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Introductory Remarks

Drew S. Days, III*

The topic of the conference, as you know, is "The Fair Housing Act after Twenty Years." I want to say a few words about anniversaries this morning. Anniversaries are important for a variety of reasons. They can be important as occasions for celebrating achievement. They can be times for stock-taking to identify successes and failures. An anniversary can increase public awareness of issues that are re-examined on such occasions. And, finally, an anniversary can serve as an opportunity to set an agenda for the future.

There have been several recent anniversaries that I think were clearly occasions for some celebration: for example, the 20th anniversary of the Civil Rights Act of 1964. One could celebrate the degree to which Title VII, by making employment discrimination illegal, significantly opened up job opportunities for racial minorities and women. Or one could look at Title II of the same act, outlawing segregation in places of public accommodation, and recognize that that type of discrimination has all but disappeared. We have also celebrated the 20th anniversary of the Voting Rights Act of 1965. I think most of us are aware of the remarkable increases in black participation in the political process, the increase in the number of black elected officials, and the degree to which the Voting Rights Act has provided the black community with political power that would have been unthinkable before 1965. We saw it in the senatorial elections of 1986, and we saw it, I believe, during the debate over the confirmation of Robert Bork.

The marking of the 20th anniversary of the Fair Housing Act of 1968 strikes me as having a more bittersweet quality to it than the others I have mentioned. Certainly, there have been successes in providing decent homes for many Americans previously denied such access because of their race or national origin or some other irrelevant characteristic. But I think that it is widely acknowledged that

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America is more segregated today than it was twenty years ago. The two societies that the Kerner Commission talked about in 1968\(^5\) are still with us.

So commemorating twenty years of the Fair Housing Act suggests some painful parallels. I feel pain each year when we commemorate—in 1988 it will be the 34th anniversary—Brown vs. Board of Education\(^6\) yet racial isolation in our public schools has taken on shocking proportions. More perversely—and it just shows you how my mind works—it is like the reminders we received on the T.V. network news programs each night of how many days the Americans hostages had been held in Iran. Many blacks and other racial minority group members are counting the days of being hostages, in effect, to the housing segregation that exists in this country.

But I do not want to be too depressing. Let me make a positive case for celebrating twenty years of the Fair Housing Act. First, it is an occasion for stock-taking and for trying to determine essentially why we are in such bad shape. There are many ways in which one could approach the issue. One could say it is the fault of the Fair Housing Act itself; that it was flawed legislation at the outset. There has certainly been enough discussion about the limitations of its enforcement mechanism. Indeed, amendments are pending in Congress that would address some of those problems. One could also talk about whether the Fair Housing Act has reached out sufficiently to include additional groups that suffer discrimination in our society, such as the disabled or, more recently, families with children. I raise this issue because if one looks at civil rights legislation for such groups, the parallels are not flattering. Title VII has been revised several times since 1964, most notably to address problems of religious discrimination and pregnancy discrimination. The Voting Rights Act has also been amended several times, in 1970, 1975, and 1982. The Voting Rights Act is an example of how a statute has reached out to bring in new groups—Mexican Americans and racial minorities other than blacks—who were not being reached because of the statute’s original triggering mechanism. One might ask whether the Fair Housing Act has failed to keep step with the times.

We can talk about failure in the enforcement process of Title VIII, about how the federal government has fallen down on the job, both in administration and in litigation. We think a lot about the Fair Housing Act in terms of its litigation components, but there are

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non-litigation components as well. And there are, of course, serious questions about the degree to which the federal government has seen Title VIII as having a significant impact upon its own operations. The courts have been resistant in construing Title VIII, and state agencies that were viewed as partners in efforts to address housing discrimination also have been ineffective.

We can even query whether the Fair Housing Act has been irrelevant. It may be the case that we had expectations that were unrealistic when the Fair Housing Act was enacted: that we thought it could do far more than any legislation should be expected to do in the society and that we were insensitive to the fact that there were demographic forces that were beyond the ability of legislation to control. We might also ask, as good federalists, whether this is a “train” that can be run out of Washington or whether it is something that admits more readily of local and state control. All of these things are possibilities in the stock-taking process.

Let me turn to public awareness. There has been a great silence on fair housing issues in recent years. There has been relatively little test case litigation. There have been funding problems with respect to both public and private sources in mounting such challenges. Not very much new housing has been built. And we have seen recurrent failures in Congress when attempts were made to amend the Fair Housing Act and move it forward in some of the respects that I have mentioned. But I have a sense that circumstances are changing. I am not exactly certain in which direction, but let me suggest a few possibilities.

One is that the homelessness crisis has forced society at large to look at the problem of housing more broadly. Since the homelessness crisis has a significant impact upon racial minorities, this is, I think, ironically all to the good. If that is what it takes to get the nation’s attention, then so be it. But we have also seen the decreasing ability of middle-class families to find decent, affordable housing. It makes me think of something that Claude Brown said in his book *Manchild in the Promised Land* about drugs. He said, in essence, that drugs did not become a national problem until they left the ghetto and reached the suburbs.7 And to the extent that people outside of the ghetto are feeling the crunch with respect to decent, affordable housing, there is likely to be some notice taken of housing problems generally. Nor do I think we can ignore the impact of school desegregation litigation, particularly the extent to which

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courts have imposed significant financial responsibilities upon states, in addition to the districts that were directly involved, such as in the St. Louis\(^8\) and Kansas City,\(^9\) Missouri cases. The Yonkers, New York, school desegregation case\(^10\) raised not only school but housing issues, as well.

