

Managing the Invisible Hand of the California Housing Market, 1942–1967

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Abstract

Chronicled here is the history of governmental interventions in the California housing market from 1942 to 1967, a period that encompassed rent controls during the Second World War, postwar urban redevelopment, and the activities of the civil rights movement. Constitutional issues associated with wartime emergency powers pitted the advocates of states' rights against nationalist reformers. The Emergency Price Control Act forbade constitutional reviews by state courts, federal district, and federal circuit courts. In turn, the appellate courts and the California Supreme Court held that local and state courts were required to hear litigation pertaining to actions under federal rent control.

As wartime federal housing was returned to local control, state policy fostered race-based checkerboard segregation in public housing, as evidenced in what transpired in Richmond, California, where there were “staggered” mailings of acceptance notices to black and white applicants. Other aspects of state law, action in the form of protection for intellectual property rights, reinforced a “checkerboard”

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system of discrimination in the real estate industry and, as a result, bolstered the segregated makeup of the neighborhoods of California.

By the 1960s, two camps came to define the politics of housing in California. The fair housing coalition was nearly synonymous with the fair employment wing of the civil rights movement. In its opposition to rent control and fair housing, the real estate lobby drew close to the emerging conservative element in the Republican politics associated with Governor Ronald Reagan.

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Table of Abbreviations

BSCP	Brotherhood of Sleeping Car Porters
CHA	California Housing Authority
CHPA	California Housing and Planning Association
CORE	Congress of Racial Equality
CREA	California Real Estate Association
EPCA	Emergency Price Control Act
FEPC	Fair Employment Practices Commission
MOWM	March on Washington Movement
NAACP	National Association for Advancement of Colored People
NAREB	National Association of Real Estate Boards (In 1974, the original NAREB organization adopted the title, "National Association of Realtors," and the NAREB title is now used by an association of realists, the National Association of Real Estate Brokers. This later association had been formed by African-American real estate brokers in the 1940s.)
NHA	National Housing Agency
OHE	Office of Housing Expediter
OPA	Office of Price Administration
USHA	United States Housing Authority

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I. Introduction and Overview

Real estate is as much about the law as it is about location. Operating under as well as outside the law, citizen groups and governmental units have long shaped the distribution and redistribution of private property, as well as the private acquisition of public property. Thus in Pike Creek, Wisconsin, in 1836 (in an incident made famous by the historian Willard Hurst in his study of legal culture and the “release of energy” in antebellum America), a coven of squatters plotted to illegally expel outside bidders and to limit the bidding on their frontier claims.² In another antebellum exodus, after President Andrew Jackson undermined the judicial refutation of the Indian Removal Acts, a forced march of Cherokees carved out the Trail of Tears from Georgia to the lands west of the Mississippi, allowing white Georgians to swoop into the recently vacated farms and communities.³ As the births of township, city, and suburb have reconstructed the American landscape throughout our history, the real estate market has not always been the idealized open market of John and Jane Doe bidders offering dollars for property. Instead, the legally defined statuses of the parties to a real estate bargain have consistently shaped the terms of the contract.

More often than not, where Americans have lived and how much they have paid for their homes have been significantly determined by who they were, whom they knew, the place of their origin, the appearance of their face, and the sound of their tongue. Often, these housing stipulations have been government sanctioned or even government mandated. Such was the case in California during and after the Second World War, when the imperatives of defense and civil rights campaigns compelled the federal government to intervene in local housing markets. This period in California’s history, and the role of the law in housing policy implementation from 1942 to 1967, is the subject of this article.

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² James Willard Hurst, *Law and the Conditions of Freedom in the Nineteenth-Century United States* (Madison: University of Wisconsin Press, 1956). A problem that ran through nineteenth-century American land disposal history involved extralegal actions by settlers, especially those moving out ahead of the federal surveys onto land that would come up for auction after they had occupied their tracts for varying periods of time, and on which they often had made farms and established their families. Collusion at land auctions was often the result, with coercion used by the settlers against any outsider who might come in and bid against them. To avoid such incidents, and in recognition of what was seen as the equities of the situation, Congress enacted a series of “preemption” acts that gave such settlers limited rights to the land they had settled without having to bid at auction. Much of this complex history may be found in the classic work by Paul Wallace Gates, *History of Public Land Law Development*, written for the Public Land Law Review Commission (Washington: Government Printing Office, 1968).

³ Lawrence M. Friedman, *A History of American Law* (New York: Simon & Schuster, 1985); and Melvin I. Urofsky, *A March of Liberty: A Constitutional History of the United States* (New York: Oxford University Press, 2002).

Prior to the Second World War, federal housing initiatives and expenditures had been less important than the state's policies with regard to housing in the state of California; and the state's interventions were both low key and largely at second remove.⁴ The state government—although it had enacted alien property laws⁵ and had promoted campaigns to curb, Americanize, and shelter immigrant farm workers⁶—had maintained on the whole a principled aversion to any kind of monolithic state housing agency, instead preferring to devolve power to local governments in this area of policy. For example, in 1920, the California Immigration and Housing Bulletin noted that enforcement of three important state housing acts “[was] directly in the hands of local officials of the various cities and counties. . . . [The state commission would] enforce the law directly only in case of failure, neglect or refusal of those officials to perform their duties.”⁷ Direct involvement by the state in local housing markets had been held in reserve, in effect—a measure to be used as a last resort, as, for example, to deal with flash points of discord between the labor, agricultural, and industrial segments of the California economy.⁸

However, as war became imminent and the United States geared up its manufacturing sector and military, to accept its role as “the arsenal of democracy” in a dangerous world, concern for the national economy eclipsed the tradition of deference to state and local government. Ultimately, the silent hand of free market forces was pushed aside when Congress passed, and President Roosevelt signed, the Emergency Price Control Act (EPCA) of 1942. To cap inflationary pressures in regions critical to the defense effort, Congress included rent control provisions in the EPCA. Overnight, it may have seemed, an amalgam of federal agencies, state courts, and local rent control boards took command of war-critical segments of the California rental market. Business plans of landlords were not the only casualties. Prerogatives of the state courts, in California as elsewhere in the nation, were suspended or, in some cases, permanently dismantled.

Even after the war had ended in 1945, the federal hand did not pull away. Inflationary pressures remained strong, and Congress authorized the continuance of federal intervention in local markets. Rent rates of existing units remained fixed, construction costs and sale prices of new units were capped, and building supplies were rationed.⁹ The stakes were high. As was well remembered by policymakers and the public, 27 years earlier the end of World War I had ushered in an era of economic turmoil: boom and bust, and the eventual crisis of the economy during the Great Depression of the 1930s. In the 1940s, the anticipated postwar bust was

⁴ *Report on State of Housing in California, Appendix, 1963*; see also California Commission on Housing and Immigration, *Second Annual Report of Housing and Immigration Commission*. 1916, pp. 152, 176, 180, 183, 186, and 191.

⁵ See *The People of the State of California v. Jukichi Harada, et al.* (1918), available online at http://www.cr.nps.gov/history/online_books/5views/5views4h34.htm.

⁶ “‘Teeth’ Put in Jap Alien Land Law,” in *Watsonville Register-Pajaronian*, 8 June 1943, p. 1.

⁷ *California Immigration and Housing Bulletin*, vol. 1, no. 2, November 1920.

⁸ *Report on State of Housing in California, Appendix, 1963*, p. 11.

⁹ *Housing Act of 1949*, 42 USCS § 1441.

expected to be worse. Returning veterans and the refocused war workers would need time and training to adjust to the jobs of peacetime industries, and supplies of raw materials and finished goods would be limited while defense industries retooled to manufacture civilian products. A study by the Berkeley Field Office of the National Resources Planning Council forecast a potential series of postwar economic tremors and collapses: “The transition from all-out war production to full-scale peacetime activities may be the most critical period in the history of the United States, excepting only that of the war itself.”¹⁰

A polarity of housing interests confronted this potential for postwar calamity. Progressive New Dealers advocated for “judicious relaxation” of long-term government intervention,¹¹ while the real estate industry fought to quickly terminate government intervention in the postwar housing market.¹² In their debates and quarrels,¹³ these players shaped a series of compromise policies: the wartime extensions and modifications of the 1942 Emergency Price Control Act; the Veterans’ Emergency Housing Act of 1946; and the Housing and Rent Acts of 1947 and 1949.

Governmental units and the citizenry of California did not quietly succumb to the federal incursions into their economy. Even before the war, Berkeley’s mayor, Fitch Robertson appointed the Berkeley Postwar Committee, “a committee of six prominent citizens to propose a form of organization for a representative planning group.”¹⁴ At the same time, in nearby Santa Clara, a similar effort by the planning committee sought “to complete basic plans and establish broad controls, so that in the postwar period attention can be given to more detailed planning and to administering zoning, highway, and other ordinances.”¹⁵ As they saw fit, the people of California interpreted, obeyed, manipulated, circumvented, or ignored the federal regulations. In turn, the agents of federal regulation would adjust their policies and tactics.

Even when shaped by federal intervention, the California landscape was often color coded: Skin color figured large in the market conditions confronted by the African-American community in the years following the Second World War. Although great numbers of black workers had migrated to California to work in the

¹⁰ California Housing and Planning Association, *Agenda for Western Housing & Planning*, September 1941, 1(4) (hereafter cited as *Agenda for Western Housing & Planning*). See Harry N. Scheiber, Harold Vatter, and Harold Faulkner, *American Economic History* (New York: Harper & Row, 1976); pp. 318–34.

¹¹ *Ibid.*, see also California Housing and Planning Association, *Planning for Postwar Housing*, September 1941 (hereafter cited as *Planning for Postwar Housing*).

¹² Lee E. Cooper, “Isotope Research May Aid Housing,” *New York Times*, 15 November 1952, p. 29.

¹³ “Special Message to the Congress Upon Signing the Housing and Rent Act,” 30 June 1947, in *The Public Papers of President Truman, 1947*.

¹⁴ *Agenda for Western Housing & Planning*, September 1941.

¹⁵ *Ibid.*

war plants,¹⁶ African-American residents of California regularly faced discrimination in trying to share in postwar prosperity. They were segregated in housing projects, excluded from suburbs, and shunned from the mainstream of the real estate industry. Theirs was a shadow market. Not resigning themselves to the lower status assigned to them by white society, by business, and by government, Californian African Americans began to shape the law by pressuring the government to force open the housing market. As will be shown in the pages that follow here, their objective was to legislatively mandate and administratively protect equal access to housing.

The fair housing advocates would argue that the legislature should create and empower an administrative juggernaut that would weed out and eliminate discrimination in the housing market—down to the level of individual agreements between tenant and landlord. They knew that they were following precedent: during and after the Second World War, to effectively prosecute the war without losing the peacetime, the government had intervened in local housing markets. Furthermore, they knew that prior government intervention had explicitly favored a specific class of individuals: war veterans had received preferred access to rented accommodations and credit for the purchase of owner-occupied accommodations. Minority advocates of fair housing sought to harness this tradition of government intervention during the postwar era in their fight against the wasteful and improvident market conditions created by discrimination.

By the 1960s, the fair housing conflict of California would evolve into a collision of legislative action, racial backlash, and judicial ruling: the Rumford Act on the floors of the state capitol,¹⁷ Proposition 14 at the ballot box,¹⁸ *Mulkey v. Reitman* before the Supreme Court of California,¹⁹ and *Reitman v. Mulkey* before the Supreme Court of the United States.²⁰ These events explicitly shaped a gubernatorial election in California, and arguably set in motion a sea change in political allegiances and presidential elections.

The effects of fair housing jurisprudence on the legal landscape were not so easily pigeonholed. Some fair housing advocates contended that antidiscrimination campaigns were merely enabling civil rights already guaranteed by the Constitution and its amendments. In the words of State Assemblyman Hawkins of Los Angeles, the second African-American state legislator in the history of California, “the Supreme Court’s declaration . . . that segregation is inherently unequal

¹⁶ Marilyn S. Johnson, *The Second Gold Rush: Oakland and the East Bay in World War II* (Berkeley: University of California Press, 1993).

¹⁷ *The Rumford Housing Act* of 1963 (also known as the California Fair Housing Law), California Health & Safety Code § 35700 (hereafter referred to as The Rumford Act).

¹⁸ Proposition 14, Amendment, Art. 1, §26 of the California State Constitution, 1964 (hereafter referred to as Proposition 14).

¹⁹ *Mulkey v. Reitman*, 64 Cal 2d 529; 413 P.2d 825; 50 Cal. Rptr. 881; 1966 Cal. LEXIS 340 (1966).

²⁰ *Reitman et al. v. Mulkey*, 387 US 369 (1967).

[served to undermine] the entire system of segregation in America.”²¹ In contrast, the conservative columnist Arthur Krock of *The New York Times* labeled “fair housing” as a euphemism that went against fundamental principles of liberalism,²² and he vehemently charged that, by reviewing the California Supreme Court’s constitutional repudiation of Proposition 14, the United States Supreme Court in the *Mulkey* case was moving closer to establishing the preeminence of the federal judiciary over the legislature and over voter actions of the separate states.²³

Thus, between 1942 and 1967, federal intervention into the California housing market raised but did not fully resolve significant economic, political, and constitutional issues. Arguments about expansive courts and the intent of the legislature still pepper the twenty-first century with a frequency and vehemence that rivals the housing debates of the 1940s, 1950s, and 1960s. In light of this enduring legacy, this study revisits some pivotal moments when federal actions first came to dominate the California landscape.

II. The Federal Hand in Local Markets

Federal intervention in local housing markets in postwar America was a two-way street: when federal law became local law, local disputes became federal disputes. Washington, D.C., might have seemed distant from California’s urban centers and other local communities; but the federal government became an intimate presence in people’s individual neighborhoods. On a house-to-house basis, federal rent controls meant that a federal agency could variously be considered as an ally, as an adversary, or as an arbitrator with absolute say-so.

A. Small Claims with Large Repercussions

It was in this expanded context of neighborhood that, in 1948 in Richmond, California, Elsie Brickner squabbled with her landlord, Manuel Amaral.²⁴ They lived down the street from each other—Brickner at 5918 Alameda Avenue and Amaral at 5825 Alameda Street—and their block was subject to federal rent con-

²¹ Governmental Efficiency and Economy Committee, *Records of Hearings of Governmental Efficiency and Economy*, 1961, Legislature-Assembly-Interim Committees, 1959–1961, 1961–1963, Interim Committee Papers, LP 43: 10–24, 26–39, LP44: 1–14, California State Archives, Sacramento, Calif. (hereafter cited as *Records of Hearings of Governmental Efficiency and Economy*).

²² Arthur Krock, “In The Nation; The Sanctity of Private Property,” *New York Times*, 22 October 1964, p. 34.

²³ Arthur Krock, “An Expansionist Court,” *New York Times*, 7 December 1966, p. 42.

²⁴ *Brickner Report*, Records of Office of Housing Expediter, Records of the Regional Rent Investigative Office, Region VIII, San Francisco, 1943–53 (E187: Boxes 1–4), Federal Archives, San Bruno, Calif. (hereafter referred to as Brickner Report).

trol. It mattered what the federal government thought of Brickner and Amaral. It mattered what the federal government wanted from them, too.

In the spring of 1948, while Brickner was at work in Oakland, the landlord “tore up” her fruit trees and he “tore down” her garage and henhouse—eight chickens straying away never to be found, and the remaining chickens left “running around the yard, not knowing where to go.”²⁵ In the eyes of the law, by reducing the garage to a pile of lumber and nails, Amaral had reduced the maximum legal rental rate that he could charge Brickner, from \$25.00 monthly for a house with a garage to \$22.50 monthly for a house without a garage. The rates were mandated by the federal government in Washington and specifically formulated by the local pricing administrator in northern California. This rent violation was Brickner’s golden opportunity, and on December 21, 1948, Brickner declared that she was taking Amaral to small claims court. Brickner’s legal claim was an order by the federal government that compelled Amaral to pay the accumulated overcharge of \$20. Brickner had already received a \$20 check from Amaral for the owed monies, but it had arrived late and she was not going to cash it. The stakes had gone beyond location, accommodation, and price. The real property quarrel had become personal, involving what property theorists denote as personhood. Pride and dander crept into play. She wrote:

I refuse to except [sic] the check from my Landlord M. Amaral of 5825 Alameda Ave., Richmond, Calif., because he did not pay the refund with-in 30 days as stated by the O.P.A. —I asked him to pay when the 30 days were up and he ignored me—I waited another 3 weeks, and still I didn’t hear from him, so I am now suing him in small claims court for \$5,000. He then now sent me a check for \$2,000 dated Nov. 26, but this check was mailed to me the 15th of Dec. 1948 instead (three weeks’ past due).

Mrs. Elsie Brickner
5918 Alameda Ave.
Richmond, Calif.²⁶

The “O.P.A.” cited by Brickner was the U.S. Office of Price Administration, the agency responsible for wartime rent controls. In 1947, postwar rent control on the home front—including Alameda Avenue in Richmond—had been transferred to the Office of Housing Expediter. But the name OPA had conjured such powerful images of an omnipotent agency during the war that it stuck in Brickner’s mind in 1948. For tenant and landlord alike, rent control by another other name was still the OPA.

Actually, as stated on the forms and letterheads of the correspondence stored in the National Archives, Brickner and Amaral were dealing with Robert H. Thorp and John H. Blake, the successive area rent directors of the Richmond-Vallejo Defense Rental Area, Office of Housing Expediter. In more contemporary jargon, Thorp and Blake might be called the federal caseworkers for the stone’s throw rent

²⁵ *Ibid.*

²⁶ *Ibid.*

dispute between Brickner and Amaral. They shepherded the petitions of both parties and announced the decisions of the federal government. In their files, carbon-copied handwritten complaints and typewritten reports offered a telling portrait of the intricate ways in which the federal legal system intervened in local rental markets.

The history of the dispute began during the war years. In 1944, Brickner and her son moved into a house that needed repairs and upgrading: “the toilet needed repair and also [the] water heater leaked.”²⁷ She bought “Kem-Tone” and painted the living room, laid new linoleum in the kitchen, installed a kitchen range, and hung shades in the bedroom windows. Returning home from work one day in the spring of 1948, Brickner found her garage reduced to a lumber pile: “All this was done without giving me any notice.”²⁸ The vignettes grew more caustic as the rent dispute progressed. When one of Amaral’s other tenants parked an old trailer in front of Brickner’s house, “the Richmond police made him move it,” Brickner stated. “This made the landlord very angry and he came to my house, using profane language and asking me to move out.”²⁹ The federal rent controllers recorded Brickner’s plight—her clothesline regularly being torn asunder and her yard trampled on by construction workers—and catalogued her plea: “I’ve always paid my rent in time [sic] and have never destroyed anything, having kept things up as best I could.”³⁰ This saga cost Amaral in small claims court: on January 12, 1949, the court ordered Amaral to pay Brickner \$50, and to pay court costs as well.

Unable to drive Brickner off Alameda Avenue by harassment, and now collecting an even smaller monthly rent from Brickner, Amaral’s hands were tied by the federal government. Amaral could not legally evict Brickner without the prior approval of the rent control officers, primarily since Richmond, the scene of this local drama, was located in a region critical to the war mobilization and to the postwar recovery. The site of shipyards, refineries, and military bases, its economic stability was important to providing housing for the defense workers. Whether or not Brickner was a defense worker, if she paid inflated rents, then the resultant inflationary pressures would hamper her defense worker neighbors. In requiring that Amaral report all changes in accommodations, and in determining that Brickner’s rent must be reduced, the actions of the Housing Expediter—née OPA—were aimed at capping these pressures. As stated in the Emergency Price Control Act (EPCA) of 1942, federal rent control sought “to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation.”³¹

Looking beyond Amaral’s browbeating tactics, the records do not portray Amaral as a war profiteer, a speculator sapping the strength of the war effort or

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Emergency Price Control Act of 1942*, 50 USCA (hereafter cited as *EPCA of 1942*).

destabilizing the resultant peacetime. In his own eyes, Amaral simply was a man with a good size lot, at the front of which sat a five-room house with economic potential. Next to the house was Brickner's garage, "built prior 1907—a shed or shelter which was dangerous so I had to tear it down."³² Responding to the January small claims court award to Brickner, Amaral finalized his business scheme for the future of 5918 Alameda Avenue. In February 1949, Amaral acted through his attorney, W. D. Stark of Richmond and San Francisco. He submitted two competing construction plans to the area rent director: the first plan involved upgrading the single rental unit that Brickner occupied; the second plan involved more dramatic structural alterations to the structure, creating two separate rental units.

