement negotiations with the Office of the Comptroller... [U]nless unexpected snags arise, we now anticipate that an agreement can be signed in the very near future."<sup>147</sup> When the

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League v. Office of Comptroller of the Currency, Settlement Negotiations + Agreements 1976-77].

<sup>144</sup> Stipulation of Dismissal, National Urban League v. Office of the Comptroller of the Currency, 76-0718 (Mar. 23, 1977) (dismissing plaintiffs' suit against the FHLBB and its senior officials in light of a March 22, 1977, settlement agreement) [LOC Box 131] [Folder: National Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1979]. *See also* Memorandum from Bill Taylor and Roger Kuhn to Plaintiffs in National Urban League v. Comptroller of the Currency, Mar. 14, 1977, at 1 ("As a consequence of negotiations begun in December, we have reached a tentative agreement with the Federal Home Loan Bank Board for a settlement of our suit against it for failure to enforce Fair Housing Law.") [LOC Box 129] [Folder: National Urban League v. Office of Comptroller of the Currency, Settlement Negotiations + Agreements 1976-77].

<sup>145</sup> Stipulation of Dismissal, National Urban League v. Office of the Comptroller of the Currency, 76-0718 (May 16, 1977) (dismissing plaintiffs' suit against the FDIC and its senior officials in light of a May 13, 1977, settlement agreement). [Box 129] [Folder: Settlement Negotiations and Agreements FDIC 1976-77]

<sup>146</sup> Plaintiffs' Mot. for a Part. Summ. J., National Urban League v. Office of the Comptroller of the Currency, 76-0718 (Sept. 30, 1977) [LOC Box 133] [Folder: Amended Complaint for Declaratory, Injunctive and Other Relief].

<sup>147</sup> Memorandum from Bill Taylor, Roger Kuhn and Marty Sloane to Plaintiffs and Others Interested in National Urban League v. Comptroller of the Currency, Nov. 15, 1977, at 3 [LOC Box 131] [Folder: FHLBB Settlement – Data Analysis]

Comptroller settled the following month,<sup>148</sup> only the Fed remained as a litigation opponent.<sup>149</sup>

In February 1978, Bill Taylor wrote in a private memorandum that the FHLBB, the FDIC, and the Comptroller had settled “on substantially the same terms.” As summarized by Taylor, the three settlement agreements all required the regulatory agencies to “require collection of race and sex data on mortgage applicants” and to “computer-analyse” the data to detect discriminatory patterns; to establish examiner training programs; to appoint full-time civil rights specialists in the Washington offices; to establish procedures for “thorough and prompt investigation and disposition of discrimination complaints”; and to impose the same sanctions for civil rights violations as for violations of other banking laws.<sup>150</sup> As for the Fed, notwithstanding its sister agencies’ settlement agreements, in May 1978 Judge Gesell granted the Fed’s Motion to Dismiss.<sup>151</sup> With the assistance of Congressional pressure, however, the Fed entered into negotiations with the

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<sup>148</sup> The CNPR files in the Library of Congress only include a draft of the settlement agreement with the FDIC, not a copy of the signed agreement.

<sup>149</sup> Memorandum from William Taylor to Vernon Jordan, Feb. 1, 1978, at 1-2. [Box 131] [Folder: National Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements Federal Reserve Board, 1978]

<sup>150</sup> Memorandum from William Taylor to Vernon Jordan, Feb. 1, 1978, at 1-2. [Box 131] [Folder: National Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements Federal Reserve Board, 1978]

<sup>151</sup> National Urban League v. Comptroller of the Currency, 78 F.R.D. 543 (D.D.C. 1978)

plaintiffs in the early summer of 1978 to establish procedures similar to those called for in the de jure settlement agreements.

In the three years in which the settlement agreements were in effect, there emerged a common pattern of dealings between the CNPR and the settling agencies. Concern about the initial pace of implementation was followed by fairly close coordination in promulgating rules and appointing agency civil rights personnel, which was followed in turn by frustration at the inability of agency statistical models to detect discrimination. The plaintiffs ultimately grew disappointed with the inability of their remedy (data disclosures and analysis) to ameliorate their injury (racial discrimination in lending). Moreover, the expiry of the settlement agreements coincided with the entry of the Reagan administration into office, in 1981; the agencies promptly dropped the data monitoring programs that they had developed in coordination with the CNPR.<sup>152</sup> On top of this, Roger Kuhn's retirement from legal practice in 1980-81 left the plaintiffs without their most conscientious regulatory advocate at the very moment when then political climate chilled.<sup>153</sup> As a formal matter, the settlement agreements had little impact after their expiry in the opening months of the Reagan Administration.

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<sup>152</sup> E-mail from Bill Taylor to Andrew Nash, Apr. 17, 2007 (on file with author).

<sup>153</sup> Telephone Interview with Roger Kuhn, Apr. 22, 2007; Telephone Interview with Martin Sloane, Apr. 25, 2007.

However, even while *National Urban League* may have failed to accomplish its most overt goal of ending lending discrimination, it achieved the more subtle accomplishment of unsettling the defendant-agencies' complacent belief that their responsibilities did not include the enforcement of anti-discrimination laws. Additionally, the CNPR and its allies developed a unique model of activist lobbying-litigation in which a court case was used as a secondary strategy to leverage changes in executive branch agencies' regulatory behavior. Viewed from this angle, the legacy of the case rests in the form of the lawsuit rather than its substance.

To demonstrate these points, the following pages provide detailed accounts of the CNPR's negotiations with each of the agencies, following which Part IV assesses and compares *National Urban League* with the approach taken in *Laufman* and its successor cases.

*The FHLBB*: The FHLBB had long been the most receptive of the four federal bank regulatory agencies to the plaintiffs' demands. In addition to being the agency most responsive to the 1971 rulemaking petitions<sup>154</sup> and taking the most

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<sup>154</sup> See *supra* notes 37, and accompanying text.

conciliatory stance during the settlement negotiations,<sup>155</sup> the FHLBB was the first agency to settle, in March 1977.<sup>156</sup> The FHLBB had also, of course, filed an amicus brief supporting the plaintiffs in *Laufman*, indicating that this agency was receptive to the petitioners' concerns.<sup>157</sup>

The FHLBB's settlement agreement included terms that would become typical of subsequent arrangements with agencies. The FHLBB agreed to create a control group of lenders on which to base a study of the effectiveness of non-discrimination reporting, and to revise its monitoring systems within one year if they proved ineffective.<sup>158</sup> The FHLBB committed itself to develop suitable discrimination-detection protocols,<sup>159</sup> to make appropriate use of HMDA data,<sup>160</sup> to provide appropriate non-discrimination training,<sup>161</sup> and to develop non-

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<sup>155</sup> See *supra* note 132, and accompanying text.

<sup>156</sup> See *supra* note 144.

<sup>157</sup> See *supra* note 50, and accompanying text.

<sup>158</sup> Stipulation of Dismissal, *National Urban League v. Office of the Comptroller of the Currency*, 76-0718 (D.D.C. 1976) (Mar. 23, 1977), at 2-3 [LOC Box 131] [Folder: National Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1979].

<sup>159</sup> Stipulation of Dismissal, *National Urban League v. Office of the Comptroller of the Currency*, 76-0718 (D.D.C. 1976) (Mar. 23, 1977), at 3-4 [LOC Box 131] [Folder: National Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1979].

<sup>160</sup> Stipulation of Dismissal, *National Urban League v. Office of the Comptroller of the Currency*, 76-0718 (D.D.C. 1976) (Mar. 23, 1977), at 4-5 [LOC Box 131] [Folder: National Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1979].

<sup>161</sup> Stipulation of Dismissal, *National Urban League v. Office of the Comptroller of the Currency*, 76-0718 (D.D.C. 1976) (Mar. 23, 1977), at 5-6 [LOC Box 131] [Folder: National

discrimination complaint procedures within 90 days.<sup>162</sup> Significantly, the FHLBB also agreed to disclose the data it collected to the plaintiffs for thirty-six months<sup>163</sup> and to meet with the plaintiffs every six months for the following thirty months to discuss implementation of the settlement agreement.<sup>164</sup> In other words, the FHLBB had conceded most of the plaintiffs' demands but left only a limited time window for implementation of the agreement. In fact, of the forms of relief requested by the plaintiffs in their First Amended Complaint, the only point wholly absent in the settlement agreement with the FHLBB was the CNPR's request for the agency to require banks with historically discriminatory practices to affirmatively seek out minority borrowers.<sup>165</sup>

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Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1979].

<sup>162</sup> Stipulation of Dismissal, National Urban League v. Office of the Comptroller of the Currency, 76-0718 (D.D.C. 1976) (Mar. 23, 1977), at 6 [LOC Box 131] [Folder: National Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1979].

<sup>163</sup> Stipulation of Dismissal, National Urban League v. Office of the Comptroller of the Currency, 76-0718 (D.D.C. 1976) (Mar. 23, 1977), at 7-9 [LOC Box 131] [Folder: National Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1979].

<sup>164</sup> Stipulation of Dismissal, National Urban League v. Office of the Comptroller of the Currency, 76-0718 (D.D.C. 1976) (Mar. 23, 1977), at 9 [LOC Box 131] [Folder: National Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1979].

<sup>165</sup> Compare First Amended Complaint, at 36, Request Relief ¶ D(6), and Stipulation of Dismissal, National Urban League v. Office of the Comptroller of the Currency, 76-0718 (D.D.C. 1976) (Mar. 23, 1977) [LOC Box 131] [Folder: National Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1979].

Two days after the settlement with the FHLBB, the *Wall Street Journal* quoted Bill Taylor as saying that the agreement “puts some teeth” into lending non-discrimination rules.<sup>166</sup> The relationship between the FHLBB and the CNPR was not all roses, however. In mid-June 1977, Kuhn expressed annoyance at the pace of the FHLBB’s implementation of the settlement agreement.<sup>167</sup> By early November 1977, however, three weeks before the FDIC settled, Kuhn wrote to FHLBB official William Sprague that the first six-month review meeting “was a good session” and that “it’s clear progress is being made on all fronts.”<sup>168</sup> Kuhn only expressed concern with that the FHLBB had been slow to appoint Washington-based and regional civil rights specialists and that specialized procedures for handling lending discrimination complaints were still needed.<sup>169</sup> As

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<sup>166</sup> [No author], “Federal Bank Board Vows to Do More To Fight Loan Bias,” *Wall Street Journal*, Mar. 24, 1977. [LOC Box 130] [Folder: National Urban League v. Comptroller – FHLBB Settlement I 1977]

<sup>167</sup> Letter from Roger S. Kuhn, Co-Director, Center for National Policy Review, to Harold B. Shore, Associate General Counsel, Federal Home Loan Bank Board, June 17, 1977; Letter from Roger S. Kuhn, Co-Director, Center for National Policy Review, to William Sprague, Director, Office of Examination and Supervision, Federal Home Loan Bank Board, Nov. 8, 1977. [LOC Box 130] [Folder: National Urban League v. Comptroller – FHLBB Settlement I 1977] (stating that “we have become increasingly concerned over the slow pace of progress in implementing the settlement agreement in National Urban League v. Office of the Comptroller.”)

<sup>168</sup> Letter from Roger S. Kuhn, Co-Director, Center for National Policy Review, to William Sprague, Director, Office of Examination and Supervision, Federal Home Loan Bank Board, Nov. 8, 1977. [LOC Box 130] [Folder: National Urban League v. Comptroller – FHLBB Settlement I 1977]

<sup>169</sup> Letter from Roger S. Kuhn, Co-Director, Center for National Policy Review, to William Sprague, Director, Office of Examination and Supervision, Federal Home Loan Bank Board, Nov. 8, 1977. [LOC Box 130] [Folder: National Urban League v. Comptroller – FHLBB Settlement I 1977]

with other agencies, CNPR attorneys periodically recommended candidates for positions at the FHLBB<sup>170</sup> and briefed newly appointed FHLBB officials.<sup>171</sup>

Internal CNPR records from late 1978 indicate that the plaintiffs' attorneys were generally satisfied with the FHLBB's implementation of the settlement agreement up to that moment. Although the CNPR briefly considered renewed litigation in April 1978 in response to the FHLBB's tardy promulgation of revised non-discrimination rules,<sup>172</sup> in May the FHLBB finally published its revised rules in the *Code of Federal Regulations*.<sup>173</sup> Reflecting on these non-discrimination rules at the end of 1978, CNPR attorneys characterized them as "embody[ing] major portions of our recommendations and substantially improv[ing] upon the Board's

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<sup>170</sup> Letter from Roger S. Kuhn, Co-Director, Center for National Policy Review, to Robert Warwick, Acting Director, Office of Housing & Urban Affairs, Federal Home Loan Bank Board, May 11, 1977. [LOC Box 130] [Folder: National Urban League v. Comptroller – FHLBB Settlement I 1977]

<sup>171</sup> Letter from Anita Miller to Bill Taylor, May 1, 1978 (acknowledging Taylor's letter of congratulations on Miller's appointment to the FHLBB and stating that "a Center briefing would, in fact, be extremely helpful."). [LOC Box 130] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1978].

<sup>172</sup> The FHLBB rules were issued three weeks after the earlier agreed upon date of April 15. Internal CNPR documents from mid-April reflect CNPR attorneys' frustration with the delay. Memorandum from Bill Taylor, Roger Kuhn, and Marty Sloane to Plaintiffs and Others Interested in National Urban League v. Comptroller of the Currency, Apr. 11, 1978, at 1 ("It now seems clear that the April 15 deadline will not be met, and we must consider whether to take legal action to enforce the Agreement.") [LOC Box 130] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1978]

<sup>173</sup> "Non-discrimination Requirements," 43 Fed. Reg. 22,332 (May 5, 1978).

previous regulations.”<sup>174</sup> Even while finding the FHLBB’s record-keeping rules “disappointing,” CNRP attorneys noted that “FHLBB examiners are finding more actual or suspected violations of fair lending laws and regulations...”<sup>175</sup> In response to a June 1978 request from the CNRP,<sup>176</sup> the FHLBB also agreed to extend the period of the settlement agreement to September 1, 1981, in light of the fact that “a longer period of time that originally contemplated will be required to implement the provisions of Section 2 of the Agreement.”<sup>177</sup> The settlement

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<sup>174</sup> Memorandum from Bill Taylor, Roger Kuhn, and Marty Sloane to Plaintiffs and Others Interested in National Urban League v. Comptroller of the Currency, Dec. 19, 1978, at 1. [LOC Box 130] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1978]. *See also* “Anti-Redlining Rules Adopted,” *NEW YORK TIMES*, May 19, 1978, at D-7 (noting that the FHLBB had adopted “tougher regulations aimed at ending housing discrimination by the saving and loan industry”); “Bank Board Adopts Regulations to Bar S&L ‘Redlining’ of Older Neighborhoods,” *WALL STREET JOURNAL*, May 19, 1977, at 10 (“The final rule requires S&Ls to gather such information [about race and gender] when applications are received in writing or in person, but telephone calls aren’t included unless the lender takes loan applications over the phone.”). [LOC Box 130] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1978].

<sup>175</sup> Memorandum from Bill Taylor, Roger Kuhn, and Marty Sloane to Plaintiffs and Others Interested in National Urban League v. Comptroller of the Currency, Dec. 19, 1978, at 2. [LOC Box 130] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1978].

<sup>176</sup> Letter from Roger S. Kuhn, Co-Director, Center for National Policy Review, to Anita Miller, Federal Reserve Home Loan Bank Board, Aug. 8, 1978, at 1 (noting that the National Urban League plaintiffs had requested an extension of the settlement agreement on June 26). [LOC Box 130] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1978].

<sup>177</sup> Amendment to Settlement Agreement, National Urban League and Federal Home Loan Bank Board, Sept. 1978 (signed but not dated). [LOC Box 130] [Folder: National Urban League v. Office of the Comptroller of Currency Settlement Negotiations and Agreements FHLBB, 1978]

agreement eventually terminated, evidently without major developments in the closing months.<sup>178</sup>

*The FDIC*: When the FDIC settled, in May 1977, the plaintiffs' settlement agreement with the FHLBB was only two months old, making it natural that comparisons should be drawn between the two. A CNPR staff assessment of the FHLBB's and FDIC's proposals concluded that the FHLBB had better time limit rules and complaint-resolution procedures, but that the FHLBB's "methods of investigation as outlined are inferior to the FDIC's."<sup>179</sup> Kuhn notified the FDIC in December 1977 that the CNPR was pleased that the FDIC had proposed a data collection rule that went beyond the reporting requirements of the Fed's Regulation B, which had gone into effect the previous March in response to Congressional amendments to the ECOA and required limited voluntary reporting of borrower racial and gender characteristics.<sup>180</sup> In particular, Kuhn noted that the FDIC's proposed rule "covers not only home purchase loans but also home construction,

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<sup>178</sup> CNPR records at the Library of Congress at least give no indication of major developments in the CNPR-FHLBB relationship after 1979.

