

THE COLOR OF LAW

A FORGOTTEN HISTORY OF
HOW OUR GOVERNMENT
SEGREGATED AMERICA

RICHARD ROTHSTEIN



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Frontispiece: *Pittsburgh, 1940. President Franklin D. Roosevelt hands keys to the 100,000th family to receive lodging in the federal government's public housing program. Most projects were for whites only.*

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PREFACE

WHEN, FROM 2014 TO 2016, riots in places like Ferguson, Baltimore, Milwaukee, or Charlotte captured our attention, most of us thought we knew how these segregated neighborhoods, with their crime, violence, anger, and poverty came to be. We said they are “*de facto* segregated,” that they result from private practices, not from law or government policy.

De facto segregation, we tell ourselves, has various causes. When African Americans moved into a neighborhood like Ferguson, a few racially prejudiced white families decided to leave, and then as the number of black families grew, the neighborhood deteriorated, and “white flight” followed. Real estate agents steered whites away from black neighborhoods, and blacks away from white ones. Banks discriminated with “redlining,” refusing to give mortgages to African Americans or extracting unusually severe terms from them with subprime loans. African Americans haven’t generally gotten the educations that would enable them to earn sufficient incomes to live in white suburbs, and, as a result, many remain concentrated in urban neighborhoods. Besides, black families prefer to live with one another.

All this has some truth, but it remains a small part of the truth, submerged by a far more important one: until the last quarter of the twentieth century, racially explicit policies of federal, state, and local governments defined where whites and African Americans should live. Today’s residential segregation in the North, South, Midwest,

and West is not the unintended consequence of individual choices and of otherwise well-meaning law or regulation but of unhidden public policy that explicitly segregated every metropolitan area in the United States. The policy was so systematic and forceful that its effects endure to the present time. Without our government's purposeful imposition of racial segregation, the other causes—private prejudice, white flight, real estate steering, bank redlining, income differences, and self-segregation—still would have existed but with far less opportunity for expression. Segregation by intentional government action is not *de facto*. Rather, it is what courts call *de jure*: segregation by law and public policy.

Residential racial segregation by state action is a violation of our Constitution and its Bill of Rights. The Fifth Amendment, written by our Founding Fathers, prohibits the federal government from treating citizens unfairly. The Thirteenth Amendment, adopted immediately after the Civil War, prohibits slavery or, in general, treating African Americans as second-class citizens, while the Fourteenth Amendment, also adopted after the Civil War, prohibits states, or their local governments, from treating people either unfairly or unequally.

The applicability of the Fifth and Fourteenth Amendments to government sponsorship of residential segregation will make sense to most readers. Clearly, denying African Americans access to housing subsidies that were extended to whites constitutes unfair treatment and, if consistent, rises to the level of a serious constitutional violation. But it may be surprising that residential segregation also violates the Thirteenth Amendment. We typically think of the Thirteenth as only abolishing slavery. Section 1 of the Thirteenth Amendment does so, and Section 2 empowers Congress to enforce Section 1. In 1866, Congress enforced the abolition of slavery by passing a Civil Rights Act, prohibiting actions that it deemed perpetuated the characteristics of slavery. Actions that made African Americans second-class citizens, such as racial discrimination in housing, were included in the ban.

In 1883, though, the Supreme Court rejected this congressional interpretation of its powers to enforce the Thirteenth Amendment.

The Court agreed that Section 2 authorized Congress to "to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States," but it did not agree that exclusions from housing markets could be a "badge or incident" of slavery. In consequence, these Civil Rights Act protections were ignored for the next century.

Today, however, most Americans understand that prejudice toward and mistreatment of African Americans did not develop out of thin air. The stereotypes and attitudes that support racial discrimination have their roots in the system of slavery upon which the nation was founded. So to most of us, it should now seem reasonable to agree that Congress was correct when it determined that prohibiting African Americans from buying or renting decent housing perpetuated second-class citizenship that was a relic of slavery. It also now seems reasonable to understand that if government actively *promoted* housing segregation, it failed to abide by the Thirteenth Amendment's prohibition of slavery and its relics.

This interpretation is not far-fetched. Indeed, it is similar to one that was eventually adopted by the Supreme Court in 1968 when it effectively rejected its 1883 decision. In 1965, Joseph Lee Jones and his wife, Barbara Jo Jones, sued the Alfred H. Mayer Company, a St. Louis developer, who refused to sell them a home solely because Mr. Jones was black. Three years later, the Supreme Court upheld the Joneses' claim and recognized the validity of the 1866 Civil Rights Act's declaration that housing discrimination was a residue of slave status that the Thirteenth Amendment empowered Congress to eliminate.