Amaral's attorney wanted to know how the federal government would rule on each of the competing plans. After assessing the plans, the rent director ruled that so long as the existing structure remained in its five-room configuration, the unit rented by Amaral to Brickner would remain at its existent rent control status and rental rate. This was because if the basic five-room configuration was left intact, then the repairs or remodeling would not have generated any additional dwelling units.

The records give no indication that a copy of the opinion was sent to Brickner, duplicate correspondence that was probably not required. The rent control officers were not issuing an order; the government was merely issuing a ruling on the law and the facts during an exchange of information and opinion between two professionals, the rent director and the attorney for Amaral. It was a close knit community. Stark's San Francisco office was located in the same Market Street building as the Office of Housing Expediter, and his Richmond office was as close to the office of rent inspectors Thorpe and Blake as Amaral's home was to Brickner's home—two great locations for networking with federal housing authorities.

Finally, in April 1949, already knowing what the federal rent agents would approve, Amaral submitted his plan for formal approval: "The present housing accommodations is a five-room frame building. . . . It is my intention to add to the rear of the building and make two units of five rooms each."³³ Making two from one, Amaral had acted to advance the public good. A five-room housing unit was being added to the market. Housing scarcity in the Richmond area would be slightly, yet perceptibly, reduced. This was in accord with a specific purpose of the 1942 EPCA and the subsequent postwar Housing Act of 1947: to reduce shortages in housing markets. Thus, it was probably no surprise to Amaral and his attorney Stark that on May 4, 1949, the area rent director gave consent to Amaral's plans.

Brickner had suffered a major setback. The resultant two housing units would be decontrolled, and the rental rate for the unit that Brickner occupied would no longer be fixed at the January 1, 1941 rate. And because the housing construction was approved by the federal government, Amaral could legally evict Brickner as part of the construction process. Brickner appealed to the Office of Housing Expe-

³² Brickner Report.

³³ *Ibid.*

diter on August 8, 1949. Soon thereafter, on August 15, 1949, the area rent director denied her appeal.³⁴

Brickner now needed a new place to live and, in the midst of postwar inflation, she could expect to pay much more than \$22.50 per month for a five-room house. Brickner's fate illustrated the expectations of the government when it interposed itself as a third party to the implied contracts of rental agreements. If the rental agreement helped contain inflationary pressures, the agents of federal rent control would rule in favor of maintaining the terms of the agreement. Rental rates would remain fixed and evictions would be stymied: the free market would be fettered. But when an existing rental agreement prevented the entry of new, low-price housing into the market, the federal government would retreat from its role in the rental agreement, and tenants such as Brickner would be left to fend for themselves on the free market.

B. Housing Policy and the Wartime Constitution

Riding herd on a nation of tenants and landlords, thousands of whom pursued their claims as vigorously as had Brickner and Amaral, the wartime OPA catalogued and adjudicated local battles between landlords and tenants. The myriad disputes that were heard fueled a national debate over the constitutionality of federal price controls. One lightning rod for opposition to price controls was that, instead of Congress's determining the rental rates through detailed legislation, the federal price administrator set the rents. There were no strict formulae, nor was there any stipulation in the statute as to threshold conditions for implementing rent control conditions. Furthermore, while neither the rental rates nor the means of determining the rental rates were exactly specified, a rigid procedure was specified whereupon OPA prices and decisions could be challenged only after all OPA procedures had been exhausted. Finally, while Brickner, Amaral, and the rent regulators might argue in state courts about the facts of a particular dispute, Congress expressly stipulated that state courts and federal district courts could not adjudicate constitutional challenges to the OPA or OPA decisions.³⁵ In essence, the act excluded state courts from a pipeline of constitutional authority that sat atop the OPA and extended upwards to include the Emergency Court of Appeals and the Supreme Court.

The constitutionality of this administrative and judicial system was established by the U.S. Supreme Court's 1944 decision in *Bowles v. Willingham*.³⁶ Here, the Supreme Court decreed that the state of Georgia must step aside in deference to the authority vested in the OPA. Constitutionally and pragmatically, the deciding opinion in *Willingham* gave more wiggle room to the wartime Congress, contending that federal control over local rental markets was necessary to maintain the short-term and long-term viabilities of a complex economy strained by war-

³⁴ *Ibid.*

³⁵ *EPCA of 1942.*

³⁶ *Bowles, Price Administrator v. Willingham*, 321 US 503 (1944).

time demands: “[The federal statutes] have as their aim the effective protection of our price structures against the forces of disorganization and the pressures created by war and its attendant activities. . . . Congress does not abdicate its functions when it describes what job must be done, who must do it, and what is the scope of his authority.”³⁷

A dissent in *Willingham* contended that the powers vested by Congress in the OPA were too vague in execution and ambit to be constitutional: “The judgment of the Administrator is, by this Act, substituted for the judgment of Congress . . . it is plain that this Act creates personal government by a petty tyrant instead of government by law.”³⁸ The deciding and opposing voices of *Willingham* did share an underlying belief that, in markets affected with a public interest, the government could interfere with the bargaining power of the parties to a contractual agreement. The key lay, first, in identifying which markets were affected with a public interest and, second, in determining what contractual terms the government should impose upon the bargaining parties in those markets.

The *Willingham* decision assured that, in recognition of wartime needs, rent regulation could arbitrarily distinguish landlords from renters, landlords from landlords, and renters from renters. Congress delegated, the price administrator defined, and the courts concurred that when beneficial to the public good, the relative bargaining power of individuals could be determined by government fiat. In effect, when the price administrator deemed it necessary for the successful prosecution of the war or the assurance of the prosperity of the subsequent peace, the government could declare itself party to a rental contract.

Whereas the Emergency Price Control Act of 1942 (EPCA) had specified the black letter of the law, and had restricted the forums eligible to interpret the constitutional legitimacy of the act, actual implementations of the EPCA over the course of time were tailored by the administrator, by local bureaucrats, by the lower courts, and by subsequent acts of Congress. In turn, any alterations were often instigated by various requests, transgressions, and trespasses of renters and landlords—individual market players adjusting to the benefits afforded and handicaps assessed by their administrator-defined statuses. Sitting at the end of this chain of legislation, interpretation, and manipulation, individual judges held sway over the scope of rent control decisions. As the Ninth Circuit noted in *Wilton v. United States* in 1946, “[i]t is not required that a judge define the offense in the language of the statute, but only that he adequately state its essentials.”³⁹

Jurisprudence shaped in wartime emergency conditions ushered in the trial-and-error evolution of rent control law, a process that was driven by the OPA’s mandate to maintain a supply of housing adequate to labor-force needs, with rental rates that would not amplify inflationary pressures. The first order of OPA business was to set rental rates by freezing free market conditions at some point in time before the inflationary effects of the war effort had taken hold. Establishing

³⁷ *Ibid.*, at 515.

³⁸ *Ibid.*, at 537.

³⁹ *Wilton v. United States*, 156 F 2d 433 (1946).

fair market conditions was of secondary concern to the federal government, a situation evinced in 1943 by *Lakemore Company v. Brown*, in which the Temporary Emergency Court of Appeals acknowledged that, “[v]ariations in maximum rents for comparable housing accommodations are inherent in this method of rent control since such differences exist in a normal competitive market.”⁴⁰

It was equally important that the OPA maintain the supply of housing at these specified rates. If the rental units were withdrawn from the market at any rate, the cure would be worse than the illness. Therefore, once a property had been rented, the landlord was forbidden from withdrawing the property from the market except for enumerated reasons. In *Brown v. Lee*,⁴¹ the Fourth District Court of Appeals held that the OPA could prevent the eviction of a tenant, essentially forcing a property to stay on the market. In this case, the Lees had sought to evict their tenant H. P. Jewell and “to withdraw said housing accommodations from the rental market.”⁴² The administrator of the OPA and the district court countermanded the eviction, stating that a landlord could evict a tenant only if the tenant had failed to meet the tenant’s obligations, such as the payment of the lawful rent, or “if the landlord in good faith, upon a proper showing made to the Administrator, [sought] occupancy for himself or his family.”⁴³

The 1943 decisions in *Lakemore* and *Lee* demonstrated that, from its onset, wartime rent control was an acceptable imposition of the government’s regulatory authority over the uses and value of private property. The limiting of rent income in *Lakemore* affected the value of the property, and the good faith and the owner occupancy prerequisites for eviction specified by *Lee* meant that the use of and market for the property were subject to the will of the federal government. These conditions were in accord with the wartime preeminence of federal over private interests, about which *Willingham* declared, “[a] nation which can demand the lives of its men and women in the waging of that war is under no constitutional necessity of providing a system of price control on the domestic front which will assure . . . each landlord a ‘fair return’ on his property.”⁴⁴

The “invisible hand” of the idealized marketplace now sported, so to speak, government-issue gloves woven from police power prerogatives. The OPA procedures were to be followed exactly and completely. Rejecting the Lees’ plea that their rights to due process had been violated, the court fell back upon the rent control formalisms specified by Congress, declaring, “if the defendants wish to secure relief against any regulation issued by the price administrator, then they must apply to the administrative forum provided by the Act for that purpose.”⁴⁵

The legal implications of the rent control mechanisms extended beyond the amended terms of the individual rental agreements. Rent control inspired virulent

⁴⁰ *Lakemore Company v. Brown*, 137 F 2d 355 (1943).

⁴¹ *Brown v. Lee*, 51 F Supp 85 (1943).

⁴² *Ibid.*, at 87.

⁴³ *Ibid.*

⁴⁴ *Bowles*, 321 US 503, 519.

⁴⁵ *Brown*, 51 F Supp 85, 88.

opinions about the proper role of government, and in particular about the constitutional reach of the national authority. The OPA ran up against a well-schooled cadre of states' rights advocates who vehemently contended that the purposes and procedures of the agency were improper impositions of federal interests over local authorities. Judicial opinions quickly latched onto the opposing camps of a classic constitutional conflict, the Supremacy Clause versus the enumerated powers.⁴⁶ Opponents of rent control castigated the blend of legislative and judicial powers, their polemics explicitly evoking the revolutionary zeal of the Boston Tea Party and the yeoman farmers of the early republic. Indeed, Red Scare incantations were voiced by Justice Millar Simpson, of the Supreme Court of the State of Washington, as he warned in a dissent that "America is traveling the road to serfdom, guided and commanded by thousands of boards, bureaus, offices and commissions. In the forefront, carrying the flag of tyranny, marches the OPA."⁴⁷

Even those judicial opinions that supported wartime rent control were reserved in their support for the national agency created by the EPCA. This half-hearted support can be heard in a pro-OPA ruling by the Supreme Court of the State of Washington that warned, "Not all of the judges who sign this opinion are, as lawyers, convinced that the OPA act is constitutional. As judges, however, they are unanimous on the point that, since the United States supreme court had determined it to be constitutional, they must so consider it in arriving at their decision in this case."⁴⁸

While accepting the wartime constitutionality of the EPCA, judicial decisions often qualified the permanent constitutionality of the measures. In *Bowles v. Barde Steel*, the Supreme Court of Oregon warned that its support might disappear with the end of hostilities, declaring that, "[f]rom the decisions of the United States Supreme Court, we learn that legislation enacted under the war powers may be constitutional during the emergency but may become unconstitutional under changed conditions."⁴⁹ Analogous to the continental governments exiled in London for the duration—or Churchill plotting for the survival of Empire—state judges and politicians anticipated that postwar readjustments would remove federal intrusions into local markets. Then, the OPA would be gone, and the postwar recovery would restore sovereignty and constitutional prerogatives of the separate states.

C. Wartime Jurisprudence

As states' rights advocates beat tactical retreats in the face of wartime exigencies, the OPA maneuvered in local, state, and federal courts to isolate rental

⁴⁶ See *Walker v. Gilman*, 25 Wn 2d 557 (1946); *Bowles v. Barde Steel Co.*, 177 Ore 421 (1945).

⁴⁷ *Walker*, 25 Wn 2d 557, 598.

⁴⁸ *Ibid.*, at 575.

⁴⁹ *Bowles*, 177 Ore 421 (1945), citing *Chastleton Corp. v. Sinclair*, 264 US 543 (1924); *Nashville, C. & St. L. R. Co. v. Walters*, 294 US 405 (1935).

agreements from free market forces. Wartime rent control had devised a system of implied rental contracts, each of which centered upon a triad of expectations: the renter's expectations, the landlord's expectations, and the government's expectations as formulated by the OPA and interpreted by the courts. This was not meant to be a level playing field.

A simple philosophy ruled: government expectations superseded financial considerations. If a landlord did not obtain prior OPA approval, the landlord could not increase the rental rates merely to pay for costs associated with real improvements made to a rental unit. "Even," a judge instructed a jury, "though you should be convinced that he actually made the changes or incurred the expenditures."⁵⁰ Bolstering the government's control of the rental market, the judge preempted any possibility of jury nullification: "It would be a violation of your duty for you to attempt to determine the law or to base a verdict upon any other view of the law than that given you by the court."⁵¹

The harshness of sanctions reflected the extent of the delegated powers. If the renter or landlord parties failed to meet the government's expectations, the OPA and the courts could levy fines of up to five thousand dollars and jail sentences of up to twenty-four months.⁵²

When exacting rent violation penalties, the courts were not blind to machinations that might circumvent the rent regulations. For example, the criminal prosecution of one Stanley Taylor demonstrated the heavy price exacted for disregarding OPA orders and court orders that supported the OPA.⁵³ In 1941, Taylor purchased a building of 48 apartment units at 530 Larkin Street, San Francisco. In the summer of 1942, the OPA fixed the rental rates of Taylor's units to those rates that were charged on March 1, 1942. Recognizing that, under certain conditions, capital improvements could justify an increase in the maximum allowable rents, Taylor added a \$300 Bendix washing machine, a paltry smattering of new décor, and engaged his manager in a flimflam \$1 paperwork sale of furniture. Taylor claimed that he had justified rent increases from which he would pocket an extra \$3,600 per year; however, he had failed to obtain the required approval of the OPA prior to increasing the rent rate.

Compounding his problems, Taylor had subsequently ignored an OPA restraining order, and, falsely contending that he was withdrawing the rental units from the housing market, Taylor then delivered eviction notices to his tenants. For this action, a court found Taylor to be "acting in bad faith" and in contempt of court, and he was charged with violating the EPCA. A jury convicted Taylor and handed him a six-month sentence and a \$950 fine. After losing his final appeal in the Ninth Circuit, Taylor was sent to a medium security prison on MacNeil Island in the state of Washington, a facility that, ironically, housed draft evaders and used prison labor to build small coastal ships for the war effort. The Ninth Circuit Court

⁵⁰ *Wilton*, 156 F 2d 433, 435.

⁵¹ *Ibid.*

⁵² *EPCA of 1942*.

⁵³ *Taylor v. United States*, 142 F 2d 808 (1944).

of Appeals lambasted Taylor's action as "a contrivance to circumvent the operation of the Emergency Price Control Act."⁵⁴

The court appeared quite conscious of the tenor of Taylor's "untenable contention,"⁵⁵ a kind of judicial sensitivity to attitude that also surfaced in *Rapp v. United States*.⁵⁶ Tenor as much as tender appeared to figure in the court's sentencing of Marcia Rapp, the owner of several rental units at the edge of San Francisco's sometimes scandalous Tenderloin District. Convicted of illegally raising rents and of ignoring preliminary injunctions against these rent increases, Rapp received a fine of \$1,500 and was sentenced to concurrent terms of 30 days in prison. Denying Rapp's appeal, the Ninth Circuit linked the severity of the punishment with the tone and vocabulary of the appellant: during the trial court proceedings, one witness had quoted Rapp as saying to a tenant "that she didn't give a damn what the OPA, or anybody else says."⁵⁷

Rapp contended that the contempt she expressed was directed at the tenant and the OPA, not the trial court or the judge. Indeed, the damning statement was uttered while the court was still effectively silent—before any injunction had been served. Yet, the appellate court considered that Rapp's contempt towards the tenant and Rapp's contempt towards the OPA were inextricably linked with an implied criminal contempt towards the court: "We agree that her contemptuous intent shown in this statement to her tenant is within the area of relevance."⁵⁸

The Ninth Circuit's condemnation of Rapp's attitude indicated that wartime law was neither deaf, nor blind, nor insensitive to the context of a violation. In a similar vein, Taylor's six-month sentence was directly linked to his blatant disregard for both the provisions of the law and the authority of those entrusted to enforce the law. However, the judiciary also considered that some rent control violations were without unlawful intent, were not indicative of disrespect for the legal order, and even could occur notwithstanding prudent precautions. This was apparent in *Porter v. Jorgensen*⁵⁹ when a rental agreement was tied to the purchase of \$950 worth of furniture. While the facts of the case might normally have warranted a conviction, the tenor of the violation appeared to compel the judge to rule against the OPA in favor of the defendant. As the judge interpreted the circumstances of the rent control charges, he found that good-faith ignorance of the law was indeed a valid excuse for violating the law: "the evidence carries the conviction that the sale of the furniture was a bona fide sale by one who had not rented his property before . . . all things considered, there was no violation of the law."⁶⁰

As they enforced the rent decisions of the OPA, judges appeared to be quite at ease when making such distinctions between contempt and good faith. Portraying themselves as sitting at courts of equity, judges might choose to parse the costs of

⁵⁴ *Ibid.*, at 812.

⁵⁵ *Ibid.*, at 813.

⁵⁶ *Rapp v. United States*, 146 F 2d 548 (1944).

⁵⁷ *Ibid.*, at 550.

⁵⁸ *Ibid.*

⁵⁹ *Porter v. Jorgensen*, 69 F Supp 13 (1946).

⁶⁰ *Ibid.*, at 15.

a rent control violation as if the violation were an equity dispute between two parties to a rental agreement. This perspective supplied judges with appreciable leeway in their interpretations of OPA regulations and in their assessments of the facts of specific cases.

A poignant example occurred in *Bowles v. Huff*, a 1944 rent control case where the Ninth Circuit supported the district court's dismissal of charges brought by the OPA against the defendant.⁶¹ Here, the Ninth Circuit cited Justice Douglas from *Hecht v. Bowles*, a 1944 OPA case involving price controls in the District of Columbia: "An equity court has the power 'to mould each decree to the necessities of the particular case.'"⁶² Douglas, in turn, had relied on the opinion of Chief Justice Stone in *Meredith v. City of Winter Haven*, a 1943 decision involving state versus federal jurisdiction over a municipal bond dispute. "The exceptions [that allowed federal jurisdiction] relate to the discretionary powers of courts of equity," Chief Justice Stone had written. "An appeal to the equity jurisdiction conferred on federal district courts is an appeal to the sound discretion which guides the determinations of courts of equity."⁶³

While the courts were molding the Emergency War Powers Act as they deemed appropriate, they also spoke with an active voice, arming rent inspectors with the tools with which they might detect violations. In *Porter v. Gantner & Mattern Co.*,⁶⁴ a company had sought to evade OPA inspection by distinguishing "subpoena" from "inspection requirement" in the terminology of the Price Control Act. Rejecting this line of reasoning, the court's decision turned on a pragmatic interpretation of the investigatory powers with which Congress had sought to imbue the OPA: "We must look to the substance of the action taken and the relief sought, rather than to outward form."⁶⁵ In this manner, judicial decisions empowered Rent Litigation Units, units established by the OPA that were able to call upon federal marshals to serve subpoenas.⁶⁶ Rent inspectors could also act directly to rout out inflationary forces by questioning neighbors and fellow workers of suspected rent violators,⁶⁷ and issuing letters of inquiry regarding such minutia as the fate of a couch in a Berkeley rental house.⁶⁸

⁶¹ *Bowles v. Huff*, 146 F 2d 428 (1944).

⁶² Justice Douglas writing in *Hecht Co. v. Bowles*, 321 US 321, 329 (1944), as quoted in *Bowles*, 146 F 2d 428, at 431.

