

Fair Housing Legislation: Not an Easy Row To Hoe

Hon. Charles McC. Mathias, Jr.
U.S. Senate, retired

Marion Morris
Inside the Beltway Consultants

Changing attitudes and behavior is never easy. Ensuring that all Americans have equal access to housing and equal justice has challenged Federal legislators, policymakers, and advocates for decades. But it is, and was, the right thing to do.

In the early 1960s, one had simply to look around U.S. towns and cities to see the racial segregation that resulted from longstanding discriminatory practices, which, in turn, led to disparities in the funding and quality of neighborhood schools between Black and White neighborhoods. These separate and unequal schools led to costly remedies, such as busing, that have remained in place even to this day in some school districts. Housing segregation contributed to the disconnect between workers and jobs. Many workers were confined to inner-city neighborhoods, while jobs increasingly became located in suburban areas, requiring inordinately long and costly commutes. The United States was paying a steep price for the cost of racial segregation.

The groundswell for equal access to public facilities by Black Americans had been building since Rosa Parks sat in the Whites-only section of a Montgomery, Alabama, bus in the summer of 1955 and refused to move. There followed a successful bus boycott led by the Reverend Dr. Martin Luther King, Jr. Individual initiatives by Black leaders to integrate lunch counters, movie houses, and buses followed in a number of cities. Voting rights for Blacks was a critical component. Congress responded with enactment of the Voting Rights Act of 1964. Implementation of this Act involved organizers going to Southern towns to educate and assist Black Americans in registering to vote. Then came the Freedom Rides of 1966. These involved mass demonstrations, chiefly by Northern Whites and Blacks, who rode buses to Southern cities in an effort to test the open accommodations law. Undergirding all of these demonstrations for equal justice was the philosophy of nonviolence, preached by King.¹

1966: The First Attempt at Fair Housing Legislation

President Lyndon Johnson proposed the first fair housing legislation to the Democratic-controlled Congress in 1966.² The House of Representatives passed the amended bill, but filibuster killed it in the Senate.

In 1966 I was a Republican member of the Judiciary Committee of the House of Representatives when it reported and shepherded through the House what was to become the Civil Rights Act of 1968.³ Representative Emmanuel Celler (D-NY), Chairman of the Judiciary Committee and also Chairman of its Subcommittee No. 5, had introduced the legislation on January 17, 1966. The bill was referred to Subcommittee No. 5, which had jurisdiction over civil rights matters.

The bill made it out of the subcommittee, as part of a larger bill to protect civil rights workers, who were being intimidated, beaten, and even killed as they attempted to organize and register Blacks to vote throughout the South. Celler knew his subcommittee would probably become deadlocked over the fair housing title, so he convinced the subcommittee to report the larger bill, including Title IV, the fair housing title, as introduced, without recommendation.

Title IV universally banned discrimination in the sale and rental of housing. This sweeping measure immediately drew the fire of real estate sales agents and their trade organization, then known as the National Association of Real Estate Brokers (NAREB).⁴ They wrote and called Congress, arguing that “a man’s home is his castle,” saying homeowners have the right to sell or rent to whomever they choose. Senate Minority Leader Everett Dirksen (R-IL) led the opposition to the administration’s fair housing proposal on the other side of Capitol Hill. Leading support for the measure was Clarence Mitchell, the lobbyist for both the National Association for the Advancement of Colored Peoples (NAACP) and the Leadership Conference on Civil Rights, an umbrella group representing 105 national civil rights, labor, and church groups.

It became apparent that compromise was needed if the bill was not to sink the entire larger civil rights workers protection bill. The Johnson administration recognized this fact, and on May 5, 1966, in testimony before the House Subcommittee, Attorney General Nicholas de B. Katzenbach said as much. Dirksen and the Attorney General met that day to discuss the bill but denied making a deal.

The issue, it seemed to me, was how to distinguish the large-scale commercial activities involved in selling or renting homes and apartments from the property transactions of the individual homeowner or small landlord. One day, while waiting for a traffic light, the thought came to me that there was a way out of this impasse. What if we exempt those individuals who do not use a broker or real estate sales agent—the typical “Mrs. Murphy”—from the bill? When I arrived at my House office, I called Representative Bill McCulloch (R-OH), the ranking Republican on the Judiciary Committee and tried my idea on him. Bill thought it might work, and he said, “Let’s take it to Manny Celler and see what he thinks.” So we did.