Yet because of an historical accident, policy makers, the public, and even civil rights advocates have failed to pay much attention to the implications of the *Jones v. Mayer* decision. Two months before the Supreme Court announced its ruling, Congress adopted the Fair Housing Act, which was then signed into law by President Lyndon B. Johnson. Although the 1866 law had already determined that housing discrimination was unconstitutional, it gave the government no powers of enforcement. The Fair Housing Act provided for modest enforcement, and civil rights groups have used this law, rather than the earlier statute, to challenge housing discrimination.



Joseph Lee and Barbara Jo Jones. Their successful 1968 lawsuit established that housing discrimination is a badge of slavery.

But when they did so, we lost sight of the fact that housing discrimination did not become unlawful in 1968; it had been so since 1866. Indeed, throughout those 102 years, housing discrimination was not only unlawful but was the imposition of a badge of slavery that the Constitution mandates us to remove.

The Color of Law is concerned with consistent government policy that was employed in the mid-twentieth century to enforce residential racial segregation. There were many specific government actions that prevented African Americans and whites from living among one another, and I categorize them as “unconstitutional.” In doing so, I reject the widespread view that an action is not unconstitutional until the Supreme Court says so. Few Americans think that racial segregation in schools was constitutional before 1954, when the Supreme Court prohibited it. Rather, segregation was always

unconstitutional, although a misguided Supreme Court majority mistakenly failed to recognize this.

Yet even if we came to a nationally shared recognition that government policy has created an unconstitutional, *de jure*, system of residential segregation, it does not follow that litigation can remedy this situation. Although most African Americans have suffered under this *de jure* system, they cannot identify, with the specificity a court case requires, the particular point at which they were victimized. For example, many African American World War II veterans did not apply for government-guaranteed mortgages for suburban purchases because they knew that the Veterans Administration would reject them on account of their race, so applications were pointless. Those veterans then did not gain wealth from home equity appreciation as did white veterans, and their descendants could then not inherit that wealth as did white veterans' descendants. With less inherited wealth, African Americans today are generally less able than their white peers to afford to attend good colleges. If one of those African American descendants now learned that the reason his or her grandparents were forced to rent apartments in overcrowded urban areas was that the federal government unconstitutionally and unlawfully prohibited banks from lending to African Americans, the grandchild would not have the standing to file a lawsuit; nor would he or she be able to name a particular party from whom damages could be recovered. There is generally no *judicial* remedy for a policy that the Supreme Court wrongheadedly approved. But this does not mean that there is no constitutionally required remedy for such violations. It is up to the people, through our elected representatives, to enforce our Constitution by implementing the remedy.

By failing to recognize that we now live with the severe, enduring effects of *de jure* segregation, we avoid confronting our constitutional obligation to reverse it. If I am right that we continue to have *de jure* segregation, then desegregation is not just a desirable policy; it is a constitutional as well as a moral obligation that we are required to fulfill. "Let bygones be bygones" is

not a legitimate approach if we wish to call ourselves a constitutional democracy.

Racial segregation in housing was not merely a project of southerners in the former slaveholding Confederacy. It was a nationwide project of the federal government in the twentieth century, designed and implemented by its most liberal leaders. Our system of official segregation was not the result of a single law that consigned African Americans to designated neighborhoods. Rather, scores of racially explicit laws, regulations, and government practices combined to create a nationwide system of urban ghettos, surrounded by white suburbs. Private discrimination also played a role, but it would have been considerably less effective had it not been embraced and reinforced by government.

Half a century ago, the truth of *de jure* segregation was well known, but since then we have suppressed our historical memory and soothed ourselves into believing that it all happened by accident or by misguided private prejudice. Popularized by Supreme Court majorities from the 1970s to the present, the *de facto* segregation myth has now been adopted by conventional opinion, liberal and conservative alike.

A turning point came when civil rights groups sued to desegregate Detroit's public schools. Recognizing that you couldn't desegregate schools if there were few white children in Detroit, the plaintiffs argued that a remedy had to include the white suburbs as well as the heavily African American city. In 1974, by a 5-4 vote, the Supreme Court disagreed. The majority reasoned that because government policy in the suburbs had not segregated Detroit's schools, the suburbs couldn't be included in a remedy. Justice Potter Stewart explained that black students were concentrated in the city, not spread throughout Detroit's suburbs, because of "unknown and perhaps unknowable factors such as in-migration, birth rates, economic changes, or cumulative acts of private racial fears." He concluded: "The Constitution simply does not allow federal courts to attempt to change that situation unless and until it is shown that the State, or its political subdivisions, have contributed to cause the

situation to exist. No record has been made in this case showing that the racial composition of the Detroit school population or that residential patterns within Detroit and in the surrounding areas were in any significant measure caused by governmental activity.”

