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2019

### The Hidden Fences Shaping Resegregation

Jeannine Bell

*Indiana University Maurer School of Law*, [jeabell@indiana.edu](mailto:jeabell@indiana.edu)

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#### Recommended Citation

Bell, Jeannine, "The Hidden Fences Shaping Resegregation" (2019). *Articles by Maurer Faculty*. 2859.  
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# The Hidden Fences Shaping Resegregation

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Jeannine Bell\*

There is a Horatio Alger<sup>1</sup>-type story about housing that is an important part of the American Dream. The boy-(or girl)-makes-good story goes something like this: “Matthew” is raised in a working-class neighborhood. After Matthew graduates from high school (or college) and gets his first job, he has little money and can only afford to rent a tiny apartment in a working-class or poor neighborhood. With time however, Matthew is able to build capital and gradually moves up the housing ladder, every decade or so purchasing in increasingly “better” neighborhoods with “better” schools, more amenities, and less crime. By the time he is middle-aged, Matthew has “arrived” and secured a comfortable place in the middle class.

By moving out of a working-class neighborhood, Matthew has done more than simply move to a larger, more comfortable house. He has also built wealth and improved his children’s life chances. Middle-class (as opposed to working-class or poor) neighborhoods are more likely to contain well-resourced schools, less crime, and more valuable housing stock.<sup>2</sup> It is this latter issue that is the most critical. Many Americans hold the majority of their wealth in their homes. When housing prices in the neighborhood in which a person lives rise in value, the person’s net worth increases. In most housing markets, even despite the recent housing crises, it still makes good economic sense for the vast majority of Americans to improve their housing by moving to more affluent neighborhoods.<sup>3</sup> Unfortunately, for many racial and ethnic minorities, the housing mobility dream—of building wealth and improving their housing outcomes—is not possible.

Though it is rarely acknowledged by many in the general population, Matthew’s story (or dream, at least in contemporary America) is a “white” dream, which few Blacks<sup>4</sup> have been able to realize. In housing, as in almost

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\* Richard S. Melvin Professor of Law, Indiana University Maurer School of Law—Bloomington. J.D. University of Michigan—Ann Arbor, 1999; Ph.D. (Political Science), 2000; A.B. Harvard College—Cambridge, 1991. Sincere thanks to Rita Eads for secretarial assistance.

<sup>1</sup> In the late 1880s, Horatio Alger, Jr. wrote the hugely popular *Ragged Dick* novel, detailing the rise of a poor shoeshine boy into the middle class.

<sup>2</sup> Homes in working-class and poor neighborhoods cost less and are consequently worth less, and barring a situation where such neighborhoods become gentrified, will appreciate less. See Laurie S. Goodman & Christopher Mayer, *Homeownership and the American Dream*, 32 J. ECON. PERSP. 31, 31, 50 (2018) (describing returns to homeownership as depending “critically” on how much the price of the property increases).

<sup>3</sup> See *id.* at 32 (describing homeownership as a valuable institution which allows individuals to build wealth). The authors note that this is true in many, though not every, housing market. *Id.*

<sup>4</sup> In this Article, the term “Black” is used to describe the racial background of people of African descent living in the United States. In doing so, the aim is to use this term to refer both to African Americans and immigrants of African descent from around the world.

all aspects of life in America, race matters. Compared to white people, Black people have lower educational achievements<sup>5</sup> and poorer health outcomes.<sup>6</sup> Perhaps most critically, there is a substantial and persistent Black/white wealth gap.<sup>7</sup> Housing disparities play a significant role in the wealth gap, not just for adults, but also for their children. Research shows predominantly white neighborhoods have more valuable housing stock and better-resourced schools than predominantly Black neighborhoods,<sup>8</sup> which allows white people to more easily build wealth that can be passed down to their children.

The ability to live in white, well-resourced neighborhoods was not an option for racial and ethnic minorities prior to the Fair Housing Act of 1968.<sup>9</sup> Discrimination by white property owners prevented minorities from buying or renting housing in white neighborhoods. In states where there were statutes prohibiting housing discrimination, private discrimination was still common, often in the form of racial covenants preventing home owners from selling to Blacks.<sup>10</sup> By 1968, with the passage of the Fair Housing Act, these de jure barriers to neighborhood segregation by race had been eradicated.

Fifty years after the passage of the Fair Housing Act, America remains nearly as segregated by race as it was in 1968.<sup>11</sup> Though individuals of all racial groups are affected, Blacks are particularly segregated from whites.<sup>12</sup> The dissolution of legal barriers to housing integration, combined with the advantages white neighborhoods possess, makes the current high level of housing segregation surprising, particularly when one considers where up-

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<sup>5</sup> S. Michael Gaddis & Douglas Lee Lauen, *School Accountability and the Black-White Test Score Gap*, 44 Soc. Sci. Res. 15 (2014) (describing Black/white achievement gap).

<sup>6</sup> Cynthia G. Colen, David M. Ramey, Elizabeth C. Cooksey & David R. Williams, *Racial Disparities in Health Among Nonpoor African Americans and Hispanics: The Role of Acute and Chronic Discrimination*, 199 Soc. Sci. & Med. 167, 167 (2018) (describing Black/white health outcome gap).

<sup>7</sup> See, e.g., DALTON CONLEY, *BEING BLACK, LIVING IN THE RED: RACE, WEALTH, AND SOCIAL POLICY IN AMERICA* 1 (2009).

<sup>8</sup> See, e.g., MELVIN OLIVER & TOM SHAPIRO, *BLACK WEALTH, WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* 9 (2006).

<sup>9</sup> There were, of course, a host of government decisions—from the design of the freeway system to facilitate the growth of white suburbs to the failure to address redlining that contributed to private discrimination and created segregated neighborhoods. For a discussion of the government's role, see generally THOMAS J. SUGRUE, *THE ORIGIN OF THE URBAN CRISIS, RACE AND INEQUALITY IN POSTWAR DETROIT* (1996).

<sup>10</sup> See *Shelley v. Kraemer*, 334 U.S. 1, 4 (1948); Michael Jones-Correa, *The Origins and Diffusion of Racial Restrictive Covenants*, 115 Pol. Sci. Q. 541, 541–68 (2000-2001) (showing widespread diffusion of racial covenants).

<sup>11</sup> Joseph P. Williams, *Segregation's Legacy*, U.S. NEWS & WORLD REPORT (Apr. 20, 2018), <https://www.usnews.com/news/the-report/articles/2018-04-20/us-is-still-segregated-even-after-fair-housing-act>, archived at <https://perma.cc/3UGC-UX98>.