<sup>179</sup> Memorandum from Cindy Lehman to Roger Kuhn, May 26, 1977. Letter from Roger S. Kuhn, Co-Director, Center for National Policy Review, to William Sprague, Director, Office of Examination and Supervision, Federal Home Loan Bank Board, Nov. 8, 1977. [LOC Box 130] [Folder: National Urban League v. Comptroller – FHLBB Settlement I 1977]

<sup>180</sup> Letter from Roger S. Kuhn, Co-Director, Center for National Policy Review, to Alan R. Miller, Executive Secretary, Federal Deposit Insurance Corporation, Dec. 6, 1977, at 2 (citing Regulation B at 12 C.F.R. 202.13). [Box 129] [Folder: Urban League v. Comptroller (FDIC Settlement) – I]

refinancing and improvement loans,” and that it envisioned the collection of race/sex data for persons inquiring about but failing to apply for a loan.<sup>181</sup> The FDIC’s mandatory reporting rule was clearly one of the CNPR’s major accomplishments, since it required convincing the FDIC to move from its February 1977 negotiating stance.

In other areas, however, the CNPR continued to lock horns with the FDIC. Although the FDIC invited Kuhn to serve as a lecturer at its Fair Housing Workshop in June 1978,<sup>182</sup> CNPR attorneys’ “greatest concern” in late 1978 was that the FDIC would adopt faulty statistical analysis models, severely undermining the value of the increased data disclosures.<sup>183</sup> Kuhn also criticized the FDIC for

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<sup>181</sup> Letter from Roger S. Kuhn, Co-Director, Center for National Policy Review, to Alan R. Miller, Executive Secretary, Federal Deposit Insurance Corporation, Dec. 6, 1977, at 2 (citing Regulation B at 12 C.F.R. 202.13). [Box 129] [Folder: Urban League v. Comptroller (FDIC Settlement) – I]; *See also* Memorandum from Bill Taylor, Roger Kuhn, and Marty Sloane to Plaintiffs and Others Interested in National Urban League v. Comptroller of the Currency, Mar. 21, 1978, at 1 (noting that the FDIC now “requires loan officers to supply race/sex data if the applicant or inquirer fails to do so”) [LOC Box 130] [Folder: National Urban League v. Comptroller Settlement Negotiations and Agreements FDIC, 1978-79].

<sup>181</sup> Letter from Roger S. Kuhn, Co-Director, Center for National Policy Review, to Alan R. Miller, Executive Secretary, Federal Deposit Insurance Corporation, Dec. 6, 1977, at 2. [Box 129] [Folder: Urban League v. Comptroller (FDIC Settlement) – I]

<sup>182</sup> Letter from John P. Kellaher, Section Chief, Training Center Administrator, Federal Deposit Insurance Corporation, to Roger S. Kuhn, Co-Director, Center for National Policy Review, May 31, 1978, at 1 (thanking Kuhn for agreeing to participate in upcoming workshop). [LOC Box 130] [Folder: National Urban League v. Comptroller Settlement Negotiations and Agreements FDIC, 1978-79]

<sup>183</sup> Memorandum from Bill Taylor, Roger Kuhn, and Marty Sloane to Plaintiffs and Others Interested in National Urban League v. Comptroller of the Currency, December 19, 1978, at 2. (“Our greatest concern at the moment is that FDIC may adopt a method of statistical analysis which we think has severe drawbacks.”) [LOC Box 130] [Folder: National Urban League v.

failing to impose nondiscrimination requirements to the same extent as the FHLBB,<sup>184</sup> and Center attorneys noted with concern that the FDIC was tardy in implementing portions of the settlement agreement. “After an inordinate delay,” the FDIC hired a civil rights specialist, but its civil rights training programs remained “deficient,” according to a CNPR staff assessment in December 1978.<sup>185</sup>

That being said, CNPR attorneys were pleased to note that the FDIC had hired former DOJ attorney Warren L. Dennis to develop the FDIC’s training program.<sup>186</sup> (Despite the fact that Dennis represented lenders in the late 1970s in private practice, Taylor liked him so much that he recommended Dennis for a civil rights position at the Fed in 1980.<sup>187</sup>) Also, the Center came to believe that “the FDIC has model complaint investigation procedures, which appear to be followed

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Office of the Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1978].

<sup>184</sup> Letter from Roger S. Kuhn, Co-Director, Center for National Policy Review, to Alan R. Miller, Executive Secretary, Federal Deposit Insurance Corporation, Dec. 6, 1977, at 2 (citing 21 C.F.R. 528 and 531, and 42 Fed. Reg. 58,953 (Nov. 8, 1977)). [Box 129] [Folder: Urban League v. Comptroller (FDIC Settlement) – I]

<sup>185</sup> Memorandum from Bill Taylor, Roger Kuhn, and Marty Sloane to Plaintiffs and Others Interested in National Urban League v. Comptroller of the Currency, Dec. 19, 1978, at 2. [LOC Box 130] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1978].

<sup>186</sup> Memorandum from Bill Taylor, Roger Kuhn, and Marty Sloane to Plaintiffs and Others Interested in National Urban League v. Comptroller of the Currency, Dec. 19, 1978, at 2-3. [LOC Box 130] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1978].

<sup>187</sup> Letter from William L. Taylor to Paul A. Volcker, Chairman, Board of Governors, Federal Reserve System, July 3, 1980 (recommending Warren L. Dennis to “the Federal Reserve Board’s Consumer Advisory Council” and noting that “[i]n recent years Mr. Dennis has counseled financial institutions and trade associations...”) [LOC Box 131] [Folder: “Federal Reserve Board II”].

in practice.”<sup>188</sup> In April 1979, towards the end of the settlement monitoring period, Bill Taylor wrote to the FDIC Chairman that “[i]n important respects, actions taken by the FDIC concerning its fair lending enforcement program have gone well beyond the minimum requirements of the settlement agreement...”<sup>189</sup>

The CNPR’s one major complaint about the FDIC’s implementation of the settlement agreement remained till the end the FDIC’s use of allegedly faulty statistical models. In October 1979, almost three years after the signing of the settlement, Kuhn complained to the agency that “the FDIC was not in compliance with the agreement... [T]he data analysis system has taken far longer to devise than any of us anticipated.”<sup>190</sup> CNPR documents in the Library of Congress do not indicate whether the issue was ever resolved to the Center’s satisfaction, but Bill

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<sup>188</sup> Memorandum from Bill Taylor, Roger Kuhn, and Marty Sloane to Plaintiffs and Others Interested in National Urban League v. Comptroller of the Currency, Dec. 19, 1978, at 3. [LOC Box 130] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1978].

<sup>189</sup> Letter from William L. Taylor, Director, Center for National Policy Review, and Martin Sloane, General Counsel, National Committee Against Discrimination in Housing, to Irvine Sprague, Chairman, Federal Deposit Insurance Corporation, Apr. 10, 1979, at 1. [LOC Box 130] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements FDIC, 1978-79].

<sup>190</sup> Letter from Roger S. Kuhn, Co-Director, Center for National Policy Review, to Robert Cook, Director for Civil Rights, Federal Deposit Insurance Corporation, Oct. 24, 1979 at 1 (“I told Hank that in fact the FDIC was not in compliance with the agreement... [T]he data analysis system has taken far longer to devise than any of us anticipated...”). [LOC Box 130] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements FDIC, 1978-79].

Taylor indicates that the FDIC and the Comptroller did not continue their monitoring programs after the settlement agreements expired.<sup>191</sup>

*The Comptroller:* The Comptroller settled with the plaintiffs in November 1977, eight months after the FHLBB's settlement and two months after the plaintiffs' filed their Motion for Summary Judgment. Given the Comptroller's hesitation to settle, it is perhaps unsurprising that the CNPR would find the Comptroller's pace of implementation unsatisfactory. Bill Taylor drafted a letter to Comptroller John Heimann in mid-January 1978 referencing "disturbing" developments, in particular the Comptroller's failure to coordinate with the CNPR in recruiting candidates for civil rights positions, but Taylor apparently never mailed the letter.<sup>192</sup> Six months after the signing of the settlement agreement, Kuhn expressed concern about the Comptroller's tardy implementation of data collection regulations and hiring of civil rights specialists.<sup>193</sup>

Still, on the whole correspondence between the CNPR and the Comptroller in 1978 reflects cooperation rather than conflict. In the spring, Kuhn noted in an

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<sup>191</sup> E-mail from Bill Taylor to Andrew Nash, Apr. 17, 2007.

<sup>192</sup> Letter from Bill Taylor to John G. Heimann, Comptroller of the Currency, Jan. 25, 1978 (handwritten notation at top of page: "UNSENT"). [LOC Box 131] [File: NUL v. OCC Settlement Negotiations and Agreements OCC, 1977-78].

<sup>193</sup> Letter from Roger S. Kuhn to Charles Muckenfuss III, Deputy Comptroller for Policy and Planning, Office of the Comptroller of the Currency, June 30, 1978. [LOC Box 131] [File: NUL v. OCC Settlement Negotiations and Agreements OCC, 1977-78].

internal memo that “[Deputy Comptroller] Chuck Muckenfuss is beginning to move on getting people who can implement the Settlement,”<sup>194</sup> and around the same time the Comptroller’s office notified community activist groups that it would provide discrimination complaint pamphlets free of charge.<sup>195</sup> The CNPR’s earlier frustration with being left out of the Comptroller’s civil rights enforcement hiring process had eased by June,<sup>196</sup> and in July Kuhn took the liberty of recommending job candidates to Comptroller officials,<sup>197</sup> a practice that would continue in subsequent years.<sup>198</sup> In the fall, after a senior civil rights official at the Comptroller’s office had been appointed, Kuhn described her as “exceptionally able, energetic, experienced and committed,”<sup>199</sup> and commented to Marty Sloane

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<sup>194</sup> Memorandum from Roger Kuhn to Marty Sloane and Bill Taylor, Apr. 7, 1978. [LOC Box 131] [File: NUL v. OCC Settlement Negotiations and Agreements OCC, 1977-78].

<sup>195</sup> Letter from John G. Heimann, Comptroller of the Currency, to Public and Private Interest, Community and Service Organizations, Mar. 29, 1978 [LOC Box 131] [File: NUL v. OCC Settlement Negotiations and Agreements OCC, 1977-78].

<sup>196</sup> [Unknown author,] Handwritten notes of phone conversation with Charles Muckenfuss dated June 5, 1978 (“CR specialist job offered to Coleman Young ass’t, but Young beat the offer. Wants our three best candidates.”) [LOC Box 131] [File: NUL v. OCC Settlement Negotiations and Agreements OCC, 1977-78].

<sup>197</sup> Letter from Roger S. Kuhn to Charles Muckenfuss III, Deputy Comptroller for Policy and Planning, Office of the Comptroller of the Currency, July 20, 1978. [LOC Box 131] [File: NUL v. OCC Settlement Negotiations and Agreements OCC, 1977-78].

<sup>198</sup> Letter from Roger S. Kuhn to Jo Ann Barefoot, Director, Customer and Community Programs, Office of the Comptroller of the Currency, Apr. 17, 1979 (recommending five names for positions in the Comptroller’s office). [LOC Box 131] [Folder: OCC Settlement Agreement – II].

<sup>199</sup> Memorandum from Roger Kuhn to Martin Sloane, Jennifer Douglas, James Harvey, Suzanne Petrey, Clay Cochran, Johnson McClurkin, and John Michener, Oct. 10, 1978. [LOC Box 131] [File: NUL v. OCC Settlement Negotiations and Agreements OCC, 1977-78].

and Bill Taylor that “I think we can consider the OCC [Office of the Comptroller of the Currency] safe territory now for civil rights enforcement.”<sup>200</sup>

Significantly, the Comptroller’s office recognized that it would have to work with the other agencies bound by settlement agreements to develop data collection and processing procedures. In a letter to Kuhn, a Comptroller official acknowledged that the Comptroller, the FDIC, and the FHLBB “all have to do a lot of work on developing an analysis system. We are all in the wilderness together...”<sup>201</sup> By late 1978 CNPR attorneys expressed moderate satisfaction with the Comptroller’s commitment to the settlement agreement. By that point the Comptroller had hired Joanne Barefoot, a former aide to CNPR ally Senator Proxmire, in its newly established Office of Customer and Community Programs.<sup>202</sup> Unlike the FHLBB and the FDIC, the Comptroller had not issued data collection and analysis regulations by December 1978, but the CNPR attorneys

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<sup>200</sup> Memorandum from Roger Kuhn to Marty Sloane and Bill Taylor, Oct. 6, 1978. [LOC Box 131] [File: NUL v. OCC Settlement Negotiations and Agreements OCC, 1977-78].

<sup>201</sup> Letter from Thomas W. Taylor, Associate Deputy Comptroller, Comptroller of the Currency, to Roger S. Kuhn, Co-Director, Center for National Policy Review, June 16, 1978, at 1 [LOC Box 131] [File: NUL v. OCC Settlement Negotiations and Agreements OCC, 1977-78].

<sup>202</sup> Memorandum from Bill Taylor, Roger Kuhn, and Marty Sloane to Plaintiffs and Others Interested in National Urban League v. Comptroller of the Currency, Dec. 19, 1978, at 3 [LOC Box 130] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1978].

were willing to accept the Comptroller's good faith assurances that it was simply trying to be prudent in adopting appropriate rules.<sup>203</sup>

In late 1980, towards the end of the settlement period, CNPR leaders expressed concern to the Comptroller that the existing reporting and detection systems “do not seem to be finding patterns or instances of disparate treatment or policies having a disparate impact...”<sup>204</sup> This concern mirrored the CNPR's criticism of the FDIC; in both instances, the CNPR felt that the increased data disclosures were not being used to their full potential to detect discrimination. The CNPR also prodded the Comptroller to take action on “effects test” issues because “we believe that a chief source of discrimination today is the application of facially neutral lending criteria whose effect is to disfavor minorities and women.”<sup>205</sup> In sum, the CNPR found a mostly cooperative partner in the Comptroller, but the arrangement failed to provide the sort of damning evidence that CNPR attorneys believed they could uncover with the agency's assistance. As noted above,

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<sup>203</sup> Memorandum from Bill Taylor, Roger Kuhn, and Marty Sloane to Plaintiffs and Others Interested in National Urban League v. Comptroller of the Currency, Dec. 19, 1978, at 3 [LOC Box 130] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1978].

<sup>204</sup> Letter from Roger S. Kuhn, Co-Director, Center for National Policy Review, to JoAnn Barefoot, Deputy Comptroller, Customer and Community Programs, Dec. 3, 1980, at 1 [LOC Box 128] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements OCC, January 1981 meeting].

<sup>205</sup> Letter from Roger S. Kuhn, Co-Director, Center for National Policy Review, to JoAnn Barefoot, Deputy Comptroller, Customer and Community Programs, Dec. 3, 1980, at 2. [LOC Box 128] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements OCC, January 1981 meeting]

however, the Comptroller did not continue its monitoring program after Reagan came into office.<sup>206</sup>

*The Fed*: While there was a fairly consistent pattern in the CNPR's dealings with the three agencies that settled in 1977—strained, if mostly amicable, negotiations followed by frustration with implementation and results—the CNPR's interactions with the Fed took a distinct form. In the opening months of 1978, when the Fed was the only defendant still in litigation, the plaintiffs' position looked relatively strong. In January Senator Proxmire badgered the incoming Fed Chairman, G. William Miller, during his confirmation hearings about the Fed's refusal to settle *National Urban League*.<sup>207</sup> Despite Proxmire's familiarity with the facts of the case, Miller was forced to admit that “I learned of it [the case] in the last couple of days.”<sup>208</sup> In February, Taylor wrote an analysis of the Fed's litigation strategy and argued that Miller could be convinced to force recalcitrant Fed staffers to re-open

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<sup>206</sup> See *supra* note 152, and accompanying text.

<sup>207</sup> Excerpt of transcript of Confirmation Hearing of G. William Miller, Nominated to be Chairman of the Federal Reserve Board, Jan. 24, 1978, at 219-20. [Box 131] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements Federal Reserve Board 1978].