Most disturbing about Justice Stewart’s observation was that the civil rights plaintiffs did offer evidence to prove that residential patterns within Detroit and in the surrounding areas were in significant measure caused by governmental activity. Although the trial judge agreed with this argument, Justice Stewart and his colleagues chose to ignore it, denying that such evidence even existed.*

This misrepresentation of our racial history, indeed this willful blindness, became the consensus view of American jurisprudence, expressed again in a decision written by Chief Justice John Roberts in 2007. His opinion prohibited school districts in Louisville and Seattle from accounting for a student’s race as part of modest school integration plans. Each district permitted students to choose which school they would attend, but if remaining seats in a school were limited, the district admitted students who would contribute to the school’s racial balance. In other words, black students would get preference for admission to mostly white schools, and white students would get preference for mostly black ones.

The chief justice noted that racially homogenous housing arrangements in these cities had led to racially homogenous student bodies in neighborhood schools. He observed that racially separate neighborhoods might result from “societal discrimination” but said that remed-

* From this evidence, federal district court judge Stephen J. Roth, in his opinion that was overruled by the Supreme Court, concluded: “The policies pursued by both government and private persons and agencies have a continuing and present effect upon the complexion of the community—as we know, the choice of a residence is a relatively infrequent affair. For many years FHA and VA openly advised and advocated the maintenance of ‘harmonious’ neighborhoods, *i.e.*, racially and economically harmonious. The conditions created continue.” Judge Roth urged that to acknowledge that other factors were also involved, we “need not minimize the effect of the actions of federal, state and local governmental officers and agencies, and the actions of loaning institutions and real estate firms, in the establishment and maintenance of segregated residential patterns—which lead to school segregation.”

ying discrimination “not traceable to [government’s] own actions” can never justify a constitutionally acceptable, racially conscious, remedy. “The distinction between segregation by state action and racial imbalance caused by other factors has been central to our jurisprudence. . . . Where [racial imbalance] is a product not of state action but of private choices, it does not have constitutional implications.” Because neighborhoods in Louisville and Seattle had been segregated by private choices, he concluded, school districts should be prohibited from taking purposeful action to reverse their own resulting segregation.

Chief Justice Roberts himself was quoting from a 1992 opinion by Justice Anthony Kennedy in a case involving school segregation in Georgia. In that opinion Justice Kennedy wrote: “[V]estiges of past segregation by state decree do remain in our society and in our schools. Past wrongs to the black race, wrongs committed by the State and in its name, are a stubborn fact of history. And stubborn facts of history linger and persist. But though we cannot escape our history, neither must we overstate its consequences in fixing legal responsibilities. The vestiges of segregation . . . may be subtle and intangible but nonetheless they must be so real that they have a causal link to the *de jure* violation being remedied. It is simply not always the case that demographic forces causing population change bear any real and substantial relation to a *de jure* violation.”

The following pages will refute this too-comfortable notion, expressed by Justice Kennedy and endorsed by Chief Justice Roberts and his colleagues, that wrongs committed by the state have little causal link to the residential segregation we see around us. *The Color of Law* demonstrates that racially explicit government policies to segregate our metropolitan areas are not vestiges, were neither subtle nor intangible, and were sufficiently controlling to construct the *de jure* segregation that is now with us in neighborhoods and hence in schools. The core argument of this book is that African Americans were unconstitutionally denied the means and the right to integration in middle-class neighborhoods, and because this denial was state-sponsored, the nation is obligated to remedy it.

Many legal scholars are properly skeptical of the distinction between *de jure* and *de facto* segregation. Where private discrimi-

nation is pervasive, they argue, discrimination by public policy is indistinguishable from “societal discrimination.” For example, if it becomes a community norm for whites to flee a neighborhood where African Americans were settling, this norm can be as powerful as if it were written into law. Both public policy discrimination and societal discrimination express what these scholars term “structural racism,” in which many if not most institutions in the country operate to the disadvantage of African Americans. It is pointless, these scholars argue, to try to distinguish the extent to which these institutions’ racially disparate impact originated with private or public discrimination. Government has an obligation, they say, to remedy structural racism regardless of its cause decades ago.

These scholars may be right, but in this book I don’t take their approach. Rather, I adopt the narrow legal theory of Chief Justice Roberts, his predecessors, his colleagues, and their likely successors. They agree that there is a constitutional obligation to remedy the effects of government-sponsored segregation, though not of private discrimination. I will take them at their word. Where *The Color of Law* differs is not with their theory but with their facts. For those who, like the Court, believe that the Constitution requires a remedy for government-sponsored segregation, but that most segregation doesn’t fall into this category, I hope to show that Justice Roberts and his colleagues have their facts wrong. Most segregation *does* fall into the category of open and explicit government-sponsored segregation.

