

PA CONFERENCE OF COUNTY BAR LEADERS  
PLAN, INC. PANEL DISCUSSION: THE COLOR OF LAW  
THURSDAY, MARCH 4, 2021, 11:30 AM-1:00 PM

Thank you for joining today's virtual panel discussion inspired by Richard Rothstein's *The Color of Law: A Forgotten History of How Our Government Segregated America*.

This book documents how American cities became so racially divided as federal, state, and local governments systematically imposed residential segregation.

Today's panel is moderated by **Donald F. Smith, Jr., Esq.**, longtime legal aid advocate and former Executive Director of the Berks County Bar Association.

Members of the panel include:

- ◆ **[Eleanor Brown, J.D., M.Phil.](#)**  
*Professor of Law and International Affairs  
Penn State Law*
- ◆ **[Jill C. Engle, Esq.](#)**  
*Associate Dean for Academic Affairs, Professor of Clinical Law  
Penn State Law*
- ◆ **[Rasheedah Phillips, Esq.](#)**  
*Managing Attorney for Housing Policy  
Community Legal Services of Philadelphia*
- ◆ **[Megan Riesmeyer, Esq.](#)**  
*Professor of Clinical Law and Director of the Community Law Clinic  
Penn State Dickinson Law*

If you're hungry for more discussion like the one we had today, check out this episode of NPR's Fresh Air with Terry Gross, "**[A Forgotten History' Of How the U.S. Government Segregated America](#)**," which features an interview with the author of *The Color of Law*, Richard Rothstein.

In addition, here is a link to the publisher's website, where you can learn more about *The Color of Law*, including **[where you can purchase a copy of the book](#)**.

On the following two pages, you'll find "20 Racial Justice Titles for Relearning America's History of Race" featured in a recent issue of the *Management Information Exchange Journal*.

The remainder of this document includes our panelists' PowerPoint presentations from today's session. The first presentation is from Megan Riesmeyer and the latter from Rasheedah Phillips.

## Worth A Look!



### Relearning America's History of Race — A Beginner's List of Resources

Contributions from the MIE *Journal* Committee

*"No one is going to give you the education you need to overthrow them. Nobody is going to teach you your true history, teach you your true heroes, if they know that that knowledge will help set you free." — Assata Shakur*

***Caste: The Origins of Our Discontents***, by Isabel Wilkerson. Isabel Wilkerson explores racism in the U.S. through a broader caste system, which includes social stratification based on a person's "perceived rank or standing in the hierarchy." Wilkerson compares the experiences of America's communities of color to the caste systems in India and that existed in Nazi Germany. A film adaptation was announced in October 2020, which will be directed by Ava DuVernay.

***Me and White Supremacy: Combat Racism, Change the World, and Become a Good Ancestor***, by Layla Saad. Originating from a popular step-by-step reflection process and workbook, *Me and White Supremacy* delves into readers' white privilege and participation in white supremacy. Saad encourages readers to explore their privilege in order to cease causing damage and pain to Black, Indigenous and People of Color.

***Just Mercy: A Story of Justice and Redemption***, by Bryan Stevenson. This book tells the remarkable and true story of the Equal Justice Initiative (EJI), an organization founded in 1989 to end mass incarceration and excessive punishment in the U.S. criminal justice system. One story follows the case of Walter McMillian, a young Black man who was wrongly sentenced to death for the murder of a young white woman he did not commit. It also provides historical context to connect stories like McMillian's to the history of lynching in the U.S. and systemic injustice that continues to oppress the most vulnerable. A film adaptation was released in 2019.

***How to be an Antiracist***, by Ibram X. Kendi. A helpful book about how to recognize the racism we all carry and move to counter it and the policies that perpetuate it. Kendi discusses his own history and recognition of his own racism and how he sees the work we need to do to move towards an antiracist society.

***The New Jim Crow: Mass Incarceration in the Age of Colorblindness***, by Michelle Alexander. This is a

groundbreaking book that helped bring the issue of mass incarceration into the national agenda. It is a powerful blend of history, data, and advocacy about the enduring and pervasive racism in the American legal system.