On Friday, June 24, Celler, McCulloch, and I had the Attorney General in to discuss my proposal. We concluded that exempting sales of owner-occupied homes and rentals of small owner-occupied duplexes and triplexes would be needed to save the fair housing title as well as the larger bill.

By Monday, June 27, I had honed my proposal into draft legislative form for the others to review. It exempted owner-occupied buildings of up to four dwellings. I shared it with my Judiciary Committee colleagues, the Attorney General, and Clarence Mitchell of the Leadership Conference.

That same afternoon, the Leadership Conference met and recognized that some compromise was necessary. They agreed to lobby for an exemption. Mitchell shared his views with the Attorney General, saying he thought real estate agents and brokers should be

prohibited from discriminating, but that individual homeowners could be exempted. The Attorney General rejected that proposal and also declined to push for the exemption that I had proposed, fearing the Administration's support would threaten the bill's chances.

That evening I began phoning key Republican leaders and friends to try my idea out on them. I was concerned that the Republican Party would be blamed for killing the fair housing title. I felt I had a workable compromise that other Republicans could support. I talked to New York Governor Nelson Rockefeller, Pennsylvania Governor Bill Scranton, Michigan Governor (and later HUD Secretary) George Romney, and New York City Mayor John Lindsay. All encouraged me in my efforts. I also consulted with the offices of then-Senate candidates Charles Percy (R-IL), and Robert Taft, Jr. (R-OH).

The full Judiciary Committee began debating and amending Title IV during a markup on June 28, 1966. I offered my amendment, but it was defeated. A motion to delete the entire fair housing title was then offered and narrowly defeated by a 15–17 vote, with 3 Republicans, including myself, voting with the majority to retain the title. Finally, Representative Bob Kastenmeier (D-WI) moved to report the bill. His motion was defeated overwhelmingly. With that, Chairman Peter Rodino (D-NY) adjourned the markup.

The next morning, the Committee met to try again to reach a compromise. During the interim, I had again massaged my amendment, having listened to my colleagues' arguments and consulted with the Leadership Conference, NAREB, and the Attorney General. It was adopted on a bipartisan vote of 21–13.

The Judiciary Committee reported the bill the next day, June 29, to the full House. We began debate on the House floor on the legislation on July 25, working our way through the 77 amendments that were proposed to the bill. Some were accepted as technical changes, while others were debated and voted on.

Among those was a floor amendment I offered to permit real estate brokers to follow the written instructions of a homeowner, even if discriminatory. The broker, however, could not have solicited the instructions. That amendment passed by 237–176, splitting both parties. Some members of the Leadership Conference had opposed my amendment, saying the bill had been weakened enough. Despite my efforts to compromise, NAREB continued to oppose the fair housing title of the bill, and its members deluged Capitol Hill with letters to that effect.

I worried that I had alienated some of my friends in the civil rights community with my amendment and still not won the endorsement of the fair housing title by its major real estate opponents. With my revision now included in Title IV, another test vote was held August 3 to try to delete the entire title. The Leadership Conference was split on whether to endorse the revised title and did not take a formal position on it. My amendment survived the test vote in a squeaker of a vote: 180–179. After that vote, the Conference said it would support the fair housing title, as amended, in an effort to get a bill.

Final passage in the House occurred on August 9 by a bipartisan vote of 259–157. The vote for the bill included 183 Democrats and 76 Republicans.

The bill then went to the Senate, where Republican Minority Leader Dirksen had publicly opposed the fair housing title, thereby signaling to his fellow Republican Senators that it was okay to vote against it. The Chairman of the Senate Judiciary Committee, James Eastland (D-MS), was opposed to any civil rights bill and was sure to hold up the bill in Committee. So Senate Majority Leader Mike Mansfield (D-MT) had the House-passed bill "held at the desk" of the full Senate, thereby avoiding referral to committee.