Before I begin, some notes about word usage: I will frequently refer (indeed, I’ve already done so) to things *we* have done, or things *we* should do. *We* means all of us, the American community. This is not a book about whites as actors and blacks as victims. As citizens in this democracy, we—all of us, white, black, Hispanic, Asian, Native American, and others—bear a collective responsibility to enforce our Constitution and to rectify past violations whose effects endure. Few of us may be the direct descendants of those who perpetuated a segregated system or those who were its most exploited victims. African Americans cannot await rectification of

past wrongs as a gift, and white Americans collectively do not owe it to African Americans to rectify them. We, all of us, owe this to ourselves. As American citizens, whatever routes we or our particular ancestors took to get to this point, we're all in this together now.

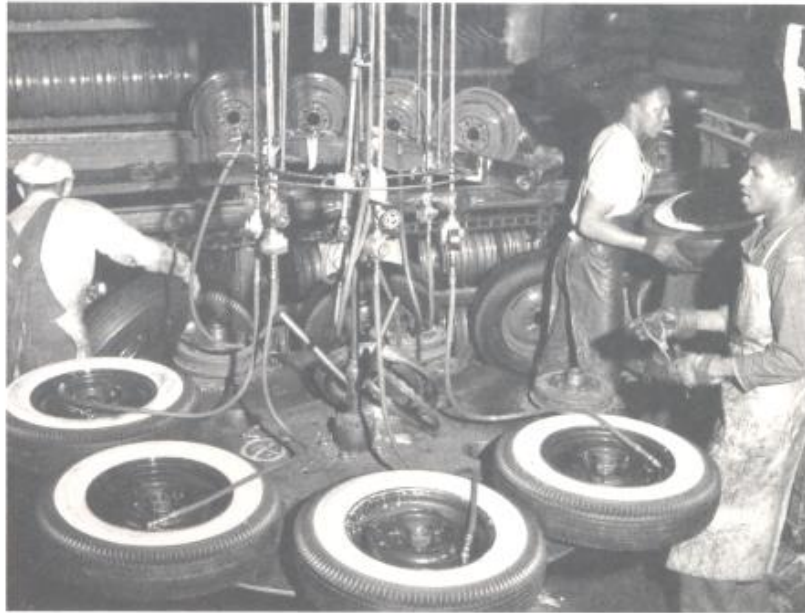
Over the past few decades, we have developed euphemisms to help us forget how we, as a nation, have segregated African American citizens. We have become embarrassed about saying *ghetto*, a word that accurately describes a neighborhood where government has not only concentrated a minority but established barriers to its exit. We don't hesitate to acknowledge that Jews in Eastern Europe were forced to live in ghettos where opportunity was limited and leaving was difficult or impossible. Yet when we encounter similar neighborhoods in this country, we now delicately refer to them as the *inner city*, yet everyone knows what we mean. (When affluent whites gentrify the same geographic areas, we don't characterize those whites as *inner city* families.) Before we became ashamed to admit that the country had circumscribed African Americans in ghettos, analysts of race relations, both African American and white, consistently and accurately used *ghetto* to describe low-income African American neighborhoods, created by public policy, with a shortage of opportunity, and with barriers to exit. No other term succinctly describes this combination of characteristics, so I use the term as well.*

* In 1948, Robert Weaver, long before becoming the first African American to serve in the cabinet, wrote a book called *The Negro Ghetto* that documented how government segregated the nation. In 1965, Kenneth B. Clark, the social psychologist whose research was relied upon by the Supreme Court in *Brown v. Board of Education*, published *Dark Ghetto*, which described the lack of opportunity in New York City's Harlem. In 1968, the Kerner Commission (the National Advisory Committee on Civil Disorders) published its influential report that concluded: "[W]hite society is deeply implicated in the ghetto. White institutions created it, white institutions maintain it, and white society condones it." A definitive scholarly study of how public policy segregated Chicago is *Making the Second Ghetto*, published in 1983 by Arnold R. Hirsch. A similar study of Cleveland, *A Ghetto Takes Shape: Black Cleveland, 1870-1930*, was published by Kenneth L. Kusmer in 1978. One of the more important books on American race relations of the past decade or more is Michelle Alexander's *The New Jim Crow*, published in 2010. She uses the term *ghetto* frequently.

We've developed other euphemisms, too, so that polite company doesn't have to confront our history of racial exclusion. When we consider problems that arise when African Americans are absent in significant numbers from schools that whites attend, we say we seek *diversity*, not racial integration. When we wish to pretend that the nation did not single out African Americans in a system of segregation specifically aimed at them, we diffuse them as just another *people of color*. I try to avoid such phrases.