***Sing, Unburied, Sing and Salvage the Bones*** by Jesmyn Ward. Both of these novels are set in contemporary Mississippi, where the author grew up and still lives. The cruel history of Mississippi hangs heavily over the lives of families who are coping with blatant racism, bleak local economies, and the devastation of Hurricane Katrina.

***Evicted: Poverty and Profit in an American City***, by Matthew Desmond. Evictions hurt poor people, and they hurt poor people of color the most. Each bad thing about eviction is worse for families of color. The book also talks very directly about how African American neighborhoods are the creation of racism by landlords, who provide less and charge more for units in Black neighborhoods than in white neighborhoods.

***The Color of Law***, by Richard Rothstein. This book explores the U.S. government's role in creating explicitly racist policies that segregated communities across America, exacerbating income inequality and stifling social mobility. Rothstein offers evidence that the racial and economic composition of American cities are the direct result of government backed policies and unconstitutional laws, such as public housing segregation during the New Deal era, racial zoning, redlining, environmental racism, and other discriminatory barriers.

***An African American and Latinx History of the United States***, by Paul Ortiz. Spanning over two and a half centuries, this book illustrates how African American and Latinx communities were key driving forces in the development of the United States. Ortiz explores largely untold stories on the Haitian Revolution, the Mexican War of Independence, the Reconstruction Era, migrant workers, labor organizing, and other historical events.

***Finding Latinx: In Search of the Voices Redefining Latino Identity***, by Paola Ramos. Paola Ramos examines the communities defined by the controversial term, "Latinx." Through her travels, Ramos explores a wide range of Latinx communities, including indigenous Oaxacans, reproductive rights activists, drag queens,

environmentalists, farmworkers, and migrants detained at our border. Incorporating her own personal story into her field research, Ramos reports how the term “Latinx” has provided a new feeling of solidarity, redefining the Latino identity.

***Latinx: The New Force in American Politics and Culture***, by Ed Morales. Exploring the term “Latinx,” Ed Morales explains how Latinx political identities are connected to Latin America’s historical conceptualization of mestizaje — “mixedness” or “hybridity.” Morales demonstrates that this concept is a key to comprehending bilingualism and biculturalism in Latinx communities and politics, while also forcing us to reexamine the meaning of race in America.

***Latina Legacies: Identity, Biography, and Community***, by Vicki L. Ruiz and Virginia Sánchez Korrol. This book documents the lives of 15 remarkable Latinas, including entrepreneurs, activists, organizers, educators, artists, and entertainers, over the course of two centuries. Examining the forces that shaped their lives and experiences, the book explores how these women influenced important historical movements and events, as well as managed family and social dynamics.

***Minor Feelings: An Asian American Reckoning***, by Cathy Park Hong. Cathy Park Hong examines Asian American and racial consciousness through memoirs, history, and cultural criticism. Described as an honest and provocative exploration, Park Hong uses her own experiences, as the daughter of Korean immigrants, to pursue questions around family, friendships, art, politics, identity, and individuality.

***We Too Sing America***, by Deepa Iyer. Deepa Iyer examines anti-immigrant and anti-Muslim hysteria targeting South Asian, Arab, Muslim, and Sikh people, in the wake of 9/11 and beyond. Iyer explores a series of recent racial flash points, from the 2012 massacre at the Sikh gurdwara in Oak Creek, Wisconsin, to the violent opposition to the Islamic Center in Murfreesboro, Tennessee, and to the Park 51 Community Center in Lower Manhattan. She reframes the discussion of race in America through the complexities of many South Asian cultures and provides ideas from the front lines of post-9/11 America.

***The Color of Success: Asian Americans and the Origins of the Model Minority***, by Ellen Wu. This book provides an overview of the Asian American experience in the U.S., from being viewed as the “yellow peril” to emerging as “model minorities.” Covering a broad range of historical events

and movements, this award-winning book is an insightful interpretation of race, racial dynamics, stereotyping, and politics.

***Hip Hop Desis: South Asian Americans, Blackness, and a Global Race Consciousness***, by Nitasha Sharma. This book examines young South Asian American hip hop artists exploring their own identities and incorporating South Asian languages, instruments and immigrant themes. The book also explores the racial consciousness of these South Asian American artists and their connections with the Black community and experience.