Other Senators filibustered Senator Phillip Hart's (D-MI) motion to proceed to debate the underlying civil rights bill for 2 weeks. Finally, on September 19, when a second cloture motion to shut off the filibuster failed,⁵ the Majority Leader gave up and turned to other pending legislation. Thus ended the effort to consider civil rights legislation in the 89th Congress.⁶

Fair housing supporters had not given up, but they were extremely wary of mounting a new effort. They continued to fear that fair housing legislation, as part of a larger civil rights package, might sink the entire bill.

1967: The House Punts

And so the 90th Congress convened in 1967. On August 16, 1967, the House of Representatives took up and passed, 326–93, a trimmed down civil rights bill. It protected civil rights workers from violence and intimidation but omitted a fair housing title. Passage by the House greased the bill for its ultimate adoption in the second session⁷ by the Senate. We sponsors knew, at the time, that it was the best we could get.

The bill, HR 2516, was sent to the Senate, where it was referred to the Judiciary Committee, which reported an amended version of it to the full Senate on November 2, 1967. That amended version, which also lacked a fair housing title, languished on the Senate calendar until the following year and the second session of the 90th Congress.

In the meantime, seeking to get around the recalcitrant Senate Judiciary Committee, the Senate Banking Subcommittee on Housing held hearings on a fair housing bill. The Subcommittee was chaired by Senator John Sparkman (D-AL).

Senator Walter Mondale (D-MN) had introduced the fair housing bill earlier in the year. It called for a staged application and implementation of fair housing, first to all federally assisted housing; second, to all private multifamily housing; and finally, to all private single-family home sales and rentals. It vested administrative enforcement authority in HUD for individual cases, including cease and desist power, and left the larger pattern or practice cases to the U.S. Department of Justice (DOJ) for prosecution in Federal court.

During the summer of 1967, there had been civil disturbances in more than 100 of our Nation's cities. These traumatic events galvanized the Nation's attention and commanded nightly news coverage for all the country to see. Congress was under increasing pressure to do something about the growing rage of Black Americans over the inequities in so many parts of American life that left them out or segregated them.

1968: The Senate Acts

When the second session of the 90th Congress, which began in fall of 1967, Senate Majority Leader Mansfield called up the bill to protect civil rights workers that had been passed by the House the previous November. Senator Mondale asked Senator Edward M. Brooke (R-MA) to join him in offering the fair housing bill as an amendment to the civil rights bill.

Senate debate began slowly that January and dragged on for more than 2 weeks on one amendment by Senator Sam Ervin (D-NC) that would have emasculated the bill. Senate Minority Leader Dirksen, who had participated in a filibuster against a similar bill just 2 months earlier, began negotiating with Ervin and DOJ to reach a compromise.

Finally, the Senate voted down the Ervin amendment by 54–29. Senators Mondale and Brooke made their move right after the successful tabling motion. Vice President Hubert

Humphrey, recognizing the importance of timing, had entered the chamber and assumed the chair of the Presiding Officer of the Senate.⁸ He recognized his Minnesota colleague, Mondale, to offer his fair housing amendment.

By then, Mondale had negotiated with the real estate industry and interested Senators and added the so-called *Mrs. Murphy boardinghouse exemption*. This was essentially the same exemption that I had proposed to the 1966 House bill. It exempted individual home-owners with four or fewer units from the fair housing law, provided they did not use a real estate agent to sell or rent their property. Senator Mondale had also rounded up cosponsorship for his amendment by 14 of the Senate Banking Committee members.

A filibuster began and continued for 10 days. A vote was taken on February 20, but supporters were short of the two-thirds votes needed to shut off debate. The next day, on a test vote, the Senate refused to kill the fair housing amendment by 58–34.

Minority Leader Dirksen began negotiations with the sponsors, proposing a change in enforcement, rather than in coverage. The sponsors had expected Dirksen to seek to exempt all single-family housing from coverage. Instead, he proposed reducing HUD's enforcement powers to conciliation only, dropping the cease and desist powers in the bill.

