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BENDING TOWARD JUSTICE: AN EMPIRICAL STUDY OF FORECLOSURES IN ONE NEIGHBORHOOD THREE YEARS AFTER IMPACT AND A PROPOSED FRAMEWORK FOR A BETTER COMMUNITY

MARK IRELAND
Foreclosure Relief Law Project, A Program of the Housing Preservation Project

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BENDING TOWARD JUSTICE: AN EMPIRICAL STUDY OF FORECLOSURES IN ONE NEIGHBORHOOD THREE YEARS AFTER IMPACT AND A PROPOSED FRAMEWORK FOR A BETTER COMMUNITY

Mark Ireland[1]

North Minneapolis is not very different from the dozens of other neighborhoods in large metropolitan areas around the country. Like those neighborhoods, North Minneapolis was among the first hit by the foreclosure crisis. The majority of people who live in North Minneapolis are people of color.[2] Over one-third of the neighborhood is comprised of rental property, rather than owner-occupied.[3] And, approximately one-fifth of the families who live in North Minneapolis are living at or below the poverty level.[4]

As other demographic statistics are evaluated and the neighborhood's history is explored, it also becomes clear that the foreclosure crisis is not the only crisis adversely affecting the lives of people who live and work in this community. There is also a health care crisis, an educational crisis, and a living-wage crisis, which each have unique causes and effects, but, ultimately, all of these individual forces feed upon each other to create an environment that undermines an ability to live a stable and healthy life.

This article uses statistics and empirical research to focus on foreclosures in North Minneapolis. It, then, uses this information to begin a larger conversation about moving toward

[1] Mark Ireland is the supervising attorney for the Foreclosure Relief Law Project, a program of the Housing Preservation Project, and an adjunct professor at Hamline University School of Law. Many thanks to the legal research assistance provided by Heather N. Kjos, the Foreclosure Relief Law Project's Minnesota Justice Foundation's summer fellow assigned to the Housing Preservation Project. Also, there is much appreciation to HousingLink, which helped me compile the majority of foreclosure statistics cited in this article, and the University of Minnesota's Institute on Race and Poverty for helping compile HMDA lending data related to 55411 and 55412. The conclusions, analysis, and, most importantly, mistakes are my own.
[2] United States Census, American Fact Finder Zip Code Tabulation for 55411 and 55412, http://factfinder.census.gov (last visited August 13, 2009).
[3] *Id.*
[4] *Id.*

more equity and more fairness in our society. Part I is a summary of research related to Minneapolis and foreclosures with a specific focus on North Minneapolis. Part I is not intended to paint North Minneapolis as a monolithic entity, because that would be false. The limits of statistics are well recognized and documented.[5] Part I is intended, instead, to provide a baseline for discussion, using certain statistics to draw-out specific issues that may otherwise be overlooked. Part II is a brief analysis of the research in the context of questions raised by the origination of predatory loans and their aftermath both in North Minneapolis. The questions are essential in understanding the context behind the statistics presented in Part I, as well as other statistics presented by other sources. Finally, Part III concludes with a discussion of the framework for a grassroots recovery and creating lasting, systemic change based upon a speech by Dr. Martin Luther King, Jr. entitled, "Where do we go from here?"

PART I: AN EMPIRACAL STUDY OF THE FORECLOSURE CRISIS AND ITS IMPACT ON NORTH MINNEAPOLIS

This empirical study of foreclosures in North Minneapolis is divided into four parts.[6] Part one provides a general overview of the demographics of North Minneapolis. Part two describes specific information related to the foreclosures that occurred in North Minneapolis and compares that information to the broader community. Part three identifies specific lending patterns as well as the lenders whose loans ultimately resulted in foreclosure. Part four focuses

[5] For example, there are no statistics that can quantify the dedication of community board members or the number of loving parents that are standing on the sidelines of the baseball field at Fairview Park and that are cheering on their children. Studies and measurements are also limited to what the research is looking for and intends to measure, but they are only a snapshot and an incomplete snapshot at best.