***Where is Your Body? And Other Essays on Race, Gender, and the Law***, by Mari Matsuda. This book of essays powerfully expresses how identity and experiences can affect our understanding of the law. It covers numerous issues with a progressive lens, including examining multiple consciousness, rhetoric and action, women in the criminal justice system, and hate speech.

***Persepolis***, by Marjane Satrapi. This autobiography is done in the form of a graphic comic about the author’s childhood up to her early adult years in Iran during and after the Islamic Revolution. There is also a film adaptation released in 2007.

***The Beginning and End of Rape: Confronting Sexual Violence in Native America***, by Sarah Deer (Muscogee [Creek]). This book is a collection of critical essays on violence against Native women that explores history of rape and sex trafficking of Indigenous people and also the destruction of tribal legal systems.

***An Indigenous Peoples’ History of the United States***, by Roxanne Dunbar-Ortiz. This book challenges myths and assumptions regarding Indigenous nations in the United States, demonstrating how colonialist policies deliberately sought to seize land from and eliminate them. Dunbar-Ortiz covers more than four hundred years, giving voice to Indigenous peoples in their active resistance to U.S. expansion.

Thanks to Joann Lee, Special Counsel, Legal Aid Foundation of Los Angeles, and Member, MIE Journal Committee, for this Worth a Look!

What has caught your eye lately? Tell MIE how to locate the website, magazine, book or other resource, along with four or five sentences describing what you like about it, and we will share the information with your colleagues. Email us at [helpdesk@mielegalaid.org](mailto:helpdesk@mielegalaid.org).



# The Color Of Law

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## A Historical Perspective of Select Governmental Action

Megan Riesmeyer  
Penn State Dickinson Law



# New Deal Legislation

- The Public Works Administration  
created in 1933
- The Federal Housing Administration  
created in 1934

# Thirteenth Amendment (Rat. December 6, 1865)

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- Section 1
- Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
- Section 2
- Congress shall have power to enforce this article by appropriate legislation.

# Thirteenth Amendment

- **Incidents and Badges of Slavery**
- First reference in Civil Rights Cases of 1883
  - Discrimination by private actors in Transportation, Hotels & Inns, Theaters does not violate 13<sup>th</sup> Amendment. Congress's attempt to legislate behavior by private actors does violate 14<sup>th</sup> Amendment.

# Public Works Administration

- Active from 1933-1939
- Reduce unemployment
- Increase purchasing power
- Focused on construction of highways and public buildings



# Federal Housing Administration

- Created in 1934
- Goal to promote homeownership
- Insured bank mortgages

# Federal Housing Administration

- Homeowners Loan Corporation created color-coded maps highlighting risk of neighborhoods – “safest” areas in green, “riskiest” areas in red
  - Neighborhoods, regardless of wealth or income of homeowners, were considered to be a risk (colored red) if African Americans lived in it
- No loans to developers of neighborhoods allowing African Americans or mortgages to African Americans or those who would allow African Americans to live in a home.



# FHA Underwriting Manual

- “If a neighborhood is to retain stability it is necessary that properties shall continue to be occupied by the same social and racial classes. A change in social or racial occupancy generally leads to instability and a reduction in values.”
- “infiltration of inharmonious racial or nationality groups”

# The GI Bill

- Educational and Housing subsidies offered to returning WWI Veterans
- VA used the same HOLC maps to insure home purchases



Until we are all free,  
we are none of us  
free.

Emma Lazarus

A historical map of Philadelphia, Pennsylvania, showing various colored overlays and labels. The map includes labels A, B, C, D, J, K, A1, and A2. A dark blue arrow-shaped graphic points from the left towards the center of the map. In the bottom right corner, there is a legend box with the title 'LEGEND' and two entries: 'HOUSING INVENTORY' represented by a dashed line and 'BEST' represented by a blue square.