<sup>208</sup> Excerpt of transcript of Confirmation Hearing of G. William Miller, Nominated to be Chairman of the Federal Reserve Board, Jan. 24, 1978, at 219. [Box 131] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements Federal Reserve Board 1978].

negotiations.<sup>209</sup> “[W]e have offered the Fed the same terms as agreed to by the other agencies,” Taylor wrote.<sup>210</sup> “The Fed has refused to them and has not even met with us to talk settlement for over a year.”<sup>211</sup> In January Kuhn had even included a jab at the Fed in a letter to a Comptroller official, stating that “[p]erhaps when you’ve got the OCC [Office of the Comptroller of the Currency] straightened out, you can move over to the Fed.”<sup>212</sup>

Among the agency-defendants, the Fed had displayed a uniquely hostile attitude towards the civil rights groups since the rulemaking petitions were filed in 1971. In their July 1976 Amended Complaint, the plaintiffs noted that the Fed had “not even formally considered the adoption of regulations” in response to the 1971 rulemaking petitions.<sup>213</sup> Later, the plaintiffs singled out the Fed as “the only federal financial agency which refuses to acknowledge the need to collect and analyse

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<sup>209</sup> Memorandum from William Taylor to Vernon Jordan, Feb. 1, 1978, at 2. [Box 131] [Folder: National Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements Federal Reserve Board, 1978]

<sup>210</sup> Memorandum from William Taylor to Vernon Jordan, Feb. 1, 1978, at 2. [Box 131] [Folder: National Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements Federal Reserve Board, 1978]

<sup>211</sup> Memorandum from William Taylor to Vernon Jordan, Feb. 1, 1978, at 2. [Box 131] [Folder: National Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements Federal Reserve Board, 1978]

<sup>212</sup> Letter from Roger S. Kuhn, Co-Director, Center for National Policy Review, to Charles Muckenfuss III, Deputy Comptroller for Policy Planning, Office of the Comptroller of the Currency, Jan. 26, 1978. [LOC Box 131] [File: NUL v. OCC Settlement Negotiations and Agreements OCC, 1977-78]

<sup>213</sup> First Amended Complaint, at 32, ¶50(b) [LOC Box 133] [Folder: Amended Complaint for Declaratory, Injunctive and Other Relief].

race/sex data on a systematic basis.”<sup>214</sup> As Judge Gesell noted, the Fed “strenuously opposed the suit from the outset in the belief that it presently exercises supervision over the relatively small amount of home mortgage lending accountable to its members.”<sup>215</sup>

Congressional action also complicated the CNPR’s positive vis-à-vis the Fed. In 1976, Congress amended the Equal Credit Opportunity Act (ECOA) to require the Fed to collect data on race- and gender-based lending patterns, thus arguably preempting the entire CNPR lawsuit.<sup>216</sup> In response to Congress’s action, the Fed issued Regulation B in December 1976, stating that it would become effective on March 23, 1977, when Congress’s 1976 amendments to the ECOA also took effect.<sup>217</sup> Regulation B specified that “a creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit

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<sup>214</sup> Plaintiffs’ Mot. for Part. Summ. J., at 29. [LOC Box 133] [Folder: Amended Complaint for Declaratory, Injunctive and Other Relief]

<sup>215</sup> *National Urban League*, 78 F.R.D. 543 (D.D.C. 1978); Mem. and Order, *National Urban League v. Office of the Comptroller of the Currency*, 76-0718 (D.D.C. 1976) (May 3, 1978), at 2-3 [LOC Box 132] [Folder: *National Urban League v. Off. of Comptroller Summary Judgment Motions Defendants’* (Off. of Comptroller) 1978].

<sup>216</sup> P.L. 94-239, 90 Stat. 251, codified at 15 U.S.C. § 1691. The ECOA prohibits “any credit” from discriminating in “any aspect of a credit transaction” on the basis of race and other protected categories. 15 U.S.C. § 1691(a)(1) (2006). The ECOA does not specifically discuss discrimination on the basis of neighborhood characteristics.

<sup>217</sup> Federal Reserve Board, “Press Release,” Dec. 29, 1979, at 1. [LOC Box 128] [Folder: REGULATION B – Final Text, 1976-77].

transaction”<sup>218</sup> and requested mortgage loan applicants to voluntarily disclose their racial identity and marital status.<sup>219</sup> As Judge Gesell noted in the February 1977 settlement conference in his chambers, the ECOA amendments arguably destroyed the need for the plaintiffs’ suit.<sup>220</sup> The CNPR, however, viewed Regulation B as inadequate because it only covered loans for residential home purchases and relied on voluntary data reporting.<sup>221</sup>

Against the backdrop, the Fed continued to litigate and, eventually, it won. On May 3, 1978, Judge Gesell dismissed the suit against the Fed on the grounds that the plaintiffs lacked Article III standing.<sup>222</sup> By this point in the case Judge Gesell had “dropped” all of the plaintiffs except for the National Urban League,<sup>223</sup> and now he decided that even the League lacked requisite injury to sustain the suit

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<sup>218</sup> Federal Reserve Board, “Press Release,” Dec. 29, 1979, at 2. [LOC Box 128] [Folder: REGULATION B – Final Text, 1976-77].

<sup>219</sup> Federal Reserve Board, “Press Release,” Dec. 29, 1979, at 4. [LOC Box 128] [Folder: REGULATION B – Final Text, 1976-77].

<sup>220</sup> See *supra* note 129, and accompanying text.

<sup>221</sup> Letter from Roger S. Kuhn, Co-Director, Center for National Policy Review, to Alan R. Miller, Executive Secretary, Federal Deposit Insurance Corporation, Dec. 6, 1977, at 2 (citing Regulation B at 12 C.F.R. 202.13). [Box 129] [Folder: Urban League v. Comptroller (FDIC Settlement) – I]

<sup>222</sup> *National Urban League*, 78 F.R.D. 543; Mem. and Order, *National Urban League v. Office of the Comptroller of the Currency*, 76-0718 (May 3, 1978), at 2-3 [LOC Box 132] [Folder: *National Urban League v. Off. of Comptroller Summary Judgment Motions Defendants’* (Off. of Comptroller) 1978].

<sup>223</sup> *National Urban League*, 78 F.R.D. at 545; Mem. and Order, *National Urban League v. Office of the Comptroller of the Currency*, 76-0718 (May 3, 1978), at 2-3 [LOC Box 132] [Folder: *National Urban League v. Off. of Comptroller Summary Judgment Motions Defendants’* (Off. of Comptroller) 1978].

against the Fed. The court stated that it had afforded the plaintiffs considerable leeway in trying to establishing standing, but that plaintiffs' submissions alleging injury-in-fact were "minimal and sketchy, thus indicating the tenuous nature of the plaintiffs' genuine standing."<sup>224</sup> Despite the unusual procedural postural posture of winning at the district court level on standing grounds after more than two years of litigation, the significance of the Fed's legal victory should not be overstated. Given that it only exercised jurisdiction over two percent of the lending transactions at issue in the case,<sup>225</sup> as a practical matter the settlements with the other three agencies were more important to the plaintiffs.

In any event, even while losing in court, the plaintiffs had cultivated high-profile support on Capitol Hill, opening up an alternative avenue for leveraging the Fed. "While virtually all of the federal financial regulatory agencies have failed over the years to enforce our fair housing laws aggressively, the [Federal Reserve] Board's record has, regrettably, been the most dismal," Senate Banking Committee Chairman William Proxmire wrote to Fed Chairman William Miller in June

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<sup>224</sup> *National Urban League*, 78 F.R.D. at 545; Mem. and Order, *National Urban League v. Office of the Comptroller of the Currency*, 76-0718 (May 3, 1978), at 3 [LOC Box 132] [Folder: *National Urban League v. Off. of Comptroller Summary Judgment Motions Defendants' (Off. of Comptroller)* 1978].

<sup>225</sup> Order, *National Urban League v. Office of the Comptroller of the Currency*, 76-0718, Dec. 9, 1976, at 1 (dismissing all plaintiffs for lack of standing except the National Urban League, the National Committee Against Discrimination in Housing, National Neighbors, the Metropolitan Washington Planning and Housing Association, and the National Association of Real Estate Brokers) [LOC Box 128] [Folder: *Urban League v. Comptroller (Motion to Dismiss)*]

1977.<sup>226</sup> The House Banking Committee Chairman, Henry Reuss, was slightly coy when writing to Miller the same month. “I have noted with interest the study by Pottinger and Company which concludes that the Fed has assigned a low priority to enforcement of civil rights and equal credit laws,”<sup>227</sup> Reuss stated. Reuss then incorporated into his letter excerpts from the Fed’s answers to the *National Urban League* plaintiffs’ interrogatories, not so subtly indicating which side in the case had his ear.<sup>228</sup>

To CNPR eyes, the Fed was not only opposed by Congress, but also by other agencies in the executive branch. A November 1977 CNPR report stated that the Department of Justice “will continue to defend the Fed on technical grounds (lack

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<sup>226</sup> Letter from Senator William Proxmire to G. William Miller, Chairman, Board of Governors of the Federal Reserve System, June 20, 1978. [LOC Box 131] [Folder: National Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements Federal Reserve Board, 1978].

<sup>227</sup> Letter from Henry S. Reuss, Chairman, House Committee on Banking, Finance and Urban Affairs, to G. William Miller, Chairman, Board of Governors, Federal Reserve System, June 14, 1978, at 3. [LOC Box 131] [Folder: National Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements Federal Reserve Board, 1978].

<sup>228</sup> Letter from Henry S. Reuss, Chairman, House Committee on Banking, Finance and Urban Affairs, to G. William Miller, Chairman, Board of Governors, Federal Reserve System, June 14, 1978, at 2-3. [LOC Box 131] [Folder: National Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements Federal Reserve Board, 1978]. *See also* “News Release: FED IGNORES REDLINING DATA IN DETERMINING WHETHER BANKS DISCRIMINATE IN MORTGAGE LENDING—REUSS,” United States House of Representatives, Committee on Banking, Finance and Urban Affairs, June 15, 1978, at 1 (“Reuss said the attitude of the Fed at the top levels is disclosed in a legal brief filed recently for the U.S. District Court for the District of Columbia (National Urban League v. Board of Governors of the Federal Reserve System.”) [LOC Box 131] [Folder: National Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements Federal Reserve Board, 1978].

of standing to sue), even though the Civil Rights Division has said the case should be settled and all three sister agencies have agreed.”<sup>229</sup> “As a consequence, both the taxpayers’ money and our scare resources will continue to be expended in total disregard of public policy.”<sup>230</sup> What made the Fed’s legal victory all the more odd was that it had retained Warren L. Dennis to evaluate the its training and examination policies just before Judge Gesell’s decision. “Ironically his [Dennis] report, submitted a few days after the dismissal of the lawsuit for lack of standing, documented in detail the total inadequacy of the Fed’s program and recommended that the Fed take most of the steps agreed to by the other agencies,” noted the CNPR attorneys.<sup>231</sup>

As it happened, dismissal of the case had almost no impact on the CNPR’s lobbying campaign with the Fed. Immediately after Judge Gesell’s ruling and the release of the Dennis report, the CNPR arranged a meeting with Fed Chairman Miller, “who made clear his personal determination that the Board play an

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<sup>229</sup> Memorandum from William Taylor, Roger Kuhn, and Marty Sloane to Plaintiffs and Others Interested in National Urban League v. Comptroller of the Currency, Nov. 15, 1977, at 3. [LOC Box 131] [Folder: FHLBB Settlement – Data Analysis].

<sup>230</sup> Memorandum from William Taylor, Roger Kuhn, and Marty Sloane to Plaintiffs and Others Interested in National Urban League v. Comptroller of the Currency, Nov. 15, 1977, at 3. [LOC Box 131] [Folder: FHLBB Settlement – Data Analysis].

<sup>231</sup> Memorandum from Bill Taylor, Roger Kuhn, and Marty Sloane to Plaintiffs and Others Interested in National Urban League v. Comptroller of the Currency, Dec. 19, 1978, at 3. [LOC Box 130] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1978].

appropriate role in advancing civil rights among its members institutions.”<sup>232</sup> Soon after the Miller meeting, Governor Jackson, long regarded by the CNPR as an opponent of civil rights enforcement, resigned from the Fed.<sup>233</sup> His seat was taken by Nancy Teeters, who was described in the press at the time of her appointment as “a vigorous liberal.”<sup>234</sup> As the CNPR noted, “[t]he result has been an about-face by the Board’s staff.”<sup>235</sup> CNPR documents indicate that the group received assurances that it would be consulted as the Fed developed and promulgated non-discrimination examination instructions.<sup>236</sup> (As a side note, the quick pace of reform after the May 1978 dismissal offers some corroboration for the FDIC’s 1976 claim that the lawsuit would only impede negotiations with the CNPR.<sup>237</sup>)

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<sup>232</sup> Memorandum from Bill Taylor, Roger Kuhn, and Marty Sloane to Plaintiffs and Others Interested in National Urban League v. Comptroller of the Currency, Dec. 19, 1978, at 3-4. [LOC Box 130] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1978].

<sup>233</sup> Memorandum from Bill Taylor, Roger Kuhn, and Marty Sloane to Plaintiffs and Others Interested in National Urban League v. Comptroller of the Currency, Dec. 19, 1978, at 4. [LOC Box 130] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1978].

<sup>234</sup> Rick Schmitt, “Nancy Teeters Seen Choice as 1st Women on FR Board,” *American Banker*, July 5, 1978, at 1. [LOC Box 131] [Folder: National Urban League v. Office of the Comptroller of the Currency Negotiation and Settlement Agreements Federal Reserve Board 1978].

<sup>235</sup> Memorandum from Bill Taylor, Roger Kuhn, and Marty Sloane to Plaintiffs and Others Interested in National Urban League v. Comptroller of the Currency, Dec. 19, 1978, at 3. [LOC Box 130] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1978].

<sup>236</sup> Memorandum from Bill Taylor, Roger Kuhn, and Marty Sloane to Plaintiffs and Others Interested in National Urban League v. Comptroller of the Currency, Dec. 19, 1978, at 4. [LOC Box 130] [Folder: National Urban League v. Office of the Comptroller of the Currency Settlement Negotiations and Agreements FHLBB, 1978].

<sup>237</sup> See *supra* note 125.

The changing of the guard at the Fed and Congressional criticism of the agency facilitated some cooperation between the Fed and the civil rights groups, even in the absence of a settlement agreement or a court order. Still, as with the other agencies, the CNPR expressed annoyance at the pace of the Fed's progress. In August 1978, Kuhn wrote to the National Urban League, stating that the CNPR had become "increasingly perplexed and concerned" about the Fed's unresponsiveness.<sup>238</sup> Kuhn noted, however, that a House subcommittee was scheduled to look into the Fed's activities and that "Bill Taylor will be the lead-off witness, and has been asked by the Subcommittee to review the progress made to date by each of the agencies."<sup>239</sup>

For seven years the Fed had barely acknowledged the existence of the CNPR, but by the fall of 1978 Fed officials had personally warmed to Kuhn<sup>240</sup> and offered assurances that "[w]e have assigned three attorneys in this division to specialize in Civil Rights and they have been working diligently to bring

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<sup>238</sup> Letter from Roger S. Kuhn to Donald Thomas, General Counsel, National Urban League, Aug. 22, 1978, at 1 [LOC Box 131] [Folder: National Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements Federal Reserve Board, 1978]

<sup>239</sup> Letter from Roger S. Kuhn to Donald Thomas, General Counsel, National Urban League, Aug. 22, 1978, at 1 [LOC Box 131] [Folder: National Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements Federal Reserve Board, 1978]

<sup>240</sup> Letter from Janet Hart, Director, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, to Roger S. Kuhn, Co-Director, Center for National Policy Review, Oct. 6, 1978, at 1 ("Was you vacation as wonderful as you expected it to be?") [Box 131] [Folder: National Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements Federal Reserve Board, 1978].

themselves up to speed.”<sup>241</sup> In April 1979, Kuhn wrote to a Fed official extending a cautiously optimistic review of the Fed’s new Consumer/Civil Rights Compliance Manual.<sup>242</sup> Although negotiations with the Fed existed outside of a settlement agreement, towards the end of the settlement periods with the other agencies the CNPR treated the Fed with a similar mix of moderate praise for the scope of reform and occasional annoyance at the pace of implementation. But, as with the other agencies, the long-term impact of the Fed’s late 1970s reforms proved elusive.<sup>243</sup>

BY THE time the post-litigation negotiations with the four agencies concluded in the early 1980s, the CNPR faced challenges of a different sort. Throughout the litigation over and monitoring of *National Urban League*, the CNPR survived largely on support from the Ford Foundation. On December 12, 1979, Bill Taylor

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<sup>241</sup> Letter from Janet Hart, Director, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, to Roger S. Kuhn, Co-Director, Center for National Policy Review, Oct. 6, 1978, at 1 [Box 131] [Folder: National Urban League v. Office of Comptroller of the Currency Settlement Negotiations and Agreements Federal Reserve Board, 1978].

<sup>242</sup> Letter from Roger S. Kuhn, Co-Director, CNPR, to Jerauld C. Kluckman, Associate Director, Board of Governors of the Federal Reserve System, Apr. 12, 1979, at 1 (praising the Federal Reserve Board for its “Consumer/Civil Rights Compliance Manual” but suggesting a modification: rather than comparing whites/blacks and women/men, Kuhn suggested comparing white men to other categories, which would prevent black men and white women from diluting the baseline). [LOC Box 131] [Folder: “Federal Reserve Board II”].