<sup>12</sup> John R. Logan, *The Persistence of Segregation in the 21st Century Metropolis*, 12 CITY & Cmty. 160 (2013) (describing the high segregation of Blacks, relative to Asians and Hispanics).

per-middle-class Blacks live.<sup>13</sup> Despite the advantages of white neighborhoods, and the lack of legal and financial barriers to entry, the majority of middle-class Blacks live in neighborhoods that are far poorer than their incomes might indicate.<sup>14</sup> In fact, the neighborhoods in which upper-middle-class Blacks live are nearly as Black as those of poor Blacks.<sup>15</sup> Why would anyone reject the incentives that white neighborhoods appear to offer? This is a paradox. Settling in Black neighborhoods when one can afford otherwise may seem an irrational choice, especially given the well-known economic disadvantages of Black neighborhoods outlined below.

This Article offers a window into the experiences that inform the neighborhood choices of middle-class and upper-middle-class Blacks. As I suggest below, there are many hidden fences, walling off white neighborhoods and restricting Blacks' housing choices in de facto ways. These hidden fences exist in the form of the many challenges Blacks face when moving to white neighborhoods. The obstacles to easy, contented lives range from police harassment to anti-integrationist violence that push Blacks into less affluent neighborhoods. Ultimately, this Article demonstrates how race can circumscribe housing choice and social mobility, even in the absence of legal barriers restricting where one can live.

#### HOUSING CHOICE, IN BLACK AND WHITE

In the minds of many Americans—white and non-white—middle-class white neighborhoods are clearly preferable to minority neighborhoods because they appear safer, offer better-resourced schools, more valuable housing stock, and more amenities—parks,<sup>16</sup> grocery stores,<sup>17</sup> coffee shops, and restaurants.<sup>18</sup> Yet, many upper-middle-class Blacks live in poorer neighborhoods as compared to similarly-situated whites, and those of other races. To understand this paradox, this Article asks whether, after controlling for class status, Blacks are really presented with the same housing choices as whites. The Article does this by closely examining the housing experiences of Blacks in white neighborhoods, focusing in particular on safety.

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<sup>13</sup> See Sean F. Reardon, Lindsay For & Joseph Townsend, *Neighborhood Income Composition by Household Race and Income, 1990–2009*, 660 ANNALS AM. ACAD. POL. & SOC. SCI. 78, 85–90 (2015) (describing the neighborhoods of middle-class Blacks).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 86.

<sup>16</sup> See Ming Wen, Xingyou Zhang, Carmen D. Harris, James B. Holt & Janet B. Croft, *Spatial Disparities in the Distribution of Parks and Green Spaces in the USA*, 45 ANNALS BEHAV. MED. 18 (2013) (showing that percentage of Blacks and Hispanics in neighborhood is negatively linked to distances to parks and green spaces).

<sup>17</sup> Angela Hilmers, David C. Hilmers & Jayna Dave, *Neighborhood Disparities in Access to Healthy Foods and Their Effects on Environmental Justice*, 102 AM. J. PUB. HEALTH 1644, 1644–50 (2012).

<sup>18</sup> Andrew V. Papachristos, Chris M. Smith, Mary L. Scherer & Melissa A. Fugiero, *More Coffee, Less Crime? The Relationship Between Gentrification and Neighborhood Crime Rates in Chicago, 1991 to 2005*, 10 CITY & CMTY. 215, 215, 234 (2011).

I argue that Blacks who can afford more expensive housing move to predominately minority neighborhoods because many are not safe from harassment and violence in white neighborhoods, making white neighborhoods uncomfortable places for Blacks to live. One alternate explanation for the segregation of Blacks is that that middle-class Blacks choose to live amongst other Blacks, even poorer ones, because they prefer such neighborhoods for cultural or intergenerational reasons. If this were true, literature on housing choice would reveal such preferences. A significant body of research has asked whites, Blacks and individuals of other racial and ethnic backgrounds whom they might consider their ideal neighbors.<sup>19</sup> With respect to preferences on neighborhood choice, when asked about the racial composition of their ideal neighborhood, whites tend to indicate they preferred predominantly white neighborhoods.<sup>20</sup> In sharp contrast to whites, when surveyed Blacks indicated that their ideal neighborhoods are not predominately Black, but rather integrated neighborhoods that are 50% white and 50% Black.<sup>21</sup>

Blacks' stated preferences for residing in more integrated settings have not been realized. Black people of all income levels still live in neighborhoods that are predominately Black. Unable to afford more expensive neighborhoods, poor Blacks, like poor whites and poor Latinos, live in disadvantaged neighborhoods with people of the same race.<sup>22</sup> Blacks, however, do not exhibit the expected departures from disadvantaged neighborhoods as their income levels increase. For example, research shows that the average Black household earning more than \$75,000 per year resides in a poorer neighborhood than the average low-income white household, which earns less than \$40,000 per year.<sup>23</sup>

### *Discriminatory Policing Practices as Threat to Minority Integration*

For middle-class Blacks, the ability to afford housing in white neighborhoods may not be the most important factor in housing choice. Despite

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<sup>19</sup> See Esther Havekes, Michael Bader & Maria Krysan, *Realizing Racial and Ethnic Neighborhood Preferences? Exploring the Mismatches Between What People Want, Where They Search, and Where They Live*, 35 POPULATION RES. & POL'Y REV. 101, 103–05 (2016) (reviewing prior research on this question).

<sup>20</sup> *Id.* at 103.

<sup>21</sup> *Id.* at 103–104. In fact, relative to Asian Americans, Latinos, and whites, Blacks are the most tolerant of neighbors of different racial backgrounds. Camille Charles' survey of Blacks, whites, Latinos, and Asian Americans in multi-racial Los Angeles revealed different levels of in-group attachment that had an effect on their racial preferences in housing. Whites, Asians, and Latinos surveyed all indicated greater preferences for same-race neighbors than did Blacks. See CAMILLE ZUBRINSKY CHARLES, *WON'T YOU BE MY NEIGHBOR? RACE, CLASS & RESIDENCE IN LOS ANGELES* 158–60 (2006).

<sup>22</sup> Reardon et al., *supra* note 13, at 85–90.

