THE FAIR HOUSING ACT AND EXTRALEGAL TERROR

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> It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own and dispose of property. Equality in the enjoyment of property rights was regarded by the framers of that Amendment as an essential pre-condition to the realization of other basic civil rights and liberties which the Amendment was intended to guarantee.[1]

Quinetta May was in search of a better life.[2] A Black single mother of three, she was determined to leave something to her children. In 2002 she purchased her first home in a white neighborhood in Mobile, Alabama. Just before she moved in, she purchased supplies to spruce up the house for occupancy.[3] Upon arrival, she discovered some neighbors might not have welcomed her coming to the neighborhood. The back door of the house had been kicked in.[4] The intruders had written in bright red letters "KKK" and "Nigga" across two living room walls and the kitchen window. May decided not to move into the house.[5]

Violence of the type experienced by May, considered by many to be a thing of the past, is unfortunately all too common. Even in the current era, minorities moving to, and in some cases living in, white neighborhoods around the country have faced harassment, vandalism, and assaults brought by neighbors who wish them to live elsewhere. I use the term "anti-integrationist violence" to describe two phenomena: 1) extralegal acts of terrorism, or crimes directed at minorities immediately upon moving to white neighborhoods; and 2) crimes targeted at African Americans and other racial and ethnic minorities while residing in majority white neighborhoods that are designed to drive them out. This definition accurately reflects the full range of experiences of those integrating racial and ethnic minorities whose presences are rejected by their white neighbors. If acts of anti-integrationist violence come to the attention of law enforcement, they may be investigated and prosecuted as hate crimes. Such incidents also violate state and federal fair housing legislation. This Article examines the implications the Fair Housing Act ("FHA") has on anti-

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1. Shelley v. Kraemer, 334 U.S. 1, 10 (1948).

2. Rhoda A. Pickett, *To Stay or Go? Mobile-Area Families Grapple with Race-Driven Vandalism*, MOBILE REG., July 22, 2002, at 1A.

3. *Id.*

4. *Id.*

5. *Id.*

integrationist racial violence faced by families like Quinetta May's. Part I of this Article analyzes the problem of anti-integrationist violence in two periods, before and after the passage of the FHA. Part II describes several important mechanisms in how the FHA functions as a remedy for extralegal violence. The Article concludes in Part III with a call for a more targeted approach to the problem of anti-integrationist violence.

I. THE SCOURGE OF ANTI-INTEGRATIONIST VIOLENCE

Violent resistance targeted at racial minorities moving into white neighborhoods originated with minorities' first moves to white neighborhoods and continues in the present day. Anti-integrationist violence directed at minorities in this context can be divided into two eras. The first era spans from the turn-of-the-century until the passage of the FHA, which outlawed discrimination on the basis of race, national origin, color, and religion in the sale, rental, and occupancy of housing.[6] The second era covers the last forty years, the period from 1968 until 2008.

A. Extralegal Anti-Integrationist Violence Before 1968

Extralegal violence long has played a significant role in restricting the housing choices of racial and ethnic minorities in the United States. This may stem, at least in part, from longstanding popular narratives of the control white Americans were endowed with in their residential spaces. Dating back to the days of the frontier, the home has been constructed as a place of sanctuary which sheltered its occupants from the dangers outside of its walls. On the frontier, the shotgun kept home, hearth and possessions safe from intruders. As the nation industrialized and Americans made their homes in more urban settings, they lived in much closer proximity than they had on the frontier. With closer neighbors, city dwellers in urban neighborhoods solidified a series of new social networks. In these new spaces, white Americans' territory became not just one's own individual plot, but also the surrounding neighborhood, occupied by friends, family, and associates.

As the neighborhoods began to be seen as white residents' territory, resistance to minority integration in the period prior to the FHA was fought on two fronts—on the legal front, through creation of restrictive covenants forbidding the sale of property to persons of particular race and through racialized zoning legislation restricting minority housing choices.[7] On the

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6. Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73 (codified as amended at 42 U.S.C. §§ 3601-3619). Though the Act states this, the issue of discrimination in occupancy is contested. *See* Robert G. Schwemm, Cox, Halprin, *and Discriminatory Municipal Services Under the Fair Housing Act*, 41 IND. L. REV. 717 (2008).

7. *See, e.g.*, Buchanan v. Warley, 245 U.S. 60, 70-71 (1917) (challenging an ordinance prohibiting Blacks from occupying particular blocks if the greater number of houses in the block were occupied by whites); Tyler v. Harmon, 104 So. 200, 200-01 (La. 1925), *aff'd*, 107 So. 704 (La. 1926), *rev'd*, 273 U.S. 668 (1927) (involving an ordinance that required written consent from

extralegal front, whites engaged in a campaign of pressure focused on the individual minorities moving in. On this latter front, white residents faced the integration of African Americans, which began in earnest in the 1920s, "as if defending against a foreign enemy, using any means at their disposal to deter the migration."[8] Many of the worst attacks took place in northern cities in the middle of the country—for example, in Detroit, Chicago, and Cleveland.[9] The early days of large-scale African-American migration to white neighborhoods in cities such as Chicago and New York consisted of Black professionals moving out of the cramped neighborhoods in which Black migrants from the south had been confined.[10] Black pioneers moving to white neighborhoods faced a backlash of violent white resistance. Scholars estimated the number of housing related crimes—such as bombings, arson, cross-burnings, and vandalism, "undoubtedly number[ed] in the thousands."[11]

One of the most famous cases of the violence directed at Black professionals who moved to white neighborhoods in the 1920s was a case of Ossian Sweet, a Black physician who moved to a bungalow in a white neighborhood in Detroit. Soon after Sweet and his wife Gladys moved in, stone-throwing white mobs containing hundreds of people surrounded the house.[12] Perhaps in part because it did not have the dramatic ending, Samuel Browne's experience moving to a white neighborhood in Staten Island, New York in 1924 is slightly more representative of the resistance directed at African Americans generally.[13] After Browne purchased a house in the neighborhood, whites threatened to burn down the house if he moved in. One of several threatening letters he received warned: "'If you moved into that house . . . it will be the worst days [*sic*] work that you ever did . . . . You should know better than to move where you are not wanted.' It was signed, 'Yours in the flaming cross, K.K.K.'"[14]

As is typical in many historical and contemporary cases involving neighborhood-based violence, the Ku Klux Klan was not responsible for sending

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majority of majority race inhabitants before member of minority race could establish a home).