⁶³ *Meredith v. Winter Haven*, 320 US 228, 235 (1943).

⁶⁴ *Porter v. Gantner & Mattern Co.*, 156 F 2d 886 (1946).

⁶⁵ *Ibid.*, at 889.

⁶⁶ *Marshalls*, Records of Office of Housing Expediter, Records of the Regional Rent Investigative Office, 1948-53, E187: Boxes 1-4, Region VIII, San Francisco, Federal Archives, San Bruno, Calif.

⁶⁷ *Interview Neighbors*, Records of Office of Housing Expediter, Records of the Regional Rent Investigative Office, 1948-53, E187: Boxes 1-4, Region VIII, San Francisco, Federal Archives, San Bruno, Calif.

⁶⁸ *Couch*, Records of Office of Housing Expediter, Records of the Regional Rent Investigative Office, 1948-53, E187: Boxes 1-4, Region VIII, San Francisco, Federal Archives, San Bruno, Calif. (hereafter cited as *Couch*).

As always, the public good of capping inflationary pressures defined the spheres in which the Rent Litigation Units and rent inspectors could operate. When Elaine Tufts overcharged her monthly tenants at her rental units in Berkeley, California, the federal government would act to recover the excess amounts. However, when Tufts collected 10 dollars on behalf of Lynn Colichman as a deposit for a single night's stay at one of the units, then refused to either rent a room or return the deposit, the San Francisco regional office soundly rejected the referral from the Oakland Area Rent Office. Instead, the Rent Litigation Unit suggested that Colichman "take this matter up with the small claims court, Berkeley, or the district attorney's office, Berkeley."⁶⁹ The jurisdiction of federal rent control, while broad, was, at least in this instance, precisely articulated.

As was exemplified in a decision handed down in 1943 by California's high court, even within their own federal jurisdiction, the federal agents could not reign alone. To institute wartime price controls quickly and effectively, it was necessary to compel local and state courts to host proceedings initiated under the Emergency Price Control Act. Thus in 1943, speaking in *Miller v. Municipal Court of the City of Los Angeles*,⁷⁰ the Supreme Court of California granted a writ of mandamus to "compel the Small Claims Court of the City of Los Angeles and Irvin Taplin, Judge thereof, to hear and determine a consumer action authorized by the federal Emergency Price Control Act of 1942."⁷¹ *Miller*, like *Hecht*, was not a rent control case; instead, it involved an overcharging of goods and services that were subject to rationing—an area of price control under the OPA that paralleled the government's authority to regulate the housing industry. The issues and participants of *Miller* captured the essence of government management of the wartime economy.

In *Miller*, one Earl O'Farrel had allegedly overcharged Bradstreet Miller, Jr., by 25 cents for the services of inspecting Miller's automobile tires: "This charge was made contrary to section 1315.703 of Ration Order No. IA and Maximum Price Regulation No. 165 issued under the provisions of the act."⁷² Miller sought to recover his costs, including the 25 cents, to the amount of 50 dollars, the maximum claim that could be considered by the small claims court. Miller's claim was backed by an OPA decision regarding the maximum price allowed for inspecting a tire. Miller also had reason to believe that taking his action to small claims court was supported by established procedure: "an individual can bring a suit in state court in an effort to enforce a right created by federal law;"⁷³ and "the wartime emergency legislation passed by Congress authorized a consumer action to be brought in a state court of competent jurisdiction."⁷⁴ However, "When the case

⁶⁹ *Berkeley Deposit*, Records of Office of Housing Expediter, Records of the Regional Rent Investigative Office, 1948–53, E187: Boxes 1–4, Region VIII, San Francisco, Federal Archives, San Bruno, Calif.

⁷⁰ *Bradstreet Miller, Jr. v. Municipal Court of the City of Los Angeles*, 22 Cal 2d 818 (1943).

⁷¹ *Ibid.*, at 819.

⁷² *Ibid.*, at 821.

⁷³ *Ibid.*, at 820.

⁷⁴ *Ibid.*, at 821.

came on for trial . . . the court declared that it had no jurisdiction of such an action and ordered it off calendar.”⁷⁵

Supported by California’s attorney general, Earl Warren, and with Prentiss M. Brown, administrator of the OPA, acting as “intervener,” Miller petitioned the Supreme Court of California to compel the small claims court, as a division of the municipal court of the city of Los Angeles, “to show cause why it should not hear and determine a consumer action authorized by the federal Emergency Price Control Act of 1942.”⁷⁶ In response, the city challenged the expansive nature of the war powers. The California Supreme Court answered by citing the 1931 draft evasion case, *U.S. v. MacIntosh*,⁷⁷ and then responded to the city’s second challenge, a constitutional argument against the legislative power of the OPA,⁷⁸ in a manner similar to the U.S. Supreme Court’s *Willingham* opinion. The city’s third argument to the court was that the jurisdiction of the small claims court did not cover actions taken under the EPCA, specifically because Congress “may not compel the state courts to act as penal enforcement agents of the United States.”⁷⁹ To this argument, the OPA replied and the Supreme Court of California agreed that, “unlike actions to recover penalties in favor of the United States, penal actions brought by private parties must be enforced in state courts.”⁸⁰

The OPA’s status as “intervener” in the *Miller* litigation reflected the increased role of the government as a third party negotiating and dictating the terms of housing agreements. The participants in *Miller* represented the set of governmental entities whose expectations and powers had come to shape the terms of marketplace agreements between landlord and tenant: the OPA, as a “quasi judicial”⁸¹ arm of the federal government and as a recipient of authority and functions delegated from the Congress; the Office of the Attorney General of the state of California; and the courts of the state of California. In 1942, when inflationary pressures might upend the war effort, the public’s stake in the matter made a two-bit overcharge a settlement worth pursuing.

A postwar case coming out of the Los Angeles trial courts involving the right to trial by jury further refined the jurisprudence of pursuing a federal police powers suit in a state court of equity.⁸² In an action to recover rent overcharges, a superior court judge in Los Angeles had denied the common law right of the defendant landlord to trial by jury: “I think we must conclude that no such cause of action or form of action existed at common law because . . . the right to fix prices and fix rents by governmental action did not exist in common law, . . . and, therefore, under the authorities, a trial by jury is not a matter of right.”⁸³ In response to the ap-

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *United States v. Macintosh*, 283 US 605 (1931).

⁷⁸ *Miller*, 22 Cal 2d 818.

⁷⁹ *Ibid.*, at 822.

⁸⁰ *Ibid.*

⁸¹ *Jones v. Shields*, 63 Cal App 2d Supp 846, 146 P.2d 735 (1944).

⁸² *Grossblatt v. Wright*, 108 Cal App 2d 475, 239 P.2d 19 (1951).

⁸³ *Ibid.*, at 478.

peal by the landlord, the appellate court upheld the power of the local court to enforce the OPA's decisions: "While such a statute was unknown to the common law, the liability is one created by statute. . . . The issues involved in the claim for treble damages are legal; they grow out of a claim for moneys due and owing—in the nature of a suit at common law—and the court which determines this issue sits as a court of law."⁸⁴

This pragmatic and functionalist judicial approach to regulatory law was familiar. In the mid-nineteenth century, during the transformations in technology of the antebellum period, instrumentalist judges had tweaked the common law to address railroad accidents and to accommodate the needs of other new industries. A century later, wartime and postwar judges—and quasi-judicial administrators—grasped for legal mechanisms that could meet the needs of a nation mobilized for war. In this way, both federal and state judges brought the exercise of the police powers under the wartime federal statutes into the realm of historic adjudication of rights under the common law procedural rules in local courts.

A controversy arising in San Diego illustrated how, as federal and state authorities operated in parallel, the police power ordinances of local governments could clash dramatically with the federal interest. In 1945, in the case *City of San Diego v. Van Winkle*,⁸⁵ the Fourth District Court of Appeal dealt with such a situation. In *Van Winkle*, the federal government wanted to increase the supply of housing, particularly near facilities such as Camp Matthews in the La Jolla section of San Diego, but San Diego's zoning ordinances forbade duplexes in La Jolla. Citing the stated rationales of federal intervention into rental housing, several military officers living in a duplex in La Jolla had successfully fought the zoning rules in a case before the San Diego Superior Court. On appeal, the city argued that the zoning rules were "an exercise of the police power to promote the general welfare."⁸⁶

. . . if the zoning ordinances are not arbitrary, discriminatory nor oppressive the courts must enforce them on the suit of a public agency. . . . Where the municipality is seeking to enforce its own zoning ordinance and proves a clear case of violation of its terms, the trial court must enforce the ordinance as a matter of right and has no discretion to either refuse or to stay an injunction.⁸⁷

However, the appellate court concurred with the tone of the lower court's decision: when federal interests came into conflict with state interests, the federal interests prevailed.

⁸⁴ *Ibid.*, at 485.

⁸⁵ *City of San Diego v. Van Winkle*, 69 Cal App 2d 237 (1945).

⁸⁶ *Ibid.*, at 238.

⁸⁷ *Ibid.*, at 240.

D. A Thumb on the Scales of Justice

As government mandates continued to trump the purchasing power of individual market players throughout the 1940s, the Veterans' Emergency Housing Act of 1946 mandated that the returning war veteran was king. Whether cutting in line for rental housing, securing a loan to purchase an existing house, or purchasing supplies to build a new house, veterans were the legally favored party in the housing contract. As one judge wrote, "It was an act of munificence on the part of a grateful Government towards those who served in World War II, which expressed itself in the form of assistance in the purchase of housing accommodations."⁸⁸ Moreover, it was legislation that acknowledged that the requirements of a housing agreement were set as much by status as by expectation.

Carried to the extreme, the courts considered that federal law absolved a veteran even when the veteran had knowingly and willingly violated federal housing laws. In *Elmers v. Shapiro*,⁸⁹ veteran Harry B. Elmers and his mother Margaret had engaged in a combination of barter and cash purchase with civilian building contractor Harry Shapiro: the Elmers exchanged their house in Burlingham plus \$8,000 in cash for a house newly built by Shapiro in San Mateo. Because the house in San Mateo was subject to federal cost controls, the maximum allowable selling price of the house was \$13,500, a value demonstrably lower than the combined value of the house in Burlingham plus the \$8,000 in cash. This violated federal housing regulations. Acting in concert, and not by accident, Elmers and Shapiro had broken the law. Yet, Elmers and Shapiro were not equal before the law. Since Elmers was a veteran, Shapiro was ordered to pay Elmers the amount of the overcharge. In the eyes of the appellate court, it was "immaterial" that the veteran had "entered the transaction with his eyes wide open and with full knowledge of what he was doing."⁹⁰

Status also skewed the market for public housing accommodations. In *San Diego State College Foundation v. Charles C. Hasty*,⁹¹ the college sought to evict Hasty, a nonveteran, from student housing facilities that gave priority to veterans. San Diego State had welcomed Hasty when low veteran demand had left some rental units vacant. Later, as more veterans applied for housing, the college needed Hasty's space. Facing eviction, Hasty claimed protection under the tenant protection aspects of the Housing and Rent Acts. However, the courts ruled that freeing space for a veteran was valid justification for evicting a nonveteran.

There were, however, limits beyond which the government would revoke the favored status of veterans. In *Lewis v. Wainscott*,⁹² a veteran had entered into an illegal bargain as a purchaser and stood to profit if the seller of the property was

⁸⁸ *Adams et al. v. Albany et al.*, 80 F Supp 876 (1948).

⁸⁹ *Elmers v. Shapiro*, 91 Cal App 2d 741, 205 P.2d 1052 (1949).

⁹⁰ *Ibid.*, at 750.

⁹¹ *San Diego State College Foundation v. Charles C. Hasty*, 90 Cal App 2d Supp 884 (1949).

⁹² *Lewis v. Wainscott*, 124 Cal App 2d 345 (1954).

forced to refund the overcharge. Contrasting *Elmers*, the seller in *Lewis* had not known that the transaction was illegal. Acknowledging this fact, the court ruled that the veteran buyer, acting in apparent bad faith in an obvious manipulation of the federal statutes, should not gain at the expense of an innocent seller who had acted in apparent good faith: "Congress could not have intended any such untoward and tragic result when it enacted this statute into law for the aid and protection of veterans."⁹³

III. Color-Coded California

On paper, the housing benefits afforded war veterans were all-inclusive and color blind. However, in California, color mattered, and it mattered a great deal: Color conferred, or discounted, status in the housing market for postwar California, even for veterans. The racial attitudes that underlay this market discrimination were neither new nor covert. In many ways, segregation was quite the norm. In 1946, an official board of army generals contended that segregated units, barracks, and facilities were "consistent with the democratic ideals upon which the Nation and its representative Army are based."⁹⁴ Truman could and did outlaw segregation in military facilities, but the civilian markets were a tougher nut to crack.

Skin color stood strong as an absolute market differential that would often trump all other considerations. The money of African Americans was worth less than that of whites on the housing market: equal accommodations cost more money for African Americans than white Americans.⁹⁵ In some instances, no amount of African-American money could purchase a home in certain neighborhoods or rent an apartment in certain buildings.⁹⁶

For most African Americans looking for housing in postwar California, the fight against postwar inflation was being lost. While the 1948 Supreme Court's

⁹³ *Ibid.*, at 350.

⁹⁴ Eugene Rachliss, a newspaper clipping from the *San Francisco Chronicle* dated 3 March 1946, Carton 45, NAACP West Coast Regional Office.

⁹⁵ Testimony by fair housing coalition to the Governmental Efficiency and Economy Committees, Sept. 28, 1961, Records of Hearings of Governmental Efficiency and Economy Committees, LP43:26 and LP43:27, California State Archives, Sacramento, Calif. (hereafter cited as Records of Hearings of Governmental Efficiency and Economy Committees, 1961).

⁹⁶ The archetypical case for this phenomenon was the race-based refusal of a white property owner to sell a home in an all-white San Francisco neighborhood in 1957 to Willy Mays, a former serviceman and celebrated superstar of the San Francisco Giants baseball club. Only an intense public relations campaign broke the barrier. See The Bay Area Human Relations *Clearing House*, November 1957, NAACP Records, Carton 10, Bancroft Collection, University of California, Berkeley, Calif. (hereafter cited as *Clearing House*.) The Bay Area Human Relations *Clearing House* was a typewritten newsletter that was used to keep the various human relation councils abreast of their activities.

decision in *Shelley v. Kraemer*⁹⁷ had struck a blow against racial covenants, there endured a myriad other ways in which access to housing was selectively restricted along racial lines. Their money was shadow money, a qualified specie that quite literally could only be spent after whites had passed on prior opportunities. Even for black veterans, it was an issue of status deferred as, in postwar California, black access to every apartment—and especially, black ownership of any home—would wait its place.

The disparate living conditions of white and black Californians were not simply a matter of color-correlated income differentials. Equal income did not insure equal buying power. A 1954 study by the California Housing Authority (CHA) showed that for the same-income groups, home ownership rates were much higher for whites than for African Americans.⁹⁸ The housing odyssey of John D. Raiford showed that African Americans in California could not take for granted that they would have equal access to housing accommodations. Raiford, an African-American electronics engineer and a graduate of the Naval Academy at Annapolis, moved from Connecticut to California in January of 1959.⁹⁹ While living with his family in a hotel, Raiford conducted an exhaustive search for housing, in person and on the telephone, using open listings and real estate agents. Raiford sought housing comparable in accommodation and location to the housing afforded his white colleagues, fellow professionals at a large industrial firm. However, landlords and agents unanimously refused to rent to a “Negro.” Finally, speaking over the telephone, a landlord owner told Raiford that he would rent to Raiford. The potential landlord had moved to another area, so Raiford was to look at the house without him, getting the key from the next-door neighbor.

The next-door neighbor became extremely angry and rude when I inquired about the key; and, refused to give it to me. She slammed the door in my face. . . . When her daughter, who was about seven, innocently began showing us a friendly smile, she was yanked from the window and sent crying into another room. I thought it as about time to move back to Connecticut at this point. . . . Finally about a year later, we were able to rent a house in Santa Monica on the Negro “Reservation” of course.¹⁰⁰

Status made available—indeed, effectively reserved—one Santa Monica neighborhood to Raiford, an African American, while simultaneously excluding him from many other neighborhoods—neighborhoods that were available to whites.

⁹⁷ *Shelley v. Kraemer*, 334 US 1 (1948).

⁹⁸ *California Housing Authority Report of 1954*.

⁹⁹ Records of Hearings of Governmental Efficiency and Economy Committees, 1961.

¹⁰⁰ *Ibid.*

A. Color-Conscious City Planners

When the federal government shed its control of temporary wartime housing in Richmond, California, Richmond's African-American citizens were dealt short hands by the local redevelopment agency. In 1953, the chairman of the Richmond City Planning Program laid out the priorities of the local government: "The city we have today grew at an abnormal pace and, in most instances, without a plan to guide that growth."¹⁰¹ To remedy the situation, the city of Richmond established a federally funded but state-authorized redevelopment agency. Using state and federal funds, the local agency promised to "replace blighted areas one by one until eventually a large part of the city [would] be rebuilt."¹⁰² If this scheme worked as planned, Richmond would relax into an idealized reincarnation of its prewar self. "The continuing change will go on month by month, year by year," city officials declared. "Richmond in 1975 will not be the city as we know it today."¹⁰³

The plans of the redevelopment agency faced an artifact of progress that was not readily washed away: the wartime influx of defense workers had raised the black percentage of Richmond's population from a miniscule 1% to a robust 20%. In absolute terms, about 23,000 people lived in Richmond before the war, of whom only 270 were African American; by the 1950s, the 100,000 population of Richmond included 20,000 black residents.

Many of the black residents lived in temporary wartime housing. But under the police power provisions of California's Community Redevelopment Law,¹⁰⁴ a redevelopment agency could classify such temporary wartime housing projects as blighted areas and could subsequently close the housing projects through the power of eminent domain. In such an action during the 1950s, the Redevelopment Agency of Richmond closed the Canal and Terrace War Apartments—an eminent domain action by the city that evicted but did not relocate the residents of these apartments.

As the redevelopment agency acted, people were being cast adrift from temporary housing, their mass eviction notice consisting of a general announcement via an article in the local paper.¹⁰⁵ This was a far cry from the fine-tuned and cautious eviction processes of the OPA. A contemporary article in the *San Francisco Chronicle* reported the personal dilemma faced by African Americans who were evicted by the Richmond redevelopment agency. "What I can't understand," an

¹⁰¹ City Planning Program for Richmond, California: 1953–54 and 1954–55, July, 1953, Wurster Collection, Carton 6, Bancroft Collection, University of California, Berkeley, Calif. (hereafter cited as City Planning Program for Richmond, Calif.: 1953–54); see also Richard Reinhardt, "Richmond—War-Born Boom That Didn't Bust," *San Francisco Chronicle*, 16–21 August 1953.

¹⁰² City Planning Program for Richmond, Calif.: 1953–54.

¹⁰³ *Ibid.*

¹⁰⁴ Selected provisions from the California Community Redevelopment Law, as extracted from the California Health and Safety Code, NAACP Collection, Carton 24, Bancroft Collection, University of California, Berkeley, Calif.

¹⁰⁵ Reinhardt, "Richmond—War-Born Boom That Didn't Bust."

African-American homemaker and wife of a veteran lamented to a reporter, “is where can we go if we can’t stay here?”¹⁰⁶ Seemingly in reply, a Baptist minister and community leader forecast an exodus: “Our people will be driven away. . . . Sometimes, I am sure that’s what the people running this town really want. . . . I asked the Redevelopment Agency about it. . . . ‘Where will they go then,’ and they said, ‘Well, they can’t stay here.’”¹⁰⁷ For black Americans living in Richmond, the diminishment of the federal role in the local housing market was not very reassuring.