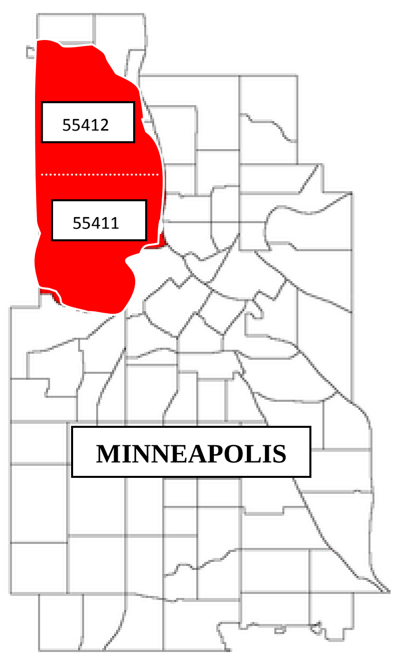
[6] The data used in this study focuses on the 55411 and 55412 zip codes. Although the dimensions of these zip codes do not exactly track the borders of what is considered "North Minneapolis," the differences do not significantly alter the analysis. The geographic differences are largely on the fringes, resulting in a small under-count in some census tracts and a small over-count in others.

on a sample of foreclosed properties and tracks what happened to these properties three years after the foreclosure Sheriff's Sale.

A. General Demographic Information About North Minneapolis.

Two zip codes generally encompass the area of Minneapolis that is considered "North Minneapolis. These two zip codes are 55411 and 55412. Within these zip codes there are primarily two neighborhoods---Near North (55411) and Camden (55412)--- with a dozen smaller niche communities within Near North and Camden. These neighborhoods sometimes exceed the 55411 and 55412 boundaries or do not reach these boundaries. The amount that the neighborhoods exceed or other neighborhoods encroach along the 55411 and 55412 boundaries, however, is not significant. Therefore, this study of North Minneapolis limits itself to these two zip codes in order to simplify data gathering and analysis.

Figure 1: Map of Minneapolis, Highlight of North Minneapolis



There are approximately 55,000 people who live in North Minneapolis. It is a diverse community:

- Over half of the people living in North Minneapolis are people of color. Specifically, in the 55411 zip code, 76% are people of color, and, in the 55412 zip code, 46% are people of color;
- There is also a significant population of renters, over 48% of housing units are rental properties in 55411 and 22% in 55412;
- Approximately 25% of North Minneapolis residents have not graduated high school;
- Approximately 20% speak a language other than English at home;
- Between 20 to 25% live below the poverty level; and
- 28% of the people living 55411 identify themselves as having a disability and nearly 20% in 55412 identify themselves as having a disability.[7]

B. Foreclosures In North Minneapolis.

The number of foreclosures in Hennepin County, including Minneapolis, were relatively stable from the mid-1980s to 2002. The total number of foreclosures were around 1,100, sometimes slightly over and sometimes dropping below 1,000 per year. But, beginning in 2004 and then continuing to the present, the number of foreclosures far exceed the normal historical fluctuations. Figure 2 provides a historical retrospective of foreclosures in Hennepin County for the past twenty years. As evidenced by Figure 2.2, the dramatic spike in the number of

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[7] United States Census, American Fact Finder Zip Code Tabulation for 55411 and 55412, http://factfinder.census.gov (last visited August 13, 2009).

foreclosures did not correlate with any of the leading economic indicators, such as unemployment rate or long-term interest rates. For North Minneapolis and Hennepin County, the spike in foreclosures occurred several years *before* the economic crisis and recession of 2008.

The primary factor that changed within this time period was the dramatic increase of subprime and Alt-A (option ARMs, no/low documentation, stated income) loans. The percentage of these loans increased from less than 10% of the overall market to approximately 40% of the overall mortgage market. Based upon Home Mortgage Disclosure Data, the first place that subprime mortgages had a substantial market-share in Hennepin County and Minneapolis market was in North Minneapolis. The number of subprime originations throughout Hennepin County, including Minneapolis, and Ramsey County, including Saint Paul, are relatively scattered. But, there was a high concentration of sub-prime originations, over 10%, in 55411 and 55412.

Since many subprime mortgages had adjustable interest rates that adjusted to a high level after two or three years, commonly referred to as 2/28s or 3/27s, the echo of these 2002 originations are seen in the foreclosure increases in 2004 and 2005 (Figures 2.1 and 2.2) as well as the mass of black dots, representing foreclosures, in North Minneapolis (Figure 2.3).

