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Non-Discrimination in the Sale or Rental of Real Property: Comments on Jones v. Alfred H. Mayer Co. and Title VIII of the Civil Rights Act of 1968

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Introduction

*Edward W. Brooke**

When public attention centers on the domestic turmoil that has been generated from within our society, reflexive thinking all too often results in a deluge of simple solutions and one-phrase retorts. If we are to mount and sustain an effective attack on our urban problems, we must recognize that they are rooted in unemployment, poor education, poverty and inadequate housing. Furthermore, in most areas these difficult issues are compounded by the damaging overtones of racial discrimination. The answers of necessity lie in comprehensive planning that extends beyond the dimensions of single resolutions. Recognition of this general framework of interaction, however, does not preclude an examination and discussion of individual aspects of our urban dilemmas. And since creative social action must come to grips with specific needs, there is much to be said for beginning with one of the most pressing—housing.

It is said by some authorities that residential patterns as they exist today were established by earlier immigrants who preferred to

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live with their families and friends in homogeneous areas. But to the degree that this is an historical fact, it must be read in light of the additional fact that these immigrants were able to move to better neighborhoods when they had the means and the desire to do so. Personal achievement has traditionally been manifested through the opportunity to buy the best home that one can afford.

Yet this traditional path has been and continues to be blocked to many of our nation's inner-city residents. No one can doubt that their upward mobility has been restrained by the debilitating impact of racial discrimination.

Should this pattern persist, the consequences are predictable. In the absence of concerted efforts to relieve constraints on free choice in the housing market, the trend toward physical separation and psychological polarization of white and Negro Americans will continue. Further, and more important, frustration of legitimate attempts to achieve equal opportunity will provide fuel for social disruption and will perpetuate tension in a society that becomes increasingly callous to reasonable demands.

As co-sponsor of the Fair Housing Amendment to the Civil Rights Act of 1968, my concern was directed to the question of what effective approach the federal government properly could take in this complex field. The consensus in the Senate was that additional federal legislation was needed to address the problem squarely and that the federal government could render assistance without pre-empting any presently valid source of relief.

Throughout the private planning and public deliberations on the Civil Rights Act of 1968, its proponents were acutely aware of the fact that the case of *Jones v. Alfred H. Mayer Co.* might shortly be decided by the Supreme Court. We were, of course, hopeful that the Court would decide as it eventually did. And I think it is not inappropriate at this stage to acknowledge that the fundamental concern of those of us who worked for the Fair Housing Law was to create new and potent enforcement machinery in this area. Even if the scope of the 1968 legislation had been severely curtailed, we felt that an invigorated federal capacity for enforcement of the older law invoked in the *Jones* case would be a major step forward by the nation. As matters developed, the 1968 Act not only provided vital means of enforcement, but reasonable and detailed coverage of most of the nation's housing stock as well. It provided helpful guidelines for early extension of the equal opportunity guarantee in this essential field.

The final version of the Fair Housing title anticipates a more active role for the federal government in the areas not presently covered by state or prior federal law. There is a central distinction between the protection afforded by the Act and the *Jones* decision. Where the latter recognizes the right of citizens to have their rights adjudicated, the former recognizes that not every victim of discrimination is willing or can afford to undergo the difficulty and expense of private litigation. The Fair Housing Law therefore provides for certain types of federal initiative to guarantee those rights. At the same time, however, the enforcement provisions require the Secretary of Housing and Urban Development to defer to state and local agencies which are in a position to offer comparable remedies.

Much of the opposition to the Act came from those who felt that this was a proper subject for state, local and individual initiative. With this we are all in agreement. But the record indicates that while the first state occupancy act was passed over ten years ago, until recently only 21 states had undertaken to act in this area. In a very real sense, the problem of housing discrimination is a national one and federal leadership is imperative if we are to deal with it.

Certainly, full redress will come only with cooperation among individuals, localities, states and the federal government. Nevertheless, the evidence is conclusive that prompt federal action is needed if de facto residential segregation is not to be perpetuated by compulsion and discrimination, both subtle and overt. Festering ghettos and lingering tension would be the result. That is the peril—and the injustice—that Congress seeks to forestall.

The following comments are intended to throw valuable light on the legal and constitutional facets of both the new statute and the Court's historic decision. But the human dimensions and implications of these actions transcend scholarly analysis.

It is my prayer and my conviction that in years to come the Civil Rights Act of 1968 and the *Jones* case will stand as the twin pillars on which this nation will construct a richer and more precious freedom for all Americans—the freedom to seek and to acquire decent housing on equal terms with one's fellow citizens.