<sup>23</sup> *Id.*; see also John R. Logan, *Separate and Unequal: The Neighborhood Gap For Blacks, Hispanics and Asians in Metropolitan America*, PROJECT US 2010 (2011), <https://s4.ad.brown.edu/Projects/Diversity/Data/Report/report0727.pdf>, archived at <https://perma.cc/8MJQ-79XN>; Patrick Sharkey, *Spatial Segmentation and the Black Middle Class*, 119 AM. J. SOC. 903, 903 (2014).

having greater amenities, lower crime, and less police presence overall, white neighborhoods may not be comfortable places to live for Blacks, who may be regularly subject to suspicion, harassment and other threatening behaviors. One reason for the discomfort Blacks may experience while living in white neighborhoods is the extent to which police threaten them with discriminatory policing practices.<sup>24</sup> Though white neighborhoods are more lightly policed than minority neighborhoods, police are still present. When they are, they may be investigating Black residents in the neighborhood, at the golf course, at the coffee shop, or in other predominately white spaces.<sup>25</sup> In other cases, whites and other (non-Black) neighbors call the police to their white neighborhoods to report their Black neighbors, who they do not recognize; because they are Black, white neighbors and the police they summon deem them criminally “suspicious.”<sup>26</sup> There are myriad anecdotes of high-profile Black residents of predominately white neighborhoods, who have been questioned about breaking into their own homes<sup>27</sup> or stopped by police and asked what they are doing in their own neighborhoods. Perhaps the most famous example is Professor Henry Louis Gates, Jr., chair of the African American Studies Department at Harvard, who was arrested after the police were called when he had difficulty entering his home.<sup>28</sup>

In his study of policing in the Kansas City area, Charles Epp and his colleagues analyzed how police engaged in investigative stops of Blacks in predominantly white neighborhoods.<sup>29</sup> These investigative stops were pure fishing expeditions—attempts to stop Black motorists by police officers who believed that, simply because these drivers were Black, they might have been engaged in criminal behavior.<sup>30</sup> Epp and his colleagues note that in Kansas City, where the suburbs are more white than the City, this is also a suburban phenomenon: “officers in the suburbs that ringed the urban core are much more focused than officers in other areas on carrying out intrusive investigations of African-American drivers.”<sup>31</sup>

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<sup>24</sup> See e.g., CHARLES R. EPP, STEVEN MAYNARD-MOODY, & DONALD P. HAIDER-MARKEL, *PULLED OVER: HOW POLICE STOPS DEFINE RACE & CITIZENSHIP* 70–71 (2014) (describing police targeting of Blacks who are “out-of-place” in white neighborhoods).

<sup>25</sup> *Id.*

<sup>26</sup> Daniel Victor, *When White People Call the Police on Black People*, N.Y. TIMES (May 18, 2018), <https://www.nytimes.com/2018/05/11/us/black-white-police.html>, archived at <https://perma.cc/H44Y-C57L>.

<sup>27</sup> See, e.g., Farnoush Amiri, *Actor Ving Rhames Said Neighbor Called 911 to Report Him as ‘A Large Black Man’ Breaking In*, NBC NEWS (July 29, 2018), <https://www.nbcnews.com/news/us-news/actor-ving-rhames-said-neighbor-called-911-report-him-large-n895611>, archived at <https://perma.cc/SX7P-JWSZ>.

<sup>28</sup> See, e.g., Renee McDonald Hutchins, *Racial Profiling: The Law, the Policy, and the Practice*, in *POLICING THE BLACK MAN: ARREST, PROSECUTION AND IMPRISONMENT* 95, 96 (Angela J. Davis et al. eds., 2017) (describing the arrest of Henry Louis Gates and sportscaster Bryant Gumbel’s son).

<sup>29</sup> See EPP ET AL., *supra* note 24, at 32.

<sup>30</sup> *Id.* at 16.

<sup>31</sup> *Id.* at 108.

The point is not that Black residents of white neighborhoods suffer more from policing than those living in over-policed, high-crime, urban neighborhoods where police departments carry out aggressive stop and frisk regimes. Rather, the point is a subtler one—not only are Black residents of middle-class predominately white neighborhoods not able to escape discriminatory policing, but they also may experience the particular indignity of being singled out for police harassment.<sup>32</sup> The policing in middle-class white neighborhoods is focused on the very few Blacks who live in those neighborhoods, while in low-income urban Black neighborhoods, police pay attention to everyone.<sup>33</sup> If neighborhood residents are aware of discriminatory police practices, they may think nothing untoward of an individual who is stopped. If there are few stops made, and many of them involve the (few) Black residents who live in the neighborhood, in some ways these stops might be even more humiliating and degrading than those made in neighborhoods where many residents are regularly stopped.

### *Neighborhood-Based Hate Crimes as a Threat to Minority Integration*

Neighborhood-based hate crimes—in the form of what I call “anti-integrationist violence”<sup>34</sup> are an additional threat to minority integration. Anti-integrationist violence is contemporary violence directed at racial and ethnic minorities who move to white neighborhoods. Over the past fifty years, whites have directed violence at non-white individuals who have attempted to integrate their neighborhoods.<sup>35</sup> Such incidents are race-based hate crimes. This neighborhood violence ranges from slurs and epithets to murder.<sup>36</sup>

In addition to violating the Fair Housing Act, acts of anti-integrationist violence are punishable under state or federal hate crimes laws.<sup>37</sup> Though such violence has been illegal for fifty years, it has continued and still occurs at a significant rate. Searches of news accounts and court cases between

<sup>32</sup> See, e.g., Ronald Weitzer & Rod K. Brunson, *Policing Different Racial Groups in the United States*, 35 CAHIERS POLITIESTUDIES JAARGANG 129, 129–145 (2015), <https://sociology.columbian.gwu.edu/sites/g/files/zaxdzs1986/f/downloads/Weitzer%20&%20Brunson%202015%20.pdf> (describing the indignity of racialized policing).

<sup>33</sup> For example, in urban Black neighborhoods in New York City, thousands of people are stopped every year. For data on the number of stop-and-frisks in New York City, see *Stop and Frisk Practices*, N.Y. CIVIL LIBERTIES UNION, <https://www.nyclu.org/en/issues/racial-justice/Stop-and-Frisk-practices>, archived at <https://perma.cc/W3DV-UG4X> (last visited Mar. 10, 2019). The majority of those stopped and frisked were Blacks and Latinos because the NYPD targeted predominately Black and Latino neighborhoods. *Id.*

<sup>34</sup> See JEANNINE BELL, *HATE THY NEIGHBOR: LAW ENFORCEMENT, CIVIL RIGHTS AND HATE CRIME 4* (2013).

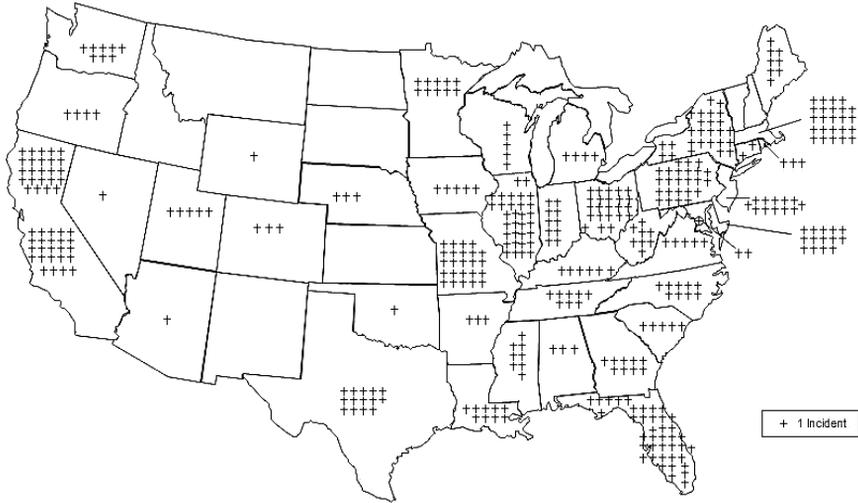
<sup>35</sup> See *id.* at 53–61.