<sup>243</sup> After reading a draft of this paper, Bill Taylor informed the author that the *Atlanta Journal & Constitution* drew renewed popular attention to the problem of race-based lending discrimination in the late 1980s, thus revealing *National Urban League* action and Congressional action up to that point had been ineffective in eliminating the practice. E-mail from Bill Taylor to Andrew Nash, Apr. 17, 2007 (on file with author). The impact of the newspaper stories is described in Schwemm, *supra* note 3, at 321.

notified the Catholic University administration that the CNPR expected to receive a final \$350,000 multi-year grant from the Ford Foundation, after which point the CNPR would have to obtain alternative funding streams.<sup>244</sup> Catholic University President Edmund D. Pellegrino had indicated to the Ford Foundation two months earlier that the University would “incorporate the basic financial support of the Center into our [the University’s] budgetary and external fund-raising program,”<sup>245</sup> raising the possibility of a permanent collaboration between the University and the Center.

The Ford Foundation’s decision to withdraw financial support from the CNPR reflected a larger shift in the Foundation’s priorities at the close of the Carter Administration. In 1970 the Ford Foundation committed itself “to become a principal source of support for public interest organizations” and funded “fledgling public interest groups” that pursued aggressive litigation strategies. In addition to funding the CNPR, in the 1970s the Ford Foundation supported the Environmental Defense Fund (EDF), the NOW Legal Defense Fund, and the Puerto Rican Legal Defense and Education Fund. In 1979—the year in which Bill Taylor notified

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<sup>244</sup> Letter from William L. Taylor, Director, Center for National Policy Review, to Robert E. Carter, Vice President for Development, Catholic University, Dec. 12, 1979, at 1 [LOC Box 24] [Folder: CNPR C.U. Funding 1978-79].

<sup>245</sup> Letter from Edmund D. Pellegrino, President, Catholic University of America, to Sanford M. Jaffe, Officer in Charge, Division of National Affairs, The Ford Foundation, Oct. 15, 1979, at 1 [LOC Box 24] [Folder: CNPR C.U. Funding 1978-79].

Catholic University that Ford dollars would soon run out—the Foundation decided to make substantial, across-the-board cuts in its support for public interest litigation. By 1981, the 350 largest grant-giving foundations in the country had followed Ford’s lead, cutting funding for public interest litigation by sixty percent in two years.<sup>246</sup> If the CNPR was going to survive, it would have to establish a permanent relationship with Catholic.

By 1983, however, the Catholic University-CNPR collaboration was on the brink of collapse. Kuhn left at the start of the 1980s<sup>247</sup> and in April 1983 the CNPR’s recently hired fundraiser informed Bill Taylor that she was quitting; her letter of resignation referenced “fundamental disagreements between CNPR and the University...”<sup>248</sup> In light of the fundraiser’s departure, Taylor observed that “the fundraising arrangement with Ford is on the brink of total demise.”<sup>249</sup> The break with Catholic eventually arrived in the spring of 1985 when the law school faculty, against Taylor’s wishes, appointed a faculty member to oversee the

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<sup>246</sup> ROBERT A. BAUM, PUBLIC INTEREST LAW: WHERE LAW MEETS SOCIAL ACTION 57-58 (1987).

<sup>247</sup> See Letter from William L. Taylor to All Plaintiffs Counsel of Record [in Liddell v. Board of Education of The City of St. Louis], Sept. 3, 1982 (CNPR letterhead listing William L. Taylor at CNPR Director and Leroy D. Clark as CNPR Co-Director). [LOC Box 107] [Folder: Liddell v. Board of Education of St. Louis/Correspondence].

<sup>248</sup> Letter from Trudi Boyette to Dennis Stefanacci, Director of Development, CNPR, Apr. 5, 1983, at 1 [LOC Box 24] [Folder: CU/CNPR Fundraising, 1983].

<sup>249</sup> Memorandum from Bill Taylor to Jack Murphy and Steve Frankino, Apr. 6, 1983, at 1 [LOC Box 24] [Folder: CU/CNPR Fundraising, 1983].

Center's clinical education program.<sup>250</sup> On May 8, Taylor sent a letter to the CNPR's mailing list stating that the Center would be severing its ties to Catholic University in response to "unacceptable interference by the Law School in the conduct of our educational program."<sup>251</sup> Movers packed up the CNPR office on August 30, 1985.<sup>252</sup> Two years later, Martin Sloane's NCDH met a similar fate when its funding streams also dried up.<sup>253</sup>

The *National Urban League* lawsuit was one of the major milestones of the CNPR's fifteen-year lifespan, but in a way it was tangential to the Center's primary focus. The majority of the CNPR's files archived in the Library of

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<sup>250</sup> Letter from William L. Taylor, Director, Center for National Policy Review, to Leroy [no surname: probably Leroy D. Clark, then Co-Director of the CNPR], Apr. 1, 1985, at 2 (stating that the proposed faculty candidate "is simply not the right person for this job") (emphasis in original) [LOC Box 20] [Folder: Center/Law School Dispute/1985].

<sup>251</sup> See, e.g., Letter from William L. Taylor, Director, Center for National Policy Review, to Carl Holman, President, National Urban Coalition, May 8, 1985, at 1 [LOC Box 20] [Folder: Center/Law School Dispute/1985].

<sup>252</sup> Letter from William L. Taylor, Director, Center for National Policy Review, to Steven Frankino, Dean, Catholic University School of Law, Aug. 22, 1985, at 1 (informing the University of the date on which the Center's office would be vacated). [LOC Box 20] [Folder: Center/Law School Dispute/1985].

After leaving the CNPR, Bill Taylor relocated to the Citizens' Commission on Civil Rights (CCCR), a small civil rights watchdog group that he helped to found in 1982. In his present capacity as Chair of the CCCR, Taylor continues to play an active role in lobbying and public debates. In the fall of 2005, for instance, he published a searing critique of John Roberts' legal career in the *New York Review of Books*, in which he stated that the "most intriguing question about John Roberts is what led him as a young person whose success in life was virtually assured by family wealth and academic achievement to enlist in a political campaign designed to deny opportunities for success to those who lacked his advantages." William L. Taylor, *John Roberts: The Nominee*, NEW YORK REV. OF BOOKS, Oct. 6, 2006.

<sup>253</sup> Telephone Interview with Martin Sloane, Apr. 25, 2007.

Congress relate to school desegregation cases.<sup>254</sup> Documents related to the *National Urban League* suit occupy seven boxes in the Library of Congress; those relating to the St. Louis desegregation case alone occupy twenty-two.<sup>255</sup> As the citations in this paper indicate, Roger Kuhn handled the bulk of ongoing negotiations with the lending regulatory agencies after 1977, while Bill Taylor, always the CNPR's most visible figure, focused primarily on desegregation issues in the late 1970s.<sup>256</sup>

The ultimate significance of *National Urban League* is difficult to gauge. The Center succeeded in convincing the FHLBB, the FDIC, and the Comptroller to legally commit themselves to explicit non-discrimination policies and monitoring programs. On the other hand, Congress was already passing laws imposing similar requirements on these agencies in 1974-77, as Judge Gesell noted in May 1978 when dismissing the plaintiffs' suit against the Fed.<sup>257</sup> Given the CNPR's close ties to Congressional leaders, in particular to Senator Proxmire, it is probably

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<sup>254</sup> Audrey A. Walker and Connie L. Cartledge, "Center for National Policy Review: A Register of Its Records in the Library of Congress," 1988/90, at 4 ("The majority of cases in the Legal File series deals with some form of school desegregation... [The Center was involved in] *Bradley v. Richmond*, *Evans v. Buchanan*, *Haycraft v. Louisville*, *Liddell v. Board of Education of St. Louis*, and *United States v. Board of School Commissioners of Indianapolis*...").

<sup>255</sup> Audrey A. Walker and Connie L. Cartledge, "Center for National Policy Review: A Register of Its Records in the Library of Congress," 1988/90.

<sup>256</sup> Telephone Interview with Roger Kuhn, Apr. 22, 2007.

<sup>257</sup> *National Urban League*, 78 F.R.D. at 544 (statement by Judge Casell that "Conditions in the home mortgage field have received congressional attention, and considerable indications of pervasive race and sex discrimination in home mortgage lending can be documented from field surveys, congressional hearings, and similar sources.").

misleading to view *National Urban League* simply as a lawsuit in isolation from contemporary political developments. From the opening months of the case Judge Gesell stated his unwillingness to retain jurisdiction over the settlement agreements to monitor the agencies' conduct; in its own way, Congress ended up playing this role, particularly in the Center's negotiations with the Fed outside of a formal settlement agreement.

A better framework for understanding *National Urban League* is to consider the broad timeline of change in fair lending law during the 1970s. In 1970, when Bill Taylor founded the CNPR, it was unclear whether redlining was illegal under federal law. The group initiated rulemaking petitions and eventually brought a lawsuit; Congress also took interest and passed new laws, which in turn forced federal agencies to take action on the non-discrimination agenda.<sup>258</sup> In a related development, the DOJ and private litigators brought the first suits under the FHA in the early and mid-1970s, establishing the essential case law that continues to provide the framework for fair lending litigation. In a less noticeable development, incoming personnel at the federal bank regulatory agencies began to share CNPR staffers' attitudes on racial issues in lending practices, in part because the CNPR used its leverage to influence hiring decisions at the agencies. Local and state

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<sup>258</sup> See, e.g., 43 Fed. Reg. 47,144 (Oct. 12, 1978) (announcing federal banking agencies' plans for implementing the recently passed Community Reinvestment Act).

governments also played an important role, with many legislatures and city councils passing anti-redlining statutes and ordinances.<sup>259</sup> By 1980, there was no question whether redlining was illegal; the only remaining issue was how comprehensive the agencies' monitoring of lenders would be in detecting discriminatory lending practices.

In sum, *National Urban League* was part of a multifaceted normative shift in the 1970s driven by activists, litigators, lobbyists, and legislators to force the executive branch agencies to assume responsibility for enforcing civil rights laws and equal protection principles in the areas under their jurisdiction. Viewed in isolation, the case stands for very little. There was only one reported decision in the case,<sup>260</sup> and that decision has only been cited once by another court since it was issued.<sup>261</sup> Academic commentary on *National Urban League* has likewise been scant and even inaccurate.<sup>262</sup> While technically a lawsuit, the case was really an

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<sup>259</sup> See MCGREW, COLLIER, AND FORREST, *supra* note 1, at 1309 n.84 (citing anti-redlining measures enacted by state legislatures in California, Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio and Wisconsin, and by city councils in Chicago, Cleveland and Minneapolis).

<sup>260</sup> *National Urban League*, 78 F.R.D. 543 (dismissing the case against the Fed because plaintiffs lack standing to sue).

<sup>261</sup> *United Black Firefighters of Norfolk v. Hirst*, 604 F.2d 844, 847 (4th Cir. 1979) (citing *National Urban League* when dismissing plaintiff association on standing grounds).

<sup>262</sup> The Westlaw database only contains five articles citing *National Urban League*, including two that provide inaccurate or misleading information about the case. See Andrew Jacobson, *The Burden of Good Intentions: Intermediate-Sized Banks and Thrifts and the Community Reinvestment Act*, 6 U.C. Davis Bus. L.J. 16, [x] (2006) (erroneously stating that all four defendant-agencies won on summary judgment); Willy E. Rice, *Race, Gender, "Redlining," and*

extension of the CNPR's rulemaking petitioning from 1971—in other words, administrative lobbying by other means. If lawsuits like *Laufman* and Willis Caruso's litigation Chicago litigation campaign aimed to end discriminatory lending by making it unprofitable, *National Urban League* represented a top-down administrative law approach to the problem.

#### IV. Conclusion

This paper has described two approaches taken by attorneys in the 1970s to establish fair lending litigation. The first approach, epitomized by Robert Laufman's work, focused on bringing suits for money damages against lenders who engaged in racial discrimination. By design, this approach responded to

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*the Discriminatory Access to Loans, Credit, and Insurance: An Historical and Empirical Analysis of Consumers who Sued Lenders and Insurers in Federal and State Courts, 1950-1995*, 33 San Diego L. Rev. 583, 621 n. 153 (citing *National Urban League* as “a classic example of how interagency conflict continues to undermine the effective enforcement of the Community Reinvestment Act,” even though *National Urban League* predated the CRA). See also Mae A. Cavoli, *Fair Lending Laws: The Growing Tension*, 115 Banking L.J. 604, 607 (1998) (one-paragraph summary of *National Urban League*); Michael S. Little, *Note: A Citizen's Guide to Attacking Mortgage Discrimination: The Lack of Judicial Relief*, 15 B.C. Third World L.J. 323, 342-44 (1995); James A. Kushner, *The Fair Housing Amendments Act of 1988: The Second Generation of Fair Housing*, 42 Vand. L. Rev. 1049, 1070, n. 85 (1989) (including *National Urban League* in a footnoted string citation to fair lending cases disposed of on standing grounds).

After reading a draft of this paper, Bill Taylor drew the author's attention to a law review article published in 1978 that discusses *National Urban League*. A co-authored piece written by a Columbia law professor and third-year Columbia law student included a one-paragraph discussion of Judge Gesell's dismissal of the plaintiffs' suit against the Fed. The authors expressed concern about the ruling and noted that “traditional [standing] tests were applied despite the fact that plaintiffs had expended substantial amounts of money and energy pressing, negotiating, and settling its [sic] claims with the agencies.” Kellis E. Parker and Robin Stone, *Standing and Public Law Remedies*, 78 COLUM. L. REV. 771, 780 (1978).

discrimination after it occurred. It aspired to compensate victims and, on a broader level, to make such discrimination unprofitable. If this approach threatened lenders' bottom-lines, however, it was primarily a local strategy to root out racist practices. The labor-intensive, fact-specific nature of damages lawsuits posed a barrier to a coordinated national campaign of similar suits against discriminatory lenders in every community.

The second approach, by contrast, had national ambitions. Bill Taylor's CNPR sued the federal government in an effort to establish a national regulatory framework to monitor and stamp out racism in residential credit markets. While the CNPR's strategy had little direct, on-the-ground influence in Cincinnati or Chicago, it attempted, with some success, to transform the federal bureaucracy into an anti-discrimination force. This top-down strategy posed problems of its own; gaining influence over the bureaucracy is a different matter than knowing how to wield it effectively.

Thirty years have passed since fair lending litigation became firmly established. This paper makes no attempt to assess the long-term effects of these litigation strategies or to assess their successes and failures in the 1980s or today. Rather, in a modest way, this paper has tried to trace the legal theories and human

relationships that created a new category of civil rights litigation in the 1970s. As a historical record, this paper hopefully demonstrates that litigation and lobbying were two complementary approaches within an overall anti-discrimination legal strategy.

## The Origins of Fair Lending Litigation': Case Catalogue

Case Name	Citation	Facts	Docs	Docket	P Attorneys	Requested relief
JAT Inc. v. Nat'l City Bank of the Midwest	460 F. Supp. 2d 812 (E.D. Mich. 2006).	Ps (African-American individuals, churches with predominantly African-American congregations, and African-American-owned businesses) allege that D banks had an unwritten policy of not making loans to businesses located in predominantly African-American areas. Ps sue for violations of the Fair Housing Act (FHA) 42 U.S.C. § 3601-3619 the Equal Credit Opportunity Act (ECOA) 15 U.S.C. §§ 1691-1691f and the Civil Rights Acts of 1866 and 1870 (CRA) 42 U.S.C. §§ 1981 and 1982.	P's Original Complaint ; P's Amended Complaint ; D's MD	06-CV-11937	John R. Runyan, Jr., Sachs Waldman (Detroit); David L. Rose, Rose & Rose (Washington). Ps include New Galilee Missionary Baptist Church, Pleasant Hill Baptist Church, Body of Christ Christian Center, Good Fight of Faith Ministry, and Samaritan Baptist Church.	Ps seek: (1) declaratory judgment that D's actions violate the FHA, the Civil Rights Act of 1866, the Civil Right Act of 1870, and the ECOA; (2) enjoins D and D's agents from (a) discriminating on the basis of race, (b) failing to take affirmative steps, as necessary, to restore D's victims to a position that would have occupied but for D's discrimination, (c) failing or refusing to take such steps as necessary to prevent racially discriminatory conduct in the future; (3) awarding actual and compensatory damages; (4) awarding punitive damages; (5) awarding P attorneys' fees; (6) assessing a civil penalty against D; (7) other relief as the court considers just.