Figure 2.1: Hennepin County Foreclosure Sheriff Sales[8]

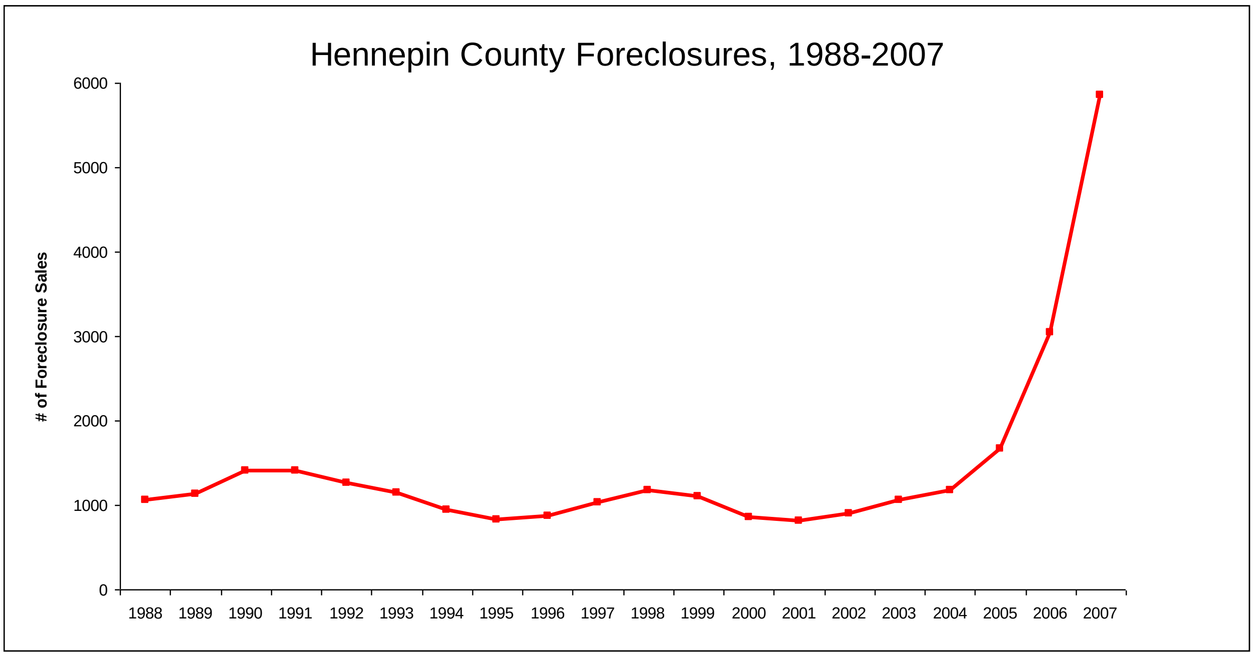
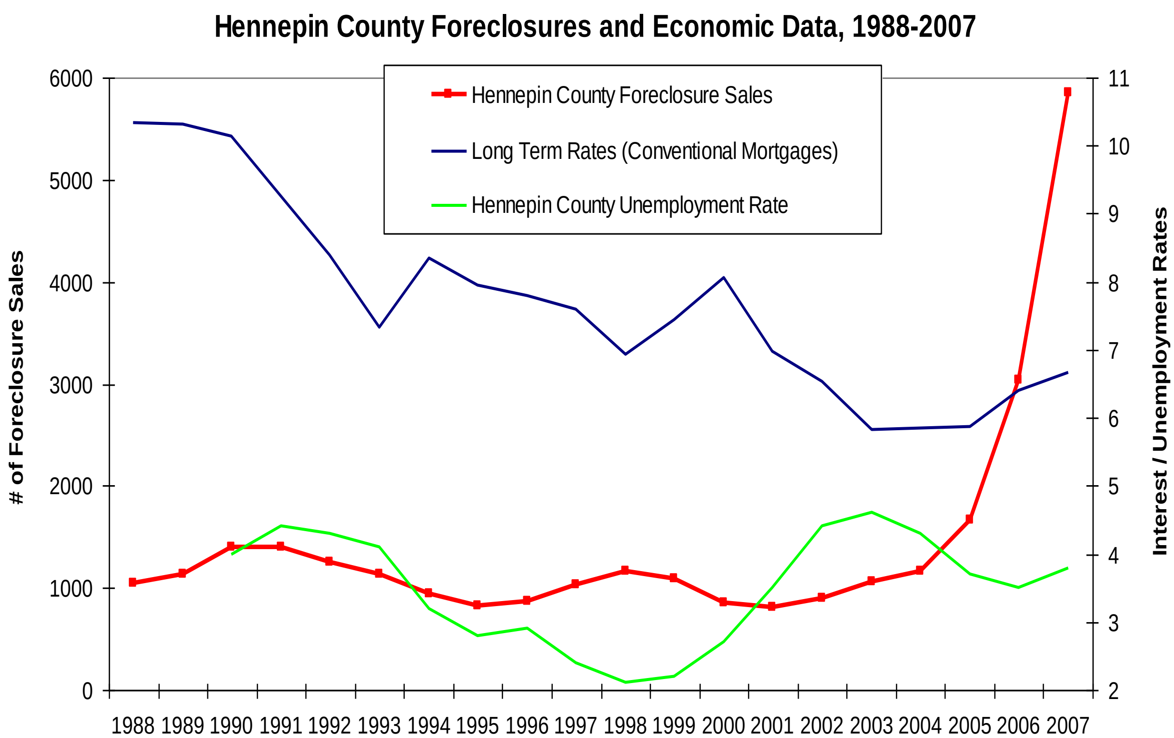