<sup>36</sup> See *id.* at 66 (listing incidents that range from verbal threats to homicide).

<sup>37</sup> See, e.g., 18 U.S.C. § 241 (1996) (conspiracy against rights); 18 U.S.C. § 242 (1996) (deprivation of rights under color of law); 18 U.S.C. § 249 (2009) (hate crime acts); see also ZACHARY J. WOLFE, *HATE CRIMES LAW APPENDICES A1–12* (2018) (describing federal hate crime laws).

1990 and 2010 revealed more than 400 incidents occurred in cities across the country.<sup>38</sup>

FIGURE 1



Each of the crosses depicted in Figure 1 represents one minority family that was victimized by an act of violence—ranging from an assault to a cross-burning at a family residence.<sup>39</sup> According to scholars’ understandings of hate crime, the crosses above represent just the tip of the iceberg, as many incidents go unreported.<sup>40</sup> Targets of violence may be afraid of the police or may simply not know that vandalism of real or personal property is a crime.<sup>41</sup> Not only are hate crimes underreported, but some families experience multiple incidents.<sup>42</sup> An incident might begin with something small—a racial slur or epithet used to harass one family member—then escalate to vandalism, eventually culminating in a much more severe incident like a cross burning or an assault.<sup>43</sup> In these 432 incidents, minorities—Blacks,

<sup>38</sup> BELL, *supra* note 34, at 66.

<sup>39</sup> *Id.*

<sup>40</sup> *See id.* at 67.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *See, e.g.,* Laura J. Lederer, *The Case of the Cross Burning: An Interview with Russ and Laura Jones*, in *THE PRICE WE PAY: THE CASE AGAINST RACIST SPEECH, HATE PROPAGANDA, AND PORNOGRAPHY* 27, 28 (Laura J. Lederer & Richard Delgado eds., 1995). Skinheads harassed the Jones family after they moved to a predominately white, St. Paul, Minnesota neighborhood. Within the first month of living in the neighborhood, the family’s tires were slashed, their son was called a “nigger” on the sidewalks right in front of the house, and a cross was burned on their front lawn. *Id.*

Asian Americans, and Latinos,<sup>44</sup> or those affiliated with minorities—were always the victims.<sup>45</sup> In the vast majority of cases, whites were the perpetrators of these neighborhood-based hate crimes.<sup>46</sup>

Perhaps unsurprisingly, the biased motives of white perpetrators of acts of anti-integrationist violence are fairly easy to discern once the incident is investigated. Consider the following case. In 2007, Sean Jenkins, a Black construction worker, was preparing to move into a house in a predominantly white neighborhood in Philadelphia.<sup>47</sup> Before he was able to occupy it, white vandals broke in and defaced the walls with, “all n[igger]s should be hung.”<sup>48</sup> This incident did not deter Jenkins and his girlfriend.<sup>49</sup> However, when his girlfriend went to clean the house, a white man yelled at her, “all n[igger]s taking over the neighborhood.”<sup>50</sup> After that, the couple canceled their plans to move.<sup>51</sup>

Even though perpetrators’ motives are so clearly race-based when outsiders consider the incident, those who sympathize with the perpetrators, and occasionally even the perpetrators themselves, manifestly maintain their behavior is race-neutral.<sup>52</sup> For instance, after the Campbells, a Black family, moved to a predominately white, middle-class neighborhood in Berywn, Illinois in 1992, someone threw a rock through the back window of their house.<sup>53</sup> A few days later, the family’s front porch was firebombed.<sup>54</sup> After these incidents, the family put the house on the market.<sup>55</sup> Though some of the family’s neighbors interviewed by a news reporter expressed support for the Campbell’s right to live in the neighborhood, others seemed happy to see them go. One neighbor, Craig Fossey, who had moved to Berwyn from nearby Cicero after the “wrong element” began moving in,<sup>56</sup> stated that he

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<sup>44</sup> Of these groups, Blacks are often the most targeted when they move, largely because Blacks are, according to studies, the most disliked neighbors. Whites, Latinos, and Asian Americans are all reluctant to move to neighborhoods that contain Blacks. Charles, *supra* note 21, at 159–62. Thus, it is unsurprising that Blacks are so frequently victimized by bias-motivated crime. *See, e.g., Victims*, U.S. DEP’T JUST. FED. BUREAU INVESTIGATION (2017), <https://ucr.fbi.gov/hate-crime/2017/topic-pages/victims.pdf>, *archived at* <https://perma.cc/239V-DCDX> (describing Blacks as the largest category of individuals targeted by hate crime by race).

<sup>45</sup> BELL, *supra* note 34, at 69.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 64.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *See* Jeannine Bell, *There Are No Racists Here: The Rise of Racial Extremism, When No One Is Racist*, 20 MICH. J. RACE & L. 349, 365 (2014) (describing the social tolerance of casual racism).

<sup>53</sup> Joseph Kirby, *Berwyn Racial Undercurrent Seen by Some*, CHI. TRIB. (Mar. 8, 1992), <https://www.chicagotribune.com/news/ct-xpm-1992-03-08-9201220050-story.html>, *archived at* <https://perma.cc/9NSA-MSD3>.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

had chosen Berwyn because “he wanted . . . an all-white community.”<sup>57</sup> He said he felt sorry for the Campbells but would still prefer that Berwyn remain predominately white.<sup>58</sup>

#### ANTI-INTEGRATIONIST VIOLENCE IN THE OBAMA YEARS

There are many reasons to assume that levels of anti-integrationist racial violence might have declined in the years after 2010. Many heralded the election of Barack Obama, America’s first Black president, as ushering in a “post-racial” moment.<sup>59</sup> Indeed, hate crimes, as reported by the FBI, fell slightly during the Obama years.<sup>60</sup> While claims that America is post-racial may be premature, it is important to recognize the changes in racial climate that have occurred in the last twenty years. For instance, Barack Obama was elected not just once but *twice*. Additionally, public opinion data show increasing progress in racial tolerance since data collection began in the 1940s. While in 1958 only 4% of whites surveyed by a Gallup Poll approved of a Black-white intermarriage, by 2011, a record 84% of whites approved of it.<sup>61</sup>

There are also now significant remedies on both the state and national level aimed at anti-integrationist violence. Forty-five states have some sort of hate crime legislation.<sup>62</sup> At the federal level, in addition to Fair Housing