For those black citizens of Richmond determined to stay in Richmond, one beckoning prospect for shelter was the Easter Hill Housing Project, a low-rent, federally funded project whose units were coming on the market in 1954. Due in part to the permanent aspect of the accommodations and the intentional suburban features of its design, its rental units were in high demand: “approximately 1,800 applications had been received for the 300 units to be available in the Easter Hill project.”¹⁰⁸

Local government and the law played fast and loose in deciding who would cross the line in time to find accommodations at the Easter Hill Housing Project in 1954. This bureaucratic legerdemain is documented in Table 1, which shows the mailing of housing applications to the families chosen by the Housing Authority of Richmond to live in the first one hundred units available in the Easter Hill Housing Project. The table correlates date of mailing with skin color of applicant. The data of the table were included in a 1954 report prepared by Associate Professor Paul F. Wendt of the University of California, Berkeley, at the behest of the Richmond Housing Authority. Based upon Wendt’s written text, “colored” meant “mostly Negroes and Japanese.”

Wendt’s report to the Richmond Housing Authority ignored a pattern that was clearly evident in the data—the staggered issuance of notices. Notices to white families were mailed out significantly earlier than notices were mailed out to “colored” families. Twenty-five forms were mailed to “colored” families in total; 48 forms were mailed to white families before a single form was mailed to any “colored” family. Over a nearly four-week period, only on the last September 27 mailings were white and “colored” notices mailed coincidentally.

This staggered mailing system was an effective means of fixing the ratio of white to black families at 78:22, a ratio that matched neither the white-to-black ratio of 1954 Richmond public housing nor the 1954 white-to-black ratio of applicants to Easter Hill. However, the planned ratio of white-to-black residents at Easter Hill did precisely match the white-to-black ratio of the 1950 city population. Apparently, while carrying out their 1953 plan to guide the future growth of Richmond, the tactical objective of the public housing authorities was to turn the

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ Paul F. Wendt, *Report on Easter Hill Housing*, Wurster Collection, Carton 9, Bancroft Collection, University of California, Berkeley, Calif. (hereafter cited as *Report on Easter Hill Housing*).

Table 1. Schedule of Easter Hill Housing Offers Mailed and Completed, Cross-Referenced by Skin Color of Applicants¹⁰⁹

(data, including headings, reconstructed from original source)

Mailing Date		Offers Mailed		Offers Completed/ Returned	
Date	Day	White	“Colored”	White	“Colored”
September 3, 1954	Saturday	24		18	
September 7, 1954	Tuesday	24		16	
September 10, 1954	Saturday		12		10
September 14, 1954	Tuesday	21		15	
September 15, 1954	Wednesday	17		10	
September 17, 1954	Saturday		8		8
September 20, 1954	Monday	21		8	
September 22, 1954	Thursday		4		3
September 23, 1954	Friday	16		7	
September 27, 1954	Monday	5	1	4	1
	Total	128	25	78	22

clock back to 1950. Indeed, the predetermined white-to-black ratio appears to have been in conscious accord with a comment made by the Wendt report: “Is it desirable to establish a neighborhood with a heavy concentration of minority racial groups in the lowest income groups? What are the alternatives to the establishment of such a neighborhood? The city of Richmond has had an extensive experience in some of these sociological aspects of its housing problems.”¹¹⁰

Were these race-conscious practices of Richmond’s housing authority legal? There was a legal bureaucratic structure to the process of redevelopment and location. In a manner reminiscent of the OPA’s position in relation to the emergency war powers, the chair of the Richmond City Planning Program considered the planning commission to be a “semijudicial body” with authority to make decisions in accordance with the zoning ordinance.¹¹¹

However, the checkerboard pattern exhibited in the mailing schedule conflicted with the law of the land. In *Banks v. Housing Authority of City and County of San Francisco*,¹¹² the appellate court of the state of California had declared that race or color could not be used either as a standard for admission or as a criteria in selecting tenants for “localized occupancy of Negroes and other racial groups in certain projects.”¹¹³ This hotly contested and widely publicized ruling came down

¹⁰⁹ *Ibid.*¹¹⁰ *Ibid.*¹¹¹ Reinhardt, “Richmond—War-Born Boom That Didn’t Bust.”¹¹² *Banks v. Housing Authority of City and County of San Francisco*, 120 Cal App 2d 1, 260 P 2d 668 (1953).¹¹³ *Ibid.*, at 6.

in California in August 1953. *Banks* explicitly forbade the checkerboard pattern of white and “Negro” that had been established by the San Francisco Housing Authority in 1943. Furthermore, in the spring of 1954, when the U.S. Supreme Court declined to hear an appeal to the case, the ban on checkerboard segregation was further legitimized.

Yet, in September of 1954, white-skinned applicants to Easter Hill were given priority over “colored” applicants. Despite such a blatant disparity that existed between the law as written and the law as practiced, in presenting and interpreting his data, Berkeley Professor Wendt said nothing and the Richmond government asked nothing about the staggered, “checkerboard” mailings. By staggering the enrollment of Easter Hill applicants, the housing authorities had cloaked a color-conscious process—possibly dodging the intended impact of *Banks*—to secure an acceptable ratio of white-to-black residents.

The federal and state governments were not above this fray. Similar to wartime rent control, postwar redevelopment was a process of cooperating and competing governments—federal, state, and local.¹¹⁴ But, in contrast to the incisive vigor of the wartime pricing regulations, there was a different tenor to the federal and state interests in redevelopment. During rent control, the combined legal systems of the federal and state governments acted quickly and decisively.¹¹⁵ The state of California would go to the mat to aid a man overcharged two-bits for a tire inspection,¹¹⁶ and the federal housing expediter would tirelessly track the whereabouts of washing machines,¹¹⁷ wall décor, and couches in wartime rental units.¹¹⁸ In contrast, when combating racial segregation, the peacetime legal systems of the state and federal governments often moved slowly, even, it might seem, creeping with trepidation. For example, rather than overtly poll the racial makeup of apartment buildings in areas to which redevelopment refugees were being relocated, housing inspectors in Oakland would scan the mailbox names for telltale names or, if that failed, they would merely watch from across the street to spot any non-white people entering and leaving the building.¹¹⁹ If a nonwhite person was spotted exiting a building, the building and its block would be reclassified as available to

¹¹⁴ State of California Redevelopment Act, from the California Health and Safety Code, NAACP Collection, Carton 24, Bancroft Collection, University of California, Berkeley, Calif.

¹¹⁵ Brickner Report.

¹¹⁶ *Miller*, 22 Cal.2d 818.

¹¹⁷ *Taylor*, 142 F.2d 808.

¹¹⁸ *Couch*, Records of Office of Housing Expediter, Records of the Regional Rent Investigative Office, 1948–53, E187: Boxes 1–4, Region VIII, San Francisco, Federal Archives, San Bruno, Calif.

¹¹⁹ Acorn Project Report, City of Oakland, 1960, Estimated Housing Requirements and Resources for Displaced Families, p. 19, NAACP Records, Carton 45, Bancroft Collection, University of California, Calif. “The procedures for this study were worked out in conferences with: . . . the Apartment House Association of Alameda County, the Oakland Real Estate Board, and the Federal Housing Administration.”

nonwhites. It was deemed too controversial to directly inquire as to the skin color of the occupants of a building.

Even prior to war mobilization, race-based manipulations of redevelopment projects went hand-in-hand with the federal presence in the California housing market. Between 1939 and 1941, as the New Deal housing program transitioned into a defense worker housing program, the Federal Housing Authority sponsored an urban renewal project in West Oakland.¹²⁰ An inauspicious feature of the partnership between federal and local governments was the entrenched role of real estate interests, to which the mayor of Oakland responded by stacking the local housing board with minions of the Bank of America. Seeking to control the federal-funded redevelopment of West Oakland, the board dispatched appraisers who pulled up to West Oakland curbsides and casually set property values without leaving the front seats of their sedans. In response to this process, black homeowners complained that West Oakland whites received better eminent domain settlements than the settlements they were being awarded in similar proceedings.

In the hope of instigating federal intercession on behalf of the West Oakland residents, C. L. Dellums, a union officer who was a member of the National Negro Congress and was a NAACP leader in Oakland, asked for help from his friend Clarence R. Johnson of the Federal Housing Authority in Washington. Noting that no West Oakland residents sat on the housing board, and describing how the mayor had appointed a citizens committee to counteract the complaints of a union-led committee, Dellums asked in a letter to Johnson for color-blind reassessments of the West Oakland properties. The reply, however, was a curt letter to Dellums from Winters Haydock, the director of the Pacific Region of the FHA, in which the FHA sidestepped issues, passed the buck to local officials, and ducked behind technical smokescreens. Haydock went out of his way to show how little he valued the views of the West Oakland community and its representatives, writing: "It is difficult for one who is a layman in the field of real estate values to take any position in this matter other than that of deferring to the judgment of those who are specialists."¹²¹ Even before they were physically displaced by the construction project, West Oakland residents were politically displaced by technocracy. Yet, when the West Oakland redevelopment effort heralded the opening of the Campbell Village Housing Project in 1941, Mayor Slavish of Oakland reminded the tenants, "You people should be extremely grateful for what Oakland is doing for you."¹²²

B. Neighborhood Realtors for Checkerboard Neighborhoods

Racial tones also drove the private market for housing in California, and blacks suffered as a result. Because their dollars were worth less, African Ameri-

¹²⁰ *Agenda for Western Housing & Planning*, September 1941.

¹²¹ Letter preserved in the Dellums Collection, Bancroft Collection, University of California, Berkeley, Calif.

¹²² Document in *Ibid.*

cans in Californian were more likely than whites to live in substandard housing, whether rented or owner-occupied. A 1954 state report addressed the implications of these inequities: substandard housing meant lower tax bases, flimsier infrastructures such as roads and water treatment plants, and underfunded, lower-caliber public schools.¹²³

At first glance, the disparity between housing conditions as between black and white citizens should have been a call to action for the real estate industry's leaders. When realtors suspected that something (or someone) diminished property values, the realtors were supposed to swing into action, guided by the Code of Ethics of the National Association of Real Estate Boards. However, the debates over public housing exposed a duality that undercut the absoluteness of the real estate agenda. On the one hand, realtors were free-market advocates, straying only in their support of benign government regulations—stringent zoning ordinances and strict enforcement of building codes¹²⁴—that were intended to protect and enhance property values. Governmental agencies, at least those larger than the local zoning board, were not to directly meddle in the local markets.

For example, the real estate lobby took aim at the New Deal's legacy of public housing, specifically challenging President Truman's postwar agenda for a gradual release of rent controls. As Truman noted in a message to Congress in 1947, "[The realtors] have exerted pressure at every point against every proposal for making the housing program more effective. They have constantly sought to weaken rent control and to do away with necessary aids to housing. They are openly proud of their success in blocking a comprehensive housing program."¹²⁵ Specifically, at their 1952 convention in Miami, the agenda of the National Association of Real Estate Boards called for an immediate end to rent controls, continued its opposition to government-assisted and government-owned housing, and proposed that private real estate interests manage large government holdings—including government housing.¹²⁶

However, when the realtors gathered the next year in Los Angeles, their "Build America Better" program actively promoted the elimination of substandard housing.¹²⁷ There was no mistaking the realtors' fervent dedication to their program. "The time is here and now," declared Charles B. Shattuck, the host of the convention and the president of the National Association of Real Estate Boards, "when the searchlight of publicity and the full power of righteous public indignation must be turned upon any and each and every one and all those owners who exact exorbitant profit from the unlawful overcrowding of dwellings." Speaking before the 4,500 realtors who attended the convention, Shattuck forsook *laissez-*

¹²³ *California Housing Authority Report, 1954.*

¹²⁴ *Ibid.*

¹²⁵ Harry Truman, "Special Message to the Congress Upon Signing the Housing and Rent Act," 30 June 1947, in *Public Papers of Presidents of the United States: Harry S. Truman, 1945–53* (Washington, D.C.: United States Government Printing Office, 1966).

¹²⁶ Cooper, "Isotope Research May Aid Housing," *New York Times*, 15 November 1952, p. 29.

¹²⁷ "Realtors Predict A Record Meeting," *New York Times*, 1 November 1953, R6.

faire market principles as he consciously expressed the need for some guided form of market fluidity. Specifically, Shattuck's proposal for a managed—albeit, privately managed—housing market entailed an increase in building that would raise the vacancy rate from three to five percent, which, he argued, “should be for the good of our business and welfare of the nation.” In total, as reported in the *New York Times*, the 1953 agenda of the national realtor association called for active manipulation of the real estate market by cooperating agents of government and private industry.¹²⁸

Mr. Shattuck proposed legislation for “providing for Federal cooperation with private mortgage lenders in establishing a national secondary mortgage market to improve the flow of mortgage money”; and state legislation to create conservation authorities with the special powers needed by cities for slum clearance by rehabilitation work.¹²⁹

Despite this initial call for market guidelines, when race relations were on the table, the realtors were quick to close the door on state and federal intercession in local housing practices. This was apparent in 1961, when Shattuck testified before a California legislative committee, the California Assembly Interim Committee on Governmental Efficiency and Economy.¹³⁰ Shattuck appeared before the committee in his role as chairman of the Race Relations Committee of the Real Estate Board, but he also proudly noted that he was past-president and legislative chairman of the California Real Estate Association, past president of the National Association of Real Estate Boards, and past president of the American Institute of Real Estate Appraisers of the National Board of Realty Boards. Shattuck's titles mattered. In 1961, in Los Angeles, California, these titles meant that Shattuck was a “realtor” and his “realtor” status meant that he was almost certainly white.

Shattuck epitomized the open book nature of color coding, so it was apropos that his white color and his realtor credentials—and their synergy—dominated his testimony.¹³¹ Unlike Shattuck, a black real estate agent could not realistically aspire to join the Los Angeles realtor association—the established and influential Los Angeles Realty Board (LARB)—which was prerequisite to becoming designated as “realtor.” Some black real estate agents had instead formed their own local board, the Consolidated Realty Board. Still, the black real estate professionals wanted to compete on the open market with the same resources and options afforded white realtors. Shattuck rejected this free-market concept. Instead, Shattuck proffered a color-coded checkerboard of neighborhood realtor associations, the realtor's equivalent of baseball's Negro Leagues, and he willingly advocated the model in front of the state commission:

¹²⁸ “Slum Eradication Urged By Realtor,” *New York Times*, 11 November 1953, p. 48.

¹²⁹ *Ibid.*

¹³⁰ *Records of Hearings of Governmental Efficiency and Economy Committees*, 1961.

¹³¹ *Ibid.*

I made the suggestion to them and told them that I would go, as President of the National Association of Real Estate Boards to the Los Angeles Board and use every best effort that I could to get them to designate an area within the City of Los Angeles that could be the territory for the Consolidated Board, the Golden West Board, whatever name you wanted to give it. They didn't want that. . . . But it was our position that they are primarily dealing with the Negro race. They are primarily dealing with people in areas that are going to be used by the Negro people, and it is therefore those portions of the City that are of that character, rightfully should be theirs, and we would be glad to have them have it, and be glad to have them be realtors, but we are not going to be a party to the salt and peppering of the whole community.¹³²

“Salt and pepper” integration—blacks and whites living and working side by side—was the issue at hand. Specifically, the committee was considering the extent to which governmental expectations regarding racial equality and color-blind opportunity should alter bargaining processes and contractual agreements between private citizens. Shattuck railed against such regulation: “They would like to try to have a law that would say to me, you have got to rent your place to this person, whether you want to or not. Now, I contend the minute you do that, why then we're washing America down the drain.”¹³³

Shattuck's assessment of antidiscrimination legislation echoed the mantra of the opponents of wartime price controls in the 1940s and the opponents of school desegregation in the 1950s. For example, in 1943, Justice Simpson of the Supreme Court of Washington had condemned the rent control agency as “arbitrary, dictatorial, and un-American . . . It sears, burns, and destroys all it touches. It is a tyrant and knows no law, save its own caprice.”¹³⁴ Calling government intervention in the rent contract a “confiscation and control of property without trial or due process of law,” Judge Simpson quoted Senator Harry Byrd of Virginia: “It is a new idea, strange to the American way of life and foreign to its origins.”¹³⁵ (Consistent with these sentiments, 10 years later Senator Byrd became a leading signatory to Senator Strom Thurmond's southern manifesto, denouncing the Supreme Court and sparking the South's resistance to the court-ordered integration of schools: “This unwarranted exercise of power by the Court, contrary to the Constitution, is creating chaos and confusion in the States principally affected,” this manifesto would declare: “It is destroying the amicable relations between the white and Negro races. . . . It has planted hatred and suspicion where there has been heretofore friendship and understanding.”¹³⁶

In the spirit of this mantra of segregation, Shattuck offered his views on checkerboard segregation:

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ *Walker*, 25 Wn 2d 557, 598.

¹³⁵ *Ibid.*, at 596.

¹³⁶ Southern Manifesto, 102 Cong Rec 4515–16 (1956).

I say that the Negro has as many rights today in this state as I have. He may not have as many social privileges yet *because they haven't earned them yet*. They're on their way to earning them, but it takes time. These things don't happen overnight. . . . I'm not going to come up here and mealy-mouth because there are a number of them here in this room. I try to talk frankly.¹³⁷

Shattuck continued with his candid take on segregation:

I sympathize with all these minority groups, but [at] the same time I think that they've got to be big enough to recognize that the majority has some rights in this picture also. . . . There's been a lot of places during my lifetime that I would have liked to have gone, liked to have moved, things that I would have liked to have belonged to, but I usually didn't have the money or they didn't invite me. And so I was frustrated. That's all. I wasn't discriminated against.¹³⁸

Here was a white realtor—the chairman of the Race Relations Committee of the Real Estate Board—justifying blatantly discriminatory practices. One gathers from the transcript of the hearings, however, that no one in the room took exception, at least in a way that became recorded, with regard to his rhetoric or his message. In 1961, there was still nothing surprising and nothing that a state legislative committee would condemn as antisocial about a realtor speaking this way about the status of African-American consumers in the housing market.

Shattuck's heated rejection of integration epitomized the manner in which the established white real estate industry distinguished between constitutional claims to equality and the concept of “earned social privileges” of African Americans. A critical element in implementing this distinction was the limitation upon use of the term “realtor,” an exercise of intellectual property protection that constituted state action that effectively amounted to the state supporting discrimination in employment and in housing.¹³⁹

The real estate business is by nature territorial and, in the Los Angeles area during the early 1960s, the “realtor” trademark was controlled by the Los Angeles Realty Board (LARB). In 1961, as seen in Shattuck's testimony, the LARB opposed integration and reinforced this stance through institutional “exclusion” and “discipline.” Testimony to the Governmental Efficiency and Economy Committee indicated that a white member of the LARB who participated in the sale of houses to blacks in white or integrated neighborhoods would be “threatened with discipline which takes the form usually of being fined [an] amount equivalent to the

¹³⁷ *Records of Hearings of Governmental Efficiency and Economy Committees*, 1961 [italics added].

¹³⁸ *Ibid.*

¹³⁹ The term “realtor” is trademark protected. See *Arleen Freeman v. National Association of Realtors*, U.S. Patent & Trademark Office, Trademark Trial and Appeal Board, Cancellations Nos. 27,885, 28,047 (2002), and *Jacob Zimmerman v. National Association of Realtors*, U.S. Patent & Trademark Office, Trademark Trial and Appeal Board, Cancellation No. 92032360 against Registration No. 0515200 (2004).

commission that he earned, and if this is repeated to be expelled from the Board.”¹⁴⁰ He would no longer be a “realtor.”

Any licensed real estate agent could show and sell a property, but only a “realtor” had access to multiple listings, the primary power associated with this protected title. In Los Angeles in 1961, an African American could be a state-licensed real estate “agent” by joining an association of real estate agents, such as the Consolidated Realty Board. The African-American agent could even become a “realist,” a trademarked term developed in the 1940s to showcase the professional standing of the members of the racially integrated National Association of Real Estate Brokers. However, an African-American real estate agent—or indeed a white real estate agent who had sold white houses to African-American buyers and thereby forfeited his realtor status—could not join the LARB and call himself or herself a “realtor.”

Leslie Shaw, president of the Family Savings and Loan Association, addressed the exclusion of blacks from the LARB in her testimony before the 1961 Governmental Efficiency and Economy Committee. Referring to a conversation with a realtor, Shaw reported that the Real Estate Board did “not wish to permit Negroes to become members . . . because they [Negro realtors] would [then] have the information as to where and how many houses there are available for sale.”¹⁴¹ As long as they remained outside the market available to realtors, African-American real estate agents could not offer clients, buyers or sellers, full access to the real estate market. Their clients were relegated to choices and prices within a shadow market, a market of neighborhoods and homes pruned from the wide selection available on the multiple listings.