8. STEPHEN GRANT MEYER, AS LONG AS THEY DON'T MOVE NEXT DOOR: SEGREGATION AND RACIAL CONFLICT IN AMERICAN NEIGHBORHOODS 6 (2000).

9. *Id.* at 31-39.

10. *Id.* at 13-16.

11. Leonard S. Rubinowitz & Imani Perry, *Crimes Without Punishment: White Neighbors' Resistance to Black Entry*, 92 J. CRIM. L. & CRIMINOLOGY 335, 345 (2002) (reviewing MEYER, *supra* note 8) (documenting individual acts of move-in violence between 1910 and 1959).

12. This particular case was unusual in that Sweet expected trouble, and was armed. Two white men were shot and Sweet was arrested. *See* KEVIN BOYLE, ARC OF JUSTICE 34-43 (2004).

13. MEYER, *supra* note 8, at 34.

14. Browne may have realized that first letter he received was not from the Klan when he received a second threatening letter telling him to get out. The second letter also informed Browne that the current letter "was his first and only warning." *Id.* "We have never written you before, nor have we done anything thus far to harm you[;] a word to the wise is usually sufficient. . . . Are you wise? KKK." *Id.* (alteration in original).

the letter.[15] Notwithstanding the threats, Browne decided to move into the house and found his windows broken in the middle of the night. Browne was lucky to receive police protection, and the violence abated. Compared with other Blacks integrating white neighborhoods in the early twentieth century, Browne was quite fortunate. As Blacks moved out of Chicago's Black Belt between 1917 and 1921, there were fifty-eight housing-related fire bombings.[16]

One important characteristic of the anti-integrationist violence directed at minorities moving to white neighborhoods in the era prior to 1968 was that resistance was often collective. Whites formed groups, some formal and others informal, to resist minority move-ins. Informal groups included mobs, like the group of 100 housewives that "heckl[ed] and picket[ed]" the Clarks, a Black family who tried to occupy an apartment in Cicero, Illinois, in 1951.[17] Groups of more formally organized individuals included block associations like the South Deering Improvement Association and the White Circle League, groups specifically organized to oppose African-American integration of white neighborhoods.[18] These groups picketed and hurled bricks at the Howards, a Black family who moved to an apartment in South Deering, Illinois in 1953.[19]

White neighborhood defense was an all-encompassing job involving confrontations, protesting, picketing, in addition to violent attacks.[20] Participation spanned several generations, with young parents, teenagers, pre-adolescent boys, and elderly people all employed in the task of neighborhood defense. Women were especially involved. One situation occurred on the lower west side of Detroit when the white owner of two houses sold them to Black families in 1948.[21] Groups of ten to twenty-five women, accompanied by their children, appeared in front of the house for a week carrying hand-painted signs proclaiming: "my home is my castle, I will die defending it."[22]

Whites openly communicated that minorities should not make their homes in particular areas. Forsyth County, Georgia, and Coleman County, Alabama, were two southern counties where whites were utterly unambiguous about the fact that Blacks were not welcome.[23] Before the civil rights movement, citizens of both Forsyth County and Coleman County erected signs at the entrance to the county stating, "Nigger, don't let the sun set on your head in Coleman [Forsyth] county."[24]

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15. *Id.*

16. *Id.*

17. *Id.* at 118.

18. *Id.* at 120.

19. *Id.*

20. THOMAS SUGRUE, THE ORIGINS OF THE URBAN CRISIS 249 (1996).

21. *Id.* at 250.

22. *Id.*

23. KLAN WATCH PROJECT, S. POVERTY LAW CTR., "MOVE-IN" VIOLENCE: WHITE RESISTANCE TO NEIGHBORHOOD INTEGRATION IN THE 1980'S, at 13 (1987).

24. *Id.* Though the signs were removed at the beginning of the civil rights movement, the report details that the prejudice remained. *Id.* In 1978, a Black activist traveling through Coleman

Forsyth County, Georgia, and Coleman County, Alabama, were not the only "sundown towns." In his book, *Sundown Towns*, sociologist James W. Loewen documents the existence of thousands of towns, cities, suburbs, and neighborhoods throughout the United States that excluded most African Americans and other minorities after sundown.[25] From 1880 and continuing until 1968, white Americans established thousands of sundown towns, most often by driving out their Black community. Loewen identified 472 sundown towns in the State of Illinois alone.[26] Some jurisdictions passed ordinances preventing Blacks from owning or renting property; others simply used harassment and even murder to police violators. African Americans were not the only minorities barred from living in sundown towns and sundown suburbs. Jews, Mexicans, Chinese, and Native Americans were other groups that found their presence prohibited in such towns.[27]

B. Extralegal Violence Since the Passage of the Fair Housing Act

The passage of the Fair Housing Act in 1968 was the culmination of a massive coordinated legal strategy stretching back to the early 1900s orchestrated by the NAACP to eradicate restrictions on housing for African Americans. A series of targeted cases by the civil rights organization led to a variety of court rulings prohibiting discrimination in housing. These include rulings which prohibited districts from restricting the number of Blacks living in a particular area;[28] rulings which struck down ordinances requiring written consent before minorities could move to an area;[29] and rulings which held unenforceable restrictive covenants mandating that property not be sold to individuals of particular races.[30] These legal changes in white residents' ability to legally restrict minorities' immigration were accompanied by "white flight"—a phenomenon in which whites abandoned neighborhoods after minorities moved in.[31] Eventually many of the whites resisting minority integration fled to the suburbs.[32] In some cases neighborhoods like Garfield Park in Chicago, where whites had fiercely resisted Blacks moving in, underwent significant racial shifts,

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County was kidnapped, beaten, and then released. *Id.* at 13 n.16.