[Investigation]

NY Attorney General begins probe into banks' lending practices in response to data suggesting that they apply different criteria for white and black loan terms.  
<http://www.msnbc.msn.com/id/7667799/>

City of Pittsburgh Comm'n on Human Rels. v. Key Bank USA	163 Fed. Appx. 163 (3d Cir. 2006).	The City of Pittsburgh Commission on Human Relations filed suit against Key Bank USA National Association ("Key Bank") and P&C Replacement Windows in the Court of Common Pleas of Allegheny County. Alleging violations of both the federal Fair Housing Act, 42 U.S.C. § 3601 et. seq., and § 659.03(a)-(e) of the Pittsburgh City Code, the Commission claimed on behalf of David I and Valerie Pollard that the Pollards were discriminated against on the basis of race during their application for a home improvement loan.	Westlaw provide the docket; Pacer contains some minor procedural document s.	05-1602	Jeffrey J. Ruder (Commission lawyer)	Without the pleadings or the district court opinion, it's unclear what relief P requested.
Boykin v. Bank of Am. Corp.	162 Fed. Appx. 837 (11th Cir. 2005).	Plaintiff borrower appealed an order of the United States District Court for the Northern District of Georgia which granted summary judgment in favor of defendant bank in the borrower's action alleging discrimination under the Fair Housing Act 42 U.S.C. § 3601 et seq. The Eleventh Circuit affirmed.	Complaint ; Dist Ct's Order; P's Appellant Brief; D's Appellee Brief	05-13494; P is a pro se plaintiff	03-03467- CV-MHS-1	P seeks damages and "[i]njunctive relief requiring Defendant HUD to conduct a[n] assessment/compliance review of the past and current practices of Defendant DHR's Buffalo, New York office under the appropriate authorities and prohibiting Defendants from further unlawful conduct of the type described herein."

Norris v. Mortgage Master	[no reported opinion]	P African-American sues LendingTree.com after being rejected for an online loan and receiving a racially derogatory email.	Complaint	05-1589 (N.D. Ill. 2005)	Angel Krull	P seeks damages.
Hood v. Midwest Sav. Bank	95 Fed. Appx. 768 (6th Cir. 2004).	Plaintiff borrower sued defendant lender alleging violations of the Fair Housing Act of 1968 (FHA) 42 U.S.C. § 3601 et seq. and the Equal Credit Opportunity Act (ECOA) 15 U.S.C. § 1691 et seq. Plaintiff had applied for a loan and was rejected because the lender said it could not appraise P's house.	[Not listed on Westlaw; No documents available on Pacer]	02--3525	Alexander M. Spater (Columbus, OH)	The court decision does not state what relief P sought.]
United States v. Old Kent Fin. Corp.	2004 U.S. Dist. LEXIS 9235 (E.D. Mich. 2004); 2004 WL 1157779.	D bank had a large presence in white areas surrounding Detroit. P United States alleged that defendant bank denied equal credit opportunity to persons and businesses in predominately African-American neighborhoods in the City of Detroit primarily by redlining in violation of the Fair Housing Act (FHA) 42 U.S.C. §§ 3601-3619 and the Equal Credit Opportunity Act (ECOA) 15 U.S.C. §§ 1691-1691f.	Ps' Complaint ; Settlement Agreement	04-CV-71879	DOJ	P's complaint seeks a declaratory judgment that D's policies violate the FHA and ECOA; an injunction against D or its agents (1) discriminating on the basis of race, (2) failing to take remedial steps to correct past harms to minority communities, (3) failing to take such conduct as would be necessary to prevent a repeat violation, in particular by defining their service area as the entire Detroit metropolitan region; awards monetary damages to victims of D's policies; and assesses fines against D.

Powell v. Am. Gen. Fin., Inc.	310 F. Supp. 2d 481 (N.D.N.Y. 2004).	P African-American woman alleged that the banks discriminated against her based on her gender and race by declining to extend her business credit, personal credit, or a home mortgage loan. Plaintiff alleged violations of the Seventh, Ninth, Tenth, Fourteenth, and Fifteenth Amendments, and the Truth in Lending Act (TILA), the Community Reinvestment Act (CRA), the Equal Credit Opportunity Act (ECOA), and the Fair Housing Act (FHA).	P's Complaint , from Pacer	02-CV-1605	P is a pro se plaintiff, but she signs the complaint "c/o Enable Organization, Binghamton, New York."	P seeks money monetary and injunctive relief. P's requested injunctive relief includes requiring D to hire more African-Americans; an injunction against Ds discriminating on the basis of race; a requirement that D submit to the court a plan to better service predominantly minority areas.
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Dumas v. Sentinel Mortg. Corp.	2003 U.S. Dist. LEXIS 21684 (N.D. Ill. 2003); 2003 WL 2285980 7	P claimed she was refused a loan because of her race. She alleged violations of the Fair Housing Act (FHA) 42 U.S.C. § 3601 et seq. the Equal Credit Opportunity Act (ECOA) 15 U.S.C. 1691 and the Illinois Consumer Fraud and Deceptive Business Practices Act 815 Ill. Comp. Stat. § 505/2.	P's Complaint , from Pacer	02-CV- 05255	Pro se plaintiff	P only sues for money damages.
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Cooley v. Sterling Bank	280 F. Supp. 2d 1331 (M.D. Ala. 2003).	Plaintiff borrower brought a claim under 42 U.S.C. § 1981 the Equal Credit Opportunity Act 15 U.S.C. § 1691 et seq. and the Fair Housing Act 42 U.S.C. § 3601 et seq. alleging that defendant lenders denied his application for a \$ 100 000 unsecured line of credit because of his race. The borrower requested an unsecured line of credit in order to invest in new real estate ventures but the borrower's application was denied. The borrower had a heavy debt to income ratio.	P's Complaint , D's Answer	02-CV- 01069	Daniel A. Hannan (Montgomery, AL)	P only sues for money damages.
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Sallion v. Suntrust Bank	87 F. Supp. 2d 1323 (N.D. Ga. 2000).	Plaintiff brought suit alleging that defendant bank rejected her application for a loan based on her race and marital status in violation of 42 U.S.C. §§ 1981 and 1982 and the Equal Credit Opportunity Act 15 U.S.C. § 1691 et seq. ("ECOA").	[Nothing on Westlaw about this case; Pacer has the docket but no documents.]	96CV1500	Georgia Kay Lord (Decatur, GA)	P's complaint isn't available on Pacer.
Hargraves v. Capital City Mortg. Corp.	140 F. Supp. 2d 7 (D.D.C. 2000).	The Ps' claims are based on allegations of ongoing illegal and discriminatory activity, particularly with regard to four loans made by the defendants to the plaintiffs. Ps allege that the Ds' practices have caused Ps to devote their scarce resources to the investigation of Ds' lending and foreclosure activities, as well as to outreach, education, and enforcement efforts regarding the Ds' activities. Collectively, Ps allege that the Ds have engaged in "reverse redlining," targeting African-American communities with predatory lending practices. Ps sue under Racketeer Influenced and Corrupt Organizations Act (RICO), the Fair Housing Act (FHA), the Equal Credit Opportunity Act (ECOA), and civil rights laws following Ds' denial of loans to Ps.	[Not listed on Westlaw; some documents are available on Pacer, but they all appear to be relatively short filings concerning procedural issues.]	98-1021	Richard Ritter, Lars T. Waldorf (Washington Lawyers' Committee for Civil Rights); Jeffrey David Robinson, Duane Kenneth Thompson, Elizabeth Torrant Sheldon (Baach, Robinson & Lewis, Washington, DC); John Peter Relman (Relman & Associates, Washington, DC); Kurt Hirsch (Chicago, IL); Fair Housing Council of Greater Washington.	P's complaint isn't available on Pacer.

Edwards v. Flagstar Bank	295 F.3d 565 (6th Cir. 2002); 109 F.Supp.2d 691 (E.D. Mich. 2000).	Ps claim that they were the subjects of racial discrimination in the manner in which defendant Flagstar Bank (Flagstar), a mortgage bank, handled their mortgage loan applications or in the way the terms and conditions of their mortgage loans were set. Ps bring a housing discrimination case (mortgage lending) under sections 805 and 818 of the Fair Housing Amendment Act of 1988 42 U.S.C. § 3605 and § 3617 & corresponding regulations promulgated by the Department of Housing and Urban Development pertaining to mortgage lending 24 C.F.R. §§ 100.120 to 100.130 as well as the Civil Rights Act of 1866 and 1870 42 U.S.C. §§ 1981 and 1982 & section 504 of Michigan's Elliot-Larsen Civil Rights Act M.C.L. § 37.2504.	Compliance Report from Pacer	95-CV-73844	Stephen R. Tomkowiak (Southfield, MI)	P's complaint isn't available on Pacer.
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United States v. Deposit Guaranty National Bank	[No reported opinion]	DOJ files a complaint and \$3 million settlement agreement in federal court in Jackson, Mississippi resolving allegations that Deposit Guaranty National Bank (DGNB), the largest such institution in the state, had engaged in a pattern or practice of racial discrimination in the underwriting of credit-scored home improvement loan applications in Mississippi, Arkansas, and Louisiana. DOJ alleges that the lender allowed individual branch loan officers to "override" automated underwriting decisions to reject applicants who had a "passing" score and to approve applicants for loans who had a "failing" score. The criteria for making such decisions were inconsistently applied, and there was inadequate monitoring of those decisions. African-American applicants were more than three times as likely to be rejected as similarly situated white applicants.	[Pacer's docket report indicates that the complaint and settlement were filed on the same day, 9/29/99, but Pacer doesn't provide copies of either.]	3:99CV67 DOJ 0 (S.D. Miss. 1999)	P's complaint isn't available on Pacer.
Latimore v. Citibank Fed. Sav. Bank	151 F.3d 712 (7th Cir. 1998); 979 F.Supp. 662 (N.D. Ill. 1997).	African-American applicant for loan brought action alleging discriminatory denial in violation of Fair Housing Act (FHA), Equal Credit Opportunity Act (ECOA), civil rights statutes on right to make and enforce contracts and hold property, and Illinois Consumer Fraud and Deceptive Business Practices Act. Lender, appraiser, and account executive moved for summary judgment.	D's Answer; D's MSJ	95 C 436 Michael D. Gerstein (Chicago IL), Edwin R. McCullough (Chicago, IL)	P's complaint isn't available on Pacer.

United States v. First National Bank of Doña Ana County	[No reported opinion]	One of four cases brought by the DOJ during the Clinton Administration alleging discrimination in underwriting, the process of evaluating the qualifications of credit applicants. DOJ attention was focused on these institutions by Home Mortgage Disclosure Act (HMDA) statistics showing that African-American and Hispanic applicants were rejected for mortgage loans at significantly higher rates than were white applicants. When DOJ lawyers examined loan files, they uncovered disturbing evidence that bank employees were providing assistance to white applicants that they were not providing to African-American and Hispanic applicants. Loan officers often did not help minority applicants explain negative information on their credit reports and document all of their income.	[Nothing on Westlaw about this case; Pacer has the docket but no documents.]	97-0096 (D.N.M. 1997) DOJ	P's complaint isn't available on Pacer.
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United States v. Albank, FSB	[No reported opinion]	DOJ sues Albank, a thrift institution headquartered in Albany, New York. Albank initially made home mortgage loans only out of its branches located in Albany and other nearby towns and cities. In the mid 1980s, the bank decided to expand its mortgage lending into Connecticut and Westchester County, areas where it had no branches, and it began for the first time to take loans through "correspondents" or mortgage brokers. In the late 1980s, Albank began instructing the correspondents that it would not take loans from certain cities in Connecticut and parts of Westchester County. DOJ alleges that Albank had no legitimate business justification for limiting its market in the way it did. The only areas in Connecticut with significant African-American and Hispanic populations were the cities excluded by Albank. In Westchester County, 76% of the County's African Americans and 66% of the County's Hispanics lived in the areas excluded by Albank.	The only document available on Pacer in connection with this case is a one-page court order.	97-CV-1206 (N.D.N.Y. 1997).	DOJ	P's complaint isn't available on Pacer.
A.B. & S. Auto Serv. v. South Shore Bank	962 F. Supp. 1056 (N.D. Ill. 1997).	Plaintiffs alleged that defendant's practice of considering an applicant's criminal record in making business loan decisions had an unlawful disparate impact on African-American men. P sues under the Equal Credit Opportunity Act (ECOA) 15 U.S.C. § 1691 et seq.	[Nothing on Westlaw about this case; Pacer has the docket but no documents.]	95 C 5826	Armand L. Andry (Oak Park, IL)	P's complaint isn't available on Pacer.

Church of Zion Christian Ctr. v. Southtrust Bank	1997 U.S. Dist. LEXIS 12425 (S.D. Ala. 1997); 1997 WL 3364451 1	Minority church seeks a bank loan for building construction; bank denies loan. Church and church officers bring a single claim a violation of the Equal Credit Opportunity Act ("ECOA") 15 U.S.C. § 1691(a)(1).	[Nothing on Westlaw about this case; Pacer has the docket but no documents.]	96-0922	Willie J. Huntley, Jr. (Mobile, AL)	P's complaint isn't available on Pacer.
United States v. First National Bank of Gordon	[No reported opinion]	One of three racial discrimination consumer lending cases brought by the DOJ in 1994-96. In this case, DOJ alleges that Native Americans were charged higher interest rates than their white counterparts by Bank of Gordon, a Nebraska bank.	[Nothing on Westlaw about this case; Pacer has the docket but no supporting documents.]	96-5035 (D.S.D. 1996)	DOJ	P's complaint isn't available on Pacer.

United States v. Fleet Mortgage Corp.	[No reported opinion]	DOJ sues the Fleet Mortgage Company alleging discriminatory "overage" charges, that is, the discretionary authority of employees or brokers to charge rates higher than the lender's set rates, for which the employees receive additional compensation. DOJ alleges that mortgage company employee loan officers were charging African-American and/or Hispanic borrowers higher up-front fees for home mortgage loans than they were charging to similarly situated white borrowers.	[Nothing on Westlaw about this case; Pacer has the docket but no supporting document s.]	CV 96 2279 (E.D.N.Y. 1996).	DOJ	P's complaint isn't available on Pacer.
Simms v. First Gibraltar Bank	83 F.3d 1546 (5th Cir. 1996).	P, a white landlord, contends that D bank violated the Fair Housing Act when it refused to issue a commitment letter to refinance its existing loan on P's apartment complex in a predominantly minority area with a loan to a cooperative housing corporation that probably would be minority owned. P sues on discriminatory treatment and discriminatory effects (or disparate impact) theories of liability under sections 804(b) and 805 of the Fair Housing Act, 42 U.S.C. §§ 3604 (b), 3605.	Appellee's Brief; Appellant's Brief; Appellant's Reply Brief; Amicus Brief	94-20386 (5th Cir.); [can't find the district court docket number]	Raymond M. Hill (Houston, TX); Amicus: F. Willis Caruso, Michael P. Seng, Ronald D. Haze (John Marshall Law School, Chicago, IL)	The district court opinion is not on Westlaw. However, since P originally won \$3.21 million in a jury verdict, it appears that P only sought damages.

Saldana v. Citibank	1996 U.S. Dist. LEXIS 8327 (N.D. Ill. 1996); 1996 WL 332451	P claims Citibank discriminated against her by declining her loan application thereby engaging in redlining in violation of the Fair Housing Act (FHA) 42 § 3605 and the Equal Credit Opportunity Act (ECOA) 15 U.S.C. § 1691(a)(1).	[Not listed on Westlaw; Pacer has a docket for the case but does not provide any actual documents in the case.]	93-CV-04164	Norman Rifkind, Ronald Alan Schy, Geena Diane Cohen (Chicago, IL)	The docket report on Pacer states that Ps did not seek any monetary relief; it appears that injunctive relief is the only type sought.
Doane v. National Westminster Bank USA	938 F. Supp. 149 (E.D.N.Y. 1996).	P homeowner filed an action against D lender alleging that the lender denied a loan to prospective buyers of his home based on the racial composition of the neighborhood and the race of the buyers in violation of the Fair Housing Act 42 U.S.C. § 3601 et seq. and the Civil Rights Act of 1866 42 U.S.C. §§ 1981 and 1982. The lender filed a motion to dismiss the claims under §§ 1981 and 1982 for lack of standing.	[Not listed on Westlaw; Pacer has a docket for the case but does not provide any actual documents in the case.]	95-CV-01181	Richard Marsico (New York Law School Civil Law Clinic)	The briefs in the case are not available, and district court's opinion does not describe what relief P sought.

Milton v. Bancplus Mortg. Corp.	1996 U.S. Dist. LEXIS 5166 (N.D. Ill. 1996); 1996 WL 197532	P African-American applicant owned a home in a neighborhood that was 95 percent African-American. P submitted an application to D lender to refinance his home and submitted a completed application along with all other requested documents and a check to pay for the appraisal and credit check fees to the lender. P claimed that he was well qualified to receive the loan and that it normally took 45 days for the lender to process a loan application. After numerous inquiries over a 120-day period the lender denied the applicant's request. The applicant claimed that the lender's discriminatory conduct violated the Equal Credit Opportunity Act & the Fair Housing Act & the Thirteenth Amendment & the IFLA. D filed a motion to dismiss the federal claims for failure to state a cause of action and to dismiss the IFLA claim for lack of subject matter jurisdiction.	[Not listed on Westlaw; Pacer has a docket for the case but does not provide any actual documents in the case.]	96-CV-00106	Nina E. Vinik (Chicago Lawyers' Committee for Civil Rights); Gary Steven Caplan and Christine M. Bodewes (Sachnoff & Weaver, Chicago, IL).	The briefs in the case are not available, and district court's opinion does not describe what relief P sought.
United States v. Security State Bank of Pecos	[No reported decision]	One of three racial discrimination consumer lending cases brought by the DOJ in 1994-96. In this case, a review of the consumer loan records by Federal Reserve Board examiners found that Hispanics were being charged higher interest rates -- from three to five percentage points -- for both secured and unsecured consumer loans than the prices charged to white Anglos, and that the differences were not supported by business reasons.	[Not listed on Westlaw]	SA95CA0 DOJ 996 (W.D. Tex. 1995)		The DOJ's summary of the case only describes the terms of the settlement agreement.