# Race, Justice, & Housing Futures

RASHEEDAH PHILLIPS

COMMUNITY LEGAL SERVICES OF PHILADELPHIA



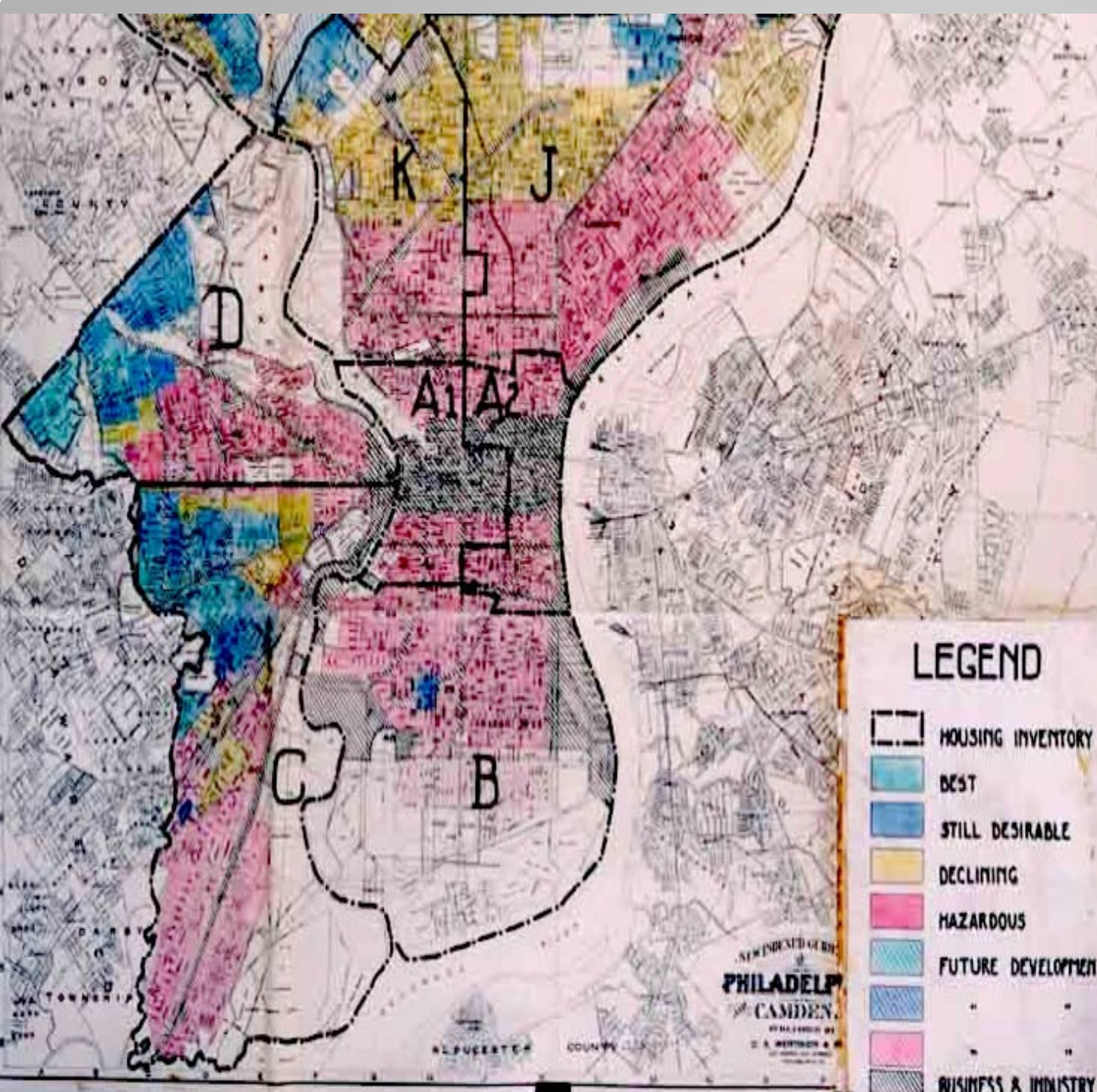
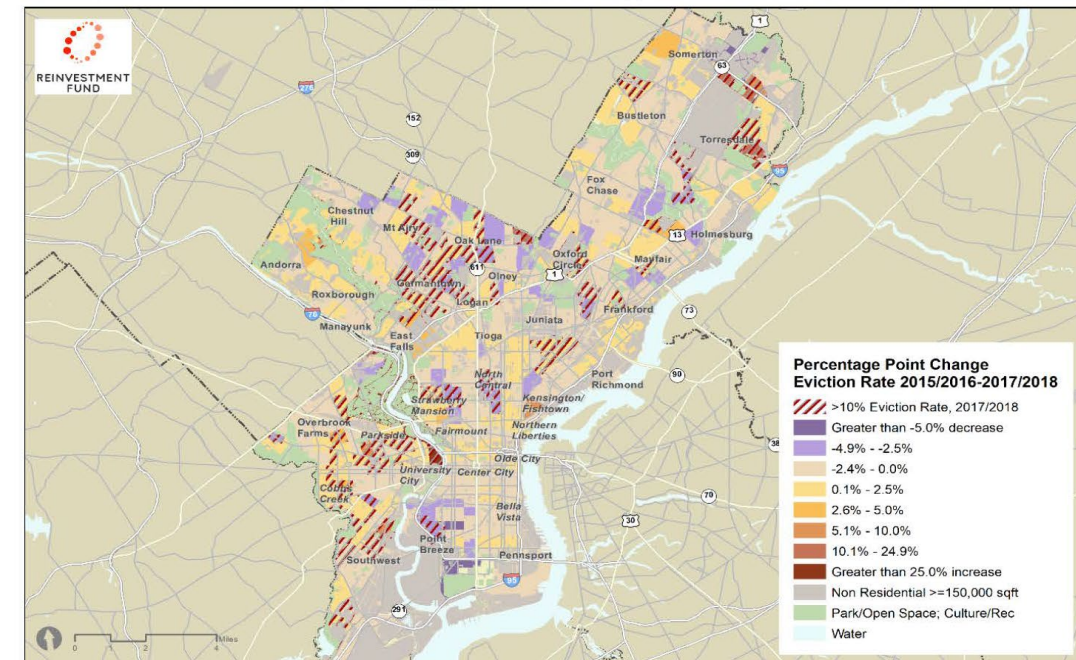
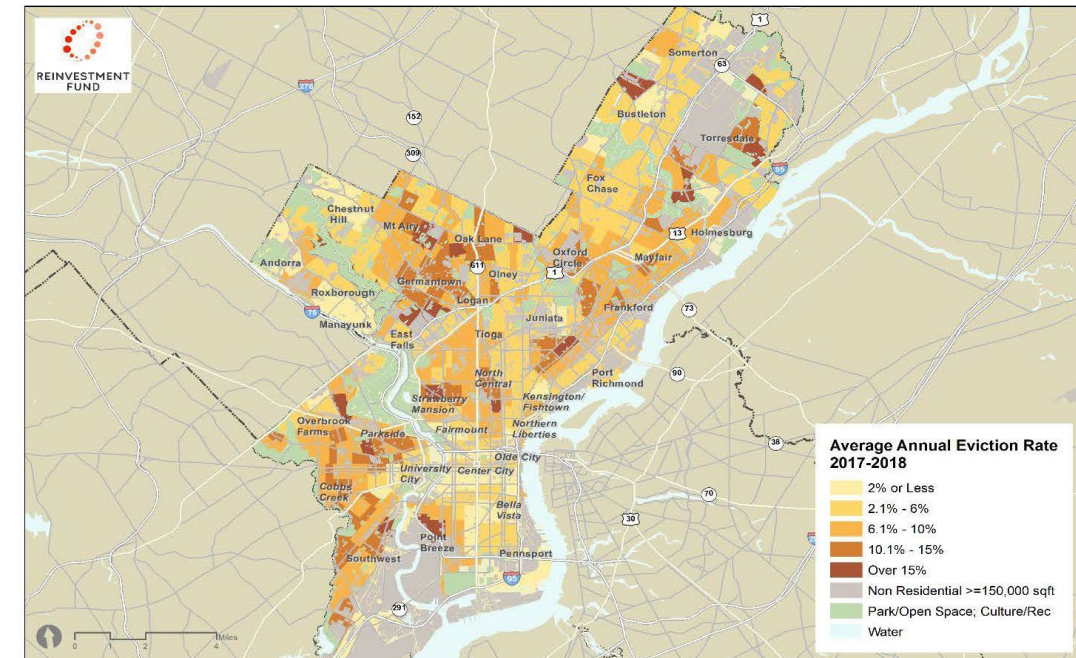