On March 1, 1968, a Presidential National Commission on Civil Disorders, chaired by former Illinois Governor Otto Kerner, reported to the President and the public that the United States was “moving toward two societies: one black, one white—separate and unequal.” The Kerner Commission recommended a Federal open housing law covering the sale or rental of all homes, including single-family ones.⁹

On March 4, 1968, the Senate, after three failed attempts to shut off the filibuster, finally invoked cloture on the civil rights workers protection bill, thereby clearing it for 100 hours of debate on the 83 amendments proposed to it. The Senate slogged through those proposals during the next 5 days of session, agreeing to some technical ones and adopting others on roll call votes. Finally, on March 11, the bill passed 71–20,¹⁰ with the Dirksen fair housing compromise in it.

What made Dirksen change his mind? The Minority Leader's remarks on the Senate floor provided some insight into his thinking. He had three main reasons: the growing racial unrest in U.S. cities and disparities in incomes between Whites and Blacks; the injustice of housing discrimination likely to confront returning Black Vietnam War veterans; and the glacial pace with which States and localities were adopting their own open occupancy laws.

HR2516 was returned to the House of Representatives for its concurrence with the Senate amendments. The most important addition by the Senate, of course, had been the fair housing title. Debate in the House is controlled by the House Rules Committee, which decides the subjects, time limits, and amendments that will be in order to any bill to be debated by the full House. The Rules Committee received the Senate-passed bill on March 14 and at first deferred action on it until April 9. With pressure building for action, however, the committee moved up the date and on March 28 began hearings that dragged on through the next week.

On the night of April 4, Dr. Martin Luther King, Jr. was struck down by an assassin's bullet in Memphis. Another series of civil disturbances followed, including one in Washington, D.C., that required the President to call out the National Guard and impose a night-time curfew. The crisis in race relations in our country forced Congress to come to grips with these tensions.

The Rules Committee, jolted by the repeated civil disturbances virtually outside its door, finally ended its hearings on April 8. The next day, it reported to the full House a rule for debate that agreed to the Senate amendments, including the compromise fair housing title, and prohibited any additional amendments.

The following day, April 10, the House debated for one hour the Civil Rights Act of 1968 and passed it 250–71. The very next day, President Johnson signed the bill into law.¹¹

The increasingly tense racial atmosphere in the country had been building for years, capped by the civil disturbances during the summers of 1967 and 1968. There was concern among some members of Congress and those in the civil rights community that race riots and the Black Power movement would further stiffen resistance to civil rights legislation by a majority in Congress. Indeed, some Senators and Representatives publicly stated they would not be intimidated or rushed into legislating because of the disturbances.

Nevertheless, the news coverage of the riots and the underlying disparities in income, jobs, housing, and education, between White and Black Americans helped educate citizens and Congress about the stark reality of an enormous social problem. Members of Congress knew they had to act to redress these imbalances in American life to fulfill the dream¹² that King had so eloquently preached.

Its good and proper intent notwithstanding, Title VIII of the Civil Rights Act of 1968, the Fair Housing Act, was a product of compromise. The Fair Housing title was drafted hurriedly behind closed doors off the Senate floor and did not have the luxury of hearings, markups, and careful debate on which the Senate, the greatest deliberative body in the world, prides itself. Rather, there were quick consultations with Clarence Mitchell of the Leadership Conference on Civil Rights, Roy Wilkins of the NAACP, Joe Rauh of Americans for Democratic Action, HUD Secretary Robert Weaver, Arthur Fleming of the U.S. Commission on Civil Rights, Attorney General Katzenbach, and Vice President Humphrey.

There were no committee reports to guide future courts and litigants. What little legislative history accompanied the bill were the remarks on the Senate floor of the key sponsors. So documentation of congressional intent, which helps guide the courts in interpreting the law, was lacking.

The sponsors knew what their intent was and stated it in the *Congressional Record*: The Fair Housing Act was to provide not only greater housing choice but also to promote racial integration for the benefit of all Americans. A unanimous Supreme Court, deciding its first Title VIII case in 1972,¹³ upheld the law, finding the language of the Act to be “broad and inclusive” in carrying out a national policy “that Congress considered to be of the highest priority.”