Multiple listings amounted to an agreement by realtors to cooperate on several fronts: the regulation of property sales; the registering of properties constituting a database of information with which realtor members would be able to appraise, and hence better manage, their investment at risk; and, most of all, the maintenance of a pact whose principal value to its realtor members was its exclusive nature. If a real estate agent could access the multiple listings, that agent could make and receive all offers on behalf of any client. The nation was therefore divided up on a regional scale by realtor associations, each region shepherding its own multiple listing and each region agreeing to forbid access by nonrealtors to the multiple listings. Exclusivity both determined and protected the value of the property, and the realtors of southern California chose to draw this exclusivity as a boundary of white versus black. Undoubtedly, this divide was not a purely business decision. Shattuck let that cat out of the bag when he qualified a black’s monetary ability to purchase a home by adding restrictions related to a vague concept of “earned social privileges.” Nonetheless, barring black access to the multiple listings had significant economic consequences.

¹⁴⁰ *Records of Hearings of Governmental Efficiency and Economy Committees*, 1961.

¹⁴¹ *Ibid.*

This said, how did the realtors maintain their exclusive access to multiple listings? The realtors relied upon copyright protection, under the intellectual property laws.¹⁴² The state government recognized and actively protected intellectual property rights. This was verified by the testimony of G. E. Harrington, assistant real estate commissioner for the state of California and H. Jackson Pontius, executive vice-president of the California Real Estate Association: “Anyone who uses the term without authority is subject to the revocation of their [real estate] license, under Section 10177E.”¹⁴³ Simply put, to protect market share from free-market forces, mainstream business interests solicited and accepted state action that supported employment discrimination. In other words, if in 1961, the mostly black Consolidated Realty Board of Los Angeles had sought to gain access to the multiple listings by declaring itself the true heir to the multiple listings, they would have been violating the regional prerogatives of the LARB to use the copyrighted term “realtor.”

From the perspective of the fair housing movement’s champions, when the state of California thus safeguarded the intellectual property of realtors, this state action served to erode the financial position of African-American homeowners. For many Americans, home ownership was the primary avenue for accumulating personal wealth and financial security, as measured by the appraised value of the home. An appraisal centered on location—the neighborhood—and the values of neighboring houses, as determined by the more recent purchase prices. Location reigned supreme, a fact that was acutely felt by African-American homeowners. If, in 1961, a homeowner added \$2,000 worth of central air conditioning and \$2,000 of landscaping to a \$12,000 house, the replacement cost of the house increased by \$4,000, but its market value might not be concurrently raised to \$16,000. However, if that \$12,000 house had been jacked onto a truck bed and hauled from its original suburban tract to an exclusive ocean view lot, there would likely have been a significant increase in the market value of the house. Thus, when white realtors shortened the list of neighborhoods available to black people, this discrimination also limited opportunities to increase financial security and purchasing power.

The color-coded features of the real estate industry also eroded the value of black homeownership during the eminent domain phase of redevelopment proceedings. The compensation received by a black homeowner in a redevelopment taking was determined by an appraiser who would most likely be a local white realtor. Appraisers who held membership in the American Institute of Real Estate Appraisers also held a competitive advantage when applying for positions with community redevelopment projects. Here again, color mattered: for the American Institute stipulated that only members of local realty boards of the National Association of Real Estate Boards—neighborhood realtors—were eligible for membership in the American Institute.¹⁴⁴ Skin color, technical prestige, and professional

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

credentials easily worked against the interest of an African-American homeowner who challenged the assessor's decision in court. As noted by Vaino Spencer, an attorney for the Consolidated Realty Board, "The buildup that is given to affiliation with the American Institute is such that the trial judge in one case thought it was equivalent to a master's degree conferred by a University."¹⁴⁵

Counter-testimony on behalf of minority homeowners was often put forth by less prestigious out-of-town appraisers who operated without access to the local multiple listing. One fair-housing attorney complained in 1961 that this situation did not "make for a fair presentation of evidence," and that the people evicted by a redevelopment agency were given short shrift and did not receive fair market value.¹⁴⁶ With sad irony, the housing markets often anticipated the housing booms that were set in motion by redevelopment projects, and this anticipation would inflate nearby property values to the point that "low-balled" former residents were immediately priced out of the local market.

By their own admission in 1961, Los Angeles realtors contended that race and nationality could figure into the terms of the housing contract, and that the color of a bidder's skin could squelch a real estate deal: "A Realtor should never be instrumental in introducing into a neighborhood . . . members of any race or nationality or individuals whose presence will clearly be detrimental to property values in that neighborhood."¹⁴⁷ For the real estate industry in California, the stated rationale for private, extralegal regulatory action was the protection of the property of some people—homeowners in all-white neighborhoods—by devaluing the bargaining power of other people, nonwhites shopping for housing in any neighborhood. Thus, while covenants per se had been outlawed in 1948 by *Shelley v. Kraemer*,¹⁴⁸ the discriminatory social mores and business policies of realtors continued well into the 1960s, barring black homeowners from white neighborhoods and robbing black homeowners of equitable compensation for homes taken under eminent domain proceedings.

In summary, the realtors actively interfered with free-market forces despite the fact that, on the face of it, these state-supported actions contradicted a fundamental tenet of the realtor's code of ethics—protect property values. However, these same realtors balked at fair housing legislation that protected the purchasing power of blacks shopping for homes in race-restricted neighborhoods.

C. The Fair Housing Coalition

The clout of political players is often measured by the gravity of their opposition. Charles B. Shattuck, as demonstrated by his titles and position, was a heavy-

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

¹⁴⁷ Governor's Commission, *Report of the Governor's Commission on the Rumford Act*, 1967, California State Archives, Sacramento, Calif. (hereafter cited as *Report of the Governor's Commission on the Rumford Act*, 1967).

¹⁴⁸ *Shelley v. Kraemer*, 334 US 1 (1948).

weight among California's realtors in 1961. Similarly, H. Jackson Pontius was a rising star: by the end of the decade, he would move from executive vice-president of the California realtors to executive vice-president of the National Realtors Association—and, in 1971, Pontius would visit the Oval Office as part of a real estate delegation that discussed housing discrimination with President Nixon.¹⁴⁹ As such, the voluntary testimony of Shattuck and Pontius in the 1961 hearings may perhaps be seen as a backhanded acknowledgement of the increasing political clout of the fair housing coalition.

The fair housing coalition comprised an intertwined network of people and organizations that was bound together by their opposition to a common adversary—the real estate lobby. One such network was the Bay Area Council Against Discrimination, “an organization to combat discrimination because of race, creed, color, or national origin.”¹⁵⁰ Advocating for progressive wartime and postwar legislation in the San Francisco, Oakland, and Berkeley regions, a 1943 report by the Executive Committee of the Bay Area Council explicitly identified the “two major phases of the problem of race relations: employment discrimination and discrimination in housing.”¹⁵¹

To wage an effective fair housing campaign, the fair housing coalition required goals broad enough to maintain its base of support. Yet, to attract individual interest groups to the coalition, and to effectively coordinate the energies of these disparate interest groups, the fair housing campaign needed to establish and reaffirm specific objectives, milestones, and tactics. Thus, because the fair housing campaign was an ad hoc movement, not an institution, it was essential that its constituencies be able to communicate ideas and coordinate efforts across a spectrum of interest groups. To this end, the fair housing interests published a newsletter, *Clearing House*, which served as “an informal coordinating mechanism for the bona fide staffed agencies in Northern California in the field of human relations and civil rights.”¹⁵² The minutes-like format of *Clearing House* catered to the diverse racial, religious, and ethnic makeup of the contributors to the newsletter: the American Civil Liberties Union, the American Friends Service Committee, the American Jewish Committee, the Anti-Defamation League, the Friends Legislative Committee, the Japanese American Citizens League, the Jewish Labor Committee, the National Association for the Advancement of Colored People, the National Conference of Christians and Jews, the Oakland Jewish Community Relations Council, the San Francisco Council for Civic Unity, the San Francisco Jewish Community Relations Council, and the San Francisco Urban League. Simply put, *Clearing House* was published by the sort of salt-and-pepper integration of

¹⁴⁹ Nixon Tapes, Conversation No. 520–23, June 15, 1971.

¹⁵⁰ *Bay Area Council Against Discrimination: Notes*, Dellums Collection, Carton 23, Bancroft Collection, University of California, Berkeley, Calif. (hereafter cited as *Bay Area Council Against Discrimination: Notes*).

¹⁵¹ *Ibid.*

¹⁵² *Clearing House*.

peoples which, during the 1961 hearings, had evoked the wrath of the realtor Shattuck.

The diversity of the fair housing coalition brought its own organizational dilemma. Competing for a restricted supply of housing resources and hampered by age-old internal and external animosities, the antidiscrimination front could easily succumb to internecine turmoil. In San Francisco in 1943, African-American interest groups argued for increased access to the housing opportunities created by the eviction and internment of Japanese-American residents;¹⁵³ while, in 1948, a *Black Worker* editorial condemned the policies of a Buy Black Committee in Harlem:

[The Committee sought to] oust the Jews from Harlem. . . . Negroes above all people should be the last to take part in such a movement of hate, prejudice and madness. . . . The claim that Negro business should control the business in Negro communities is no more sound than that white business should control business in white communities. . . . To take any such position is to put a premium on business inefficiency and chicanery.¹⁵⁴

The vulnerability of the antidiscrimination coalition to internal strife could not be ignored. In response, human relations councils formed across the state with a common purpose to promote unity and respect across ethnic and racial lines.¹⁵⁵ Acting as advisory groups within local communities, the human relations councils sought to coordinate diverse interests and to advocate on behalf of their various interests with businesses and local governments.¹⁵⁶ For example, William Byron Rumford later recalled that the members of one Berkeley council, the Interracial Committee, “functioned wherever they needed to function. If people brought to them circumstances of institutions or conditions which they felt were creating a problem, why then the committee would intercede.”¹⁵⁷ Council members might sit as individual citizens or as representatives of special interest groups. Conse-

¹⁵³ *Bay Area Council Against Discrimination: Notes*.

¹⁵⁴ BSCP, *Black Worker*, January 1942, p. 4, Dellums Collection, Carton 22, Bancroft Collection, University of California, Berkeley, Calif.

¹⁵⁵ The California Council for Civic Unity, Minutes of the Northern California Executive Meeting, August 1, 1946, Rumford Collection, Carton 9, Bancroft Collection, University of California, Berkeley, Calif. (hereafter cited as The California Council for Civic Unity).

¹⁵⁶ Representing the diverse voices found on these councils, in 1942, the Advisory Committee of the Bay Area Council Against Discrimination included the deans from the Schools of Education of Stanford University and the University of California at Berkeley, a monsignor and a rabbi, the progressive Carey McWilliams, James K. Moffitt of the Crocker National Bank, Herb Caen, the popular San Francisco columnist, and high profile labor leaders—as well as Attorney Mathew O. Tobriner, future justice of the Supreme Court of California, and three sitting justices of the Supreme Court of California, Jesse W. Carter, John W. Shenk, and Roger J. Traynor

¹⁵⁷ William Byron Rumford, *Recollections of William Byron Rumford*. Oral History Project: University of California, Berkeley, Calif., p. 22.

quently, the membership and aims of the separate councils often overlapped, creating a network of common interests that crisscrossed California's socio-economic landscape. Using these common interests to align their activities without sacrificing their autonomy, the advisory groups could then form larger associations like the California Federation for Civic Unity.¹⁵⁸

Sometimes the fair housing movement found that its coalition could not maintain an open door policy. Usurpations of fair employment agendas by communists and "fellow travelers" had attracted Red Scare smear campaigns that dragged down fair employment campaigns in California and Michigan during the 1940s.¹⁵⁹ Consequently, under the leadership of Reverend Allan Knight Chambers of the NAACP National Board, and A. Philip Randolph of the Brotherhood of Sleeping Car Porters, the National Council for a Permanent FEPC resisted Communist infiltration.¹⁶⁰ Speaking at the NAACP West Coast Regional Council Meeting on February 26, 1949 in San Francisco, Roy Wilkins, assistant secretary of the National Office of the NAACP, explicitly called for caution in reaching out to more extreme groups: "Certain people who believe in the left wing approach and philosophy," Wilkins said, "have made inroads in some of our branches to the extent people don't care to cooperate with the NAACP any more because they say it has a bunch of Communists in it."¹⁶¹ The fair housing campaign heeded Wilkins' warning to monitor the makeup of its coalition. Repudiating a Berkeley initiative sponsored by the United Socialist Action Committee, the NAACP set forth its arguments about fair housing in the then-familiar style of argument invoking the Cold War context: "Can a modern society such as ours," the NAACP asked, "destined to be the number one state in the middle of the free world, ignore the moral, legal and governmental responsibility to act in accordance with the American creed, based as it is upon the equality of opportunity and the essential dignity of the individual?"¹⁶²

Consequently, as a fluid faction tossed about by external opponents and internal constituencies, the postwar antidiscrimination coalition was a dynamic move-

¹⁵⁸ Meeting Minutes and By-Laws of the California Federation for Civic Unity, 1947, Dellums Collection, Carton 25, Bancroft Collection, University of California, Berkeley, Calif. (hereafter cited as Meeting Minutes and By-Laws of the California Federation for Civic Unity).

¹⁵⁹ BSCP, *Black Worker*. 1948 Cold War voters in California responded by summarily defeating a tainted referendum while, in Michigan, ". . . the Communists' inefficiency caused the failure of their campaign for a referendum, [while] their blatant and irritating tactics helped to cause the proposed [fair employment] law to be blocked in the state legislature."

¹⁶⁰ *Clearing House*.

¹⁶¹ *Ibid.*

¹⁶² *Records of Hearings of Governmental Efficiency and Economy Committees*, 1961. "Can a modern society such as ours, destined to be the number one state in the middle of the free world, ignore the moral, legal, governmental responsibility to act in accordance with the American creed based as it is upon the equality of opportunity and the essential dignity of the individual?"

ment that continually refocused on common interests and coordinated actions. Publications such as *Clearing House* met some of this need, but face-to-face coordination was also necessary. Much like New England town meetings, the alliances would often gather to regroup and reorganize before renewing their course of action. One pivotal instance of postwar organization in support of civic unity and fair housing took place on Saturday, September 13, 1947, when 45 delegates to the Northern California Regional Conference of the California Council for Civic Unity gathered at the International House (I-House) of the University of California.¹⁶³ Nestled against Memorial Stadium directly across from the School of Law, I-House was an appropriate setting for such a diverse coalition. In the 1930s, the Moorish building had welcomed international students unable to find housing in the restrictive neighborhoods of Berkeley; and during the defense mobilization of the 1940s, I-House had barracked naval officer candidates preparing to wage the overseas war for democracy.¹⁶⁴ Now, in 1947, the mixed American and international community at I-House hosted a day-long gathering to “*exchange ideas and techniques* for solving mutual problems of intergroup tension.”¹⁶⁵ As the minutes of the meeting indicate, the gathering was one of several regional planning sessions in the postwar campaign against discrimination in jobs and housing in California. Discussing a nonprofit listing bureau established in Redwood, the minutes of the housing panel reported that “the bureau serves as a go-between for the real estate dealers or individual owners willing to sell and the minority family wishing to buy.”¹⁶⁶

Throughout California, a spider web of similar local meetings, rallies, and organizations fed into a series of annual statewide conferences. By bringing the legal skills of the NAACP West Coast Regional Legal Redress Committee to the fair employment and fair housing movements in California, the statewide gatherings explicitly linked California to advances made on the national stage. In 1954, the Ninth Annual Civic Unity Convention at Asilomar Hotel and Conference Center in Pacific Grove, California, focused primarily on housing issues, but it also included a presentation on the California FEPC by William Becker of the Jewish Labor Committee and a talk on the “Implications of Recent Supreme Court Decisions” by the Regional Secretary-Counsel of the NAACP, Franklin H. Williams.¹⁶⁷ For the civil rights movement as much as the business and real estate interests, California had become an arena for airing national issues and challenging national priorities.

While specific issues were addressed in the Asilomar conference symposia, the overriding and more heuristic mission and accomplishment of the Civic Unity

¹⁶³ Meeting Minutes and By-Laws of the California Federation for Civic Unity, 13 September 1947.

¹⁶⁴ Hall of History Display, International House, Berkeley, Calif.

¹⁶⁵ Meeting Minutes of California Federation for Civic Unity, 13 September 1947.

¹⁶⁶ *Ibid.*

¹⁶⁷ The Ninth Annual Civic Unit Convention with a Focus on Housing: *Agenda*, December, 1954, Rumford Collection, Carton 9, Bancroft Collection, University of California, Berkeley, Calif.

and the NAACP Legal conferences were articulated by Tarea Hall Pittman, a leader of the antidiscrimination coalitions. Built as a training center for the Young Women's Christian Association, the Asilomar Hotel and Conference Center was situated on the Monterrey Peninsula, a rocky coast jutting out in the Pacific and noted for scruff pines, sea spray, and chilling isolation. "When you came together in a setting like Asilomar, you weren't competing for people's time," Pittman said. "At Asilomar they were sort of captive, so to speak, and they could do all sorts of things together. We brought the leadership people from all over into the conference."¹⁶⁸ Presumably, strolls along the meandering seaside paths built personal bonds between African-American, Jewish, and Catholic interests—and enhanced the exchange of ideas and tactics between the housing and employment campaigns.¹⁶⁹

By the 1960s, the common interests and coordinated efforts of the fair housing coalition were pressuring the realtor lobby to respond, and eventually the realtor lobby found its old tactics wanting. Less than one week after the racist testimony of Shattuck at the 1961 hearings, Earl P. Snyder, president of the Home Builders Association of Los Angeles, Orange, and Ventura counties, and a charter member of the National Association of Home Builders, rushed a letter to the chairman of the legislative committee. Snyder wanted the official records of the hearings to include his association's take on antidiscrimination. "The issue is not the matter of better or adequate housing," Snyder argued. "If an owner, regardless of his wishes, must under penalty of fine and imprisonment accept as a purchaser or tenant a person he does not want, he is *not* free. This is the one and only issue."¹⁷⁰ At the very least, the high moral tone of this message was part of a larger strategic shift in the arguments of the realtor lobby. Indeed, by 1964, even Shattuck appeared to have abandoned the style of openly confessing to the color-coded business principles and practices that he had defended in 1961 when he explicitly endorsed housing segregation and employment discrimination. Three years later, as quoted in *The New York Times*, Shattuck denied the California attorney general's charge that Los Angeles realtors "black-balled" African-American house hunters.¹⁷¹

¹⁶⁸ Tarea Hall Pittman, *Oral History*. Bancroft Collection, University of California, Berkeley, Calif.

¹⁶⁹ "Realtors Gather in West," *New York Times*, 9 November 1953, p. 43. This was a tried-and-true business concept, as demonstrated by the high billing the 1953 NAREB convention in Los Angeles gave to their golf tournament.

¹⁷⁰ *Records of Hearings of Governmental Efficiency and Economy Committees*, 1961.

¹⁷¹ Bill Becker, "Fair Housing Law Fought On Coast," *New York Times*, 19 January 1964, p. 76.

IV. The Race for Free Market Equity

From its growing well of social capital, the fair housing campaign in the 1950s and 1960s drew three assets: a legislative roadmap to establish antidiscrimination laws and administrative methods for enforcing these laws; a legal team to establish and maintain the constitutional basis for these antidiscrimination laws; and an electoral base to assure the success of the legislative and judicial campaigns. But these benefits were not without a price. When New Deal progressives, the labor unions, and the school desegregation supporters participated in the fair housing campaign, they brought with them an opposing cadre of states' rights advocates and real estate lobbyists. The philosophy and tactics of these opposition groups also drew upon a varied background: opposition to postwar rent control and government management of the economy; opposition to what some perceived as *Brown v. Board of Education's* expansive interpretation of the Fourteenth Amendment;¹⁷² and the emerging opposition to the social upheavals of the 1960s—the antiwar movement and the so-called welfare state.