Because our majority culture has tended to think of African Americans as inferior, the words we've used to describe them, no matter how dignified they seem when first employed, eventually sound like terms of contempt. African Americans react and insist on new terminology, which we eventually accept until it too seems to connote inferiority. So at the beginning of the twentieth century, America's subordinated race was called *colored*. Later, we came to think of it as *Negro*, first with a lowercase and then with a capital N. It was replaced by *black*, a term that has had a seemingly permanent currency. Today *African American* strikes us as most appropriate. In these pages, it's the term I'll use most frequently, but I will sometimes use *black* as well. Occasionally, in describing historical events, I will refer to *Negroes*, intending the same respect that it enjoyed in those earlier periods.

This shifting of terminology should not distract us from this underlying truth: We have created a caste system in this country, with African Americans kept exploited and geographically separate by racially explicit government policies. Although most of these policies are now off the books, they have never been remedied and their effects endure.



Richmond, California, 1948. African Americans worked together with whites in a Ford assembly plant but were barred from living in white neighborhoods.

1

IF SAN FRANCISCO, THEN EVERYWHERE?

WE THINK OF the San Francisco Bay Area as one of the nation's more liberal and inclusive regions. If the federal, state, and local governments explicitly segregated the population into distinct black and white neighborhoods in the Bay Area, it's a reasonable assumption that our government also segregated metropolitan regions elsewhere and with at least as much determination—which is why I became particularly interested in the government's racial policies in San Francisco and its environs in the twentieth century.

Across the Bay from the city itself is Richmond, a town with the region's greatest concentration of African Americans. During World War II, Richmond hosted the most extensive shipbuilding complex in the nation; later it was best known as the site of a large oil refinery. There I met Frank Stevenson in 2013, after reading an oral history that he had recorded for the National Park Service. I called on him at his Richmond home.

I

ONE OF seven brothers, Mr. Stevenson was born in 1924 in Lake Providence, Louisiana, a town that *Time* magazine once called “the poorest place in America.” But he was privileged compared to most other black youths in the South at the time. His father, a pastor, owned the land on which his First Baptist Church sat, so unlike many other southern black men in the early twentieth century, he didn’t have to sharecrop for white farmers. The Stevensons grew cotton and corn for sale and raised hogs and fowl, hunted, and maintained a vegetable garden for their own sustenance.

Through the seventh grade Frank attended a one-room schoolhouse in his father’s church, with a single teacher who lived with the family. If Frank were to continue, he would have had to get to a high school in town, too far to walk. In rural Louisiana in the early 1930s, the school year for African Americans was much shorter than for whites, because children like Frank were expected to hire out when planting or harvesting was to be done. “Actually,” Mr. Stevenson recalled, “they didn’t care too much whether you were going to school or not, if you were black. . . . White school would be continued, but they would turn the black school out because they wanted the kids to go to work on the farm. . . . Lots of times these white guys would . . . come to my dad and ask him to let us work for them one or two days of the week.”

During this time, Franklin Roosevelt’s New Deal, first with industry codes and then with the Fair Labor Standards Act, prohibited child labor and established minimum wages of about twelve dollars a week in the South, rising to twenty-five cents an hour in 1938. But to pass such economic legislation, Roosevelt needed the votes of southern congressmen and senators, who agreed to support economic reform only if it excluded industries in which African Americans predominated, like agriculture. The Stevenson brothers were each paid only fifty cents a day to work in white farmers’ fields.

After finishing seventh grade, Frank Stevenson followed his older brothers and found work in New Orleans, delivering food to workers in the shipyards. Later he had jobs that were typically reserved for African Americans: carrying cement, laying rails, and loading or unloading freight, including, once World War II began, dangerous ammunition. He followed his brother Allen to California, eventually settling at the age of nineteen in Richmond. At first the shipyards and other war industries attempted to operate only with white men, but as the war dragged on, unable to find a sufficient number to meet their military orders, they were forced to hire white women, then black men, and eventually black women as well.

From 1940 to 1945, the influx of war workers resulted in Richmond's population exploding from 24,000 to more than 100,000. Richmond's black population soared from 270 to 14,000. Like Frank Stevenson, the typical African American settling in Richmond had a seventh-grade education, which made these migrants an elite; their educational attainment was greater than that of African Americans in the southern states they left behind.

With such rapid population growth, housing could not be put up quickly enough. The federal government stepped in with public housing. It was officially and explicitly segregated. Located along railroad tracks and close to the shipbuilding area, federally financed housing for African Americans in Richmond was poorly constructed and intended to be temporary. For white defense workers, government housing was built farther inland, closer to white residential areas, and some of it was sturdily constructed and permanent. Because Richmond had been overwhelmingly white before the war, the federal government's decision to segregate public housing established segregated living patterns that persist to this day.