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> See, e.g., Gwen Ifill, *THE BREAKTHROUGH: POLITICS AND RACE IN THE AGE OF OBAMA* 16, 30 (2009) (promoting Obama, among others, as a Black politician who has transcended race); Michael Crowley, *Post-Racial*, *NEW REPUBLIC* (Mar. 12, 2008), <https://newrepublic.com/article/64482/post-racial>, archived at <https://perma.cc/2QFG-DX9H>; Robert H. Frank, *When It Really Counts, Qualifications Trump Race*, *N.Y. TIMES* (Nov. 15, 2008), <https://www.nytimes.com/2008/11/16/business/16view.html>, archived at <https://perma.cc/49Q2-VZMR>; Bob Herbert, *Take a Bow, America*, *N.Y. TIMES* (Nov. 8, 2008), <https://www.nytimes.com/2008/11/08/opinion/08herbert.html>, archived at <https://perma.cc/49Q2-VZMR>; Leonard Pitts, *Commentary: ‘Post-Racial’ America Isn’t Here Yet*, *CNN POLITICS* (Mar. 28, 2009), <http://www.cnn.com/2009/POLITICS/03/28/pitts.black.america/index.html>, archived at <https://perma.cc/A7A7-RMNT>; Tim Rutton, *The Good Generation Gap*, *L.A. TIMES* (Feb. 6, 2008), <http://articles.latimes.com/2008/feb/06/opinion/oe-rutton6>, archived at <https://perma.cc/M6UY-G3RK> (suggesting that Obama “personifies and articulates the post-racial America in which most of our young people now live”); Shelby Steele, *Obama’s Post-Racial Promise*, *L.A. TIMES* (Nov. 5, 2008), <https://www.latimes.com/opinion/opinion-la/la-oe-steele5-2008nov05-story.html>, archived at <https://perma.cc/Z7XF-9UZP>.

<sup>60</sup> See *Victims*, *supra* note 44. There were just 6,216 offenses in 2011. See *id.* Hate crimes decreased from 2010, see *Incidents and Offenses*, U.S. DEP’T JUST. FED. BUREAU INVESTIGATION, <https://ucr.fbi.gov/hate-crime/2010/narratives/hate-crime-2010-incidents-and-offenses>, archived at <https://perma.cc/58RU-KJVW> (last visited Mar. 10, 2019), and 2009, see *FBI Releases 2009 Hate Crime Statistics*, U.S. DEP’T JUST. FED. BUREAU INVESTIGATION (Nov. 22, 2010), [https://archives.fbi.gov/archives/news/pressrel/press-releases/2009hatecrimestats\\_112210](https://archives.fbi.gov/archives/news/pressrel/press-releases/2009hatecrimestats_112210), archived at <https://perma.cc/G64R-HBQA>.

<sup>61</sup> See Jeffrey M. Jones, *Record-High 86% Approve of Black-White Marriages*, *GALLUP* (Sep. 12, 2011), <https://news.gallup.com/poll/149390/record-high-approve-black-white-marriages.aspx>, archived at <https://perma.cc/D9TS-QVU8>.

<sup>62</sup> Wolfe, *supra* note 37, at Appendix B (listing ethnic intimidation, anti-mask, cross burning, institutional vandalism, civil action and data collection categories for all 50 states). See, e.g., Ala. § 13 A-5-13 (punishing ethnic intimidation).

Act remedies aimed at anti-integrationist violence, the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act<sup>63</sup> was enacted in 2009. The Act provides additional federal assistance (in the form of personnel and experience) for states and tribes to bolster their effectiveness in investigating and prosecuting hate crimes. If a state currently does not have the ability to prosecute hate crimes, 18 USCA 249(b)(1) allows the federal government to prosecute incidents that are hate crimes under the statute.<sup>64</sup>

#### ANTI-INTEGRATIONIST VIOLENCE IN THE ERA OF TRUMPIAN RACIAL POLITICS

The racial progress described above has not stopped anti-integrationist violence. Though American scores on racial tolerance measures have been well documented by survey research, with respect to our ability to accept neighbors who are different from ourselves, the devil is in the details.<sup>65</sup> For centuries, the home has been considered a sacred intimate space.<sup>66</sup> It is then quite understandable that Americans treat the home, and by extension, neighborhoods, as intimate spaces that they are reluctant to share. It is not just that Americans are worried about property values, but rather, as surveys indicate, they fear sharing the space at all.<sup>67</sup> Many whites are quietly self-segregating.<sup>68</sup>

In the Trump era, some of whites' reluctance to share their neighborhoods may be due to the increasingly overt and widespread presence of white supremacist activity in the United States. For instance, after the 2016 election, the number of hate crimes directed at minorities significantly increased. Though statistics on how much of an increase actually occurred vary based on the agency or organization collecting the data,<sup>69</sup> the FBI statis-

<sup>63</sup> 18 U.S.C. § 249 (2009).

<sup>64</sup> 18 U.S.C. § 249 (b)(1)(A) (allowing prosecution under this statute if the state does not have jurisdiction or has requested that the Federal Government assume jurisdiction).

<sup>65</sup> See Jones, *supra* note 61.

<sup>66</sup> See, e.g., GASTON BACHELARD, *THE POETICS OF SPACE 6* (Maria Jolas, trans., Orion Press 1964) (1958).

<sup>67</sup> See Alvin Chang, *White America Is Quietly Self Segregating*, Vox (Jul. 31, 2018), <https://www.vox.com/2017/1/1814296126/white-segregated-suburb-neighborhood-cartoon>, archived at <https://perma.cc/TC3N-J2ZY>.

<sup>68</sup> See *id.*

<sup>69</sup> Several different organizations, including the Anti-Defamation League (ADL), the Southern Poverty Law Center (SPLC), and the FBI, collect data on hate crimes. See, e.g., *ADL Hate Crime Map*, ADL, <https://www.adl.org/adl-hate-crime-map>, archived at <https://perma.cc/43H4-B45P> (last visited Mar. 10, 2019); *Hate Crimes, Explained*, S. POVERTY L. CTR. (Apr. 15, 2018), <https://www.splcenter.org/20180415/hate-crimes-explained>, archived at <https://perma.cc/KL65-UKES>; *2017 Hate Crime Statistics Released*, FBI (Nov. 13, 2018), <https://www.fbi.gov/news/stories/2017-hate-crime-statistics-released-111318>, archived at <https://perma.cc/4AEN-EQ22>. SPLC and ADL data are based on FBI reports. See *ADL Hate Crime Map*, *supra*; *Hate Crimes, Explained*, *supra*. The FBI's annual hate crimes report is based on reporting from law enforcement agencies. See *2017 Hate Crime Statistics*, *supra*. Scholars tend to agree that all of these data undercount the number of hate crimes committed. See *Weekend Read: The FBI Is Massively Undercounting Hate Crimes*, S. POVERTY L. CTR. (Nov. 16,

tics show a modest increase in the number of hate crimes in 2016<sup>70</sup> and a larger 17% increase in the number of hate crimes in 2017.<sup>71</sup>

Data suggest anti-integrationist violence remains a significant problem.<sup>72</sup> The Southern Poverty Law Center, which tracked hate crimes in the wake of Trump's election, identified 1,094 bias-related incidents in the month following the election.<sup>73</sup> Most significantly for the purposes of this Article, it remains the case that individuals are targeted at home, where they are most vulnerable. One hundred and thirty-four of these incidents took place at individuals' homes.<sup>74</sup> With respect to the 2017 FBI data, 27% of the incidents—the largest percentage—took place at individuals' residences.<sup>75</sup> Additionally, anecdotes of incidents from cities around the country indicate that minorities are targeted in a manner that mirrors earlier patterns of anti-integrationist violence.<sup>76</sup> It is not clear whether the increase in residential bias-related incidents represents a change in racial climate, or whites' lack of comfort with changing demographics.