25. JAMES W. LOEWEN, SUNDOWN TOWNS: A HIDDEN DIMENSION OF AMERICAN RACISM 4 (2005). Though these existed all over the United States, according to Loewen such towns were rare in the South. *Id.* Loewen insists that even when African Americans in general were expelled, some servants were allowed to live in sundown towns. *Id.* at 37.

26. *Id.* at 61.

27. *Id.* at 75-76.

28. Buchanan v. Warley, 245 U.S. 60, 82 (1917).

29. Harmon v. Tyler, 273 U.S. 668 (1927) (per curiam).

30. Shelley v. Kraemer, 334 U.S. 1, 20 (1948).

31. Howard Aldrich, *Ecological Succession in Racially Changing Neighborhoods: A Review of the Literature*, 10 URB. AFF. Q. 327, 331-44 (1975).

32. *See, e.g.*, SUGRUE, *supra* note 20, at 266 (describing whites who fled to the suburbs in Detroit and defended them from Blacks who moved there).

as whites left for other neighborhoods and African Americans or Latinos came to dominate the once fiercely maintained turf.

Despite significant white flight, in the period since 1968 a select group of working-class urbanites, especially those abiding in areas identified as ethnic enclaves, remained fiercely attached to their neighborhoods and aggressively patrolled these boundaries, resisting minority incursion. Studies of ethnic neighborhoods in Yonkers, New York,[33] Boston, southern Brooklyn,[34] and Chicago[35] suggest that residents of several ethnic neighborhoods have reacted violently to minorities' attempts to integrate.

Perhaps the most vivid example of resistance to housing integration after the passage of the FHA occurred in Canarsie, a neighborhood in Brooklyn. In the 1970s, middle-class Blacks finally began moving to Canarsie, which previously had been settled predominately by Jews and Italians.[36] Canarsie was considered territory the groups were determined to protect. Some of the whites occupying Canarsie in the 1970s were longtime residents; a substantial number had moved to the area from other parts of New York City that had been integrated by Blacks and Hispanics.[37]

Protecting Canarsie became of paramount importance to its white residents. Block associations were formed to encourage homeowners to sell to whites. Attempts were made to recruit whites to the neighborhood to fill any vacancies and prevent African Americans from moving in. Canarsians also resorted to violence to protect their neighborhood. Houses of minorities who had moved to the neighborhood and also those of whites who had sold to minorities were fire-bombed.[38] After a Puerto Rican family moved to a block near Rockaway Parkway, where many working-class Italians lived, their new neighbors attributed a rash of storefront burglaries that occurred nearby to the newcomers.[39] A band of Italian boys ousted the Puerto Ricans. One of the individuals responsible for ejecting the Puerto Rican family boasted: "They were the filthiest family you'd ever seen, right out of Brownsville. We got them out of Canarsie. We ran right into the house and kicked the shit out of everyone."[40]

Exploring the roots of the resentment and anger toward minority integration

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33. *See* LISA BELKIN, SHOW ME A HERO: A TALE OF MURDER, SUICIDE, RACE, AND REDEMPTION (1999) (describing fierce and violent white opposition to minorities moving into subsidized housing in Yonkers, New York).

34. *See* JONATHAN RIEDER, CANARSIE: THE JEWS AND ITALIANS OF BROOKLYN AGAINST LIBERALISM (1985); Howard Pinderhughes, *The Anatomy of Racially Motivated Violence in New York City: A Case Study of Youth in Southern Brooklyn,* 40 SOC. PROBS. 478 (1993).

35. *See* WILLIAM JULIUS WILSON & RICHARD P. TAUB, THERE GOES THE NEIGHBORHOOD: RACIAL, ETHNIC, AND CLASS TENSIONS IN FOUR CHICAGO NEIGHBORHOODS AND THEIR MEANING FOR AMERICA (2006).

36. RIEDER, *supra* note 34, at 16.

37. *Id.*

38. *Id.* at 200.

39. *Id.* at 201.

40. *Id.*

in neighborhoods like Canarsie a decade later, Howard Pinderhughes, in an attempt to explain the dramatic increase in the number of racially motivated crimes in New York City, interviewed youth in southern Brooklyn about their racial attitudes.[41] The youth studied were drawn from several working-class white communities located in southern Brooklyn, including Gravesend, Bensonhurst, Sheepshead Bay, and Canarsie.[42] According to Pinderhughes, at the time these communities predominantly contained Italian-Americans living in stable, majority white neighborhoods.[43]

The youth interviewed by Pinderhughes were very mistrustful of Blacks[44] and quite concerned about maintaining the ethnic composition of their neighborhoods.[45] Pinderhughes noted that they believed they had the right and obligation to defend their territory against Blacks, in other words, "that it was up to them to 'stop the Blacks.'"[46] If they attacked these outsiders, they would send a message to all Blacks from outside the neighborhood to stay out of the whites' communities.[47]

Other research has shown that incidents involving attacks on minorities who strayed into white territory are not limited to ethnic enclaves. One report by the Southern Poverty Law Center ("SPL"), focusing on the period between 1985 and 1986, identified move-in-violence—violence directed at minority families moving to white neighborhoods—as the most common form of violent racism in the country.[48] According to the report, such violence was not limited to one particular area of the country and was in fact most acute in the North, the Midwest, and the West. The incidents documented in the report involved cross burnings, arson, fire bombings, the yelling of slurs, vandalism, and threatening calls and letters, all focused on driving minorities out of all white or predominantly white neighborhoods.[49]

In the 1990s, crimes committed because of the race of the victim began to be identified as hate crimes. Hate crimes are crimes motivated in whole or in part by the victim's race, ethnicity, color, religion, or sexual orientation. Research suggests that perpetrators' behavior in hate crime cases generally falls into one of three categories: thrill seekers, defensive crimes, and retaliatory crimes.[50] In

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41. Pinderhughes, *supra* note 34, at 478.