Competing at the ballot box and jousting at the bench, these two sides fought over the control and makeup of the suburbs of 1960s California. In 1963, at a popular California governor's request the legislature passed a law adding fair housing to the purview of the Fair Employment Practices Commission (FEPC). In response, the voters overwhelmingly approved a constitutional amendment that banished all fair housing laws. Finally, in 1966, as these opposing positions were fought out in litigation from the California Supreme Court to the United States Supreme Court, the national spotlight shone on a gubernatorial election in California that, in the end, changed far more than the color wheel of its suburbs.

A. Fair Housing and Fair Employment as Legacies of the March on Washington Movement

It cannot be overemphasized that, in the context of fair housing in California, the fair employment movement did more than merely put more down-payment dollars in the pockets of more black workers. The fair employment campaign paved much of the political landscape of California, constructing an efficient political machine from the special interests of separate factions, and generating the social capital that the fair housing movement would match against the resources of the real estate industry.

Like the fair housing movement, the fair employment movement had never been monolithic or static. The 1950 campaign to pass federal FEPC legislation involved scores of civil rights, religious, and labor organizations, and was spearheaded by the National Council for a Permanent FEPC (with A. Philip Randolph as cochairman, Roy Wilkins as chairman of the executive committee, and Arnold Aronson as secretary of the executive committee) and the National Emergency

¹⁷² Southern Manifesto, 102 *Cong Rec* 4515–16 (1956).

Civil Rights Mobilization (with Roy Wilkins as chairman and Arnold Aronson as secretary).¹⁷³ Despite their obvious overlaps of leadership, the efforts of the two organizations were neither redundant nor wasteful. By advancing on two organizational fronts—each creating multiple channels for accumulating social capital—the FEPC proponents increased the political potency of their fair employment campaign. And as the campaign for fair employment continuously expanded its base of support, its constituency would become synonymous with the constituency of the fair housing movement.¹⁷⁴

1. *The Wartime Campaign for Fair Employment*

The fair housing and fair employment issues had common roots in the political and economic headwaters of wartime industrial mobilization. For African Americans, the Second World War involved a two-front campaign against foreign fascism and racism at home.¹⁷⁵ It was a fight against practices so crass that the American Red Cross was said to have refused to allocate African-American blood to wounded white Americans.¹⁷⁶ Racism diminished the African-American citizenry's role in contributing to what President Roosevelt called the "arsenal of democracy."¹⁷⁷ The armed forces herded black servicemen into segregated units; black civilians often were denied job opportunities on the shop floors of war plants. At times there was open violence: When the authorities decided to integrate the Sojourner Truth war housing development in Detroit in 1942, as the African-African labor magazine *Black Worker* reported angrily, "When the Negro tenants attempted to occupy their homes, they were attacked by a mob of two thousand whites and, according to reports, these thugs were aided and abetted by servants of the law."¹⁷⁸

¹⁷³ Joint Letter, "The Fight for FEPC Goes on—Round 3 Coming Up." May 19, 1950, Dellums Collection, Carton 20, Bancroft Collection, University of California, Berkeley, Calif. On the FEPC, see also text at note 181 below.

¹⁷⁴ Rumford, *Rumford Oral History*, 52, Bancroft Collection, University of California, Berkeley, Calif. This was a natural, inevitable alignment, as considered by Dr. William Byron Rumford, Assemblyman from Berkeley, ". . . it would seem to me that the first thing is to get a job and be able to make sufficient revenue so that they can live better."

¹⁷⁵ *BSCP, Black Worker*, January 1942, p. 4. See generally Jervis Anderson, *A. Philip Randolph: A Biographical Portrait* (New York: Harcourt, Brace, 1974). See also note 176, below.

¹⁷⁶ *BSCP, Black Worker*, January 1942, p. 4.

¹⁷⁷ Radio Address delivered by President Franklin D. Roosevelt, 29 December 1940; see also A. Philip Randolph, "The Brotherhood Backs the War," in *BSCP, Black Worker*, February 1942, p. 4: ". . . it is fully possible for America to win the war in Europe and lose it in Washington, D.C., New York, and Georgia. It is possible for America, by virtue of its failure to understand and hold fast to the principles of democracy, and by surrendering to the disastrous doctrines of race superiority, to lose the war in Europe and Asia as well as at home."

¹⁷⁸ A. Sagittarius, "The Great Test," in *BSCP, Black Worker*, March 1942, p. 4. Ironically, having built the Sojourner Truth project in response to discrimination against

Only the exigencies of an expanding global war were able to eclipse—or at least soften—the racial divides of the home front. In 1940 and 1941, America found itself urgently rearming in response to the invasions and cooperative partitioning of Poland by Hitler and Stalin; to the blitzkrieg racing across Norway, the Low Lands, and France; to the Italian flexing in the Mediterranean and Africa; to the Lend Lease demands of teetering Britain; and to the Japanese advances in China and Indochina. Thus, even before Pearl Harbor, the White House and Congress—as well as overseas allies—called for more weapons, more transports, more fuel, and more food. To fill the new orders, American industry needed the help of all hands—female as well as male, and black as well as white.¹⁷⁹

Turning away African-American labor could easily have crippled prewar mobilization, and the African-American labor movement flashed this bargaining chip. Led by A. Philip Randolph, founder and president of the Brotherhood of Sleeping Car Porters, the African-American labor movement confronted racial barriers by organizing a massive protest on the Capitol Mall of Washington, D.C. Announced in a May 1941 letter as a movement to eliminate discrimination in the military and war industries,¹⁸⁰ the March on Washington Movement (MOWM) publicly rehearsed and demonstrated its scheme to deliver tens of thousands of black workers from across the nation to the seat of the federal government. The march was empowered by the new market clout of African-American labor, and by the pressing need to maintain a united home front.

African Americans in the Detroit housing market, federal authorities succumbed to local pressures and decided to make the project all-white housing; they backed down finally, and invited black tenant applications. When the project opened, a mob of whites picketed and assaulted African-American tenants trying to move in, and the police reportedly did nothing to protect the tenants or to hold the mob in check. Finally the tenants occupied their housing, moving in under the protection of more than 1,700 law enforcement officers. (Robert Shogan, *The Detroit Race Riot: A Study in Violence* (Philadelphia: Chilton Books, 1964), 29–31.) Eleanor Roosevelt had been instrumental in persuading government officials to adopt the integration policy there, and she was accused in some southern newspaper editorials of “having blood on her hands” as the result of the riots. The PBS film in the “American Experience” series, *Eleanor Roosevelt*, and its website, have material on this incident, as does the Eleanor Roosevelt National Historic Site website. The years 1942 and 1943 also witnessed the events leading to the notorious Zoot Suit Riot in Los Angeles, in which a mob of navy sailors assaulted Mexican-American youths, and riots in Harlem, New York City; and in Illinois. Shogan, *Detroit Race Riot*, 89–96; . Eduardo Obregon Pagan, *Murder at the Sleepy Lagoon: Zoot Suits, Race & Riot in Wartime L.A.* (Chapel Hill: University of North Carolina Press, 2003).

¹⁷⁹ PROCLAMATION OF UNLIMITED NATIONAL EMERGENCY, May 27, 1941, The American Presidency Project, available online at <http://www.presidency.ucsb.edu/>

¹⁸⁰ Letter establishing the march on Washington, 28 May 1941, Dellums Collection, Carton 23, Bancroft Collection, University of California, Berkeley, Calif. (hereafter cited as Letter establishing march on Washington).

Building on carefully orchestrated logistics,¹⁸¹ the campaign was no paper tiger. The march was set to converge on Washington on July 1, 1941. Instead, on June 25, 1941, two days after the Nazis invaded the Soviet Union, Roosevelt accepted the demands for racial equality in the war effort. Issuing Executive Order 8802, Roosevelt established the Fair Employment Practices Committee and charged it with investigating and eliminating discrimination in government service and defense industries.¹⁸² Although Roosevelt's order preempted the actual march on Washington, the leverage exerted by the March on Washington Movement was realized.

Despite continued vigilance of the MOWM, the wartime federal FEPC had more bark than bite. Black workers did gain and expand some footholds into segregated industries and unions. In Texas in 1943, the War Labor Board removed contractual differentials between "colored labor" and "white labor" by substituting a single word "labor."¹⁸³ And, in California in 1944, the Region VII offices of the federal FEPC "achieved a greater number of satisfactory adjustments of proven discriminatory cases than any other region in the nation" and established "friendly personal terms with nearly all the employers and union officials" charged with employment discrimination.¹⁸⁴

However, once the MOWM's gathering of thousands of black workers had been cancelled in positive response to Roosevelt's creation of the federal FEPC, it became apparent that the resolve of the federal FEPC was not immutable. In December 1942, A. Philip Randolph wrote, "If the hearings on discriminations in railroads are to be summarily and indefinitely called off after months of careful preparation for them, then there is only one conclusion Negroes can reach, namely, that the FEPC is useless and that it can no longer be looked to for help. It appears that the FEPC was just a sop, an appeasement, in the first place to stop the March on Washington."¹⁸⁵

It was apparent, too, that the federal FEPC was undermined by the circumstances of its birth. The Office of Price Administration was established by act of

¹⁸¹ *Ibid*; see also Negro-March-on-Washington Committee Bulletin, 9 June 1941, Dellums Collection, Carton 23, Bancroft Collection, University of California, Berkeley, Calif. (hereafter cited as Negro-March-on-Washington Committee Bulletin). The MOWM timetable for late June 1941 included establishing local MOWM Committees, sponsoring rally's by African Americans in cities across the country, and planning the bus transport of marchers from across America to the nation's capitol. To fund the movement, buttons and posters were advertised for sale. See Paula F. Peffer, *A. Philip Randolph, Pioneer of the Civil Rights Movement* (Baton Rouge: Louisiana State University Press, 1990).

¹⁸² 68 Executive Order 8802 Establishing the Committee on Fair Employment Practice, June 25, 1941, *The American Presidency Project*, available online at <http://www.presidency.ucsb.edu/>

¹⁸³ *BSCP, Black Worker*, June 1943.

¹⁸⁴ Harry L Kingman, letter dated 26 December 1949, Dellums Collection. Carton 20, Bancroft Collection, University of California, Berkeley, Calif. (hereafter cited as Kingman letter).

¹⁸⁵ *BSCP, Black Worker*, December 1942.

Congress, and its powers affirmed by judicial decision. The Emergency Price Control Act of 1942 defined the rent control mechanisms, specifying the intent of the legislature and delegating the power of the legislature to the OPA, with the courts in support. In contrast, the fair employment mechanisms were established in 1941 by executive action—Executive Order 8802—making fair employment enforcement continuously subject to the political forces that could sway the resolve of the administrative process. In January 1944, an article in the *Black Worker* noted that employment discrimination by southern railroads and labor unions rested safely outside the war industry jurisdiction of federal FEPC. When the FEPC directives were resisted, a compromising Roosevelt had “appointed a committee to work out ways and means to handle the directives.”¹⁸⁶ The way in which Roosevelt had waffled on fair employment issues influenced the tone of a *Black Worker* editorial eulogizing the president just after his death. “There are few instances in which the President did anything directly for Negroes by way of breaking down discriminations,” the editorial declared, “but Negroes benefited in the main as workers and plain people from his broad program . . . to curtail the ravages of vested interests.”¹⁸⁷

Seeking an effective way to stymie the “ravages of vested interests” during and after the Roosevelt administration, the fair employment movement established a coalition of antidiscrimination and labor interests to advance a broad—if sometimes deliberate or compromised—agenda of progressive legislation. As the *Black Worker* proclaimed, “the Negro workers must organize wherever and whenever this is possible, thus placing himself within the orbit of the postwar planning and the gains which may accrue to workers through the wise planning translated into applied gain and impartial democratic action.”¹⁸⁸

To this end, A. Philip Randolph established the National Council for a Permanent Federal Fair Employment Practice Act, naming an Independence Day MOWM conference as a call to arms, “We Are Americans, Too.”¹⁸⁹ Created to “debate basic questions involving strategy and the status during the war and post war period,”¹⁹⁰ the 1943 conference preceded a series of efforts to establish and sustain federal and state Fair Employment Practice Committees.

2. *The Postwar Campaign for Fair Employment*

As the Second World War wound down, the African-American labor movement charged that maneuvers in Congress were whittling down the OPA and the wartime FEPC.¹⁹¹ In May of 1945, the *Black Worker* noted, the wartime FEPC

¹⁸⁶ *Ibid.*, January 1944.

¹⁸⁷ *Ibid.*, May 1945.

¹⁸⁸ *Ibid.*, March 1944.

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

¹⁹¹ *Ibid.*, July and September 1946. In July 1946, *Black Worker* issued a call that pressure be applied on Congress, warning that a stepped price control amendment introduced by Senator Taft was, “a strictly superficial remedy for the economic malady of inflation.” By September 1946, the union paper noted with a tone of respite that OPA

was having difficulty securing funding while the bill for a permanent FEPC was “being sabotaged in the Rules Committee of the House and [by] a filibuster by southern reactionary bourbon Democrats in the Senate.”¹⁹² Those fair employment initiatives that did press forward were often found hesitant and lackluster by the postwar FEPC movement. For example, in 1951, three years after President Truman had used his executive powers to desegregate the armed services, the *Black Worker* complained that Truman’s Committee on Government Contract Compliance had become a “mild FEPC” that lacked enforcement powers—rendering it weaker than the wartime version.¹⁹³

Similar disappointments occurred in California at the state level, where the fair employment movement felt itself ignored by Governor Earl Warren. In 1946, after winning the primary elections of both the Republican and Democratic parties in June, Warren offered no coattail support for the fair employment referendum establishing a FEPC on the November ballot.¹⁹⁴ Later, in 1953, when the NAACP marched on Sacramento to lobby the legislature for an impending FEPC bill, Warren again sat silent. “It is very interesting that although there were those who claimed that Governor Warren was not against the bill, he would not come to the mobilization or speak, and he would not see our delegation,” recalled Tarea Hall Pittman. “We tried very hard to meet with him and to ask that he use his influence to get the bill through. . . . [The] committee which was putting on the big mobilization pleaded with Governor Warren to come to the meeting and speak and give his approval to FEPC, and to do what he could do. . . . That he would not do.”¹⁹⁵ Years later, Earl Warren remembered it differently, stating that he had actively pursued enactment of fair employment legislation, hoping to see a special commission appointed to determine “what we could do in that area”; but that both the proponents and enemies of the legislation were unwilling to compromise on “any bill that would have a chance of enactment by the legislature.”¹⁹⁶

Wherever the truth may lie with regard to the governor’s role, and no matter how estranged from the political leadership in Sacramento, the movement leaders favoring effective FEPC in California nonetheless persevered. It was an auspicious event when, in the 1958 gubernatorial campaign, Democrat Pat Brown defeated Republican William Knowland. Unlike Warren in 1953, Brown openly supported the establishment of a FEPC that had strong enforcement powers and a sphere of

price controls had been reinstated, with the rights of renters rolled back to June 30, 1946—except for those renters unfortunate enough to have been evicted during the interim.

¹⁹² BSCP, *Black Worker*, May 1945.

¹⁹³ *Ibid.*, December 1951.

¹⁹⁴ Lawrence P. Crouchett, *William Byron Rumford, The Life and Public Services of a California Legislator: A Biography* (El Cerrito, Calif.: Downey Place Publishing House, Inc., 1984).

¹⁹⁵ Pittman, *Oral History*.

¹⁹⁶ “Then the extremists put their bill on the initiative ballot,” Warren went on to say, “[and they] drove everybody who was in favor of the movement away from it. . . . So, I have some knowledge of how difficult it is to do those things.” Earl Warren, *Oral History Interview*, copy in the Harry S. Truman Library, Independence Missouri.

influence that extended beyond government contracts. These goals had long been pursued by one of Brown's first appointments to FEPC, C. L. Dellums. Dellums brought organizational and political expertise developed during his tenures as the chairman of the NAACP Regional Committee and the West Coast vice president of the Brotherhood of Sleeping Car Porters.¹⁹⁷ Moreover, as evinced by his personal recollections, Dellums' role on the FEPC was also shaped by his social and professional interactions with whites.¹⁹⁸ Dellums openly acknowledged that he had been hired by the railroad because, during his job interview, he had been recognized as a Prince Hall Mason, a black fraternal organization with ties to the Free Masons. Dellums was later fired on account of his standing as an organizer of the first all-black union. Dellums' brother had been jailed as a leader of the Tulsa Riots, and Dellums had once faulted a black attorney because the attorney "believed what white people told him."¹⁹⁹ Ubiquitously involved in the civil rights movement, Dellums encapsulated the essence of the antidiscrimination campaigns: "We were never really asking white people to grant or give us any rights. Only to stop using their majority and power in preventing us from exercising our God-given rights."²⁰⁰ With tactical shrewdness coming from a lifetime of advocacy, Dellums would lead the California FEPC movement by forging alliances between both African-American and white labor leaders.²⁰¹

B. The Rumford Act

When Dellums referred to God-given rights, he touched upon a concept that was highly contested during the civil rights conflicts, and he brought it directly from the fair employment movement into the fight for fair housing. During the 1961 legislative hearings on fair housing, the two opposing camps of the fair housing debates were clearly defined by their different takes on the meaning of fundamental rights. This conceptual chasm became evident in the discussions on Assembly Bill 801 (AB 801), which sought to incorporate the fair housing regulation passed in 1959 for publicly assisted housing within revised terms of the Fair Employment Practices Commission (FEPC). For Assemblyman Hawkins, who sponsored the bill, the personal rights asserted by AB 801 were well established by precedent:

The right of all citizens to enjoy equal opportunities in public assisted housing has been sustained under the 14th amendment, was implemented by congressional

¹⁹⁷ Interview with Ronald V. Dellums, February 20, 2000, *Conversations with History* Series, Institute of International Studies, University of California, Berkeley, Calif. Transcript available online at <http://globetrotter.berkeley.edu/people/Dellums/dellums-con0.html>.

¹⁹⁸ C. L. Dellums, *Dellums Oral History*, Bancroft Collection, University of California, Berkeley, Calif., p. 94.

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*, p. 116.

²⁰¹ *Ibid.*, p. 119.

statutes as early as 1866, and has been affirmed by the Supreme Court in numerous decisions dating from 1917. In addition the Supreme Court's declaration for the field of education that segregation is inherently unequal [has] undermined the entire system of segregation in America . . . the only thing we are discussing, gentlemen, is not the law of the land, we are simply discussing the implementation of it . . . to bring it to life for everyone among us.²⁰²

Not surprisingly, the real estate interests disagreed on principle. They saw nothing natural or accepted in the idea of giving the FEPC the power to monitor discrimination in publicly assisted housing. This opinion was sharply expressed by the representative of the builders' association.

Powers such as those proposed to be granted to a commission under AB 801 . . . are extremely dangerous to the freedom of all people. This trend toward government by commissions is a move toward a police state and should be opposed by all Americans. We feel that it is an abridgement of individual rights and as an attempt to legislate human behavior.²⁰³

Amidst this exchange of views, the essential question—the crux of the legislative bill—still remained to be answered: would the state of California adopt tough and stringent fair housing laws in the 1960s? In 1959, the California legislature had passed the Hawkins Fair Housing Act, which regulated against discrimination in publicly assisted housing, as well as the Unruh Civil Rights Act, which prohibited discrimination in business practices, including the practices of the real estate profession. However, the Hawkins Act specified regulations for publicly assisted housing but did not provide a means for enforcement. The Unruh Civil Rights Act addressed the actions of businesses but could not fully reach the discriminatory practices imbued in the rentals and sales of private housing. In 1959, fair housing regulations still had neither the bite nor the scope of the wartime OPA, and the checkerboard California real estate market held fast as the status quo.

The fair housing campaign believed that the answer lay in linking fair housing to the California FEPC.²⁰⁴ In its first two years of operation, the California FEPC had shown itself to be a stalwart and effective administrative agency: in 1959, the commission had withstood a campaign to get an anti-FEPC referendum on the 1960 ballot;²⁰⁵ and between 1959 and 1961, the California FEPC received, on average, 10 complaints per week for two years, and nearly all the complaints were

²⁰² *Records of Hearings of Governmental Efficiency and Economy Committees*, 1961.