United States v. The Northern Trust Company	[No reported decision]	One of four cases brought by the DOJ during the Clinton Administration alleging discrimination in underwriting, the process of evaluating the qualifications of credit applicants. DOJ attention was focused on these institutions by Home Mortgage Disclosure Act (HMDA) statistics showing that African-American and Hispanic applicants were rejected for mortgage loans at significantly higher rates than were white applicants. When DOJ lawyers examined loan files, they uncovered disturbing evidence that bank employees were providing assistance to white applicants that they were not providing to African-American and Hispanic applicants. Loan officers often did not help minority applicants explain negative information on their credit reports and document all of their income.	[Not listed on Westlaw]	95C 3239 (N.D. Ill. 1995)	DOJ	The DOJ's summary of the case only describes the terms of the settlement agreement.
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United States v. Long Beach Mortgage Company	[No reported decision]	DOJ alleges that D mortgage company had allowed both its employee loan officers and its independent loan brokers the discretion to charge borrowers up to 12% of the loan amount above the lender's base price. The DOJ argued that this led to lender discriminated on the basis of race, national origin, sex, and age. Because Long Beach ultimately was responsible for underwriting all of the loans and allowed the brokers to charge the discriminatory prices, the DOJ asserted that Long Beach was liable, not only for the alleged discrimination of its own employees, but also for that of the brokers.	[Not listed on Westlaw]	CV-96-6159DT(CWx)(C.D. Cal. 1996)	DOJ	The DOJ's summary of the case only describes the terms of the settlement agreement.
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Buycks- Roberson v. Citibank Fed. Sav. Bank	162 F.R.D. 322 (N.D. Ill. 1995).	Plaintiffs were African-American and sued defendant seeking redress for alleged racial discrimination and discriminatory redlining practices in connection with its home loan application approval process. They alleged intentional discrimination in violation of the Equal Credit Opportunity Act 15 U.S.C. § 1691 et seq., discrimination on the basis of race or color in violation of the Fair Housing Act, 42 U.S.C. § 3601 et seq., violation of U.S. Const. amend XIII, and invoked 42 U.S.C. §§ 1981 and 1982. Plaintiffs sought injunctive relief, actual damages and punitive damages with respect to all three counts. They also sought class certification pursuant to Fed. R. Civ. P. 23.	[Not listed on Westlaw]	94 C 4094 Jeffery Irvine Cummings, Judson H. Miner, Barack H. Obama (Davis, Miner, Barnhill and Galland, Chicago, IL); Fay Clayton, Hilary I. Alexis (Robinson, Curley & Clayton, Chicago, IL), Michael Allen Childers (Chicago, IL).	Although the briefs in the case are not available, the court's opinion indicates that Ps sued for both monetary and injunctive relief. The court does not indicate what type of injunctive relief Ps sought, but notes, in FN 20, that: "Injunctive relief can be fashioned to prevent Citibank from redlining and/or to require Citibank to (re)consider the class members' applications without regard to the racial composition of their respective neighborhoods, but injunctive relief cannot cure bad credit, and it cannot force a lending institution to make a loan if that credit is wanting. Injunctive relief also cannot force a bank to take a bad risk on a particular property."
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United States v. The Huntington Mortgage Company	[No reported opinion.]	DOJ sues the Huntington Mortgage Company in Cleveland (along with Fleet Mortgage Company in New York in 1996) alleging discriminatory "overage" charges. In the mortgage lending area, pricing disparities often arise as a result of discriminatory application of "overages," that is, the discretionary authority of employees or brokers to charge rates higher than the lender's set rates, for which the employees receive additional compensation. DOJ alleges that mortgage company employee loan officers were charging African-American and/or Hispanic borrowers higher up-front fees for home mortgage loans than they were charging to similarly situated white borrowers, and that these differences in price could not have occurred by chance and could not be explained by differences in the borrowers' loan qualifications.	[No record of the case in Westlaw. Pacer has the docket but not copies of court documents.]	1:95 CV 2211 (N.D. Ohio 1995)	DOJ	The DOJ's summary of the case only describes the terms of the settlement agreement.
United States v. Chevy Chase Federal Savings Bank	[No reported opinion]	DOJ alleges that the bank had refused to market its mortgage loans and other credit products in minority neighborhoods. In 1992, Chevy Chase made only a handful of mortgage loans in African-American neighborhoods in the District of Columbia and Prince George's County, Maryland, which had the nation's lowest disparity in income levels between African-American and white residents.	[Pacer lists this case but doesn't provide a copy of the complaint.]	Civil Action No. 94-1829 (D.D.C. 1994).	DOJ	The DOJ's summary of the case only describes the terms of the settlement agreement.

United States v. First National Bank of Vicksburg	[No reported opinion]	One of three racial discrimination consumer lending cases brought by the DOJ in 1994-96. In this case, DOJ alleges that African-American applicants were charged higher interest rates than their white counterparts by the First National Bank of Vicksburg in Mississippi; DOJ files suit to end this practice.	[Not listed on Westlaw]	5:94 CV 6 DOJ (B)(N) (S.D. Miss. 1994)	The DOJ's summary of the case only describes the terms of the settlement agreement.
Ring v. First Interstate Mortg., Inc.	984 F.2d 924 (8th Cir. 1993).	P developer alleged that because of ethnic and racial bias the lenders refused to provide long-term mortgage financing for seven apartment buildings in predominantly minority St. Louis neighborhoods. P sues under the FHA.	[Not listed on Westlaw]	92-1019 Mark T. McClosky (Wood River, IL)	The district court's opinion is not available on Westlaw, nor are briefs available. However, the Eighth Circuit refers several times to P's plea for damages, suggesting that there is no injunctive aspect to this case.
United States v. Shawmut Mortgage Company	[No reported opinion]	One of four cases brought by the DOJ during the Clinton Administration alleging discrimination in underwriting, the process of evaluating the qualifications of credit applicants. Loan officer behavior was responsible for the inordinately high denial rate of African-American applicants underlying the Federal Reserve Board's referral to the DOJ of the Shawmut Mortgage Company in Boston.		3:93CV-2453 (AVC) (D. Conn. 1993)	The DOJ's summary of the case only describes the terms of the settlement agreement.

United States v. Blackpipe State Bank	[No reported opinion]	DOJ challenges the policies of Blackpipe State Bank in South Dakota, alleging that the bank was refusing to make secured loans to Native Americans residing on Reservation land, even though the land was within the bank's natural service area. Loans to purchase automobiles, mobile homes or farm equipment were simply unavailable to Native Americans living on Reservation land. This bank policy limited their ability to make the types of purchases that enable people to own and maintain a decent home, travel to and from a job, or work a farm.	[Not listed on Westlaw]	Civil Action No. 93-5115 (D.S.D. 1993).	DOJ	The DOJ's summary of the case only describes the terms of the settlement agreement.
Steptoe v. Savings of America	800 F. Supp. 1542 (N.D. Ohio 1992).	P minority couple attempts to purchase a home in an inter-racial neighborhood. Ps apply for a loan at D bank, which allegedly undervalues the appraisal. P borrowers and interracial neighborhood association filed suit against D bank and its appraiser. They alleged violations of the Fair Housing Act (FHA) 42 U.S.C. § 3601 et seq. the Civil Rights Act of 1866 42 U.S.C. §§ 1981 1982 the Civil Rights Act of 1871 42 U.S.C. § 1985(3) and the Civil Rights Act of 1966 42 U.S.C. § 2000d et seq.	[Not listed on Westlaw]	89-CV-07329	C. Thomas McCarter (Toledo, OH)	The briefs in the case are not available. Concerning relief, the district court's opinion only mentions that P is seeking punitive damages. There does not appear to be an injunctive relief aspect to this case.

United States v. Decatur Federal Savings & Loan Association	92-CV-2198 (N.D. Ga. 1992)	One of four cases brought by the DOJ during the Clinton Administration alleging discrimination in underwriting, the process of evaluating the qualifications of credit applicants. DOJ attention was focused on these institutions by Home Mortgage Disclosure Act (HMDA) statistics showing that African-American and Hispanic applicants were rejected for mortgage loans at significantly higher rates than were white applicants. When DOJ lawyers examined loan files, they uncovered disturbing evidence that bank employees were providing assistance to white applicants that they were not providing to African-American and Hispanic applicants. Loan officers often did not help minority applicants explain negative information on their credit reports and document all of their income.	[Not listed on Westlaw]	92-CV-2198 (N.D. Ga. 1992)	DOJ	The DOJ's summary of the case only describes the terms of the settlement agreement.
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Cartwright v. Am. Sav. & Loan Assn.	880 F.2d 912 (7th Cir. 1989).	Plaintiffs, minority loan applicant and state housing center, filed a lawsuit in the United States District Court for the Northern District of Indiana alleging that defendant lender refused to approve a loan in violation of the Fair Housing Act, 42 U.S.C. § 3601 et seq., or 15 U.S.C. § 1691 of the Equal Credit Opportunity Act and the civil rights statutes 42 U.S.C. § 1981 1982.	[Not listed on Westlaw]	88-1593	Jerry T. Jarrett (Hammond, Ind.)	The district court opinion does not appear to be available in the Westlaw system, nor are the briefs in the case. The appellate court's decision does not state what relief P sought.
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Huntington Branch NAACP v. Town of Huntington	488 U.S. 15 (1988).	In per curium opinion Court affirms 2d Circuit's use of a discriminatory effects test when applying the FHA to discriminatory acts by a municipality.	[Not listed on Westlaw]	87-1961	[Not listed on Westlaw]	
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Evans v. First Federal Savings Bank of Indiana	669 F. Supp. 915 (N.D. Ind. 1987).	The plaintiffs allege that First Federal discriminated in its lending practices by engaging in "mortgage redlining." Plaintiffs claim they were denied home equity or mortgage loans by First Federal because they are black and reside in predominantly black neighborhoods in Gary, Indiana.	[Not listed on Westlaw]	H 86-711, H 86-0712, H 86-0716, H 86-0719 and H 86-0776	Lawrence G. Albrecht (Valparaiso University School of Law) and Jeffrey A. James (Valparaiso, Ind.)	The district court's opinion doesn't indicate what relief P sought.
Ricci v. Key Bancshares of Maine, Inc.	662 F. Supp. 1132 (D. Me. 1987).	D lenders terminate their relationship with P. P borrowers brought an action against the lenders for violations of § 706(b) of the Equal Credit Opportunity Act (Act), 15 U.S.C. § 1691-1691f (1982). (District court opinion does not provide much more information than this.)	[Not listed on Westlaw]	82-0249-P	Richard E. Poulos, John S. Campbell (Portland, ME); Robert M. Axelrod (Meriden, CT); M. Hatcher Norris (Glastonbury, CT), John C. Peters (Hartford, CT)	P appears to have only sought monetary damages.
Thomas v. First Federal Sav. Bank	653 F. Supp. 1330 (N.D. Ind. 1987).	Ps alleged that Ds discriminated on their race and "red-lined" the neighborhood where the Ps lived in violation of the Fair Housing Act, the Civil Rights Act of 1866, and the Equal Credit Opportunity Act.	[Not listed on Westlaw]	Civ. No. H84-716	Rosalind Parr & Albert Marshall, Jr. (Gary, IN)	The district court's opinion doesn't indicate what relief P sought.

Old West End Asso. v. Buckeye Federal Sav. & Loan	675 F. Supp. 1100 (N.D. Ohio 1987).	Plaintiffs allege that defendants have discriminated in the financing of housing based upon the racial composition of the neighborhood in which the property is located. Ps sue under 42 U.S.C. § 1981 (the Civil Rights Act of 1870) 42 U.S.C. § 1982 (the Civil Rights Act of 1866) 42 U.S.C. § 3601 et seq. (Title VIII of the Civil Rights Act of 1968 Title VIII) and 42 U.S.C. § 1985(3).	[Not listed on Westlaw]	C85-7814	Stephen M. Dane (Toledo, OH)	The district court's opinion indicates that Ps seek both monetary and injunctive relief, but doesn't specify what that proposed relief entails.
Pollitt v. Bramel	669 F.Supp. 172 (S.D. Ohio 1987)	Interracial couple sues for wrongful denial of mobile home rental property under the FHA.	[No document s available on Lexis or Westlaw.]	86-983	Robert Laufman	

United States v. Capitol Thrift and Loan Association	[No reported opinion.]	USDOJ files ECOA case against California lender with 17 branch offices alleging lending discrimination on the basis of race, national origin, age, sex, marital status, and source of income. Consent decree entered four months after complaint filed. 1986 DOJ Report, p. 129, FN 41.	[No document s available on Lexis or Westlaw.]	86-1148 (N.D. Calif, Complaint filed May 7, 1986, and consent decree entered Sept. 2, 1986).	DOJ	Unclear exactly what relief the DOJ sought, but see the Outcome category for information on the settlement.
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McDiarmid v. Economy Fire & Casualty Co.	604 F. Supp. 105 (S.D. Ohio 1984).	P sues under FHA for alleged racial redlining in denial of homeowners' insurance.	[Not listed on Westlaw]	C-3-81-010	R.J. Stidham (Dayton, OH); Noel Vaughn (Dayton, OH); Allen Brown (Cincinnati, OH); Stephen Olden (Cincinnati, OH).	The only available information about this case comes from the district court's opinion, which does not specify what relief P sought.
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Pierce v. Metropolitan Prop. & Liab. Ins.	1984 U.S. Dist. LEXIS 24653 (S.D. Ohio 1984); no record of the case in Westlaw.	P sues under FHA for alleged racial discrimination in denial of homeowners' insurance. The district court opinion does not explain the factual background of the case.	[Not listed on Westlaw]	C-3-82-044	R. J. Stidham (Dayton, Ohio)	The only available information about this case comes from the district court's opinion, which does not specify what relief P sought.
Mackey v. Nationwide Ins. Co	724 F.2d 419 (4th Cir. 1984)	Suit against insurance company for redlining; suit premised on the Civil Rights Act of 1866, the FHA, and antitrust laws.	[Not listed on Westlaw]	82-1912	John T. Nockleby, Charlotte, N.C.	
Michigan Savings and Loan League v. Francis	683 F.2d 957 (6th Cir. 1982).	Contrary to the Ninth and Third Circuits' holdings the Sixth Circuit holds that federal anti-redlining laws do not preempt a state's ability to enact and enforce anti-redlining statutes against lenders.				
United States v. Central State Hospital Credit Union	[No reported opinion]	DOJ brings suit under the ECOA alleging that Georgia credit union discriminated against blacks by failing to give rejected applicants a notice of adverse action, as required by the Act. 1983 DOJ Report, p. 136, FN 42.	[Not listed on Westlaw]	83-135-3	DOJ (M.D. Ga., Complaint filed Apr. 12, 1983).	