For whites worried about becoming a numerical minority, there is ample reason for concern. First, there have been significant demographic shifts in the number of whites and minorities living in the United States. The percentage of Americans who consider themselves white has decreased and will continue to decrease.<sup>77</sup> This decrease stems from two main factors. First,

2018), <https://www.splcenter.org/news/2018/11/16/weekend-read-fbi-massively-undercounting-hate-crimes>, archived at <https://perma.cc/FKF8-ELLP>.

<sup>70</sup> See *2016 Hate Crime Statistics*, FBI, <https://ucr.fbi.gov/hate-crime/2016/topic-pages/incidentsandoffenses>, archived at <https://perma.cc/ZG7W-VZGB> (reporting 6,121 hate crime incidents); and *2015 Hate Crime Statistics*, FBI, [https://ucr.fbi.gov/hate-crime/2015/topic-pages/incidentsandoffenses\\_final](https://ucr.fbi.gov/hate-crime/2015/topic-pages/incidentsandoffenses_final), archived at <https://perma.cc/W3KY-RHGG> (reporting 5,850 hate crime incidents).

<sup>71</sup> See *2017 Hate Crime Statistics Released*, *supra* note 69.

<sup>72</sup> See *Weekend Read*, *supra* note 69.

<sup>73</sup> See Eli Rosenberg, *He Threatened a Muslim Family That Planned to Move to His Neighborhood. Now, He'll Go to Prison*, WASH. POST (June 12, 2018), [https://www.washingtonpost.com/news/post-nation/wp/2018/06/12/he-threatened-a-muslim-family-that-planned-to-move-to-his-neighborhood-now-hell-go-to-prison/?utm\\_term=.28d7df807360](https://www.washingtonpost.com/news/post-nation/wp/2018/06/12/he-threatened-a-muslim-family-that-planned-to-move-to-his-neighborhood-now-hell-go-to-prison/?utm_term=.28d7df807360), archived at <https://perma.cc/ZS4B-KK5W>.

<sup>74</sup> *Id.*

<sup>75</sup> *Victims*, *supra* note 44.

<sup>76</sup> See, e.g., Amanda Drane, *Racist Graffiti in Lanesborough Spurs Police Investigation*, BERKSHIRE EAGLE (Sept. 20, 2018), <https://www.berkshireeagle.com/stories/racist-graffiti-in-lanesborough-spurs-police-investigation,550946>, archived at <https://perma.cc/S4S9-44PT>; Ricardo Lopez, *Dayton Condemns Burglary, Graffiti Targeting Black Family in Delano*, STAR TRIB. (Mar. 18, 2017), <http://www.startribune.com/dayton-condemns-burglary-graffiti-targeting-black-family-in-delano/416521193/>, archived at <https://perma.cc/RT48-L7PR>; Alex Taylor & Danika Fears, *Interracial Couple Charged \$700 Per Week for Racist Graffiti on Their Home*, N.Y. POST (Feb. 21, 2017), <https://nypost.com/2017/02/21/racist-vandalism-is-costing-victims-100-per-day/>, archived at <https://perma.cc/WL5W-XTKE>; *Tulsa Man Who Fatally Shot Lebanese Neighbor Faces Hate Crime and Murder Charges*, N.Y. DAILY NEWS (Aug. 23, 2016), <https://www.nydailynews.com/news/national/tulsa-man-killed-lebanese-neighbor-charged-hate-crime-article-1.2762734>, archived at <https://perma.cc/9LRE-DHYD>. For discussion of earlier patterns of anti-integrationist violence, see *supra* note 35 and accompanying text.

<sup>77</sup> See William H. Frey, *US White Population Declines and Generation 'Z-Plus' Is Minority White*, CENSUS SHOWS, (June 22, 2018), <https://www.brookings.edu/blog/the-avenue/2018/>

because of non-white immigration beginning in the 1970s, the numbers of Asian Americans and Latinos in the U.S. have increased significantly.<sup>78</sup> By 2020, demographers estimate that most children who live in the U.S. will be non-white, and by 2045, most people who live in the U.S. will be non-white.<sup>79</sup> Second, with respect to residence, where minorities were once concentrated entirely in city neighborhoods, more are now moving to the suburbs, which were once exclusively white domains.<sup>80</sup>

Whites' concern over minorities moving to traditionally white-dominated spaces is clear in many acts of anti-integrationist violence. For instance, consider Kaderbhai Ali Asgar, an immigrant from India, who signed a contract for a house in November 2016. During the final walk-through, a white man, David H. Howard, yelled at the seller and Asgar's family, "This sale will not take place! . . . I will break all of your f—ing windows and I will burn your f—ing house down! . . . You are not welcome here!"<sup>81</sup>

Despite all of the legislation punishing hate crimes,<sup>82</sup> there is little hope that hate crimes will be better addressed in the coming years. In addition to the increase in hate crimes noted by organizations that collect such data and even by the FBI, it is not clear that states and the Federal Government are appropriately poised to adequately respond to such crimes. Hate crimes, similar to other criminal acts, are most frequently addressed under state law; the vast majority of hate crimes are prosecuted as violations of state rather than federal law.<sup>83</sup> Localities have not responded strongly to the increase in hate crimes. Eighty-seven percent of police departments in the U.S. did not report a single hate crime to the FBI in 2017.<sup>84</sup> Five states do not even have hate crime legislation, meaning that local police cannot investigate incidents that would be hate crimes in other jurisdictions as state hate crimes.<sup>85</sup>

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06/21/us-white-population-declines-and-generation-z-plus-is-minority-white-census-shows/, archived at <https://perma.cc/8BSZ-LBBE>.

<sup>78</sup> See Chang, *supra* note 67.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> See Rosenberg, *supra* note 73. Though survey research shows Blacks to be the most disliked racial group in housing, see CHARLES, *supra* note 21, at 104–05, Asian, Latin, and other non-white peoples are sometimes targeted in ways that are essentially the same—anti-integrationist and bitter.