Adding Teeth to Enforcement: The Fair Housing Act of 1988

The 1968 Act put the Nation on notice that housing discrimination would not be tolerated. Over time, however, it became clear that in practice the law lacked teeth and was not delivering on its promise. The average citizen who was told there were no vacancies when some existed was steered to certain neighborhoods, was offered only higher interest rates, or was forced to pay extra “security” deposits had little recourse if the discriminator refused to sit down and talk about it with a HUD conciliator. The real teeth needed were cease and desist powers for HUD to temporarily hold a unit off the market while

conciliation was attempted between the two parties. Civil penalties were another missing enforcement stick. With these to back up the conciliation process, fair housing practitioners believed the process would become much more effective.

On average, homebuyers or renters are in the housing market for a very brief period of time. They find the unit they want, negotiate with the seller or landlord over price, rent, and amenities, secure a mortgage, and sign the contract. Because they are usually between homes, they do not have the luxury of time to pursue a court case if they feel they have been given a raw or no deal by any of the actors in the home sales or rental chain. Going to court is intimidating, time-consuming, and costly for all parties. The parties needed a fair, fast, and inexpensive forum to settle their disputes.

The average, noncontroversial bill takes about 5 to 6 years from introduction to enactment into law. In the case of more controversial measures, however, the gestation period can be much longer. This was the case with the Fair Housing Amendments Act of 1988, which began as a modest bill in 1977 but did not become law until 1988—11 years later.

By 1977 I was in my second term as U.S. Senator representing Maryland. HUD Secretary Patricia Roberts Harris asked me to introduce a bill to put “teeth” into the Fair Housing Act of 1968. I gladly agreed. Joining me in cosponsoring that first Senate Fair Housing Amendments bill¹⁴ was Senator John Glenn (D-OH). The Senate Subcommittee on the Constitution, chaired by Senator Birch Bayh (D-IN), held a hearing on it the next year, taking testimony from 21 witnesses. The bill never made it out of the Judiciary Committee, which was chaired at the time by Senator James Eastland (D-MS).

In the 96th Congress, I again introduced the fair housing bill¹⁵ on behalf of 13 bipartisan cosponsors. Senator Edward M. Kennedy (D-MA), Chairman of the Judiciary Committee, had joined me as the principal Democratic cosponsor. Representatives Don Edwards (D-CA) and Hamilton Fish (R-NY) introduced a companion bill in the House with 46 cosponsors. Edwards chaired and Fish was the ranking Republican on the House Judiciary Subcommittee on the Constitution.

The revised bill we introduced provided that administrative law judges within HUD would hear and decide individual cases of discrimination. Their decision could be appealed to a Federal court of appeals. It also relied on State and local human rights commissions in States with laws “substantially equivalent” to the Federal fair housing law to hear and decide individual discrimination complaints arising within their State.

Following 6 days of Senate hearings and 8 days of House hearings in 1980, we had a full understanding of needed refinements. Two days of subcommittee markup and 4 days of full Judiciary Committee markup followed the House hearings. A rewritten bill, HR5200, was reported to the House favorably on April 1, 1980. HR5200 was debated and amended on the House floor for 2 days, June 11 and 12. It was passed by a vote of 310–95.

Meanwhile the Senate Judiciary Committee reported¹⁶ a marked-up version of the bill to the Senate on August 26, 1980. Senator Kennedy chaired the Committee and was also the principal cosponsor of the legislation.

The reported bill was not called up in the Senate until the lame-duck session of the 96th Congress in December 1980. At that time, opposition to this legislation engaged in 9 days of filibuster and procedural delay. Several Senators who were opposed to the bill filed more than 100 amendments in anticipation of a lengthy floor fight. Faced with this prospect, and persuaded by the commitments of incoming Majority Leader Howard Baker (R-TN) to move a bill in the new Congress,¹⁷ the bill was taken down.

In the 97th Congress, once again I introduced the bill with most of the features reported by the Senate Judiciary Committee. The political landscape had changed, however, and interest in pursuing the bill had waned on three important fronts: the new Reagan administration, the civil rights community, and the Democratic-controlled House.

The Reagan administration wanted all Federal court suits, including both individual and class actions, to be handled by DOJ, citing fears that administrative law judges, who are employed by the agency that brings complaints before them, might not be impartial. This ignored the fact that 22 Federal agencies used these judges to decide minor disputes.