The Richmond police as well as the housing authority pressed the city recreation department to forbid integrated activities, so where projects for whites and projects for blacks shared recreational and sports facilities, the authority designated special hours for African American use. The authority maintained separate social programs for whites and blacks—Boy and Girl Scout troops and movie screen-

ings, for example. A policy of segregation was adopted, explained the authority's director, for the purpose of "keeping social harmony or balance in the whole community." Another housing authority official insisted that "Negroes from the South would rather be by themselves."

Twenty projects with 24,000 units (for both races) built in Richmond during this period barely met the need. For white workers, the federal government created a "war guest" program in which it leased spare rooms from Richmond's white families so workers could move in as tenants. The government also issued low-interest loans for white homeowners to remodel and subdivide their residences.

Consistent with this policy, the federal government recruited one of the nation's leading mass production developers, David Bohannon, to create Rollingwood, a new Richmond suburb. Federal officials approved bank loans to finance construction, requiring that none of Rollingwood's 700 houses be sold to an African American. The government also specified that each Rollingwood property must have an extra bedroom with a separate entrance to accommodate an additional white war worker.

Although African Americans, with fewer private options, were more dependent on public housing than whites, the Richmond Housing Authority's segregated projects did less to alleviate the housing shortage for African American than for white families. Not surprisingly, units for African Americans included many doubled-up families and illegal sublets. By 1947, when Richmond's black population had increased to 26,000, half still lived in temporary war housing. As the government financed whites to abandon these apartments for permanent homes in suburbs like Rollingwood, vacancies in white projects were made available to African Americans. Gradually black families became almost the only tenants of Richmond public housing, except for three permanent projects of sturdily constructed units that had been assigned to whites, most of whom didn't want to leave. By 1950, the city's ghetto had expanded with more than three-fourths of Richmond's black population living in war projects.

For black workers like Frank Stevenson who couldn't squeeze

into the limited number of public housing units, there were no “war guest” or other supplemental government programs. Mr. Stevenson, like many African Americans in Richmond who did not get into the segregated public projects, lived in North Richmond, an unincorporated area for which the city provided no services. He boarded with an elderly woman with whom he traded maintenance for rent.

Other black war workers in North Richmond, not as fortunate as Frank Stevenson, remained in cardboard shacks, barns, tents, or even open fields. Black workers who earned steady wages at war industries could save to buy small plots in unincorporated North Richmond, but because the federal government refused to insure bank loans made to African Americans for housing, standard construction was unaffordable.* Some built their own dwellings with orange crates or scrap lumber scoured from the shipyards. By the early 1950s, some 4,000 African Americans in North Richmond were still living in these makeshift homes.

During the war the government also collaborated with private groups to segregate Richmond. The United Services Organization (USO) maintained separate black and white clubs in Richmond for military personnel and also operated separate black and white Travelers Aid services for newly arrived war workers. On one occasion in 1943, the USO proposed a service center for African Americans on property that was available in a white neighborhood. The local newspaper, the *Richmond Independent*, protested; a petition drive in opposition to the plan ensued, and the city council prevented the plan from going forward. Although the USO was and is a private organization, it was organized by President Roosevelt (who held the title of honorary chairman), benefited from the use of government buildings for some of its clubs, coordinated its services with the War Department, and had a congressional charter. Along with the city council’s action, this tight federal government nexus rendered

*Throughout, I use the term *bank* loosely to include not only banks but also savings and loans, credit unions, and mortgage-originating companies. However, the discussion in Chapter 7 about federal and state regulators of banks includes only those lending institutions that are heavily regulated by government.

the USO's practice of segregation in Richmond (and elsewhere) an aspect of *de jure* segregation.

To ensure that no African Americans migrated to Richmond unless they were essential to the war effort, the city's police stopped African American men on the street and then arrested and jailed them if they couldn't prove they were employed. So after joining his older brother Allen in Richmond, Frank Stevenson quickly located a job at a Ford Motor assembly plant that had been taken over by the government for the manufacture of military jeeps and the refurbishing of damaged tanks.

In the 1930s, the Ford plant had a sign in front, "No Mexican or Black Workers Wanted," but when Frank Stevenson arrived in 1944, his services were badly needed. Three years earlier, the United Auto Workers (UAW) had forced Henry Ford to the bargaining table, and at the war's end, a union contract prevented Ford Motor from firing African Americans to make way for returning white veterans or for white workers who had been laid off from military production in places like the shipyards. So in 1945, when the army gave up control of the plant and the Ford Motor Company began to make cars again, black workers who had been hired during the war were able to stay on with secure industrial jobs.