²⁰³ *Ibid.*

²⁰⁴ *Clearing House*, February 1959.

²⁰⁵ Lawrence E. Davies, "Voters May Act On Coast F.E.P.C.," special to *The New York Times* 19 April 1959, p. 65.

resolved without public disclosure.²⁰⁶ In 1961, the California FEPC was working, and the employer-employee-applicant relationship had not turned chaotic. This was the type of government regulation that the fair housing campaign wanted: a police powers bureaucracy that would be able to quickly respond to inequities in the housing market. Thus, after the California legislature voted down the regulatory and enforcement provisions of AB 801 in 1961, Assemblyman William Byron Rumford began anew the quest for effective fair housing legislation.

Rumford knew first-hand that the California FEPC would be an effective venue for fighting discrimination in the housing market. A legislator since 1946, Rumford had worked throughout the 1950s with Hawkins—and consulted with Governor Warren—on fair employment legislation. In 1953, he strengthened a piece of fair employment legislation by adding the creation of a fair employment commission and the enumeration of criminal penalties.²⁰⁷ More importantly, while a pharmacist by training and profession, Rumford also had had significant first-hand experience in the use of police powers to maintain the public good. Before his pharmacist career flourished, Rumford had worked as an inspector in the Venereal Disease Control Program, a public sector job that revealed for him the potential reach of the police powers: “During the war, we in VD control had to deal with army camps and apprehending persons who were carriers. . . . They could be jailed for not keeping up their treatment . . . [or] they could be quarantined.”²⁰⁸

Even as he established himself as a pharmacist-businessman in Berkeley, Rumford remained active in the public sector. He had gained additional experience with regulatory powers of the government during wartime, serving on the Emergency Housing Committee and on the Local Rent Control Board in Berkeley.²⁰⁹ In 1944, he had been appointed by Governor Warren to the State Housing Commission,²¹⁰ a position that afforded Rumford intimate knowledge of the activities and duties of the wartime and postwar rent controllers, the regional rent directors who were empowered to oversee the terms of individual rental agreements, and the Office of Rent Litigation’s inspectors who worked to ferret out violations and pressed actions in state court. Compared to these effective examples of administrative law, the opportunities for recourse established under the Unruh Act (which, as mentioned earlier, was enacted in 1959) were inherently limited because, as Rumford noted, “[u]nder the Unruh Act you had the Civil Rights Act which *would require the individual to file a suit himself* in the courts in order to get compensation or justice.”²¹¹

The lack of administrative channels for recourse weighed heavily against individual citizens combating specific instances of housing discrimination, despite the potential for success in the courts. For example, individual citizens found that

²⁰⁶ “California Gain Listed By F.E.P.C.,” special to *The New York Times*, 20 August 1961, p. 46.

²⁰⁷ Crouchett, p. 28.

²⁰⁸ Rumford, *Rumford Oral History*, p. 15.

²⁰⁹ *Ibid.*, p. 14.

²¹⁰ *Ibid.*; see also Crouchett, p. 28.

²¹¹ Rumford, *Rumford Oral History*.

the lower courts in California did not uniformly support government intervention in private housing contracts. When, in its decision in *Burks v. Poppy*,²¹² the California Supreme Court upheld the Unruh Act, it did so in reversing a San Francisco Superior Court decision. The lower court had refused to intervene when racial discrimination blocked the sale of tract housing by a construction company to a “Negro.”²¹³ The Supreme Court held that under the Unruh Act’s terms covering discrimination by business establishments, the construction company could not refuse to sell to an African American. The same San Francisco Superior Court judge had ruled in favor of a landlord who had refused to rent to an African American solely on the grounds that the would-be tenant was black. Again, the Supreme Court reversed the lower court’s decision.²¹⁴ Thus, while justice was served once cases reached the high court, it was often served much too slowly to meet the urgent needs of African Americans shopping for shelter.

Private market mechanisms failed to pick up the slack. After the state legislature declined to pass AB 801 in 1961, the discrimination assailed in the 1961 hearings went unchecked and even matured in full view of the public in 1962. National newspapers reported that, to avoid a campaign by the Congress of Racial Equality (CORE) that was seeking to document and quantify racial discrimination, Los Angeles area realtors closed offices and took down “for rent” signs.²¹⁵ One realtor selling a tract development announced his *own* color line when he declared, “we’ve taken in Japanese and Mexicans in this development but we feel that Negroes would be going too far.”²¹⁶ In Burbank, a town which counted one African American as one of its 90,000 residents, realtors fell back on old wives’ tales when discouraging African-American house hunters: *The New York Times* reported that the head of the local realtor association told a black couple that it would be hard to integrate Burbank because many of the residents mistakenly believed that a municipal ordinance banned African Americans from city streets after dark.²¹⁷

Dodged in the streets and stalled in the courts, African Americans in 1962 still suffered housing discrimination in California—and would probably continue to be subjected to unfair market conditions unless there emerged some administrative recourse for action. So, Assemblyman William Byron Rumford continued to promote legislation that married the fair housing regulations of the Hawkins Act with the Unruh Civil Rights Act. The goals remained the same: fight discrimination by giving the California FEPC the administrative power and means to investigate and halt unfair housing practices.²¹⁸

Rumford’s continuing efforts were given new impetus with the re-election of Pat Brown in the fall of 1962. In his 1963 inaugural speech, Brown responded to

²¹² *Burks, Jr. v. Poppy Construction Company*, 57 Cal 2d 463 (1962).

²¹³ *Burks*, 57 Cal 2d 463.

²¹⁴ *Lee v. O’Hara*, 57 Cal 2d 476 (1962).

²¹⁵ Gladwin Hill, “Negroes on Coast Fight for Housing,” *New York Times*, 9 July 1962, p. 1. See also text at note 259, below.

²¹⁶ *Ibid.*

²¹⁷ *Ibid.*

²¹⁸ Rumford, *Recollections*.

the support he had received from the civil rights coalition. Specifically, he called for an expansion of the FEPC “into a Human Rights Commission with authority to move against discriminatory practices in housing.”²¹⁹ A month later, on February 14, 1963, Rumford introduced his inclusion of fair housing under the FEPC as AB 1240.

Throughout the spring of 1963, real estate interests and the committee members they controlled fought tooth and nail against AB 1240.²²⁰ In April, the real estate interests took heart as the voters of Berkeley overturned fair housing actions passed by the Berkeley City Council.²²¹ Still, skillfully playing the clock, Rumford maneuvered his fair housing bill out of committee and onto the floor. AB 1240 passed the Senate just after 11 P.M. on June 20; and, on June 21, it passed the Assembly at five minutes before midnight—literally minutes before the end of the legislative session.²²²

C. Proposition 14

As a survivor of negotiation and compromise, the final form of the Rumford Act was not the comprehensive regulatory regime that had been sought by the fair housing coalition. For example, small rental complexes of four or less units were exempt; and the enforcement provisions of the Rumford’s original draft bill had been weakened.²²³ However, in its investigatory and enforcement powers, the housing arm of California FEPC was a close cousin to the wartime Office of Price Administration. This was enough to stir up a maelstrom not only throughout the state of California but across the nation, as news of Rumford’s success was splashed across the pages of newspapers and real estate trade journals.

Opposition to the Rumford Act crystallized in an impressive fashion. Even as Governor Brown signed the Rumford Fair Housing Act into law, the 40,000-strong California Real Estate Association announced it would fight the law, possibly with a referendum.²²⁴ The final form of their opposition awaited consultation with their attorneys. It appeared to Rumford that the California Real Estate Association, the Apartment House Owners Association, and the Chamber of Commerce “had made California the battleground for a national showdown on housing legislation.”²²⁵

²¹⁹ Edmund “Pat” Brown, “Inaugural Address,” January 7, 1963, Appendix to the 1963 Report on Housing in California; also available online at http://www.governor.ca.gov/govsite/govsgallery/h/documents/inaugural_32b.html.

²²⁰ Rumford, *Recollections*; see also Crouchett (1984).

²²¹ Rumford, *Recollections*; see also Thomas W. Casstevens, *Politics, Housing, and Race Relations: California's Rumford Act and Proposition 14* (Berkeley: Institute of Governmental Studies, 1967); see also Crouchett (1984).

²²² Rumford, *Recollections*; and Crouchett (1984).

²²³ Rumford, *Recollections*.

²²⁴ Lawrence E. Davies, “California Law on Bias Assailed,” *New York Times*, 2 July 1963, p. 9.

²²⁵ Rumford, *Recollections*, p. 120.

Quickly, the real estate coalition organized a campaign that promoted their alternative to the Rumford Act—Proposition 14.²²⁶ As recalled by Rumford, Proposition 14 was “written by law firms which were against the Fair Housing Act” and was a constitutional amendment that “nullified all housing acts.”²²⁷ According to Proposition 14, people could actively discriminate in their housing bargains, and it specified that the state government would not be allowed to intervene. Proposition 14 was designed to eliminate government influence in the private housing market; however, individual housing negotiations and agreements would still be subject to private-sector disruptions of the free market, including race, religious, and ethnic biases. In effect, by positioning Proposition 14 against the Rumford Act, the real estate coalition drew a line in the sand that went far deeper than merely repealing a single piece of legislation.

The debate over Proposition 14 cultivated a whirlwind of information and misunderstanding, marked by angry exchanges on the merits, and running through the entire debate a plague of bitterness, ill feelings, and slurs. On any given day, the effort to overturn the Rumford Act might involve highbrow jurisprudence, righteous indignation, or racial epithet. Unitarian ministers marched in support of the bill across San Francisco to the local California Real Estate Association (CREA) affiliate,²²⁸ while across the Bay in Richmond, women of the African-American Beta Psi Sigma Sorority invited Rumford to explain the Rumford Act at a formal luncheon.²²⁹ In many ways, the Rumford Act played as bawdy and violent as the land and mineral grabs of the original California Gold Rush: Rumford received an invitation to a stag dinner party—complete with one hour of “entertainment”—that was sponsored by the Associated Home Builders of the Greater East Bay,²³⁰ while across the state, pamphlets and pickets revealed the ugly fascist undercurrents of support for Proposition 14.²³¹ Throughout 1963 and 1964, there was no missing the Rumford Act or Proposition 14.

Old hands stepped forward to join the debate. On December 27, 1963, H. Jackson Pontius of CREA forwarded a report to the various local real estate boards regarding the Unruh Civil Rights Act and AB 1240. The report consisted of a letter prepared by the San Francisco law firm Brobeck, Phleger & Harrison, dated November 25, 1963, that updated a study performed by the Los Angeles law firm O’Melveny & Meyers in 1960. It stated that it was legal “for a broker to follow his

²²⁶ “Americans to Outlaw Forced Housing” and “Kennedy’s Death Slows Campaign to Repeal California’s Fair Housing Act,” *New York Times*, 1 December 1963, p. 58.

²²⁷ Rumford, *Recollections*.

²²⁸ “Clergymen on Coast Assail Housing Bias,” *New York Times*, 13 May 1964, p. 47.

²²⁹ Sorority invitation, Rumford Collection, Carton 9, Bancroft Collection, University of California, Berkeley, Calif.

²³⁰ Stag invitation, Rumford Collection, Carton 9, Bancroft Collection, University of California, Berkeley, Calif.

²³¹ Handbook, Rumford Collection, Bancroft Collection, University of California, Berkeley, Calif.; Wallace Turner, “Rightists in West Fight Housing Act,” *New York Times*, 10 May 1964, p. 59 (hereafter cited as Handbook).

principal's instructions in refusing to sell to someone having a minority status." Paralleling wartime opposition to laws that empowered rent regulation, the Brobeck, Phleger & Harrison letter argued, "if it was the legislature's purpose in 1959 or in 1963 to enact this kind of prohibition [of race-based housing discrimination] . . . we think that the legislature would have said so plainly."²³²

Other actors, prominent or obscure, added their say to the debate surrounding fair housing. On January 23, 1964, an Oakland real estate broker seeking to participate in the process, Arlene M. Slaughter, wrote the Oakland Real Estate Board about the rumored meetings of the "Equal Rights Committees" established locally and statewide by CREA. In February 1964, the Brown administration distributed a "Speaker's Handbook for Opposition to the Segregation Amendment" that outlined the rationales for supporting the Rumford Act and voting down Proposition 14. The handbook even included techniques for crowd control when 'right wing' agitators got out of hand: "Do not waste time trying to respond to them. You can't reach them. . . . Your job is to educate the non-committed."²³³ Implicit in this statement is the recognition that vote counting was the order of the day. Stacked against American Nazi party picketers, cohorts of the "right-wing" Citizens Councils of America, and the "anti-Catholic" American Council of Churches,²³⁴ it seemed to the leadership that fair housing's first line of defense lay in motivating swing voters to travel to the polls to vote against Proposition 14.

Some contests for these swing voters took place in more collegial venues. On May 23, 1964, an extension course on "Race, Property, and Government" at the University of California, Riverside,²³⁵ covered all the bases by offering three back-to-back seminars, each with its own list of suggested reading materials: A UCLA professor of real estate, Fred Case, covered "The Role of Minority Groups in the Functioning of the Economy;" Assemblyman Rumford led a session entitled, "The Rumford Act: Its Provisions and What Led to Its Enactment"; and John Cotton, appearing as a spokesman for the Committee for Home Protection, suggested that the participants read, "Human Rights and the Realtor," written by E. P. Conser, a leader of the realtors, and published by the National Association of Real Estate Boards.

Another resource listed by Cotton was an indication of the national scope and audience of the California fair housing conflict that surrounded Proposition 14. Before resuming our account of the California fight over Proposition 14, it is appropriate to examine further how debates outside the state provided the context of how the debate was shaped in the Golden State. The brochure referred to by Cotton in the extension course materials listed a 1963 publication of the essays pre-

²³² Alfred Avins, ed. *Open Occupancy vs. Forced Housing Under the Fourteenth Amendment: A Symposium of Anti-Discrimination Legislation, Freedom of Choice, and Property Rights in Housing* (New York: Bookmailer, 1963).

²³³ Handbook, p. 2.

²³⁴ *Ibid.*, p. 16.

²³⁵ Extension Class Syllabus, Rumford Collection, Carton 9, Bancroft Collection, University of California, Berkeley, Calif.

mented at a 1962 conference at the Chicago-Kent College of Law.²³⁶ The conference, “Open Occupancy vs. Forced Housing under the Fourteenth Amendment: a Symposium on Anti-Discrimination Legislation, Freedom of Choice, and Property Rights in Housing,” was organized by Alfred Avins, a prominent opponent of the national Civil Rights Acts at that time. Professor Avins assembled speakers from the opposing parties of the national fair housing debate. Joining the conference as a proponent of the fair housing movement was the lawyer Charles Abrams, who addressed the topic “Discrimination and the Struggle for Housing.”²³⁷ His stance paralleled both his work in the New York fair housing movement, of which he had been a leader, and the overall tone of the 1960 California Governor’s Report on Housing, to which he had contributed.²³⁸

Opposition to fair housing at the Chicago conference was spearheaded by Avins’ essay, “Anti-Discrimination Legislation in Housing: A Denial of Freedom of Choice.”²³⁹ Holding to a position argued by the anti-OPA camp during the Second World War, Avins contended that the legitimacy of emergency measures such as wartime rent control would be “continuously” subject to judicial review. Assailing antidiscrimination legislation as “a mask behind which parades compulsory integration,”²⁴⁰ Avins related the postwar fair housing movement to the wartime regulation of housing costs. Declaring that unfettered housing markets already existed, Avins ignored empirical²⁴¹ and anecdotal²⁴² data, arguing instead that “like emergency rent control, antidiscrimination legislation in housing is invalid because the emergency is over, and a normal market has been established in many areas.”²⁴³

Avins’ viewpoint was seconded by the retired chief judge of the United States District Court for the Eastern District of Virginia, a region of the country where resistance to school desegregation had been both intense and protracted.²⁴⁴ Condemning a presidential order barring discrimination in federally assisted housing, Judge Charles Hutcheson Sterling relied upon narrow interpretations of the Commerce Clause and the Fourteenth Amendment to conclude that “the United States Constitution gives the federal government no general power to regulate the sale of housing within the states.”²⁴⁵ Again, there were echoes of the anti-OPA states’

²³⁶ Avins, *Open Occupancy*, cited n. 232 *supra*.

²³⁷ *Ibid.*

²³⁸ *Ibid.*

²³⁹ *Ibid.*, p. 14.

²⁴⁰ *Ibid.*, p. 26.

²⁴¹ California Housing Authority Report of 1954; see also *Report on State of Housing in California, 1963*, Division of Housing, Department of Industrial Relations, State of California.

²⁴² *Records of Hearings of Governmental Efficiency and Economy Committees*, 1961.

²⁴³ Avins, p. 21.

²⁴⁴ *Ibid.*, p. 111.

²⁴⁵ *Ibid.*, p. 106.

rights sentiment of earlier years, as Sterling called for “action by the Congress to defend the Constitution by repelling this invasion of its province.”²⁴⁶

In California, a similar call to “defend the Constitution” was a rallying cry of the backers of Proposition 14—a highbrow argument, as it were, that invoked the sanctity of private property and unregulated markets. Again, evidence of the national context of this California debate is revealing. Writing a “Comment on *Martin v. New York*,” a housing case involving racial discrimination against a would-be tenant, a retired chief justice of the State Court of New Mexico, a retired justice of the Supreme Court of Washington, and a former dean of Wake Forest Law School argued against what they perceived as the police power basis of civil rights legislation: “The NAACP identifies the ‘common good’ as *integration*,” they wrote. “All other features of Negro legislation are mere details or supporting arguments.”²⁴⁷ A judicial decision such as was handed down by the New York court when it upheld open housing rulings, they wrote, “strips the white man of the constitutional protection of his rights without due process. . . . It transfers the struggle to the political arena where anything goes which can muster enough votes.”²⁴⁸

As seen by the champions of Proposition 14, their measure was indeed a referendum on the entire civil rights movement and the view of law that the movement advocated. However, beyond all the debated issues on natural rights and property rights, Proposition 14 was first and foremost a local issue to the voters in California. The fair housing debate was about who would get to live in which neighborhood. It was about the expected resale value of the house across the street and the respective colors of playmates at the local schoolyard. It was about how far state law could reach in regulating the real estate market.

Responding to these issues on election day in November 1964, the California voters approved Proposition 14 by a wide margin. However, in its success at the ballot, Proposition 14 did not quell but instead magnified the turmoil that surrounded fair housing and the Rumford Act. The federal government immediately announced that it would suspend financial support for housing projects, at least until a review of Proposition 14 was completed.²⁴⁹ Then litigation by the fair housing coalition began anew.

Proposition 14 was first tested in the case of an African-American couple denied rental housing because of their skin color in Orange County, California. In *Mulkey v. Reitman*,²⁵⁰ the local court in Orange County held that Proposition 14 precluded the state authorities from stepping in to prevent this discrimination. This decision was overturned on appeal, as the Supreme Court of California ruled in 1966 that Proposition 14 violated the Fourteenth Amendment of the United States Constitution: “The state has affirmatively acted to change its existing laws,” the

²⁴⁶ *Ibid.*, p. 111.

²⁴⁷ *Ibid.*, p. 204.

²⁴⁸ *Ibid.*, p. 205.

²⁴⁹ “U.S. Extends Ban On Coast Housing,” *New York Times*, 11 November 1964, p.

30.

²⁵⁰ *Mulkey v. Reitman*, 64 Cal 2d 529 (1966).

Court stated, “from a situation wherein the discrimination practiced was legally restricted to one wherein it is encouraged.”²⁵¹ Twenty-four years after they had sat on the advisory board of the Bay Area Council Against Discrimination,²⁵² Justices Tobriner and Traynor found that they could not close their “eyes and ears” to state action that facilitated and legitimized a private “act of discrimination.”²⁵³ Thus Proposition 14 was nullified and the Rumford Act was reinstated, pending appeal to the United States Supreme Court—the Court on which former governor Earl Warren sat as chief justice.