I am wary of using local examples, but I want to talk about Connecticut, which has been my home for the past seven years. Connecticut is a very interesting state. It is usually ranked first or second in per capita income in the nation.\(^11\) Yet, Connecticut has three of the poorest cities in America. Hartford is fourth on the list of the poorest cities in America, New Haven is seventh, and Bridgeport is twenty-sixth.\(^12\) We have within this state, therefore, one of the most striking contrasts between wealth and poverty that I think one will find anywhere. This is a state that has, until this year, enjoyed remarkable budget surpluses. Within the last three years, Connecticut has had annual budget surpluses of over $350 million.\(^13\)

For the past seven years, there has been no drumbeat of discussion or debate over either school desegregation or housing issues. However, things have been very noisy in recent months. Just this year, in fact, two reports have been issued in Connecticut that I think are remarkable, first because they came out of Connecticut, and second because they came out at all, anywhere. The first report is entitled “Racial Ethnic Equity and Desegregation in Connecticut’s Public Schools” and was issued in January of this year by a committee appointed by the State Board of Education and the State Commissioner of Education.\(^14\) That report recommends, among other things, voluntary efforts initially—but perhaps followed by mandatory efforts—to end racial isolation across district lines.\(^15\) The report also discusses the need for inter-agency coordination to

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\(^12\) Id.
\(^14\) Racial/Ethnic Equity, supra note 11.
\(^15\) Id. at 11-20.
deal with the high degree of segregation in public schools in Connecticut. The report says, more specifically:

Since segregated housing is one of the primary causes of segregation in schools, Connecticut’s desegregation efforts must include coordination with government agencies that are responsible for housing and economic development.16

The second report came out on March 1. It is the report of the Connecticut Blue Ribbon Commission on Housing.17 That commission was set up by the legislature and by the governor. Its report is addressed to those two entities. It recommends, among other things, greater state control over the siting of public housing, inclusionary zoning, prohibitions of minimum floor area requirements, the establishment of maximum land areas consistent with public health considerations that will serve as minimum lot sizes—a direct challenge to large acre zoning—and the inclusion of multi-family housing in all communities in the state. The report, describing the problem of housing in Connecticut, states:

The needs are enormous. While incomes grow, reflecting the state’s relative economic prosperity, sale prices of houses grow faster, rental rates grow faster still, and land costs skyrocket. The housing crisis has new victims. Moderate income and middle income households find that they must defer the dream of house ownership. For low-income households and individuals, the traditional victims of housing crises, this decade’s housing problems are variations on an old theme. For them, the percentage of household income required for decent rental housing continues to grow. For them, the dream for home ownership has long ago receded; the nightmare of homelessness intrudes.18

Perhaps Connecticut is unique in this respect. Of course both reports have been controversial. It is hard to say what will come from their recommendations. However, my central point is that talk is now happening where there once was silence; and I think we in this conference can add to that conversation. On the point of public awareness, we are all mindful of the fact that this is a presidential election year as well as election time for a third of the Senate and for all members of the House. It is important on this twentieth anniversary to get fair housing on the political agenda. Our talking is one way of doing so. Some of the remarks made at this conference will be on the newstands or bookshelves before election day. So speak

16. *Id.* at 20.
18. *Id.* at 3.

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from your heart as you make your remarks on the issues that we will be addressing.

Formulating an agenda for the future is another part of anniver-
sary time. As an outcome of our stock-taking, we may conclude that the Fair Housing Act has outlived its utility and that other tech-
niques may have to be pushed. We cannot be wedded to the past. On the other hand, we might come to the conclusion that what we need is to update the Fair Housing Act. I have a suspicion that we are going to be moving in a direction that entails a combination of those themes with as many variations as you can contribute during your remarks.

I am always embarrassed to say this, but I am an irrepressible op-
timist no matter how pessimistic I get. In describing the atmos-
phere that I think is developing I may be relying too much on limited data. But there is talk going on; there is concern. My friend Derrick Bell at Harvard takes the position that blacks have made real advances in America only when whites have decided that such changes were consistent with their enlightened self-interest.19 That may be what is going on at this point. So be it. But I also have had experiences that lead me to think that even in tough times important things can happen—good things—things that move us forward. I did not for a moment believe in the late 1970s that it would be possible to get the United States Congress to pass a law called the Civil Rights of Institutionalized Persons Act20 that, among other things, gave the Attorney General of the United States the power to chal-
lenge unconstitutional conditions of confinement on behalf of pris-
noners. In 1982 the Voting Rights Act was amended, despite Reagan Administration opposition, in a way that has meant remarkable ad-
vances for minorities in the electoral process.21 Only in the last few days we have seen something called the Civil Rights Restoration Act become part of federal law, over the President's veto.22

I also try to be realistic, however. And that realism tells me that it is unlikely that the nation is going to return to what some,23 not I, like to call the "free spending days" of the Great Society. So whatever we have in mind, whatever we think can be accomplished

has to be considered in light of those limitations. The Republican Party has taken such a position, in general. And, as I have said here and elsewhere, the days of the “Atari Democrats” have not come and gone. You may remember the phrase. It was meant to describe Democrats who wanted to make themselves essentially into computer games and act accordingly in their political lives, instead of responding to the flesh and blood concerns of people, concerns that often must be met by the federal government if they are to be met at all. Hence, the resistance to major federal government undertakings appears to be bipartisan.

So where does all of this rambling leave us? I am not asking that in a day and a half we solve the nation’s housing problem. However, I think that we ought to try to come to some intellectual understanding of the scope and nature of the problem—what it is that we are up against. But I think we have to be concerned with identifying pragmatic responses to that problem. The life of the mind is a wonderful life, but there is another life that affects millions and millions of people quite immediately. We have to be concerned about that. We have to remember that we are speaking not only to ourselves, but ultimately to the public opinion shapers and policy makers beyond these walls who can effect social change. We are fortunate to have you here because you are more than equal to the tasks I have just described. I look forward to your discussions, comments, and observations.