42. *Id.* at 480.

43. *Id.* at 482.

44. *Id.* at 483.

45. *Id.* at 484.

46. *Id.* at 485.

47. *Id.*

48. *See* SOUTHERN POVERTY LAW CENTER, "MOVE-IN" VIOLENCE: WHITE RESISTANCE TO NEIGHBORHOOD INTEGRATION IN THE 1980'S (1987).

49. *Id.*

50. *Local Law Enforcement Hate Crimes Prevention Act of 2007: Hearing on H.R. 1592 Before the Subcomm. on Crime, Terrorism and Homeland Security of H. Comm. on the Judiciary*, 110th Cong. (2007) (testimony of Jack McDevitt, Associate Dean, Northeastern University) (citing Jack McDevitt et al., *Hate Crime Offenders: An Expanded Typology*, 58 J. SOC. ISSUES 303 (2002)).

this regard, a further explanation offered by the authors is that perpetrators often commit hate crimes because they are motivated by a desire to defend their turf.[51] "A common example of defensive hate crimes involves harassment suffered by a Black family who moves into an all White neighborhood."[52]

Examination of data on hate crimes in New York City and Boston suggests that race-based hate crimes were strongly linked to the migration of minorities to white neighborhoods. One study of all hate crimes identified by the Boston police over a three-year period in the 1980s identified "[m]oving into a neighborhood" as the third most likely cause of hate crime.[53] A separate study analyzing the location of hate crimes reported to the hate crimes unit within the New York City Police Department between 1987 and 1995 revealed that rates of racially-motivated crime against Asians, Latinos, and Blacks rose when minorities moved into white strongholds.[54] The researchers hypothesized that racially motivated crime stemmed from white residents' battles to control areas they considered to be their territory.[55]

A variety of news accounts suggest that minorities living in or moving to white neighborhoods continue to be attacked. In 2007 alone, from the East Coast (New York and Philadelphia) to the West (California), in the South and Midwest, Black families experienced graffiti, arson, and verbal harassment committed by neighbors upon moving to white neighborhoods. The violence of the past thirty years is eerily similar to situations that are occurring now. For instance, in Philadelphia, Sean Jenkins, a Black construction worker, and his girlfriend made plans to rent a house in a quiet, predominately white neighborhood in December 2007. Immediately prior to their taking occupancy, white vandals broke first floor windows in the house and wrote on a wall, "'All n[igger]s should be hung.'"[56] Later, when Jenkins's girlfriend went to clean the house, a young white man yelled at her, "'Y'all n[igger]s taking over the neighborhood!'"[57] After these events, the couple changed their minds about renting the house.

After the passage of the Fair Housing Act in 1968, many of the mechanisms that had been used to maintain housing segregation became legally prohibited.[58] Despite legal prohibitions on sundown towns for instance, in the 1990s citizens were still attempting to enforce such illegal prohibitions.[59] In addition, extralegal violence remained a common mechanism used by those resisting housing

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51. *Id.*

52. *Id.*

53. JACK LEVIN & JACK MCDEVITT, HATE CRIMES: THE RISING TIDE OF BIGOTRY AND BLOODSHED 246 (1993).

54. Donald P. Green et al., *Defended Neighborhoods, Integration, and Racially Motivated Crime*, 104 AM. J. SOC. 372, 397 (1998).

55. *Id.* at 373.

56. David Gambarcorta et al., *Advice About Racism Proved to Be Prophetic*, PHILA. DAILY NEWS, Dec. 14, 2007, at 6.

57. *Id.*

58. *See* MEYER, *supra* note 8, at 209-11.

59. LOEWEN, *supra* note 25, at 103.

integration. Another important break with the past is that in the post-1968 period, though mobs could and occasionally did gather to protest minority entry to all white or nearly all white residential areas, most of the resistance to integration was individual and nearly invisible—crimes committed in the middle of the night with no witnesses.[60] The next section discusses the FHA as a remedy for such violence.

II. THE FAIR HOUSING ACT AND EXTRALEGAL VIOLENCE

A. Sections 3631 and 3617

The Fair Housing Act, enacted as Title VIII of the Civil Rights Act of 1968, was created to provide fair housing throughout the United States.[61] As a broad remedy, it prohibits a variety of discriminatory housing practices, including extralegal violence.[62] The chapter focused particularly on violence is the "Prevention of Intimidation" subchapter, which contains § 3631.[63] Modeled after 18 U.S.C. § 245, with language that tracks that of 245(b),[64] § 3631 is one of several remedies targeted at crimes like those described in the previous section.[65] Section 3631 provides imprisonment or fine in the following context:

> Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—
> (a) any person because of his race, color, religion, . . . or national origin and because he is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling.[66]

The maximum penalty for violation under § 3631 is life in prison. Section 3631 also allows victims various other remedies under the FHA, including obtaining damages or injunctions for violations of § 3617, a section of the FHA which also

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60. *See, e.g.*, Laura J. Lederer, *The Case of the Cross Burning: An Interview with Russ and Laura Jones*, *in* THE PRICE WE PAY: THE CASE AGAINST RACIST SPEECH, HATE, AND PORNOGRAPHY 27-29 (Laura Lederer & Richard Delgado eds., 1995) (describing cross burning directed at Black family who moved to white neighborhood occurring in the middle of the night without witnesses).

61. *See* Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73 (codified as amended at 42 U.S.C. §§ 3601-3619).