Figure 8: Average Annual Eviction Rate and Rate Change, Philadelphia Municipal Court and ACS 5-Year Estimates





# Race and Evictions

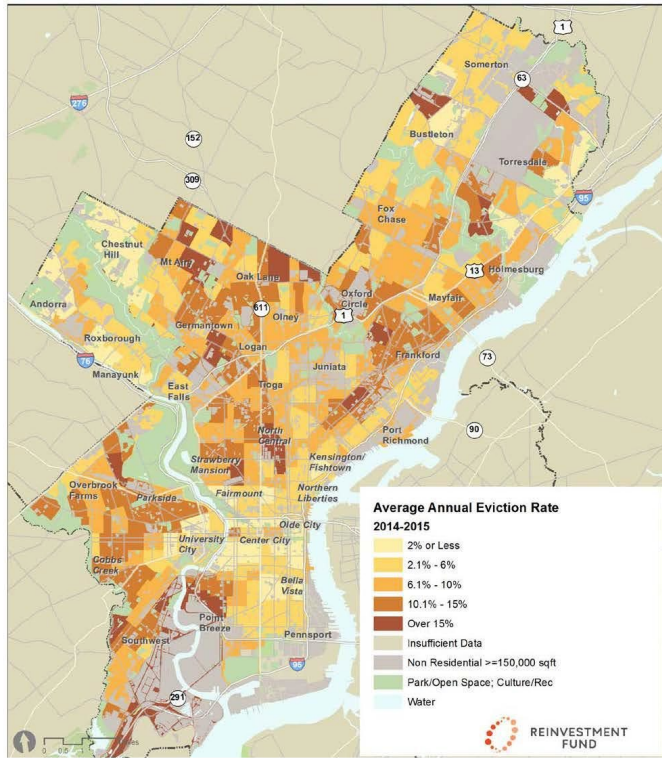
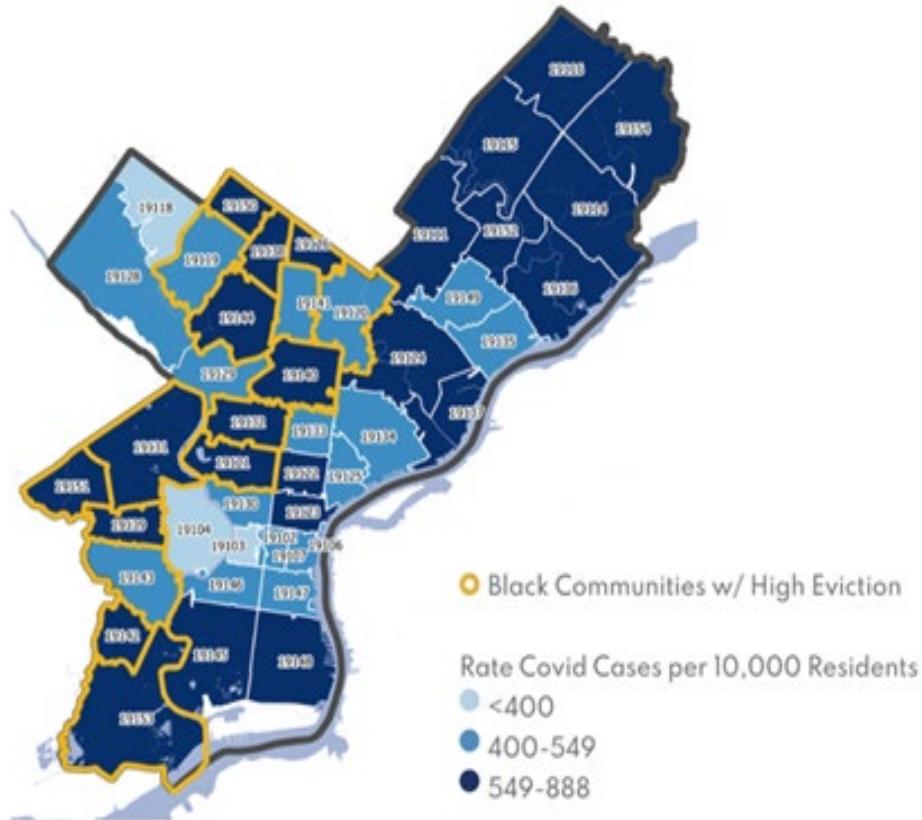