Ford had established the plant in 1931 after Richmond offered the company tax incentives to lure its northern California assembly operations. The city had a deepwater port—that's why it became a shipbuilding center during the war—and Ford found the site attractive because it was accessible both to ocean freighters and to railroads. The company could inexpensively transport parts from Detroit to Richmond for assembly into cars and light trucks and then ship the completed vehicles from Richmond to dealers in northern California and Hawaii. The Richmond plant was two stories tall, with conveyor belts moving parts and subassemblies from one floor to the other.

When they were first hired during the war, black workers were assigned only to the lowest and most strenuous job classifications, but the union fought to open more skilled assignments to African Americans. Frank Stevenson seems to have been among the most ambitious and talented, and within a decade of being employed, he

was sufficiently skilled to fill in when workers at different workstations were at lunch. "I was smart enough," Mr. Stevenson says, "to go to the other jobs on my break and say, 'Let me see what you do.' That's why they made me a utility man."

In the 1950s, as the postwar consumer boom created growing demand for automobiles, Ford's Richmond plant had no room to expand. Highways made undeveloped rural areas accessible, and land was cheap, allowing Ford the opportunity to spread out and eliminate the inefficiencies of multistory buildings. So in 1953, the company announced it would close its Richmond plant and reestablish operations in a larger facility fifty miles south, in Milpitas, a suburb of San Jose, rural at the time. (Milpitas is part of what we now call Silicon Valley.) Ford purchased a 160-acre site from the Western Pacific Railroad, which had bought 1,700 acres in hopes of attracting industrial facilities for a rail hub.

Union leaders met with Ford executives and negotiated an agreement permitting all 1,400 Richmond plant workers, including the approximately 250 African Americans, to transfer to the new facility. Once Ford's plans became known, Milpitas residents incorporated the town and passed an emergency ordinance permitting the newly installed city council to ban apartment construction and allow only single-family homes. Developers then set to work, creating subdivisions of inexpensive single-family houses for workers not only at Ford but at the other plants that Western Pacific had drawn to the area.

The builders went to the Federal Housing Administration (FHA) for approval of their subdivision plans, and then used these approvals to get banks to issue low-interest loans to finance construction. If the houses conformed to its specifications, the federal government then guaranteed mortgages to qualified buyers without a further property appraisal.* Although banks would generally make mortgage loans to affluent buyers without government involvement, they usually shied away from making loans to working-class families unless the mort-

*The Veterans Administration "guaranteed" mortgages, while the Federal Housing Administration "insured" them. The distinction is of no importance for understanding *de jure* segregation, and I use the terms interchangeably.

gages were insured. With reduced risk, banks offered lower interest rates, making ownership more affordable to working-class families. For veterans, government approval also usually meant that no down payment was required. As in Rollingwood ten years earlier, one of the federal government's specifications for mortgages insured in Milpitas was an openly stated prohibition on sales to African Americans.

Because Milpitas had no apartments, and houses in the area were off-limits to black workers—though their incomes and economic circumstances were like those of whites on the assembly line—African Americans at Ford had to choose between giving up their good industrial jobs, moving to apartments in a segregated neighborhood of San Jose, or enduring lengthy commutes between North Richmond and Milpitas. Frank Stevenson bought a van, recruited eight others to share the costs, and made the drive daily for the next twenty years until he retired. The trip took more than an hour each way.

Of Frank Stevenson and his eight carpoolers, only one was ever able to move farther south, closer to the plant, and he was not able to do so until the late 1960s. He found a home in Hayward, a town about halfway between Richmond and Milpitas that had also previously been closed to African Americans.

As the civilian housing shortage eased after the war and more government-subsidized suburbs like Rollingwood were built for white working-class families, Richmond itself became a predominantly black city. As the black population of North Richmond swelled, African Americans began to break into the south Richmond housing market. Soon, south Richmond as well became part of Richmond's ghetto. In 1970, after his daughters finished high school, Frank Stevenson was finally able to buy his first home in the southern, previously whites-only section of the city.

II

AT THE end of World War II, Stanford University in Palo Alto, south of San Francisco, recruited Wallace Stegner to teach creative

writing. Stanford's offer followed the publication in 1943 of Stegner's widely acclaimed semiautobiographical novel, *The Big Rock Candy Mountain*. Years later Stegner would go on to win the Pulitzer Prize and the National Book Award, but when he arrived in Palo Alto with his family immediately after the war, his financial resources were modest.

Like the rest of the country, the Stanford area was suffering from a housing shortage: during the war, with all available material and labor reserved for military use, the government had prohibited civilian housing construction, except for projects designated for the defense industry in towns like Richmond. Stegner joined and then helped to lead a cooperative of middle- and working-class families who were all unable to find available housing. For the most part, college professors were not highly paid; the co-op included others of similar economic status—public school teachers, city employees, carpenters, and nurses. Of the first 150 families to join, three were African American.