62. 42 U.S.C. §§ 3617, 3631 (2000). For a discussion of the legislative history surrounding the Fair Housing Act, see Leonard S. Rubinowitz & Ismail Alsheik, *A Missing Piece: Fair Housing and the 1964 Civil Rights Act*, 48 HOW. L.J. 841, 843-910 (2005); Schwemm, *supra* note 6, at 757-66; Aric Short, *Post-Acquisition Harassment and the Scope of the Fair Housing Act*, 58 ALA. L. REV. 203, 222-39 (2006).

63. 42 U.S.C. § 3631 (2000).

64. HATE CRIMES LAW 193 (Thomson/West Editorial Staff eds., 2007).

65. 42 U.S.C. § 3631 (2000).

66. *Id.*

prohibits interference, intimidation, or coercion in the exercise of one's federal housing rights.[67]

The Fair Housing Act was passed in the wake of Dr. Martin Luther King, Jr.'s assassination in 1968. At that time, the House had passed a housing bill, with a separate bill being considered in the Senate.[68] Though there is little legislative history for the individual provisions,[69] comments made in the debate around the Senate version of the Act seem to suggest that it was passed with full acknowledgment of the problem of move-in violence.[70] Describing the need for the legislation the Senate Report noted:

> [A] small minority of lawbreakers has resorted to violence in an effort to bar Negroes from exercising their lawful rights. Brutal crimes have been committed not only against Negroes exercising Federal rights but also against whites who have tried to help Negroes seeking to exercise these rights. Acts of racial terrorism have sometimes gone unpunished and have too often deterred the free exercise of constitutional and statutory rights.[71]

The same Senate report also noted the failure of local officials to solve and prosecute crimes of racial violence and their failure to obtain convictions.[72]

B. The Use of the FHA as a Remedy Against Move-in Violence

Though move-in violence may take a variety of forms, ranging from the extremely physically violent to actions involving verbal harassment, many of the cases prosecuted under the FHA involve extremely violent conduct. Section 3631 of the FHA has been used to punish racially-motivated fire bombings and arsons,[73] cross burnings,[74] assaults,[75] and threats.[76]

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67. *Id.* § 3617.

68. For a detailed history of the passage of the Act, see Leonard S. Rubinowitz, *Non-Violent Direct Action and the Legislative Process: The Chicago Freedom Movement and the Federal Fair Housing Act*, 41 IND. L. REV. 663 (2008).

69. *See* Schwemm, *supra* note 6, at 757-58.

70. *See* S. REP. NO. 90-721 (1967), *reprinted in* 1968 U.S.C.C.A.N. 1837, 1839.

71. *Id.*

72. *Id.* at 1839-40.

73. *See, e.g.*, United States v. Craft, 484 F.3d 922, 924 (7th Cir. 2007) (arson); United States v. White, 788 F.2d 390, 392 (6th Cir. 1986) (arson); United States v. Redwine, 715 F.2d 315, 317 (7th Cir. 1983) (firebombing); United States v. Anzalone, 555 F.2d 317, 318 (2d Cir. 1977) (arson); United States v. Nix, 417 F. Supp. 2d 1009, 1009 (N.D. Ill. 2006) (firebombing); Stackhouse v. DeSitter, 566 F. Supp. 856, 858 (N.D. Ill. 1983) (firebombing).

74. *See, e.g.*, United States v. May, 359 F.3d 683, 685 (4th Cir. 2004); United States v. Colvin, 353 F.3d 569, 571 (7th Cir. 2003) (en banc); United States v. Magleby, 241 F.3d 1306, 1308-09 (10th Cir. 2001); United States v. Whitney, 229 F.3d 1296, 1300 (10th Cir. 2000); United States v. Stewart, 65 F.3d 918, 921-22 (11th Cir. 1995); United States v. Montgomery, 23 F.3d 1130, 1131-32 (7th Cir. 1994); United States v. J.H.H., 22 F.3d 821, 823-24 (8th Cir. 1994); United

Many of the FHA cases involve acts of move-in violence directed at minorities who have moved to white neighborhoods. Frequently the intent of the perpetrators in these cases is to drive individuals out of the neighborhood.[77] In a majority of these cases, the defendants' desire for white space was crystal clear.[78] For example, in *United States v. Nichols*, the defendant Nichols, "a long-time resident of a formerly all-white neighborhood in Bessemer City, North Carolina," complained that Hispanics and African Americans had begun integrating his neighborhood.[79] Nichols and his associates made a point of "scream[ing] racial epithets at Hispanics and African-Americans who lived in the neighborhood."[80] One evening in July 1999, the victim, Julio Sanchez, and a friend, were assaulted by the defendants, who had previously yelled epithets at them, while they sat on the friend's front porch.[81] The defendants left only to return later with a pipe and a bat.[82] As they smashed the windows of trucks parked outside the house and the windows of the house, they screamed, "'Go back to Mexico. You done got all our damn jobs.'"[83]

Several of the move-in violence cases reflect the perpetrators' belief that if African Americans move to the neighborhood their own property will be worth less. In *United States v. Vartanian*, for example, the defendant was convicted for having threatened a real estate agent after she facilitated the purchase of a house in a formerly all white neighborhood in Harper Woods, Michigan, by an African-American family.[84] Standing outside the home, the defendant, who owned the property across the street from the seller, ran across the road and began ranting at the agents assembled there.[85] Vartanian insisted "that he would not have invested $10,000 in a swimming pool in his yard had he known African Americans would move in across the street."[86]

States v. Hayward, 6 F.3d 1241, 1243-44 (7th Cir. 1993), *overruled by Colvin*, 353 F.3d 569.

75. *See, e.g.*, United States v. Nichols, 149 F. App'x 149, 150-151 (4th Cir. 2005); United States v. McInnis, 976 F.2d 1226, 1228-29 (9th Cir. 1992); United States v. Wood, 780 F.2d 955, 956-58 (11th Cir. 1986); United States v. Johns, 615 F.2d 672 (5th Cir. 1980).