Figure 2.2: Hennepin County Foreclosure and Economic Data[9]



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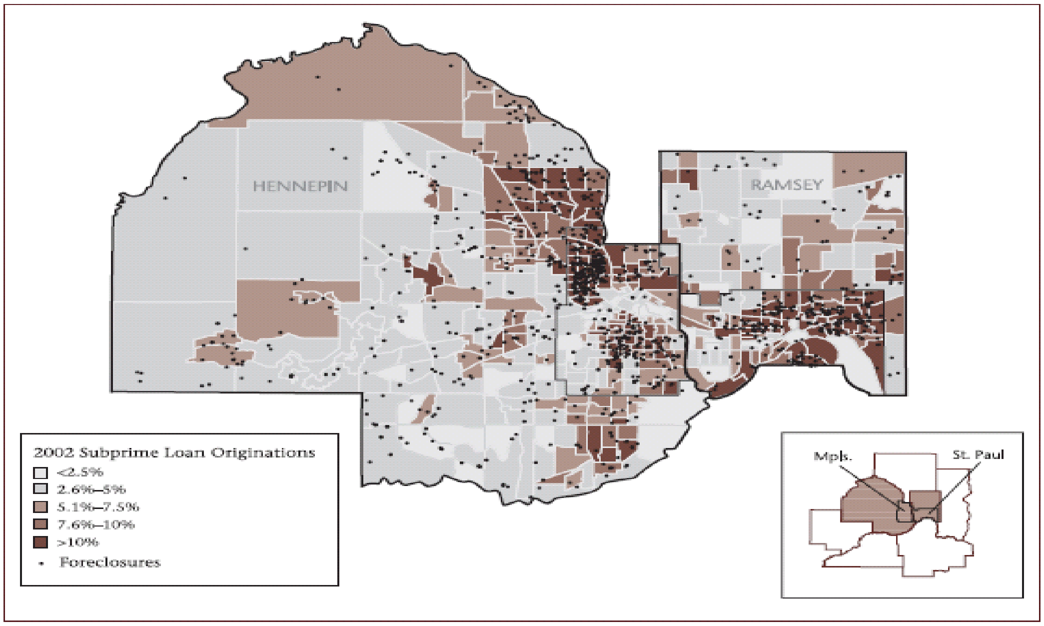
[9] Foreclosure Sales are from Hennepin County Sheriff's Office; Unemployment Rate from the Minnesota Department of Employment and Economic Development, and Interest Rates from the Federal Reserve Board.

Figure 2.3: 2002 Subprime Originations and Foreclosures[10]