Calling itself the Peninsula Housing Association of Palo Alto, the co-op purchased a 260-acre ranch adjacent to the Stanford campus and planned to build 400 houses as well as shared recreational facilities, a shopping area, a gas station, and a restaurant on commonly owned land. But banks would not finance construction costs nor issue mortgages to the co-op or to its members without government approval, and the FHA would not insure loans to a cooperative that included African American members. The cooperative's board of directors, including Stegner, recommended against complying with the demand that the cooperative reconstitute itself as an all-white organization, but the membership, attempting to appease the government, voted in January 1948 by a narrow 78–75 margin to compromise. The co-op proposed to include a quota system in its bylaws and deeds, promising that the proportion of African Americans in the Peninsula Housing Association would not exceed the proportion of African Americans in California's overall population.

This concession did not appease government officials, and the project stalled. Stegner and other board members resigned; soon afterward the cooperative was forced to disband because it could

not obtain financing without government approval. In 1950, the association sold its land to a private developer whose FHA agreement specified that no properties be sold to African Americans. The builder then constructed individual homes for sale to whites in "Ladera," a subdivision that still adjoins the Stanford campus.

III

OVER THE next few years, the number of African Americans seeking jobs and homes in and near Palo Alto grew, but no developer who depended on federal government loan insurance would sell to them, and no California state-licensed real estate agent would show them houses. But then, in 1954, one resident of a whites-only area in East Palo Alto, across a highway from the Stanford campus, sold his house to a black family.

Almost immediately Floyd Lowe, president of the California Real Estate Association, set up an office in East Palo Alto to panic white families into listing their homes for sale, a practice known as blockbusting. He and other agents warned that a "Negro invasion" was imminent and that it would result in collapsing property values. Soon, growing numbers of white owners succumbed to the scaremongering and sold at discounted prices to the agents and their speculators. The agents, including Lowe himself, then designed display ads with banner headlines—"Colored Buyers!"—which they ran in San Francisco newspapers. African Americans, desperate for housing, purchased the homes at inflated prices. Within a three-month period, one agent alone sold sixty previously white-owned properties to African Americans. The California real estate commissioner refused to take any action, asserting that while regulations prohibited licensed agents from engaging in "unethical practices," the exploitation of racial fear was not within the real estate commission's jurisdiction. Although the local real estate board would ordinarily "blackball" any agent who sold to a non-white buyer in the city's white neighborhoods (thereby denying the

agent access to the multiple listing service upon which his or her business depended), once wholesale blockbusting began, the board was unconcerned, even supportive.

At the time, the Federal Housing Administration and Veterans Administration not only refused to insure mortgages for African Americans in designated white neighborhoods like Ladera; they also would not insure mortgages for whites in a neighborhood where African Americans were present. So once East Palo Alto was integrated, whites wanting to move into the area could no longer obtain government-insured mortgages. State-regulated insurance companies, like the Equitable Life Insurance Company and the Prudential Life Insurance Company, also declared that their policy was not to issue mortgages to whites in integrated neighborhoods. State insurance regulators had no objection to this stance. The Bank of America and other leading California banks had similar policies, also with the consent of federal banking regulators.

Within six years the population of East Palo Alto was 82 percent black. Conditions deteriorated as African Americans who had been excluded from other neighborhoods doubled up in single-family homes. Their East Palo Alto houses had been priced so much higher than similar properties for whites that the owners had difficulty making payments without additional rental income. Federal and state housing policy had created a slum in East Palo Alto.

With the increased density of the area, the school district could no longer accommodate all Palo Alto students, so in 1958 it proposed to create a second high school to accommodate the expanding student population. The district decided to construct the new school in the heart of what had become the East Palo Alto ghetto, so black students in Palo Alto's existing integrated building would have to withdraw, creating a segregated African American school in the eastern section and a white one to the west. The board ignored pleas of African American and liberal white activists that it draw an east-west school boundary to establish two integrated secondary schools.

In ways like these, federal, state, and local governments purposely

created segregation in every metropolitan area of the nation. If it could happen in liberal San Francisco, then indeed, it not only could but did happen everywhere. That the San Francisco region was segregated by government policy is particularly striking because, in contrast to metropolitan areas like Chicago, Detroit, Cleveland, or Baltimore, northern California had few African Americans before migrants like Frank Stevenson arrived during World War II in search of jobs. The government was not following preexisting racial patterns; it was imposing segregation where it hadn't previously taken root.*

* If you inquire into the history of the metropolitan area in which you live, you will probably find ample evidence of how the federal, state, and local governments unconstitutionally used housing policy to create or reinforce segregation in ways that still survive.