76. United States v. Vartanian, 245 F.3d 609, 611-12 (6th Cir. 2001) (discussing threats of death and bodily injury directed at African Americans and real estate agents because of attempts to purchase a house in an all white neighborhood); *see also Nichols*, 149 F. App'x at 150-51; Williams v. Derifield, No. 04 C 5633, 2005 U.S. Dist. LEXIS 33367, at *2-3 (N.D. Ill. Dec. 13, 2005).

77. *See, e.g.*, United States v. Hartbarger, 148 F.3d 777, 780 (7th Cir. 1998); *Redwine*, 715 F.2d at 318.

78. *See, e.g.*, *Vartanian*, 245 F.3d at 611-12.

79. *Nichols*, 149 F. App'x at 150-51.

80. *Id.* at 150.

81. *Id.*

82. *Id.*

83. *Id.*

84. United States v. Vartanian, 245 F.3d 609, 611-13 (6th Cir. 2001).

85. *Id.* at 612.

86. *Id.* The defendant also threatened to destroy the agent's car, and find the defendant's

Though the vast majority of the racially motivated cases prosecuted under § 3631 involve situations in which Asians, African Americans, or Latinos are victims, some of the cases involve whites who have been targeted for race-based hate crimes. When whites are targeted in this context, the perpetrators tend to be motivated by anger at the victim's interaction or association with racial and ethnic minorities. The association that most often triggers a violent racial attack is developing a family with a person of color, for instance, as part of an interracial couple.[87] Lesser associations such as friendship may also prompt racial attacks.[88] In one rather unusual case a defendant was convicted under § 3631 for sending letters threatening the white head of an adoption agency who was trying to place African-American and Asian children with white adoptive families.[89]

Remedies protecting housing rights are a crucial part of civil rights law. In fact, housing related violence is the most common form of racial violence prosecuted by the Justice Department.[90] With respect to anti-integrationist violence, behavior directed at racial and ethnic minorities integrating white neighborhoods may be punished under a variety of types of federal and state law.[91] The broad protections against interference under the FHA have been used to prosecute racial violence in a variety of contexts. For instance, §§ 3617 and 3631 of the FHA have been used to prosecute a variety of violent acts, including cross burnings, fire bombings, vandalism, assault, and threats targeted at racial and ethnic minorities and whites in the exercise and enjoyment of their fair

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family and "chop them into little pieces, and bury them in the backyard where nobody would ever find them." *Id.*

87. *See, e.g.*, United States v. May, 359 F.3d 683, 685 (4th Cir. 2004) (examining a case where a cross was burned on the lawn of a white woman who lived with a Black man); United States v. Magleby, 241 F.3d 1306, 1308-09 (10th Cir. 2001) (examining a cross burning at the home of an interracial family); United States v. Sheldon, 107 F.3d 868 (4th Cir. 1997) (unpublished table decision) (affirming the defendant's conviction for burning a cross on the front lawn of an interracial couple's house); United States v. Wood, 780 F.2d 955, 956-59 (11th Cir. 1986) (affirming the defendant's conviction for breaking into interracial couples' homes and assaulting them because of their relationship); United States v. Johns, 615 F.2d 672, 674 (5th Cir. 1980) (finding that the defendant terrorized an interracial couple).

88. United States v. Hayward, 6 F.3d 1241, 1243-44 (7th Cir. 1993), *overruled by* United States v. Colvin, 353 F.3d 569 (7th Cir. 2003) (involving a defendant convicted under § 3631 for burning two crosses on the property of a white family who had entertained Black friends); *Wood*, 780 F.2d at 956-59 (finding that a white woman was beaten for having associated with Blacks).

89. United States v. Gilbert, 884 F.2d 454, 455-56 (9th Cir. 1989).

90. HATE CRIMES LAW, *supra* note 64, at 191.

91. When the facts in the case satisfy the requirement for conspiracy, the Justice Department also prosecutes cross burning and other forms of bias-motivated interference with housing rights under 18 U.S.C. § 241 as a conspiracy to interfere with housing rights. For a detailed description of the various legal remedies targeted at move-in violence, see Jeannine Bell, *Hate Thy Neighbor: Violent Racial Exclusion and the Persistence of Segregation*, 5 OHIO ST. J. CRIM. L. 47, 54-66 (2007).

housing rights.

III. THE FUTURE OF FHA EXTRALEGAL VIOLENCE CASES

The FHA had broadly integrationist aims. A broad reading of the FHA's legislative history suggests the Act was an attempt to pave the way for significant nationwide housing integration. Even the narrowest reading of the FHA suggest that it is, at minimum, aimed at the use of extralegal violence as a barrier to integration. As Part II suggests, recently the Act has been interpreted by courts that limit its use in move-in violence cases. If courts continue to interpret the FHA in this manner, there are important consequences for the racial balance of neighborhoods. For instance, segregation among African Americans, the most segregated racial group in the country, has declined but still remains high, with residential segregation among African Americans in many major cities identified as severe.[92] As so many of the cases brought under the FHA reveal, when minorities move to white neighborhoods and crimes are committed against them, they leave.[93] Thus, forty years after the passage of the FHA, extralegal violence still serves as a barrier to housing integration. This Part attempts to suggest why this remains the case, given the existence of such a remedy.

A. What Really *Counts as Intimidation?*

Section 3617 of Title 42 makes it unlawful for persons to coerce, intimidate, or threaten others in the exercise or enjoyment of their fair housing rights.[94] As detailed above, in the past the FHA has been used to prosecute "typical" acts of move-in violence–violent harassment aimed at minorities and others who moved to and were living in white neighborhoods. Until recently, few cases have defined either: 1) the precise conduct that constituted intimidation[95] or 2) whether the Act could be applied to individuals who have already purchased housing. A series of recent court decisions, address these issues in a manner which raises the concern that the FHA may be interpreted in ways that significantly blunt its ability to address anti-integrationist violence.