<sup>82</sup> See WOLFE, *supra* note 37, at Appendices A and B (describing federal and state hate crime legislation).

<sup>83</sup> *Id.* at 13 (asserting that state law violations present the highest number of prosecutions). There is no tension between calling for the investigation and prosecution of hate crimes and rejecting the over-policing of Blacks in both white and Black neighborhoods. Rather, this Article endorses an equality-based argument, calling for police officers to investigate, and to suggest prosecution for perpetrators of, crimes that disproportionately impact Blacks.

<sup>84</sup> See *Victims*, *supra* note 44.

<sup>85</sup> See *State Maps of Laws & Policies*, HUMAN RIGHTS CAMPAIGN, <https://www.hrc.org/state-maps/hate-crimes>, archived at <https://perma.cc/6MSY-7D6N> (last visited Mar. 10, 2019). The five states are Arkansas, Georgia, Indiana, South Carolina and Wyoming. See *id.* Part of the reason that hate crime laws matter is that most hate crimes are low-level offenses and are therefore unlikely to be investigated by the police. See JEANNINE BELL, *POLICING HATRED: LAW ENFORCEMENT, CIVIL RIGHTS AND HATE CRIME 2–4* (2002). Designating a low-level crime as a hate crime means that the crime is more likely to get prosecuted. See *id.* Police are

In addition to legislative and enforcement gaps, white neighbors may actually really dislike the minorities who move to predominately white neighborhoods. This dislike likely stems from increasing worries about changing U.S. racial demographics. In 2013, the Brookings Institution conducted a survey regarding immigration, in which 14% of Americans said that the prospect of a majority non-white country would bother them.<sup>86</sup> By 2016, that number had increased to 21%.<sup>87</sup> More than half of white Americans believe that the country's "way of life" needs to be protected from outside influences.<sup>88</sup> Unsurprisingly, 83% of Trump's supporters feel that way.<sup>89</sup>

One disturbing trend is the entitlement that perpetrators of neighborhood hate crime seem to feel. Despite fair housing, criminal, and hate crime laws punishing anti-integrationist violence, some perpetrators act as if they have a right to use violence in order to maintain the whiteness of their neighborhoods. This entitlement was apparent in the shooting of 14-year-old Brennan Walker. Walker is a Black teenager who in April 2018 knocked on the door of Jeffrey Zeigler, a white retired firefighter who lived in Rochester Hills, a Detroit suburb.<sup>90</sup> Walker missed his school bus, had gotten lost and was asking for directions.<sup>91</sup> In response to Walker's request, Zeigler grabbed his gun and fired at Brennan.<sup>92</sup>

In another case, occurring in October 2018, a white Kokomo, Indiana woman left the following note at her neighbor's newly purchased home.<sup>93</sup>

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the first parties who make this designation, and prosecutors and judges are unlikely to fact-check police officers' determinations. *See id.* Therefore, if the police fail to classify a crime as a hate crime, the crime is unlikely to get prosecuted or adjudicated. *See id.* Though such crimes could be prosecuted as federal crimes, for instance under the Matthew Shepard and James Byrd Act, the decision to prosecute is governed by the Justice Department's federal prosecution policy, one factor of which involves whether there is a substantial federal interest in initiating prosecution. WOLFE, *supra* note 37, at 74.

<sup>86</sup> *See The 2013 Religion, Values, and Immigration Reform Survey*, PUB. RELIGIOUS RES. INST., GOVERNANCE STUD. BROOKINGS 13 (Mar. 2013), [https://www.brookings.edu/wp-content/uploads/2016/06/View\\_event\\_presentation.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/View_event_presentation.pdf), archived at <https://perma.cc/6ADS-J8SY>.

<sup>87</sup> Robert P. Jones, Daniel Cox, E.J. Dionne, William A. Galston, Betsy Cooper & Rachel Lienesch, *How Immigration and Concerns About Cultural Changes Are Shaping the 2016 Election*, PUB. RELIGIOUS RES. INST. BROOKINGS 13 (June 23, 2016), <https://www.prii.org/wp-content/uploads/2016/06/PRRI-Brookings-2016-Immigration-survey-report.pdf>, archived at <https://perma.cc/95FS-UPRJ>.

<sup>88</sup> *Id.* at 7.

<sup>89</sup> *Id.* at 1.

<sup>90</sup> *See Michigan Man Who Shot at Black Teen Seeking Directions Gets 4 Years in Prison*, CHI. TRIB. (Nov. 14, 2018), <https://www.chicagotribune.com/news/nationworld/midwest/ct-michigan-man-who-shot-at-teen-sentenced-20181114-story.html>, archived at <https://perma.cc/7T5Y-7AD5>.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> Lindsey Bever, 'THIS IS A WHITE NEIGHBORHOOD': Woman Greets Family by Calling Their Child the N-word, Police Say, WASH. POST (Oct. 30, 2018), [https://www.washingtonpost.com/nation/2018/10/30/this-is-white-neighborhood-woman-greets-family-by-calling-their-child-n-word-police-say/?utm\\_term=.54bae432bbd5](https://www.washingtonpost.com/nation/2018/10/30/this-is-white-neighborhood-woman-greets-family-by-calling-their-child-n-word-police-say/?utm_term=.54bae432bbd5), archived at <https://perma.cc/TG9F-MFZN>.

No [N—S]<sup>94</sup> wanted in this neighborhood—THIS IS A WHITE NEIGHBORHOOD—some people find [N—S] Stressful . . . We moved here to a WHITE TOWN, ALL WHITE NEIGHBORHOOD—FOR HEALTH REASONS AMONG OTHER THINGS. THIS IS OUR FOREVER HOME, WE CANNOT AFFORD TO MOVE — BESIDES THIS IS MY DREAM HOME AND WE HAVE BEEN HERE FOR A VERY LONG TIME.<sup>95</sup>

The neighbors who received the note have a Black son, at whom the letter was assumed to be aimed.<sup>96</sup> After it was revealed that Deborah Cantwell, the family’s next-door neighbor, had left the note, Cantwell admitted to a reporter that she was trying to make the new family feel unwelcome in the neighborhood but did not think she had really done anything wrong.<sup>97</sup> “I just needed to let off some steam . . . I feel like I released some anger in writing that letter,” Cantwell reportedly said.<sup>98</sup>

Though neither Cantwell nor Zeigler were avowed white supremacists, their actions were marked by a deep sense of entitlement. Though their conduct was clearly both illegal<sup>99</sup> and immoral, they seem undeterred. In fact, they acted as if they had a right to defend their neighborhood irrespective of any rights that minorities may have had to occupy spaces near them. One wonders what any law could possibly do in the face of such a persistent commitment to white supremacy. In both cases, police arrested those committing violence and prosecutors charged the perpetrators for violating the rights of their minority neighbors.<sup>100</sup> The boldness of the perpetrators’ actions and, in particular, their lack of remorse, suggest that, in this “Charlottes-

<sup>94</sup> This a direct quotation taken from a news story. It is likely that the slur “nigger” was used in the flyer and the newspaper chose not to print it.