The Leadership Conference on Civil Rights had grown into a coalition of more than 180 national organizations representing minorities, women, disabled persons, labor, religious organizations, and older Americans. It was consumed with fighting to extend the Voting Rights Act, enact the Equal Rights Amendment, continue funding for the Legal Services Corporation, and oppose Administration attempts to fire members of the U.S. Commission on Civil Rights. The groups felt that no bill was better than a weak one, which was all they thought they could get from Congress at that time.

My House colleagues, who had worked mightily to get a bill through the House in 1980, were unwilling to go through that ordeal again without assurances that the Senate was prepared to act also. The Democratic-led House wanted the Republican-led Senate to go first with a fair housing bill to ensure passage by both houses.

During 1981, I attempted to engage HUD Secretary Samuel Pierce in commenting on my bill and enlisting the support of Attorney General Edwin Meese and the President. It was not forthcoming.

On Monday, September 28, 1981, Senator Orrin Hatch (R-UT), Chairman of the Senate Judiciary Subcommittee on the Constitution, introduced S1670, the Equal Access to Housing Act. This bill further clouded the issue by proposing a radically different approach to enforcement. The bill required the courts to use an "intent test" to determine whether fair housing violations had occurred. This was a much more difficult standard to prove. It required U.S. magistrates to hear individual discrimination cases. DOJ, rather than HUD, was to attempt to conciliate between the parties and go to court on behalf of complainants. So there continued to be major philosophical differences on the best way to ensure that homeseekers with a complaint had their day in court.

On May 3, 1983, I again introduced S1220 on behalf of 38 bipartisan cosponsors in the 98th Congress. Working closely with the broadly based constituency for this legislation, we fine-tuned a few minor details and added one major new feature: families with children as a class protected by the fair housing law. Based on four HUD-commissioned studies, the sponsors of the fair housing bill believed the evidence was there to support the inclusion of this new protected class.

Justice delayed is justice denied. As we worked over the years to hone the bill into manageable shape and convince our colleagues to vote for it, we relied heavily on the foot soldiers of the civil rights movement. Notable among them were Althea Gibson, lobbyist for the NAACP; Benjamin Hooks, president, and Ralph Neas, director of the Leadership Conference on Civil Rights; Jane O'Grady of the AFL-CIO; Wade Henderson, lobbyist for the American Civil Liberties Union; Martin Sloane, executive director of the National Committee Against Discrimination in Housing; Elaine Jones, representing the NAACP Legal Defense Fund; Kerry Scanlon of the Washington Lawyers Committee for Civil

Rights Under Law; David Brody of the Jewish Anti-Defamation League; Bob McAlpine, Washington director of the National Urban League; and Arthur Fletcher, former chairman of the U.S. Commission on Civil Rights.

Our fair housing bill sought to ensure that individuals had their complaints redressed in a reasonable period of time. For large cases, where a pattern or practice of discrimination was alleged, HUD was to investigate the complaint, and, if it were found credible, refer it to DOJ for prosecution.

From 1978 to 1986, I continued to introduce the Fair Housing Amendments Act in the Senate and push for hearings and a markup. The Senate Subcommittee on the Constitution held at least three major hearings on those bills during the course of those 9 years. Those hearings explored a number of concerns raised by the real estate appraisal, insurance, homebuilding, and sales industries. They included issues of local zoning for group homes for the mentally and physically disabled; property insurance as a State rather than Federal regulatory regime; the legitimacy of factors that could be considered by property appraisers in determining the value of a home; and definitions of *disabled* to include those recovering from addiction to alcohol and controlled substances. Another question raised during the hearings was who pays for retrofitting current housing to accommodate the special needs of the disabled. Some of those debates continue even today.

Although I had retired from the Senate the year before the Fair Housing Amendments Act was finally enacted, I was grateful to my Senate colleagues, Ted Kennedy and Arlen Specter (R-PA) for taking up the yoke and pulling the bill through the Senate in 1988.¹⁸ They had the able help of Senators Joseph Biden (D-DE), and Paul Simon (D-IL). The sponsors were able to get the Leadership Conference on Civil Rights and the National Association of Realtors to agree to a compromise that led to both groups endorsing the bill. The compromise, announced at a June 21, 1988, press conference, permitted the aggrieved person to choose his hearing forum: either an administrative law judge or Federal district court. The compromise satisfied the real estate industry that any defendant would have a right to a trial by jury.