Though the decision was subsequently reversed on appeal, the trial court's opinion in *Ohio Civil Rights Commission v. Akron Metropolitan Housing*

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92. Michael Selmi, *Race in the City: The Triumph of Diversity and the Loss of Integration*, 22 J.L. & POL'Y 49, 58 (2006) (asserting that as of the 2000 Census segregation levels for Blacks and Hispanics measured against whites were consistently moderate to severe in America's ten largest cities); *see also* john a. powell, *Reflections on the Past, Looking to the Future: The Fair Housing Act at 40*, 41 IND. L. REV. 605, 608-09 (2008); Margery Austin Turner, *Limits on Housing and Neighborhood Choice: Discrimination and Segregation in U.S. Housing Markets*, 41 IND. L. REV. 797, 799-800 (2008).

93. *See, e.g.*, United States v. Hayward, 6 F.3d 1241(7th Cir. 1993); United States v. Stewart, 806 F.2d 64 (3d Cir. 1986); United States v. Redwine, 715 F.2d 315 (7th Cir. 1983).

94. 42 U.S.C. § 3617 (2000).

95. HATE CRIMES LAW, *supra* note 64, at 203.

Authority[96] serves as a cautionary tale for courts interpretation of the Fair Housing Act as a remedy for move-in violence cases. The case involved Harper, an African American who lived in a housing development operated by the Akron Metropolitan Housing Authority ("AMHA"). Harper had lived in the development for ten years when Beverly Kaisk, a Caucasian woman, moved to an apartment two doors away from Harper.[97] Harper claimed that shortly after the Kaisks moved in, Kaisk and her two children began to harass the Harpers and their African-American visitors, calling them "'niggers'" and "'black bitches.'"[98] Such incidents, according to Harper were not isolated and included physical confrontation and threats of violence. Harper complained to the AMHA, to no avail.

In its defense against the suit, the AMHA contended that it bore no responsibility for the hostile environment.[99] Rather, the hostile environment, if it existed, was created by the Kaisks.[100] The defendants placed heavy reliance on *Lawrence v. Courtyards at Deerwood Ass'n*.[101] In *Lawrence*, African-American homeowners sued their homeowners' association after it refused to get involved when they experienced racially-motivated harassment soon after they moved to the residential development.[102] The homeowners' association claimed that they were unwilling to "become involved in a personal dispute between neighbors."[103] In *Lawrence*, the court granted the association's motion for summary judgment on the interference claim because it indicated the defendants had no duty to stop the neighbors' conduct, and the association did not engage in threatening behavior toward the homeowners.[104]

In *Ohio Civil Rights Commission*, the court granted the defendant's motion for summary judgment.[105] In deciding that the alleged harassment was not sufficiently severe, Judge Stormer noted that courts allowing claims for racial discrimination under the FHA have limited its application to "only the most extreme or violent conduct."[106] The court noted:

> "On one side lie cross-burning, fire-bombing and other similarly overt discriminatory acts designed to intimidate, coerce, or interfere with housing rights. On the other side lie unfortunate skirmishes between

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96. No. CV 04-06-3416, 2005 WL 5957624 (Ohio Ct. Com. Pl. Dec. 22, 2005), *rev'd*, 866 N.E.2d 1127 (Ohio Ct. App. 2006), *appeal allowed by* 825 N.E.2d 912 (Ohio 2007).

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. Lawrence v. Courtyards at Deerwood Ass'n, 318 F. Supp. 2d 1133, 1137 (S.D. Fla. 2004).

103. *Id.*

104. *Id.* at 1143.

105. *Ohio Civil Rights Comm'n*, 2005 WL 5957624.

106. *Id.*

> neighbors, tinged with discriminatory overtones or occasional discriminatory comments. Nothing in the text of the FHA or the case law interpreting it indicates that Congress intended to federalize the latter type of dispute."[107]

The Ohio judge's decision did not demonstrate adequate appreciation for the context and the effect of move-in violence. Acts of neighbor terrorism frequently begin with incidents of harassment that have a low offense level but are terrifying, nevertheless—vandalism or the use of slurs and epithets. Judge Stormer fails to recognize the power that use of slurs may have in the context of the racial integration of neighborhoods. If Judge Stormer's reasoning represents a trend, the ability of the FHA to serve as a remedy in cases of anti-integrationist violence is seriously undermined. If other courts begin requiring cross burning or firebombing in order to secure relief under the FHA, there may be two negative effects. First, it may inadvertently send a message that the perpetrators have carte blanche to racially harass, so long as a cross is not burned or the victim's house is not firebombed. Second, it may encourage victims to stay, as events escalate.

Recent court interpretations of who may exercise rights with respect to the FHA, is similarly troubling. As others have noted,[108] in one recent case, *Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n*, the Seventh Circuit severely limited the reach of who may utilize the Fair Housing Act.[109] *Halprin* was the typical move-in violence case. Rick Halprin, who was Jewish moved to Dearborn Park with his wife. Soon after their arrival, the president of the neighborhood association wrote H-town (short for "Hymie town") on the Halprins' property.[110] As is frequent in cases of move-in violence, other acts of vandalism followed, with damage to landscaping and cutting down holiday lights.[111] All of the Halprins' attempts to find the perpetrator of the harassment directed at them were thwarted by the association.

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107. *Id.* (quoting Walton v. Claybridge Homeowners Ass'n, No. 1:03-CV-69-LJM-WTL, 2004 U.S. Dist. LEXIS 946, *21-22 (S.D. Ind. Jan. 22, 2004)); *see also* Gourlay v. Forest Lake Estates Civic Ass'n, 276 F. Supp. 2d 1222, 1236 (M.D. Fla. 2003) (explaining that the FHA should not become "an all purpose cause of action for neighbors of different races, origins, faiths . . . to bring neighborhood feuds into federal court when the dispute has little or no actual relation to housing discrimination"), *vacated*, No. 8:02CV1955T30TGW, 2003 WL 22149660 (M.D. Fla. Sept. 16, 2003).