United States v. Great Western Bank and Trust	[No reported opinion]	USDOJ brings suit against Arizona bank alleging discrimination against Native American in housing loans. 1981 USDOJ Report, p. 125, FN 60. Consent decree entered in 1982. 1982 USDOJ Report, p. 159, FN 62.	[Not listed on Westlaw]	80-1026 (D. Ariz., Dec. 16, 1980).	DOJ	
Emigrant Savings Bank v. Elan Management Corp.	668 F.2d 671 (2d Cir. 1981).	According to 1980 USDOJ Report, p. 130 FN 72, P sued mortgage lender alleging racial discrimination and sought to remove a foreclosure action filed in state court. DOJ filed an amicus brief in P's behalf. The 1980 report indicates that a decision in the case had not yet been decided.	No litigation documents available on Westlaw.	Civil Action No. CA 1631 (E.D.N.Y.) ; 81-7449 (2d Cir.).	Appellant's counsel: Marcia Berger Hershkowitz, Mineola, NY (Goldweber & Hershkowitz, Mineola, N. Y., Elyse S. Goldweber, of counsel).	P seeks to remove a foreclosure action to federal court, claiming that the mortgage company's action violated the FHA.
Conference of Federal Savings and Loans Ass'ns v. Stein	604 F.2d 1256 (9th Cir. 1979), aff'd mem. 445 U.S. 921 (1980).	California AG sues bank alleging mortgage redlining; bank countersues, claiming that federal law preempts state authority to bring suit. The Ninth Circuit accepts the Defendant's preemption argument.		78-3201		
United States v. Beneficial Corp.	492 F. Supp. 650 (D. N.J. 1980).	District Court rules that DOJ cannot obtain money damages for victims of lending discrimination in violation of the ECOA. However, this case was premised on gender discrimination, nor racial discrimination. Third Circuit later affirms this ruling without an opinion. 1982 DOJ Report, p. 159, FN 64.		77-04008-CV-C, 75-CV-100-C and 78-04093-CV-C		

Cherry v. Amoco Oil Co.	490 F. Supp. 1026 (N.D. Ga. 1980).	P white woman resided in a predominantly non-white area. P was denied credit by defendant in part based upon the ZIP code of her residence. Defendant's credit approval process took into consideration the applicant's ZIP code and assigned a low rating to those ZIP codes where defendant had experienced an unfavorable level of delinquency. Plaintiff claimed no actual damages except embarrassment and humiliation of being denied credit.	[Not listed on Westlaw]	C78-574A	Lawrence L. Aiken (Atlanta, GA)	The pleadings aren't available on Westlaw. However, the reported opinion, 490 F.Supp. 1026, 1027 n. 2, states that P originally sued for damages and then attempted to amend her complaint to add a plea for injunction relief. The court refused to allow her to add such a claim.
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United States v. Erlanger Hospital Credit Union	[There appears to be no reported opinion]	DOJ's first ECOA case against a credit union. DOJ alleges that different standards were used in determining whites' and blacks' loan eligibility. Consent decree filed on the same day as the complaint. See 1981 DOJ Report, p. 126, FN 72.	[Not listed on Westlaw]	1-80-420	DOJ (E.D. Tenn., complaint and consent decree filed Dec. 8, 1980).
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Fisher v. Dallas Federal Savings and Loan Association and Guardian Savings and Loan Association	106 F.R.D. 465 (N.D. Tex. 1985)	USDOJ's 1981 Report, p. 126, FN 76, indicates that the government filed an amicus brief in this case. Ps brought the suit alleging racial redlining by two lending institutions in the Dallas area. The district court ruled that white Ps in the affected areas can sue private lenders for racial discrimination under the 19th century civil rights statutes, the Fair Housing Act, and the Equal Credit Opportunity Act.	[Not listed on Westlaw]	79-0565 (N.D. Tex., amicus brief filed Dec. 2, 1980)
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Dunn v. Midwestern Indem	88 F.R.D. 191 (S.D. Ohio 1980)	African-American insurance applicants sue insurance company for allegedly denying them insurance coverage on the basis of racial composition of neighborhood.	[Not listed on Westlaw]	C-3-78-105 (S.D. Ohio, 1978)	Ashley Brown, Stuart Goldberg, Dalma Grandjean, Noel Vaughn
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National State Bank v. Long	630 F.2d 981 (3d Cir. 1980)	The Third Circuit holds that federal law preempts New Jersey's anti-redlining statute and thus State of New Jersey can't bring suit for redlining violations against national banks.	[Not listed on Westlaw]
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United States v. Sumer Advertising Agency, Inc. and Mitchell Development Corp. of the Southwest	[No reported opinion]	According to 1980 DOJ Report, p. 130 FN 70, DOJ charged a land developer with violating the ECOA and FHA by discouraging prospective clients, including racial minorities, to apply for credit financing. DOJ Report indicates that a consent decree was entered. See 1981 Report, p. 126, FN 73.	[Not listed on Westlaw]	Civil Action No. SA 78 CA 199 (W.D. Tex.)	DOJ
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Dunn v. Midwestern Indem. Mid-American Fire & Casualty Co.	472 F. Supp. 1106 (S.D. Ohio 1979).	Plaintiffs are black homeowners residing in a predominantly black neighborhood. In 1955, they purchased homeowner's insurance from D insurance company, but they were subsequently terminated. Ps contend that the decision to terminate was based on the fact that the portfolio included "a significant portion of black homeowners and/or persons residing in predominantly black neighborhoods." Plaintiffs charge that this practice, referred to as "insurance redlining", is prohibited by Title VIII of the Civil Rights Act of 1968.	[Not listed on Westlaw]	C-3-78-105	Ashley C. Brown (Dayton, Ohio)	The decision does not specify what relief Ps sought, nor does secondary literature discussing the case provide that information.
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Dallas A.C.O.R.N. v. First National Savings and Loan Association of Dallas	[No reported decision]	The 1979 DOJ Report says that the Department filed an amicus brief in this case supporting Ps' claims under the ECOA, but the Report doesn't provide any details on the case. Unclear if this is a race or gender discrimination suit.	[Not listed (N.D. Tex. on 1979) Westlaw]
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United States v. Citizens Mortgage Corp.	Fair Hous.- Fair Lending Rep. (P- H) ¶19,324 (E.D. Va. 1978) (consent decree)	The 1979 DOJ Report, p. 114 FN 69, says that the Department brought this case under the ECOA and FHA, but doesn't provide any information on the case. Lexis appears to contain no information on it and a Google search did not turn anything up.	[Not listed (E.D. Va. DOJ on 1979) Westlaw]
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United States  
v. The  
American  
Institute of  
Real Estate  
Appraisers, et  
al.

According to 1980 DOJ Report, p. 130  
FN 130, the DOJ completed  
negotiations in this case, producing a  
settlement.

[Not listed 76 C 1448 DOJ  
on (N.D. Ill.,  
Westlaw] Dec. 7,  
1979)

Shurman v.  
Standard Oil  
Co. of  
California

DOJ files amicus brief in equal access  
to credit class action suit.

[Not listed C-77-  
on 0270-SW  
Westlaw] (N.D.  
Calif.  
1978)

[No copy of P's complaint on  
file]

Dunn v.  
Midwestern  
Indemnity Co.,  
Mid-American  
Fire and  
Casualty Co.,  
et al.

88 F.R.D. DOJ participates as amicus curiae in  
191 (S.D. case alleging that the FHA prohibits  
Ohio redlining by insurance companies.  
1980).

[Not listed C-3-78-  
on 105 (S.D.  
Westlaw] Ohio,  
1978)

[No copy of P's complaint on  
file]

Green v.  
Associated  
Financial  
Services Co.  
of New York,  
Inc.

88 F.R.D. Ps challenge the constitutionality of  
191 (S.D. ECOA, alleging that it is impermissively  
Ohio vague.  
1980).

[Not listed 78-195  
on (W.D.N.Y.  
Westlaw] 1978)

United States v. The American Institute of Real Estate Appraisers, et al.	590 F.2d 242 (7th Cir. 1978).	Intervener sought review of an order approving the proposed settlement between plaintiff and defendant institute, contending the proposed settlement violated the First Amendment. Intervener also sought an order compelling defendant institute to submit the settlement agreement to members for review and enjoining defendant institute from entering into the settlement without prior membership approval.	Complaint No. 78-1133	DOJ	[No copy of P's complaint on file]
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United States v. The American Institute of Real Estate Appraisers, et al.	442 F. Supp. 1072 (N.D. Ill. 1977)	DOJ charges four nationwide trade associations of real estate appraisers and lenders with racial discrimination in determining the value of dwellings and evaluating the soundness of home loans. DOJ files suit under Title VIII of the Civil Rights Act of 1968.	Complaint 76-1448 (N.D. Ill.)	DOJ lawyers: Edward Levi (Attorney General); Samuel K. Skinner (US Attorney); Stanley Pottinger (Assistant AG, Civil Rights Division); Frank Schwelb (Chief, Housing Section, Civil Rights Division); Warren Dennis (Attorney, Housing Section, Civil Rights Division); Sara Kaltenborn (Attorney, Housing Section, Civil Rights Division); Sandra Beber (Attorney, Housing Section, Civil Rights Division).	The DOJ sues under the FHA and Title VIII of the Civil Rights Act of 1968. The DOJ alleges that Ds have adopted standards for appraisal and valuation that its members are encouraged to follow. The DOJ charges (§§ 8) that these appraisal criteria are racially discriminatory, as they factor in race and national origin as negative considerations (§§ 10). The DOJ seeks a declaration that Ds' practices violate the FHA. The DOJ also seeks an injunction against Ds or their agents: (a) promulgating rules or procedures that factor race into appraisals, (b) otherwise engage in practices that violate the FHA, or (c) fail to take such steps as may be appropriate to correct the effects of past discrimination.
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National Urban League, et al, v. Office of the Comptroller of the Currency, Department of the Treasury, et al.	[No court opinion; the parties settled]	P organizations filed rulemaking petitions in 1971 with the four federal agencies that regulate banking practices, requesting them to impose regulations to ban racial discrimination in lending. (See 48 Notre Dame L. 1113 (1973) for background). Ps allege that D agencies have failed to take appropriate rulemaking action, in violation of Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1968, the Civil Rights Acts of 1870 and 1866, the Financial Institutions Supervisory Act, Section 2 of the Housing Act of 1949, Section 527 of the National Housing Act, and the Administrative Procedure Act.	Amended 76-0718 Complaint (D.D.C.)	William L Taylor; Roger Kuhn, Center for National Policy Review (Catholic University Law School); Martin E. Sloane, Daniel A. Searing, Jay Mulkeen, and Karen Krueger (National Committee Against Discrimination in Housing); Jack Greenberg, James E. Nabrit III, and Charles Williams (NAACP Legal Defense and Education Fund).	Ps seek: a declaration that D agencies have violated Ps' rights by failing to perform their duties; an injunction against Ds ordering them to perform their duties under the law; an order compelling Ds to promulgate rules that would compel private banks to institute non-discrimination policies; an order that Ds must institute an investigate into discriminatory lending practices, including through the collection of data on the race of loan applicants.
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National  
Urban League  
(cont'd)

Harrison v. Otto G. Heinzerth Mortgage Co., et al.	414 F. Supp. 66 (N.D. Ohio 1976).	P approaches D company about obtaining a loan for a house purchase. D's agent tells P that because the neighborhood where the house is located is transitioning from a white area into a black area, D will only provide a loan if P makes a 50 percent down payment. P calls back several times and D's agent eventually reduces the down payment to 40 percent. P sues under the FHA. The court holds D's agent personally liable as well as D company.	[Not listed on Westlaw]	C74-390 (N.D. Ohio)	[Attorneys' names aren't reproduced in the source in which I learned about this case.]	Based on the court's characterization of P's requested relief, P sought: (1) a permanent injunction against D company from engaging in discriminatory lending practices; (2) a similar permanent injunction against D's agent; (3) and compensatory and punitive damages.
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Laufman v. Oakley Bldg. & Loan Co.	408 F. Supp. 489 (S.D. Ohio 1976).	Ps (white buyers) were denied a loan to purchase a home from Ps (white sellers) based on the racial composition of the neighborhood in which the home was located. They filed an action and alleged their rights under Title VII of the Civil Rights Act (Title VII) 42 U.S.C. § 2000(d) and the Fair Housing Act (Act) 42 U.S.C. §§ 3604 and 3605 and 3607 were violated by the practice of 'redlining.'	Ps' Complaint (reproduced in book); District Court's Opinion.	C--1--74—153 (S.D. Ohio).	Donald F. Colegrove (Beers and Colegrove, Cincinnati, OH); Martin E. Sloane, Jay Mulkeen, and Daniel Searing (National Committee Against Discrimination in Housing, Inc., Washington, DC); Robert F. Laufman (Cincinnati, OH) (of counsel).	Ps seek: (1) declaration that Ds' practice of denying loans or requiring stricter terms of predominantly minority or integrated neighborhoods is illegal; (2) enjoining Ds from refusing to make a loan or requiring different terms because of the races of the prospective owners or the neighborhood; (3) enjoining Ds from engaging in any acts that have the purpose or effect of denying equal housing opportunities because of race; (4) requiring Ds to (a) award P sellers compensatory damages, (b) award P buyers compensatory damages, (c) award all Ps punitive damages, and (d) take reasonable steps to correct past discrimination, including through the implementation of an affirmative action plan to promote equal opportunities in housing.
Laufman v. Oakley Bldg. & Loan Co.		USDOJ files its first amicus brief arguing that redlining by banks violates the FHA.	[Not listed on Westlaw]			

Kupiec v. Republic Federal Savings and Loan Ass'n	373 F. Supp. 1282 (N.D. Ill. 1974).	Plaintiffs, community activists, attempt to obtain membership list of federally chartered savings and loan. The S&L rejects their request, stating that plaintiffs have failed to comply with applicable bylaws. Plaintiffs then bring suit to compel production of the list, but the district court denied relief. (Case is mentioned in 6 U. Chi. L. J. 71 as attempt to gain control of the S&L in response to lending discrimination).	[Not listed on Westlaw]	74 C 378 (N.D. Ill. Oct. 3, 1974).
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Clark v. Universal Builders, Inc.	501 F.2d 324 (7th Cir. 1974).	Plaintiffs brought suit under an exploitation theory of liability, claiming racial discrimination in obtaining housing violates the 13 <sup>th</sup> and 14 <sup>th</sup> amendments and § 1982 of the Civil Rights Act of 1866.	[Not listed 72-1655 on Westlaw]	The court's opinion does not specify what remedy P sought.
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Brown v. Federle Realtors	[no reported opinion]	Suit by Robert Laufman to declare realtor racial steering illegal under the FHA.	Complaint 73-9051 , MSJ (S.D. Ohio Dec. 18, 1973)	Robert Laufman	Settlement agreement, creation of a local Board of Review
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Trafficante v. Metropolitan Life Ins. Co.	409 U.S. 205 (1972)	Declaring at 209-10 that the courts must use "a generous construction" of the FHA to effectuate Congress' aims.	[Not listed on Westlaw]	71--708	
United States v. Northside Realty Assoc., Inc.	324 F. Supp. 287 (N.D. Ga. 1971)				
United States v. Bob Lawrence Realty, Inc.	327 F. Supp. 487 (N.D. Ga. 1971)				
United States v. HFC		Cited in 48 Notre Dame L. 1113, 1139 n. 151, as being a housing discrimination case ending with a "consent decree requiring listing of race on all loan applications."	[Not listed on Westlaw]	72C 515 (N.D. Ill., filed Feb. 29, 1972)	DOJ
Jones v. Alfred H. Mayer Co.	392 U.S. 409 (1968)	Holds that 42 U.S.C. 1982 prohibits private discrimination in the sale or rental of property.	[Not listed on Westlaw]	No. 645	

## Outcome

The district court holds that: (1) plaintiffs stated a claim against holding company based on bank's actions; (2) plaintiffs were entitled to implicitly amend their initial pleading by raising new legal theories in response to defendants' motion to dismiss; (3) consideration of additional information that defendants submitted in conjunction with their motion to dismiss, and that was not included in the complaint, was not warranted; (4) defendants did not violate FHA section which prohibited discrimination on the basis of race in residential real estate-related transactions, to extent that their transactions with plaintiffs did not involve a dwelling and were not secured by residential real estate; (5) loan applicants, but not former bank employee, stated claim against defendants for violation of ECOA section which prohibited a creditor from discriminating against a credit applicant on the basis of race; but (6) bank employee's employment discrimination lawsuit did not toll two-year limitations period for claim alleging an ECOA violation; and (7) loan applicants, but

After the case was removed by Key Bank to the District Court for the Western District of Pennsylvania the Court dismissed all federal claims for lack of standing and remanded the remaining claims to the Court of Common Pleas of Allegheny County. The 3d Circuit affirmed.

Eleventh Circuit affirms district court's grant of summary judgment to D. The court held that P failed to establish a prima facie case of lending discrimination because she did not allege that similarly situated white applicants were treated differently by D.

Undisclosed settlement agreement

The Sixth Circuit affirms the district court's grant of summary judgment to defendants.

The parties jointly submitted a settlement agreement. The court approved the settlement.

The court granted D's motion to dismiss. The court found that TILA had no provisions that govern credit denial or racially discriminatory lending both of which form the crux of plaintiff's claims. Neither the CRA the Ninth Amendment or the Tenth Amendment created a private right of action. Plaintiff had not alleged any facts which would support a claim under the Seventh Amendment. The ECOA claim failed because the race of the loan officers did not support an inference of discriminatory intent nor did she allege that she had a sufficient credit history and/or sufficient collateral and/or a necessary co-signer. P failed to state a claim of discrimination under the FHA.

The court found that plaintiff provided no evidence to suggest that the mortgage company discriminated against African-American borrowers in general on a prohibited basis or that a Caucasian person with creditworthiness similar to her's sought to apply for and received a loan of less than \$ 50 000 at the same time. The court granted Ds' motion as to the FHA and ECOA claims. It declined to exercise supplemental jurisdiction over the state law claim.

The borrower did not prove a prima facie case of credit discrimination due to the absence of sufficient evidence to establish that the banks approved loans for applicants outside of the borrower's protected class with similar loan qualifications. Even if the borrower could prove his prima facie case however the court held that the evidence submitted was insufficient to establish that the banks' non-discriminatory reasons for its loan decision were pretextual.

District Court grants D's motion for summary judgment.

From the DOJ's annual report for 2000:  
"In September 2000, the judge denied defendants' motion for summary judgment recognizing that reverse redlining may violate the Fair Housing Act and Equal Credit Opportunities Act." See:  
<http://www.usdoj.gov/crt/housing/documents/ecoa2000.htm>

The court denied Ds' motion for judgment as a matter of law. The jury returns a verdict for P; the judge awards P attorneys fees. D is required to submit compliance reports.