The House passed the bill¹⁹ on June 29, 1988, led by Representatives Edwards and Fish.²⁰ The Senate approved the bill by a vote of 94–3 on August 2, 1988. President Reagan signed it into law on September 13, 1988.²¹

With its enactment, the fair housing conciliation process took on new meaning for people. HUD certified State and local human rights commissions with “substantially equivalent” fair housing laws to carry out conciliations between homeseekers and rental companies. The backlog of several thousand cases pending at HUD was whittled down. Cases were decided and restitution, where warranted, made.

Changes in Housing Discrimination Since 1968

The nature of housing discrimination has changed in the 30 years since enactment of the original Fair Housing Act. No longer do people have doors slammed in their faces or rental agents blatantly telling them, “We do not rent to your kind.” Discrimination has become more subtle—a fine art, some would say. The terms and conditions of the mortgage one applies for may be a point or two higher, with a greater downpayment requirement than if one were White. The security deposit on a rental may be for 2 months, where everyone else’s is for 1 month. Available apartments may only be at the back of the building with a view of the parking lot, rather than the front view of the nature preserve.

How the Fair Housing Act Has Helped Change Housing Patterns

I believe the Fair Housing Act has moved us forward as a Nation of diverse people and cultures. First, the Federal Government led the way by prohibiting racial discrimination in the sale of homes insured by the Federal Housing Administration and Department of Veterans Affairs as well as in the rental of HUD and other federally assisted housing. Private rental property owners participating in such Federal programs as Section 8 rental assistance knew the rules of nondiscrimination in renting their apartments and homes to low- and moderate-income families and seniors. In some cases, those private rental owners also owned market-rate housing. They learned from their experience under the Federal program that open housing is good business.

Simply knowing that the Fair Housing Act is there and has its enforcers, through State and local human rights commissions and testers, is a strong deterrent to those property owners and companies that might be tempted to do the wrong thing. Increasingly, the adverse publicity that surrounds the settlement of housing discrimination cases and the amount of restitution is having an impact on the housing market. Landlords and home sales companies know that discrimination will not be tolerated, that business may suffer, and that their reputation in the community may be tarnished because of a discriminatory act. In numerous ways, subtle peer pressure and enlightened business practices by others in the housing industry work against the few errant individuals who have yet to see the light.

Future Steps

As one court noted in a fair housing case, “Fear cannot be enjoined.” But examples of successful integrated living can have a vast impact on the American peoples’ mindset.

There will always be room for improvement in enforcement. The biggest challenge, I believe, is to ensure that all Americans know their rights and responsibilities under the law. Publicity about the HUD conciliation process and the procedure for administrative law judges should be an ongoing effort, reminding people that simple, easy, inexpensive redress is there for the asking.

Most real estate sales agents, and others in the real estate chain, I am convinced, are well-intentioned businesspersons. They frequently are members of our own community and are just out trying to earn a living like everyone else. For the most part, they want to do right. They may need an occasional refresher course on what the fair housing law says and what practices are outside the law. The stereotypes they hold may need an occasional reality check. This is an area that HUD, State, and local human rights commissions, and advocacy groups can pursue through seminars, fairs, and other informal means of reaching out.

The 1988 Act succeeded in large part because it was a bipartisan congressional effort and because the civil rights and real estate communities cooperated to reach common ground. As Benjamin Hooks said of that historic coming together of views, “The lions have laid down with the lambs.”

Authors

U.S. Senator Charles McC. Mathias, Jr., a Maryland Republican, served in the U.S. House of Representatives for six terms and in the U.S. Senate for two terms. He developed a key compromise during House debate on the proposed 1966 civil rights bill that led to its enactment. During his Senate career, he was the principal sponsor of the 1988 Fair

Housing Amendments Act. He retired from the Senate in 1987. He is president and chairman of the Board of First American Bankshares, Inc.

Marion Morris handled the fair housing legislation when she was a legislative assistant to Senator Mathias from 1975 to 1986. She is the principal of Inside the Beltway Consultants, a congressional monitoring and publishing company.