<sup>95</sup> See *id.* (citing Amy Howell Pundt, *Raising Money to Fight a Hate Crime*, GOFUNDME (Oct. 14, 2018), <https://www.gofundme.com/need-lawyer-for-a-hate-crime>, archived at <https://perma.cc/U8L9-3DSH>). According to court documents, the letter also stated “YOU CAN SELL YOUR HOUSE AND MAKE MONEY ON IT RIGHT NOW.” Bever, *supra* note 93.

<sup>96</sup> Bever, *supra* note 93.

<sup>97</sup> See George Myers, *63-year-old Greentown Woman Charged in Racist Letter Incident*, KOKOMO TRIB. (Oct. 26, 2018), [https://www.kokomotribune.com/news/local\\_news/year-old-greentown-woman-charged-in-racist-letter-incident/article\\_5e3429f0-d949-11e8-a643-d32df94b7db6.html](https://www.kokomotribune.com/news/local_news/year-old-greentown-woman-charged-in-racist-letter-incident/article_5e3429f0-d949-11e8-a643-d32df94b7db6.html), archived at <https://perma.cc/3CDJ-Z47>.

<sup>98</sup> *Id.*

<sup>99</sup> Cantwell was arrested. See Bever, *supra* note 93.

<sup>100</sup> It is important to distinguish between the call for greater hate crime enforcement and the Article’s objection to overactive policing and harassment of minorities in their own neighborhoods. Blacks can distinguish between policing that is used for their benefit (in the case of enforcement of hate crime law) and discriminatory policing designed to harass. Suggesting that hate crime law should be enacted (or enforced if it exists) does not preclude one from suggesting the police should not use other laws—e.g. stop and frisk—to harass. Different parts of the police department are charged with these separate areas (patrol vs. hate crime enforcement), and police are perfectly capable of doing both jobs well. See, e.g., BELL, *POLICING HATRED*, *supra* note 85, at 35–36 (describing police organizational practices).

ville”-era,<sup>101</sup> the safest choice for many minorities is to stay away from white neighborhoods.

### CONCLUSION

Fifty years after the passage of the Fair Housing Act, leaving a letter calling your Black next-door neighbor a “nigger” and telling them that they are not wanted in the neighborhood still really *matters*. In addition to violating laws prohibiting intimidation,<sup>102</sup> such behavior invokes the legacy of the past when mobs of white neighbors greeted their new Black neighbors with angry and violent protests. In spite of the comfort and amenities that middle- and upper-class white neighborhoods seem to offer, the continued violence directed at Blacks and other people of color creates a powerful disincentive to move to these neighborhoods where it is easier to build wealth. Policy-makers trace the lack of access to household wealth to be a critical part of the enduring Black/white wealth gap and the systemic inequality between Blacks and whites.<sup>103</sup>

Congress enacted the Fair Housing Act in order to provide all Americans the right to live in any neighborhood they choose. Congress assumed housing segregation would improve. Fifty years later, Americans live in neighborhoods that are nearly as racially segregated as they were in 1968. While such neighborhood separation affects everyone, housing segregation has the most pernicious effects for Blacks who grapple with the disadvantages of poor and working-class neighborhoods—including limited shopping options, fewer social services, worse schools, and less green space—even when they can afford to live in more prosperous neighborhoods.

The choice to live in a neighborhood that has fewer neighborhood services and more crime when one can afford neighborhoods with fewer disadvantages is rooted in the negative experiences that many Blacks and other minorities face when they move to, or pass through, white neighborhoods.

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<sup>101</sup> On August 11, 2017, white supremacists Jason Kessler and Richard Spencer led a Unite the Right Rally in Charlottesville, VA. See Ian Shapira, *Inside Jason Kessler’s Hate-Fueled Rise*, WASH. POST (Aug 11, 2018), [https://www.washingtonpost.com/local/inside-jason-kesslers-hate-fueled-rise/2018/08/11/335eaf42-999e-11e8-b60b-1c897f17e185\\_story.html?utm\\_term=.c7fb61a114d3](https://www.washingtonpost.com/local/inside-jason-kesslers-hate-fueled-rise/2018/08/11/335eaf42-999e-11e8-b60b-1c897f17e185_story.html?utm_term=.c7fb61a114d3), archived at <https://perma.cc/ZZZ3-BF6Z>. On the day of the rally, white supremacists, many of whom were armed, violently clashed with counter protestors, local residents, members of church groups, civil rights leaders, and onlookers who were also present. A white supremacist killed one young woman, Heather Heyer, when he drove his car into a crowd. See Vanessa Romo, *Charlottesville Jury Convicts ‘Unite The Right’ Protester Who Killed Woman*, NPR (Dec. 7, 2018), <https://www.npr.org/2018/12/07/674672922/james-alex-fields-unite-the-right-protester-who-killed-heather-heyer-found-guilt>, archived at <https://perma.cc/M6XG-XM6T>.

<sup>102</sup> Indiana did not have hate crime legislation at the time of the crime. Cantwell was arrested on intimidation charges. See Myers, *supra* note 97.

<sup>103</sup> See Angela Hanks, Danyelle Solomon & Christian E. Weller, *Systematic Inequality: How America’s Structural Racism Helped Create the Black-White Wealth Gap*, CTR. FOR AM. PROGRESS (Feb. 21, 2018), <https://www.americanprogress.org/issues/race/reports/2018/02/21/447051/systematic-inequality>, archived at <https://perma.cc/BH29-F8U7>.

Hate crimes, harassment, and discriminatory policing serve as hidden fences and provide powerful disincentives to build wealth through homeownership in more lucrative (white) neighborhoods. As this Article details, the “cost” to minorities of invoking their right to live in white neighborhoods includes harassment by the police, sometimes prompted by calls from their neighbors, who question their very presence in the neighborhood. Even when such challenges do not result in violence, they compromise individuals’ basic need to feel like they belong. Minorities may also face extralegal violence—harassment and other hate crimes—from white neighbors opposed to sharing neighborhoods with Blacks or other non-whites. Harassment by the police and hate crimes that Blacks and other non-whites face when moving to white neighborhoods call into question the efficacy of legal remedies—from the Fair Housing Act to hate crime laws—designed to ensure Americans have the right to live in any neighborhood. For middle-class Blacks able to afford housing in white neighborhoods, these twin factors—police and neighbor harassment—have the power to drastically alter their calculus in choosing a neighborhood. In this way, police and small-minded neighbors are able to negate the promise of equal access to housing made fifty years ago in the Fair Housing Act.