Under the terms of the settlement, an estimated 250 African-American applicants, whose applications for home improvement loans were evaluated under the flawed underwriting system, shared in a \$3 million fund. In addition, loan applications will be underwritten under uniform and centralized underwriting policies and procedures, all applications initially recommended for rejection will receive a second level of review by senior underwriting officials, decisions to override the result indicated by a credit score can be made only by a small number of bank officials, and there will be frequent reviews and analyses of all underwriting decisions in order to ensure their consistency with fair lending requirements.

District court held that: (1) applicant failed to establish racially discriminatory denial of application; (2) applicant failed to establish race discrimination in appraisal review process; and (3) executive's statement about preliminary approval of application was not deceptive.

The DOJ summarizes its relief in the case as including: fair lending training for loan officers, advertising and marketing to minority communities, "second reviews" of rejected minority applications, and new bank branches in minority neighborhoods. (See: [http://www.usdoj.gov/crt/housing/bll\\_01.htm](http://www.usdoj.gov/crt/housing/bll_01.htm))

Case ends with a consent decree, which requires the lender to abandon its geographic limitations and to make \$55 million in loans at below-market rates to residents of the minority areas that were previously excluded, at an estimated cost to Albank of \$8 million. Albank was also required to fund education and mortgage counseling services for residents of the excluded areas.

The district court grants defendants' motion for summary judgment.

The district court rules that the individual officers lack standing to bring the suit but allows the church's claim to proceed to trial.

Under the settlement agreement, relief includes compensation funds for victims of discrimination by the banks, education programs for both bank employees and borrowers, recruitment of minorities for positions at the bank, and self-testing to monitor compliance with the fair lending laws. (See: [http://www.usdoj.gov/crt/housing/bll\\_01.htm](http://www.usdoj.gov/crt/housing/bll_01.htm) )

The DOJ's 2001 report provides background information on this case but does not state whether or not a settlement was reached. See: [http://www.usdoj.gov/crt/housing/bll\\_01.htm](http://www.usdoj.gov/crt/housing/bll_01.htm) Pacer's docket report states the following: "LETTER dated 5/25/96 from Stephanie Singletary to Judge Korman regarding the settlement details as to the 600 customers that were overcharged. (Jean (Entered: 06/12/1996))."

District court entered judgment for landlord. Court of Appeals reverses, holding that landlord did not present sufficient evidence to establish violation of FHA. The court finds that P failed to identify any discriminatory policy, procedure, or practice on which to base a discriminatory effects claim, and that P failed to adduce sufficient evidence from which a reasonable jury could infer intentional discrimination under a discriminatory treatment theory of liability.

Docket report 1/9/97: "CERTIFIED COPY of order from the 7th Circuit: The parties have settled this matter in accordance with discussions held under Federal Rule of Appellate Procedure 33. Accordingly, the appeal is Dismissed pursuant to Federal Rule of Appellate Procedure 42(b). [62-1] (96-2732) (Attachments) (eav) (Entered: 01/10/1997)." Pacer does not provide a copy of the settlement agreement.

The court held that the homeowner although he was white was asserting his own rights-rights that existed independent of the buyers' rights. The homeowner in a minority neighborhood was asserting his own rights under the Civil Rights Act to sell his property free from discrimination. The court held that plaintiffs in § 1982 suits have standing to assert their own rights even if those rights overlap with the rights of third parties.

The court ruled that the applicant's complaint sufficiently alleged a prima facie case for the federal claims but that the applicant could not pursue the IFLA claim because 815 Ill. Comp. Stat. 120/5 required the applicant to choose between the IFLA and other remedies. The court denied D's motion to dismiss the P's discrimination claims under the Equal Credit Opportunity Act & the Fair Housing Act & and the Thirteenth Amendment. The court granted the D's motion to dismiss the P's discrimination claim under the IFLA for lack of subject matter jurisdiction.

Under the settlement agreement, relief includes compensation funds for victims of discrimination by the banks, education programs for both bank employees and borrowers, recruitment of minorities for positions at the bank, and self-testing to monitor compliance with the fair lending laws. (See: [http://www.usdoj.gov/crt/housing/bl\\_01.htm](http://www.usdoj.gov/crt/housing/bl_01.htm) )

The DOJ summarizes its relief in the case as including: fair lending training for loan officers, advertising and marketing to minority communities, "second reviews" of rejected minority applications, and new bank branches in minority neighborhoods. (See: [http://www.usdoj.gov/crt/housing/bll\\_01.htm](http://www.usdoj.gov/crt/housing/bll_01.htm))

Under a settlement, Long Beach changed its pricing policies, and paid a total of \$3 million to 1,200 borrowers who had paid higher prices. (See: [http://www.usdoj.gov/crt/housing/bl\\_01.htm](http://www.usdoj.gov/crt/housing/bl_01.htm))

The court ruled that plaintiffs had satisfied the requirements for certification and allowed the case to proceed as a class action suit. However, the court rules that the case can only proceed on a claim for injunctive relief.

The DOJ's 2001 report provides background information on this case but does not state whether or not a settlement was reached. See:  
[http://www.usdoj.gov/crt/housing/bll\\_01.htm](http://www.usdoj.gov/crt/housing/bll_01.htm)  
Pacer's docket report states the following: "CONSENT JUDGMENT dismissing case in favor of USA against deft for amt of \$420,000.00 to compensate aggrieved personas as defined and distr by deft pur to Settlement Agreement; Each part to bear its own costs and attys fees (issued on 10/18/95) ( pgs) Judge Donald C. Nugent (K,V) (Entered: 10/20/1995)."

Under the 1994 Consent Decree, Chevy Chase agreed to make \$11 million in loans to the neglected areas through a special program and to open bank branches and mortgage offices in African-American neighborhoods in the District of Columbia and in Prince George's County, Maryland. By 1995, approximately 60% of the loans made by Chevy Chase were secured by properties in African-American neighborhoods.

Under the settlement agreement, relief includes compensation funds for victims of discrimination by the banks, education programs for both bank employees and borrowers, recruitment of minorities for positions at the bank, and self-testing to monitor compliance with the fair lending laws. (See:

[http://www.usdoj.gov/crt/housing/bll\\_01.htm](http://www.usdoj.gov/crt/housing/bll_01.htm) )

The district court dismissed complaint.

The Eighth Circuit held that: (1) district court erroneously measured sufficiency of complaint against evidentiary standard for establishing prima facie case, and (2) complaint stated cause of action.

Reversed.

The DOJ summarizes its relief in the case as including: fair lending training for loan officers, advertising and marketing to minority communities, "second reviews" of rejected minority applications, and new bank branches in minority neighborhoods.

(See:

[http://www.usdoj.gov/crt/housing/bll\\_01.htm](http://www.usdoj.gov/crt/housing/bll_01.htm) )

Under the settlement agreement, the bank also agreed to set up a fund to compensate victims of its discriminatory policies, to establish a special marketing program designed to attract qualified loan applicants from Indian Country, to appoint a compliance officer to ensure that all applicants receive equal consideration in the loan process, to conduct financial seminars on Indian reservations, and to recruit qualified Native American applicants for job openings at the bank.

The district court held that: (1) plaintiffs made out prima facie case under Fair Housing Act and under §§ 1981 and 1982; (2) plaintiffs did not establish case under conspiracy statute; and (3) plaintiffs were not entitled to relief under statute prohibiting discrimination under any program or activity receiving federal funds.

The DOJ summarizes its relief in the case as including: fair lending training for loan officers, advertising and marketing to minority communities, "second reviews" of rejected minority applications, and new bank branches in minority neighborhoods. (See: [http://www.usdoj.gov/crt/housing/bll\\_01.htm](http://www.usdoj.gov/crt/housing/bll_01.htm))

The district court granted lender's motion for involuntary dismissal, and plaintiffs appealed. The Court of Appeals, Coffey, Circuit Judge, held that: (1) documentary evidence failed to support plaintiffs' allegation that lender engaged in "redlining"; (2) lender's comment that an urban renewal area could not "afford" their proposed home reflected lender's legitimate financial concerns; and (3) there was no evidence that the Equal Credit Opportunity Act was violated.

D moved to dismiss Ps' complaint. The district court denied Ds' motion in part. The district court held that to allege a violation of 42 U.S.C. § 1982 the complaining party must demonstrate that D's conduct impaired his or her property interest. The court continued that while there was no mention of a right to obtain an equity loan in 42 U.S.C. § 1982 the supreme court found that the statute guaranteed black citizens the right to use property on an equal basis with white citizens. The court dismissed plaintiffs' ECOA and FHA claims holding that plaintiffs were not applicants under the ECOA and the FHA applied to housing matters.

The court held that proof of actual damages was not a prerequisite to punitive damages. The court granted the lenders' motion for directed verdict on the issue of exemplary damages and set aside the jury's award of 12.5 million dollars because the lenders' conduct did not reach the level of actual or implied malice as required under state law. However, the court granted statutory punitive damages under the Equal Credit Opportunity Act to the borrowers.

Court grants D's motions for a directed verdict.

District court held that: (1) genuine issue of material fact existed as to whether lender's reasons for initially rejecting application were mere pretext for discrimination, in violation of Civil Rights Act; (2) both expert's testimony and statistical evidence on which he relied were admissible on issue of whether lender's underwriting policies had discriminatory effect, in violation of Fair Housing Act; (3) genuine issue of material fact existed as to possible discriminatory effect of lender's policies; but (4) firm which assisted in preparation of loan application could not be held liable under either Civil Rights Act or Fair Housing Act.

P wins money damages, but not attorneys' fees.

Jean Noonan, Federal Trade Commission Enforcement Activities, Practicing Law Institute, June 1, 1989, available on Westlaw at: 500 PLI/Comm 283.: "To settle allegations that this creditor discriminated on the basis of race and national origin by instructing employees not to make too many loans to blacks and Mexican--Americans and by refusing to lend or lending on less favorable terms because applicants were black or Mexican--American, Capitol entered into a consent order enjoining the violative conduct and requiring affirmative marketing practices. (Order negotiated by the Justice Department based on evidence developed by the FTC.)"

District court denies Ds' motion to dismiss. Unclear what happens after that.

The district court denies D's motions to dismiss under the FHA. Unclear what happens after that.

Court denies P's claim, holding that the FHA does not reach claims of redlining by insurance companies. This holding is contrary to that in Laufman and its progeny.

Consent decree entered on Oct. 6, 1983.  
1984 DOJ Report, p. 149, FN 57.

No references to this case in either Westlaw or Google. It is unclear what the terms of the settlement agreement were.

The Second Circuit holds that foreclosed upon party cannot remove the case to federal court because foreclosures do not fall within the ambit of the FHA.

The court held that this did not constitute actual damages but that plaintiff could still be entitled to punitive damages attorney's fees and declaratory relief under the Equal Credit Opportunity Act 15 U.S.C. § 1691e(a)-(d). The court held that an "effects test" rather than proof of actual intent could prove discrimination. The court further held however that plaintiff failed to establish a prima facie case. There was no proof that the ZIP code areas which were assigned low ratings were predominantly non-white areas. In fact the court found that the aggregate population of all low-rated areas was 60 percent white and 40 percent black. (According to the 1979 DOJ Report, p. 114 FN 70, the DOJ filed an amicus brief in this case.)

No reference in Westlaw to "Erlanger & credit union"; it appears that this settlement is not discussed in the secondary source literature. A Google search revealed that Erlanger Hospital Credit Union has since changed its name to Hospital Services Credit Union (<http://www.hscu.net/>), but there is no information on any settlement agreement.

There is no record of this case in Westlaw. Google did not turn anything up either.

The court opinion concerns the scope of plaintiffs' discovery. The court cites Laufman in support of the plaintiffs' right to discover documents that demonstrate the defendant company's general coverage practices.

There is no discussion of this case in Westlaw or Google. It's unclear what the terms of the settlement agreement were.

On motion to dismiss for failure to state a claim on which relief could be granted, the District Court held that: (1) "insurance redlining," a discriminatory failure or refusal to provide property insurance on dwellings, violates provisions of the Fair Housing Act, and (2) complaint that defendant insurer had decided to terminate certain business portfolio based on fact that the portfolio included a significant portion of black homeowners and/or persons residing in predominantly black neighborhoods stated a claim on which relief could be granted under the Fair Housing Act.

There does not appear to be any secondary source literature discussing this case. Westlaw contains several articles referencing the Dallas branch of Acorn, but none of them provide information on this particular case. The closest reference appears to be: Practising Law Institute, Selected Considerations in Bank and Bank Holding Company Acquisitions, February-March, 1993 (available in Westlaw at: 651 PLI/Comm 9) (noting in FN 33 that "Since January 1990, Texas Commerce's subsidiary bank in Dallas also has helped fund a program sponsored by Texas ACORN to establish a mortgage counseling service and has assisted with Texas ACORN's counseling efforts by sending consumer and mortgage lending officers to participate on a volunteer basis in credit fairs sponsored by Texas ACORN.").

Consent decree involving refusal to lend to woman because of marital status.

There appears to be no record of the case in Westlaw or on Google.

It is unclear what exactly happened in this case. The cited opinion is an evidentiary ruling on the admissibility of computer evidence. The decision is cited in six law review articles, but only for its holding on the evidentiary question; the case does not appear to be part of the standard literature on anti-discrimination litigation.

The Seventh Circuit dismissed the intervenor's appeal against the settlement agreement.

The court approves the settlement agreement between the parties, which calls for D to promulgate the most accurate possible appraisal methods without using race as a factor in the valuation process. The DOJ's 1977 report cites the district court's opinion as evidence that the FHA encompasses redlining claims.

The court dismisses Ps' complaint because the parties settlement. The terms of the settlement agreement are as follows. Section 1: D agencies agree to use their best efforts to ensure that private lenders comply with federal anti-discrimination laws. Ps had requested that Ds monitor data on the racial profile of loan applicants and rejections at all banks, but under the settlement agreement Ds agree to select a sample group of banks and savings and loans to monitor in this manner. Ds agree that, if the data obtained from the sample group materially improve Ds' ability to enforce civil rights laws, they will expand data collection nationally. Ds agree to provide Ps with access to the sample group data. Section 2: Ds agree to develop procedures for evaluating the sample group data to determine if violations of law are occurring. Section 3: Ds agree to attempt to develop a use for HMDA data disclosures, but the settlement agreement releases Ds of any responsibility to use this data if Ds cannot figure out a way to make meaningful use of it. (cont'd next row

Section 4: Ds agree to institute non-discrimination training exercises. Section 5: Ds agree to provide training in civil rights issues to its representatives in their twelve regional offices, and to hire a fulltime civil rights specialist. Section 6: Ds agree to promulgate non-discrimination rulemaking procedures within 90 days of the settlement agreement. Section 7: Ds agree to apply the same standards for reviewing complaints about racial discrimination as they do in all other complaints. Section 8: Ds agree to notify all federally insured institutions of their commitment to non-discrimination in lending. Section 9: Ds agree to allow Ps the opportunity to make further suggestions in the future. Section 10: Ds agree to provide specified data disclosures to Ps for at least 36 months after the execution of the settlement agreement. Section 11: Ps surrender all their legal claims against Ds for any racial discrimination violations that occurred between 1968 and 1977. Section 12: Ps will dismiss their suit without prejudice.

The court enters a permanent injunction against D's agent but finds that D company did not have knowledge of the agent's activities and thus there was insufficient evidence on which to base a permanent injunction against the company. Ps win compensatory and punitive damages.

The court denied defendant's motion for summary judgment because plaintiffs stated a cause of action under the Fair Housing Act and Title VII or the Civil Rights Act. 'Redlining' was an activity precluded as a discriminatory practice in connection with the sale of property. Rice, 33 San Diego L. Rev. 583, 669 calls this "perhaps... the earliest reported mortgage redlining case..." From the opinion: "[A] denial of financial assistance in connection with a sale of a home would effectively "make unavailable or deny" a "dwelling." When such denial occurs as a result of racial considerations, § 3604(a) is transgressed." Id. at 493.



The trial court granted a directed verdict for defendants, holding that plaintiffs had only shown that defendants acted in exploitation for profit and failed to show defendants committed traditional racial discrimination by selling the same or similar housing to whites at more favorable terms and prices. On appeal, the court reversed, holding that recovery under § 1982 was not only permitted upon proof of traditional discriminatory conduct but also upon proof that a discriminatory situation was exploited even where that situation was then existing and not created in the first instance by defendants. Plaintiffs sufficiently established a prima facie case under § 1982 to prohibit the granting of directed verdict in favor of defendants. The court reversed the trial court's decision. The court held that plaintiffs established a prima facie case under the Civil Rights Act by showing defendants exploited an already existing discriminatory situation for profit by demanding prices and terms unreasonably excessive compared to those offered to whites for comparable hou