D. Housing Issues and the 1966 Gubernatorial Election

When Republican Ronald Reagan challenged incumbent Democratic Governor Pat Brown in 1966, the voting public had a lot on its mind—a gamut of unhappy complex issues that defied simple quick fixes. Free speech and antiwar marches in Berkeley competed for headlines with police shootings and race riots in Los Angeles and San Francisco.²⁵⁴ Still, in many ways, Democrats and Republicans alike heard the other shoe drop when the decision by the California Supreme Court in *Mulkey v. Reitman* overrode the popular vote.

At the very least, the May 1966 decision caused housing to remain a key issue during the June primary and the November general elections.²⁵⁵ By September, both parties admitted by deed that fair housing was driving the electorate: Brown softened his stand on the Rumford Act and extended assurances to white homeowners and voters;²⁵⁶ and Reagan likewise softened his stand by seeking revision rather than outright repeal of the 1963 fair housing legislation.²⁵⁷ *The New York Times* reported a Reagan spokesperson’s opinion that the fair housing issue was generating a big vote and that Reagan would benefit from this turnout.²⁵⁸ Proposition 14 was an albatross to the Democratic Party, the party that voters associated with the fair housing movement, the Fair Employment Practices Commission, and the Rumford Act. Indeed, in the November 1964 elections, Proposition 14 had even carried some Democratic counties.²⁵⁹

²⁵¹ *Ibid.*, at 541. For a full analysis of voter behavior and the dynamics of the Proposition 14 referendum, see the classic article by Ramond E. Wolfinger and Fred I. Greenstien, “The Repeal of Fair Housing in California: An Analysis of Referendum Voting,” *American Political Science Review*, 62 (1968), 453–69.

²⁵² BSCP, *Black Worker*, Meeting with Eisenhower, 1958, Dellums Collection, Carton 22, Bancroft Collection, University of California, Berkeley, Calif.

²⁵³ *Mulkey*, 64 Cal 2d 529, 538.

²⁵⁴ Warren Weaver, Jr., “Coast Riots May Hurt Brown at Polls,” *New York Times*, 29 September 1966, p. 39.

²⁵⁵ Hill, “Housing Revived as Issue on Coast,” *New York Times*, 17 July 1966, p. 39.

²⁵⁶ Davies, “‘White Backlash’ Becomes a Major Coast Issue,” *New York Times*, 28 September 1966, p. 28.

²⁵⁷ Weaver, Jr., “Coast Riots May Hurt Brown at Polls.”

²⁵⁸ Davies, “‘White Backlash’ Becomes a Major Coast Issue.”

²⁵⁹ “Anti-Rights Plan Winning on Coast,” *New York Times*, 4 November 1964, p. 34.

In many ways, the social capital of the fair housing movement had been hemorrhaging for years. At the 1961 hearings, significant portions of the detailed accounts of housing discrimination had been provided by CORE.²⁶⁰ In careful, meticulous fashion, CORE had dispatched teams of black couples and white couples to visit the same sale and rental housing units. The CORE researchers provided clear, substantiated cases of landlords, agents, and owners quoting prices to black couples that were higher than the prices that were quoted to white couples. Similarly, the CORE researchers documented the refusal of landlords, agents, and owners to sell or rent to black couples while still selling or renting to white couples.²⁶¹ So, it was ironic that, in 1963, when Rumford's political maneuvering in the capitol in Sacramento brought the Fair Housing Act up for a vote, he found that CORE was literally tripping him from under foot: "The CORE organization attempted to assist us by occupying the rotunda of the capitol as protesters and petitioners . . . I had asked them to please leave. But they did not. They remained there throughout. . . . If they were trying to help me, as far as I was concerned, this was a poor way to do it!"²⁶²

In 1964, as the Proposition 14 campaign threatened the Rumford Act, independent actions and side issues eroded the constituency of the fair housing campaign. CORE continued to operate independent of other elements of the antidiscrimination coalition, charging Bank of America with employment discrimination and sponsoring public demonstrations against the Palace Hotel and Mel's Diner, two San Francisco landmarks.²⁶³ In Berkeley, public bans aimed at the free speech movement also hindered efforts to mobilize sentiment against Proposition 14. "Before the ban," Mario Savio was quoted in *The New York Times*, "there were hundreds of people signed up to do precinct work against Proposition 14." After the ban went into effect, "there was just a trickle."²⁶⁴

Furthermore, some in the fair housing movement were affected by a change in the sentiments of a coalition that was now being distracted by the Vietnam War and that was becoming increasingly troubled by internal strife. The director for domestic affairs for the American Jewish Committee, Nathan Perlmutter, noted that the problem was more than a loss of momentum. "Another part is white reaction to black nationalism, and 'hate whitey' talk," Perlmutter said. "The liberal white man knows that he is as much a 'whitey' to a marauding hater as the bigoted white man and this realization is having its effect." Furthermore, this perceptual change was magnified by the shift of the civil rights battles from southern schoolyards to northern suburbs, and by the transformation of the public face of black protestors from that of the heroic marchers in Selma to the looters and arsonists of

²⁶⁰ *Records of Hearings of Governmental Efficiency and Economy Committees*, 1961.

²⁶¹ *Ibid.*

²⁶² Rumford, *Recollections*.

²⁶³ Davies, "A Cosmopolis in Shock," *New York Times*, 19 March 1964, p. 23.

²⁶⁴ Wallace Turner, "Berkeley Peace Plan Backed by Students," *New York Times*, 9 December 1964, p. 1.

Watts.²⁶⁵ The columnist Tom Wicker of *The New York Times* reported that at another level, many political analysts believed, the voters were now focused on “Negroes moving into the block, taking over their jobs, and making their streets a battleground.”²⁶⁶ A white backlash had erupted and, in the words of Wicker, it was driven by the plea, “When are they going to start worrying about me, my job and my family?”²⁶⁷

As the civil rights coalition imploded under its own weight in California, much of the finger pointing was directed towards incumbent Governor Brown.²⁶⁸ If for nothing else, Brown was being held to account for the 5-2 vote of the California Supreme Court in *Mulkey v. Reitman*. After all, he had nominated five of the sitting justices.²⁶⁹ With the liberal left also pulling away from him,²⁷⁰ Brown began to try harder now to shore up his political base by moving to a more conciliatory position on Proposition 14. At the August 1966 party convention, he backpedaled away from his earlier civil rights agenda as he called for a bipartisan blue ribbon commission to amend the Rumford Act.²⁷¹ He fought as if his political life hung in the balance—which, as it proved, it did. Two months later, at the October CREA convention, Brown praised the code of ethics of the realtors and announced that he was appointing a commission to study ways to change the law.²⁷² But the writing was on the wall. Two days later, Reagan’s appearance at the CREA convention was greeted by a much more rousing ovation: “We want Ronnie!” The CREA convention had pulled the rug out from under the new, more moderate Governor Brown; and railing against government interferences with who shall buy, who shall sell, and who shall occupy private property, CREA declined to be represented on Brown’s committee, effectively boycotting it.²⁷³

While handing California Republicans a potent issue to use against Pat Brown, Proposition 14 had also scrambled the makeup of the state Republican Party as it had stood in 1964. Backers of Senator Barry Goldwater, who was the party’s candidate for president in 1964, had supported the initiative; but the former head of the Rockefeller campaign had joined the fair housing group that Brown

²⁶⁵ Gene Roberts, “Civil Rights: A Turning Point,” *New York Times*, 19 September 1966, p. 1.

²⁶⁶ Tom Wicker, “Is the Backlash Here at Last?” *New York Times*, 7 September 1966, p. 46.

²⁶⁷ *Ibid.*

²⁶⁸ Arthur Krock, “In the Nation; ‘Weary Political Faces and Phrases,’” *New York Times*, 12 June 1966, p. 219.

²⁶⁹ Davies, “Berkeley Report an Issue on Coast,” *New York Times*, 15 May 1966, p. 53.

²⁷⁰ Peter Bart, “‘New Left’ Parley on Coast Denounces Brown and Backs Black Power,” *New York Times*, 3 October 1966, p. 28.

²⁷¹ Lawrence E. Davies, “Coast Democrats Score Extremism,” *New York Times*, 14 August 1966, p. 43.

²⁷² “Gov. Brown Courts Real Estate Vote Hails Ethics Code,” *New York Times*, 5 October 1966, p. 29.

²⁷³ Lawrence E. Davies, “Reagan Cheered at Realty Convention,” *New York Times*, 7 October 1966, p. 22.

had organized.²⁷⁴ The moderate chair of the state party, Caspar Weinberger of San Francisco, had warned that a conservative movement led by the John Birchers was plotting to take over the Central Committee. Operating outside the official party circles, the California Republican Assembly followed the lead of the Goldwater wing²⁷⁵ as it called for “the right of the individual to manage and exchange his property.”²⁷⁶ Initially expressed in 1964, then, these sentiments reemerged as part of Reagan’s 1966 gubernatorial campaign. Portraying his candidacy and his policies as an alternative to the Great Society of Lyndon Johnson,²⁷⁷ Reagan contended that the Rumford Act was “an infringement on one of our basic individual rights . . . a precedent which threatens individual liberty.”²⁷⁸

Reagan walked a fine line while dealing with Proposition 14. Vowing that he would never permit California to become a mere “administrative district of the federal government,”²⁷⁹ Reagan used his opposition to housing regulation as a platform for displaying his more general opposition to big government. In a letter to a voter dated August 12, 1966, Reagan commented on whether a homeowner could refuse to sell a house on the basis of the race or religion of the would-be buyer. If the government was involved with the current financing of the house, Reagan felt that antidiscrimination legislation could interfere in the refusal to sell the house; yet, Reagan continued, “once the mortgage is paid off, I think the case again reverts to the right of the individual to the free disposition of his own property.”²⁸⁰ Thus, by carefully voicing his tenets and their exceptions, Reagan managed to benefit from opposition to the Rumford Act while, at the same time, he avoided being labeled as a right-wing extremist.²⁸¹

Ronald Reagan’s limited prescription for government interest in housing discrimination reflected a sea change in the public’s interest in fair housing legislation. This new attitude became government policy when Reagan defeated Brown in the November election. As he prepared to take over the reins of government, Reagan entrusted his transition team to William French Smith.²⁸² A political ad-

²⁷⁴ Jack Langguth, “Test on Housing Opposed on Coast,” *New York Times*, 11 May 1964, p. 24.

²⁷⁵ Bill Becker, “Coast G.O.P. Aides Fear Right Wing,” *New York Times*, 29 March 1964, p. 40.

²⁷⁶ Lawrence E. Davies, “Fair-Housing Law Assailed on Coast,” *New York Times*, 7 September 1964, p. 6.

²⁷⁷ Arthur Krock, “In the Nation; ‘A Colossal Pile of Homework,’” *New York Times*, 19 June 1966, p. 175.

²⁷⁸ Davies, “Berkeley Report an Issue on Coast.”

²⁷⁹ Tom Wicker, “In the Nation: ‘Big Choice, Wrong Issues,’” *New York Times*, 25 October 1966, p. 44.

²⁸⁰ *Report of the Governor's Commission on the Rumford Act, 1967.*

²⁸¹ Jack Langguth, “Political Fun and Games in California,” *New York Times*, 16 October 1966, p. 8.

²⁸² William French Smith, *Smith Oral History*, 1988, Regional Oral History Office, Reagan Gubernatorial Era Project, Bancroft Collection, University of California, Berkeley, Calif. Also available at the California State Archives, *Oral Histories*, “William

viser, personal attorney, and confidante of Reagan, Smith was also the lawyer who had represented the real estate interests in arguments on behalf of the landlords in *Mulkey v. Reitman* during the spring of 1966, just nine months earlier. While he was overseeing transition issues when Reagan assumed the governorship in Sacramento, Smith continued to advocate on behalf of the real estate interests. In March 1967, Smith co-authored a brief that was submitted to the United States Supreme Court in *Reitman v. Mulkey*.²⁸³ Its key points echoed the judicial dissents of the 1940s that blasted the wartime powers of the OPA. Commenting upon the Supreme Court's decision to review the decision of the California court, the brief offered a thinly veiled criticism of the Warren Court's intrusion into local matters with its deployment of the Fourteenth Amendment in the school desegregation, criminal justice, and Civil Rights Act cases:

The adoption of such expansive jurisdiction by this Court would at once undermine the separation of powers between the federal and State governments; narrow the area within which the States might endeavor to balance the conflicting claims of liberty, privacy, and equality; discourage the initiative of legislatures, local, State and federal; and indeed undertake a function which the legislatures are infinitely better suited and equipped to handle. . . . Whereas the ultimate resolution of dynamic social problems necessarily requires the constant reweighing in localized contexts of individual rights and obligations and of conflicting values of constitutional proportion, rigid constitutional mandates can only inhibit the fashioning of suitable remedies at all levels of government.²⁸⁴

The brief conceded the applicability of the Fourteenth Amendments to cases in which a citizen directly interacts with his government. But, in echoes to the dissents in *Bowles v. Willingham*, *Bowles v. Barde Steel*, and *Walker v. Gilman*, Smith denounced the judge-mandated intervention of state and federal governments in regard to strictly private contracts:

If a State chooses to leave some areas of human conduct to the consciences of its citizens, is it fair to hold the State responsible merely because some of its citizens have no conscience?

The court below imposed constitutional responsibility upon the State or having made the legislative choice not to prohibit private conduct which it had the power, although not a duty, to proscribe. The logical result of this far-reaching proposition is that virtually all conduct is brought within the Fourteenth Amend-

French Smith: Evolution of the Kitchen Cabinet, 1965–1973,” OH R-12, Sacramento, Calif.

²⁸³ *Reitman v. Mulkey*, 387 US 369 (1967).

²⁸⁴ William F. Smith, “Brief to U.S. Supreme Court, October Term, 1966,” in *Landmark Briefs and Arguments of the Supreme Court of the United States*, vol. 64, no. 483 (Washington: University Publications of America, 1975), p. 27.

ment and subject to appraisal on Constitutional standards by this Court. Such a holding neither is nor should be the law.²⁸⁵

Smith's brief implies concepts of fairness and duty that were worlds apart from Hawkins' and Dellums' beliefs that segregation was inherently unequal, a white man's denial of a black man's "God-given rights." Smith's brief also clashed with the contention before the Court of Solicitor General Thurgood Marshall that, when the voters in California had approved of Proposition 14, the state of California had sided with the forces of discrimination. Marshall saw something that Smith did not see: Proposition 14 meant that the state of California "put its thumb on the scales [of justice]."²⁸⁶

On May 29, 1967, the United States Supreme Court announced in a 5-4 decision that Proposition 14 was unconstitutional. Justice White's opinion concluded with an assessment of Section 26, the section of the California Constitution that had been inserted by Proposition 14: "We are dealing with a provision which does not just repeal an existing law forbidding private racial discriminations. Section 26 was intended to authorize, and does authorize, racial discrimination in the housing market. The right to discriminate is now one of the basic policies of the State."²⁸⁷ Thus, deciding that the state action mandated by Proposition 14 would violate the Fourteenth Amendment, the United States Supreme Court nullified the Proposition and fully reinstated the Rumford Fair Housing Act. This was open a bold judicial move, criticized by numerous constitutional scholars as well as political conservatives for its assertion that the federal judicial power could be mobilized to protect equal rights for a racial minority in a housing market affected by racial prejudices.

Reagan apparently took these legal developments in stride. In fact, even before the Supreme Court heard oral arguments in *Reitman v. Mulkey*, Reagan had appointed the former head of CREA—Reagan's former host at the 1966 realtor convention²⁸⁸—to be the State Real Estate Commissioner.²⁸⁹ Leadership in Sacramento had now formally switched from supporters of the Rumford Act to promoters of Proposition 14. Even four months after the Warren Court had declared Proposition 14 unconstitutional, Reagan remained defiant while speaking at the CREA convention, asserting that for him, fair housing laws still should be seen as interfered with inalienable property rights that cannot properly be subject to governmental interference.²⁹⁰

²⁸⁵ *Ibid.*, p. 35.

²⁸⁶ Fred P. Graham, "U.S. Criticizes California Vote Ruling Out Fair-Housing Laws," *New York Times*, 22 March 1967, p. 24.

²⁸⁷ *Reitman*, 387 US 369, 380-81.

²⁸⁸ Lawrence E. Davies, "Reagan Cheered at Realty Convention," *New York Times*, 7 October 1966, p. 22.

²⁸⁹ Lawrence E. Davies, "Budget Decision Next for Reagan," *New York Times*, 26 March 1967, p. 37.

²⁹⁰ "Reagan Denounces Open Housing Laws as Rights Violation," *New York Times*, 27 September 1967, p. 35.

These were not empty sentiments. Indeed, the recommendation of a 1966-1967 governor's committee that reviewed the Rumford Act indicated that, if the act had not been reinstated by the *Reitman* decision, any subsequent fair housing legislation would have been extremely weak, essentially devoid of administrative enforcement.²⁹¹ California, never a land to stand still, was slowing its march towards a truly free and fair housing market. Between the oral arguments and the Court's announcement of its decision of *Reitman v Mulkey*, the California legislature considered a repeal of the Rumford Act introduced by John Schmidt,²⁹² a legislator who candidly acknowledged his membership in the John Birch Society.²⁹³ The repeal failed, which was a victory for the fair housing coalition.²⁹⁴ Still, in August 1967, a final attempt to revise and replace the original Rumford Act was stymied—in a stalemate such as Earl Warren reported he had encountered while governor years earlier²⁹⁵—only because the far left liberals and far right conservatives could not reach a compromise on a revised fair housing law.²⁹⁶

V. Conclusions

The handprint of the Office of Price Administration, and other federal initiatives spawned by the Second World War, was local, personal, and lasting. Wartime federal intervention into California's housing market had a lasting impact on the legal climate of postwar California. Californians learned that, in the name of public good, the federal and state governments would act in concert to alter the terms of private contracts. In 1942, when inflationary pressures threatened to undermine the war effort, the public's stake in the matter made aggressive enforcement by the OPA and other regulatory agencies an everyday matter. At the same time, the booming defense industry's demand for labor meant that African Americans in California were given entry into industries and occupations that had previously been lily white. This lesson was not lost on civil rights advocates in segregated California; and, after the war, the civil rights coalition applied these precedents in administrative law and fair employment practices to the postwar struggle for fair employment and fair housing.

In addition, the interaction between the state and federal judiciaries was significantly affected by wartime developments. To meet the needs of the wartime economy, judges in California accepted abridgments of the inherited common law, and also agreed even to temporarily reduce the power of state courts to rule on

²⁹¹ *Report of the Governor's Commission on the Rumford Act*, 1967.

²⁹² "Open Housing Law Loses Coast Test," *New York Times*, 14 April 1967, p. 11.

²⁹³ "Housing Bias Ban Fought on Coast," *New York Times*, 16 April 1967, p. 70.

²⁹⁴ *Ibid.*

²⁹⁵ Warren, *Oral History*, cited note 196, above.

²⁹⁶ "Open Housing Bill Snarled on Coast," *New York Times*, 7 August 1967, 21; and Wallace Turner, "Fair Housing Law in California Saved as Legislature Adjourns," *New York Times*, 8 August 1967, p. 36.

constitutional issues. After the war, the federal government's newly established regulatory legislation and agency implementation policies continued to dominate many aspects of the legal order of the state of California. This was especially true in areas involving civil rights.

However, the greatest repercussion of the changed legal order was felt outside the judicial branch. In *Mulkey v. Reitman*, the Supreme Court of California ruled that the Fourteenth Amendment to the federal Constitution invalidated a popular vote of the people, the 2-1 victory of Proposition 14 in 1964. In response, the real estate coalition reiterated its property rights arguments—arguments that were mainly reiterations of its legal and philosophical positions against wartime price control and the postwar fair housing legislation. These tactics fell short when taken to the Warren Court in *Reitman v. Mulkey* in 1967, but they had already hit their marks in the political arena as denunciations of the civil rights wing of the Democratic Party in 1966, and as a key weapon in the effective call to arms that resulted in Ronald Reagan's successful gubernatorial campaign.

Thus, decades after the end of the Second World War, the barrack-like silhouettes of war worker housing still loomed over East Bay neighborhoods; the tract neighborhoods funded by veteran's benefits remained largely segregated; and, the constitutional—and emotional—arguments of wartime litigation still ran through political debates on new questions of states' rights, property regulation, civil rights, and race relations.