108. *See, e.g.*, Rigel C. Oliveri, *Is Acquisition Everything? Protecting the Rights of Occupants Under the Fair Housing Act*, 43 HARV. C.R.-C.L. L. REV. 1 (2008); Schwemm, *supra* note 6, at 727-31; Short, *supra* note 62.

109. Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n, 388 F.3d 327, 330 (7th Cir. 2004); *see also* Reule v. Sherwood Valley I Council of Co-Owners, Inc., No. H-05-3197, 2005 U.S. Dist. LEXIS 25597, at *12 (S.D. Tex. Oct. 19, 2005); *Gourlay*, 276 F. Supp. 2d at 1236. For a discussion of this in *Halprin*, see Schwemm, *supra* note 6, 727-31.

110. *Halprin*, 388 F.3d at 327.

111. *Id.*

Though the harassment the Halprins received was typical of many other successful move-in violence cases brought under the FHA, in affirming the dismissal of their case under § 3604, Judge Posner, maintained the FHA did not apply to the Halprins' situation. He noted that of several sections of the Fair Housing Act (§§ 3603, 3604, 3605, 3606) the only section applicable was § 3604, which focuses on the act of selling or purchasing a home. "The language indicates concern with activities, such as redlining, that prevent people from acquiring property. . . . Our plaintiffs, however, are complaining not about being prevented from acquiring property but about being harassed by other property owners."[112] In other words because the Halprins were harassed after they moved in, rather than before they acquired the property, they were not eligible for relief under the FHA. Making light of the harassment directed at the Halprins, Posner concluded, "we do not think Congress wanted . . . to convert every quarrel among neighbors in which a racial or religious slur is hurled into a federal case."[113]

Taken together, cases like *Halprin*, *Ohio Civil Rights Commission*, and *Lawrence* create a picture of what counts as intimidation that is sharply at odds with the phenomenon of move-in violence that scholars have documented. Move-in violence often involves the use of slurs and property damage, like the Halprins' experience. Second, by definition, such violence is directed at individuals after they have moved to a neighborhood. Often it is moving in that prompts neighbors to react. To not allow relief under the FHA for individuals once they have moved in, may substantially diminish, if not entirely eliminate the FHA as a remedy for victims of anti-integrationist violence.

B. Looking Toward the Future

Admittedly, at this point in time, decisions adopting the same perspective as *Halprin, Lawrence*, and *Ohio Civil Rights Commission* are fairly rare. As I suggest above, if these decisions represent a trend, courts have created a definition of intimidation that excludes the real-life situations of many who integrate white neighborhoods. Even if these decisions do not represent new directions for the courts, the picture is more positive, but not necessarily rosy, because the FHA remains an underutilized remedy.[114] In the extralegal violence context, this may be especially true. Though it is impossible to say precisely how many individuals are intimidated while exercising their housing rights, it seems clear that there are many more incidents appropriate for charges than there are charges filed. For instance, the FBI identified 4000 racially motivated hate

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112. *Id.* at 329.

113. *Id.* at 330.

114. *See, e.g.*, John O. Calmore, *Spatial Equality and the* Kerner Commission Report*: A Back-to-the-Future Essay*, 71 N.C. L. REV. 1487, 1514-15 (1993); Florence Wagman Roisman, *Long Overdue: Desegregation Litigation and the Next Steps to End Discrimination and Segregation in the Public Housing and Section 8 Existing Housing Programs*, 4 CITYSCAPE: J. POL'Y DEV. & RES. 171 (1999).

crimes in 2006.[115] Hate crime experts suggest that large percentages of such crimes occur in and around the victims' homes.[116]

One of the reasons for this may be that in cases of move-in or other types of anti-integrationist violence, criminal charges may be seen as the most obvious and, for prosecutors, the easiest, types of remedies. If families do not know that they have civil rights relief available to them, they may not press for legal relief. More importantly, cases of anti-integrationist violence are physically threatening and have a great effect on the families at whom they are directed. In the wake of incidents, families may often move away or, if they have not yet moved in, nullify their purchase or rental of the living space in the neighborhood where the incident occurred. In a new house, and a different neighborhood, individuals may feel disinclined to revisit the crime by pursuing civil rights actions.

Actions like the defacing of Quinetta May's home are so threatening because they self-consciously invoke a well-known history of violence directed at minorities who "stepped out of line." In the Reconstruction South, for instance, minorities who transgressed social boundaries were lynched. Though it has been decades since Blacks were lynched, moving to white neighborhoods may feel to some minorities as if they are crossing some sort of invisible color barrier. Contemporary incidents, even if there are proportionally few of them, reinforce the notion that minorities who move to white neighborhoods are breaking some sort of color barrier. If an incident happens, it becomes hard not to see it as a message that the minority family does not belong. It is not surprising, therefore, that many minorities victimized by move-in violence leave the neighborhood.

There may, however, be a way to prevent minorities from leaving in the wake of move-in violence. If the incident does not represent the feelings of others in the neighborhood, neighbors can and should communicate this to the family. If a city has a specialized police unit to investigate hate crimes, such incidents should be investigated, even if as vandalism they would not normally garner much attention. In other words, in sharp contrast to the perpetrator's intended message, everything should be done to demonstrate to the family that they moved to a place where they do belong.

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115. *See* U.S. Dep't of Justice, Fed. Bureau of Investigation, 2006 Hate Crime Statistics, Incidents, Offenses, Victims, and Known Offenders by Bias Motivation (Nov. 2007), http://www.fbi.gov/ucr/hc2006/table1.html.

116. *See generally* LEVIN & MCDEVITT, *supra* note 53.