Figure 1: Estimated Annual Eviction Rate, 2014-2015 (Source: ACS 2009-2013 and Philadelphia Court System)

- Philadelphia's eviction rate is four times higher than the foreclosure rate, impacting nearly 1 in 14 Philly renters.
- Over 70% of annual eviction filings in Philadelphia are against Black women. (ACLU)
- Differences in the eviction filing rates in areas that were greater than 80% Black were typically three-times greater than the rates in areas that were under 10% Black. (The Reinvestment Fund)
- 56% of all eviction filings occur in majority-Black communities; 81% of all eviction filings occur in communities of color (Breaking the Record report)
- 54% of renters are cost burdened. cost burden rate for non-Hispanic Black households is 46%, while fifty percent of Hispanic/Latinx households are cost-burdened, the highest rate among the major ethnic and racial groups in the city. (Pew)



## COVID-19 cases in high-eviction, majority-Black ZIP codes.



# COVID-19, Race, and Housing

- Most areas with elevated eviction rates fall within zip codes with the highest COVID-19 positivity and hospitalization rates.
- Zip codes with higher COVID-19 positivity + hospitalization rates have predominantly Black renters
- Zip codes with the highest positivity rates typically have an eviction rate 3x higher than zip codes with lowest positivity rate
- 49% of eviction filings occurred in majority-Black communities during the pandemic
- 78% of eviction filings occurred in communities of color during pandemic

# Duty to Affirmatively Further Fair Housing – 2015 Rule

1. Stresses a balanced approach
2. Place-based AND mobility strategies
3. Replaces the AI with the Assessment of Fair Housing (AFH)
4. Structured process with HUD review for all AFHs
5. Incorporates fair housing planning into broader planning processes (e.g., PHA Plan, Consolidated Plan)
6. Encourages (and relies upon) community participation  
Seeks more meaningful and effective fair housing planning through the provision of data
7. Includes data on education, transportation, employment, and the environment
8. Encourages collaboration among HUD grantees
9. Requires local AND regional thinking and data analysis

# AFFH Advocacy

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- Sign-on letters with the National Housing Law Project
- Comments on Regs
- Letters to HUD and members of Congress
- Testifying at policy hearings
- Media Advocacy



# Main Issues and Recommendations Raised in Local Advocacy

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01

Lack of  
Community  
Engagement and  
Local Participation

02

Comments on Reg

03

Testifying at  
policy  
hearings/briefings

04

Advocating for or  
against executive  
orders.

05

Media Advocacy

# Voucher Discrimination

- Testing took place in Philadelphia and Bucks County  
67% of landlords in Philadelphia refused to accept vouchers  
In neighborhoods that were low-poverty (poverty rates below 10%), 83% of landlords refused to accept vouchers  
In neighborhoods that were high-poverty (poverty rates above 30%), 56% of landlords refused to accept vouchers
- Voucher discrimination usually happens at the point of advertisement or application
  - Craigslist Ads, Facebook ads, newspapers ads stating that they do not accept Housing Vouchers
  - Tenants calling around and asking and being told by phone or during application that the property does not accept voucher holders
- It also happens during live-in or during eviction process
  - West Philly cases

# Source of Income Protections

- Source of Income. Section 9-1102(1)(CC) of the Fair Practices Ordinance (against unlawful discrimination) defines Source of Income as: including any lawful source of income, and shall include, but not be limited to, earned income, child support, alimony, insurance and pension proceeds; all forms of public assistance, including Temporary Assistance for Needy Families; and housing assistance programs. (Fair Practices Ordinance enforced by Philadelphia Commission on Human Relations )
- Of the 15 states that currently have statewide SOI protections, three have SOI protections that do not include Section 8 vouchers. Exclusions resulted from caselaw that determined that Section 8 vouchers were not protected either because they did not count as “income” or because landlord’s right to refuse was protected as a business decision
- Rental Assistance and SOI protections