Notes

1. For an understanding of the civil rights movement and King's leadership of it, see Branch, 1988 and Garrow, 1986.
2. For a more detailed description of the legislative history of the Civil Rights Act of 1968, see Dubofsky (1968).
3. For a detailed legislative history, see "Congress and the Nation, Vol. II", *Civil Rights: 1966 Chronology*. Also see "Statutory History of the United States, Civil Rights Part II," *The Civil Rights Act of 1968*.
4. NAREB was the forerunner of today's National Association of Realtors, a 700,000-member organization. Today, the association represents Black real estate brokers, who supported and worked closely with me on the subsequent Fair Housing Amendments Act during the 1980s.
5. Roll call vote of 52–41, 10 votes short of the two-thirds needed to shut off debate.
6. All legislation not enacted within the 2-year first and second session of each Congress dies.
7. Bills not acted upon in the first session of a Congress continue into the second session at the particular stage of the legislative process where they left off.
8. The Vice President is the President of the Senate. He appoints a senior Senator to serve as the "President Pro Tem" or temporary presiding officer. Only on rare occasions, when a close vote is expected, does the Vice President assume the chair and serve as President of the Senate. He may also cast a vote to break a tie.
9. Report of the National Advisory Commission on Civil Disorders (1968), Chapter 5.
10. Yeas: Aiken, Allott, Anderson, Baker, Bartlett, Bayh, Boggs, Brewster, Brooke, Burdick, Cannon, Carlson, Case, Church, Clark, Cooper, Cotton, Dirksen, Dodd, Dominick, Fong, Gore, Griffin, Gruening, Harris, Hart, Hartke, Hatfield, Inouye, Jackson, Javits, Jordan, Kennedy of MA, Kennedy of NY, Kuchel, Lausche, Long of MO, Magnuson, Mansfield, McGee, McGovern, McIntyre, Metcalf, Miller, Mondale, Monroney, Montoya, Morse, Morton, Moss, Muskie, Nelson, Pearson, Pell, Percy, Prouty, Proxmire, Randolph, Ribicoff, Scott, Smith, Symington, Tydings, Yarborough, and Young of OH.
11. P.L. 90–284 §§801–19, 82 Stat. 73 §§81–89 (codified as amended at 42 U.S.C. §§3601–19 (1976).
12. Delivered by King on the steps of the Lincoln Memorial in Washington, on August 28, 1963, as part of the March on Washington by civil rights supporters: "I have a dream that one day this nation will rise up and live out the true meaning of its creed:

‘We hold these truths to be self-evident: that all men are created equal.’ I have a dream that one day on the red hills of Georgia the sons of former slaves and the sons of former slave owners will be able to sit down together at a table of brotherhood.... I have a dream that my four children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.”

13. *Trafficante v. Metropolitan Life Insurance Co.* 409 U.S. 205 (1972).
14. S571, A bill to amend Title VIII of the Act, commonly called the Civil Rights Act of 1968 with respect to the awarding of attorney’s fees and the authority of the U.S. Department of Housing and Urban Development to initiate a civil action to enforce the provisions of such title.
15. S506, The Fair Housing Amendments Act of 1980.
16. Senate Report 99-919; 96th Congress, 2nd Session *Fair Housing Amendments Act of 1980: Report Together with Minority and Additional Views of the Committee on the Judiciary of the United States Senate on S506 as amended.*
17. The Senate majority had turned over from Democrat to Republican in the 1980 election along with the election of President Ronald Reagan. Senator Orrin Hatch replaced Senator Bayh as Chairman of the Judiciary Subcommittee on the Constitution. Senator Strom Thurmond (R-SC) replaced Senator Kennedy as Chairman of the parent Judiciary Committee.
18. The Senate had turned over from Republican to Democratic control in the 1986 election. Senator Joseph Biden chaired the Judiciary Committee, replacing Senator Thurmond. Senator Paul Simon succeeded Senator Hatch as Chairman of the Subcommittee on the Constitution. Senator Specter became the ranking Republican on the subcommittee.
19. HR1158.
20. House Report 100-711.
21. P.L. 100-430.

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