# Local Legal Tactics

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- **Responding to Mass Evictions with Litigation and Direct Action collaborating with TURN and West Philly Cases**
  - 200+ tenants evicted with little notice in rapidly gentrifying area of the city
  - Filed 20+ age, source of income, and race discrimination complaints with injunctions to prevent eviction filings
  - Tenant organizers took a number of direct actions at property to block efforts by landlord to constructively evict (blocking off entrances, shutting off utilities)
  - <https://www.phillymag.com/property/2017/06/16/watch-tenants-continue-to-press-case-against-new-penn-wynn-manor-owner/>
  - <https://whyy.org/articles/west-philly-gentrification-means-upheaval-for-these-longtime-residents/>
  - <https://whyy.org/articles/ousted-tenants-win-more-time-to-move-out-as-gentrification-moves-in/>
- **Just Cause Legislation**
  - Direct result/response to Mass evictions at one building in particular



# About the Report

## **BREAKING THE RECORD: DISMANTLING THE BARRIERS EVICTION RECORDS PLACE ON HOUSING OPPORTUNITIES**

**Read our new report at [clsphila.org](https://clsphila.org)**

- Written in collaboration with tenant organizers impacted by eviction records
- Provides data on eviction records in Philadelphia, and who is most impacted by the long-term harms associated with open access to eviction records
- Advances three key recommendations for policymakers and local courts to adopt
- Highlights the issue of access to eviction records as one that disproportionately impacts Black and Latinx communities

# *Breaking the Record:* Key Recommendations

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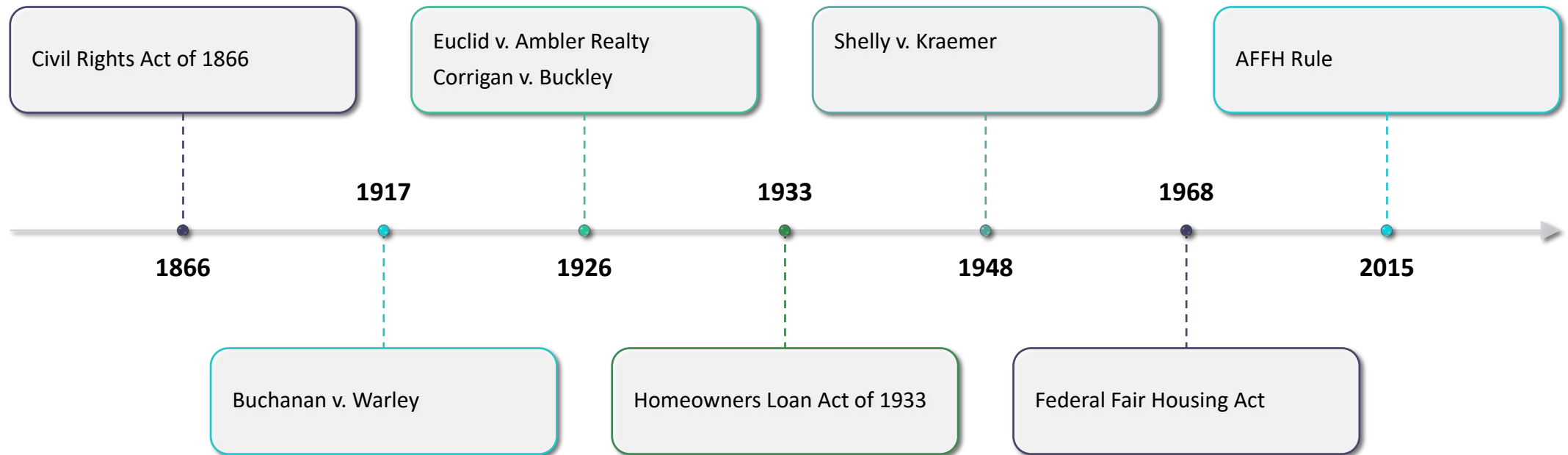
Pass	Pass State Legislation for Sealing Records and Enact Other Court Policies that Seal or Restrict Access to Eviction Records
Pass	Pass Local Protections Restricting the Use of Eviction Records in Rental Decisions and Banning the Use of Blanket Ban Policies
Expand	Expand Agreement Options for Tenants in Landlord-Tenant Court and Implement Administrative Rules Limiting or Sealing Access to Eviction Filings





# Brief History of Housing Discrimination Law

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One study reviewed hundreds of thousands of Philadelphia property deeds written from 1920 to 1932 and identified nearly 4,000 instances in which a racial covenant was included in a property deed.