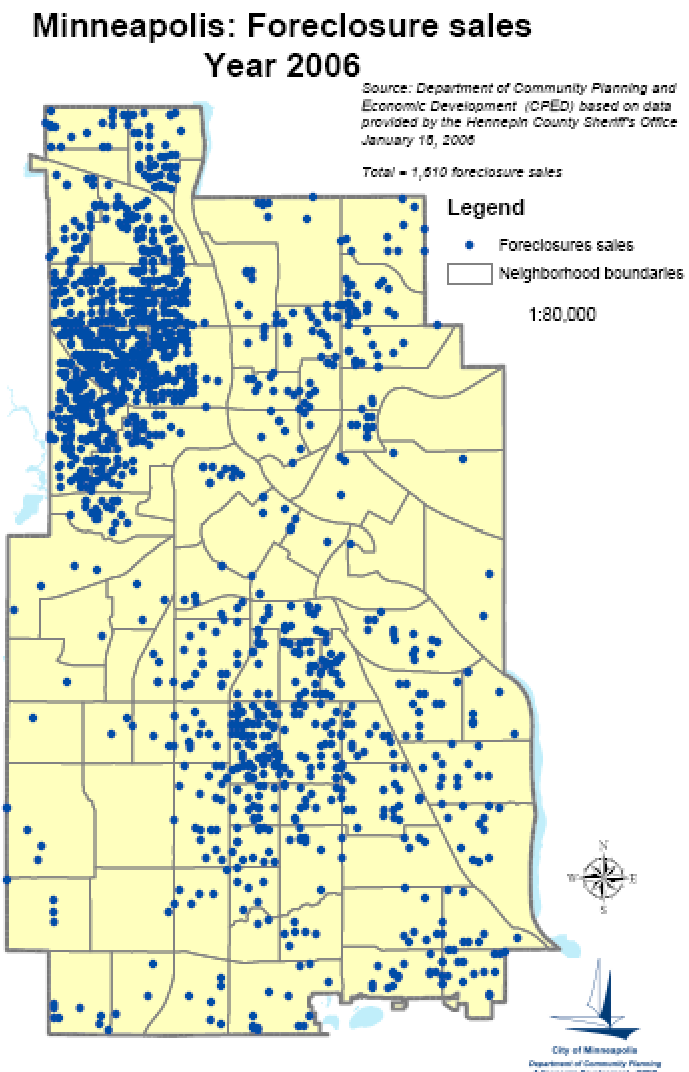


Data Source: Home Mortgage Disclosure Act, 2002; and Hennepin and Ramsey Counties, 2003

[10] Home Mortgage Disclosure Act Data (HMDA), 2002

By 2006, over half of the foreclosures that occurred in Minneapolis took place in just these two zip codes. Specifically, there were 1,610 foreclosures in Minneapolis. Of those foreclosures, 50.5% occurred in North Minneapolis. This concentration of foreclosures was unmatched anywhere else in the city.

Figure 2.4: 2006 Foreclosure Map of Minneapolis



In North Minneapolis, the foreclosure rate as a percentage of households was approximately six times higher than Hennepin County and four times higher than Minneapolis.[11] But, what is more informing is data related to the underlying toxicity of the mortgage loans that were foreclosed upon.

The mean number of months from the date of origination to the date of foreclosure was approximately 21 months for mortgage loans originated in North Minneapolis. Specifically, 26% of the foreclosed mortgage loans were foreclosed upon less than a year after origination.[12] Another 48% were foreclosed upon less than two years after origination, and only 3% were mortgage loans more than five years old.[13] In other words, 97% of the foreclosed mortgage loans in 2006 were originated after 2001, which correlates with the rise of the sub-prime and Alt-A mortgage industry.[14]

Based on Sheriff's Sale auction data, it is also clear that North Minneapolis homeowners had made very few payments toward the principal balance of their foreclosed mortgage loan. Rather than having equity, the amount due at sale was approximately 4-5% *higher* than the original principal balance of mortgage loan.[15]

The high number of investment properties is also evidenced by the high percentage of people who had 2 or more foreclosed mortgage loans within the 55411 and 55412 zip codes that were foreclosed upon in the same year.[16] In 55411, nearly 16% of the foreclosures related to a

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[11] Housing Preservation Project, *Analysis of Detailed Sheriff's Sale Data: Includes 2005-2006 Data for zip codes 55411 and 55412* (March 6, 2008) http://www.hppinc.org/_uls/resources/55411-55412_Foreclosure_Ana.pdf
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*

person that had been foreclosed upon more than twice in 2006.[17] In 55412, 5.5% of the foreclosures relate to a person who had been foreclosed upon more than twice in 2006.[18]

A study recently released by the University of Minnesota confirms the high number of rental property that was foreclosed upon and the significant impact of foreclosures on renters in North Minneapolis.[19] Specifically, the study found that non-homesteaded (rental) property comprised 61% of all foreclosures that occurred in North Minneapolis in 2006-2007.[20] The other key finding of the University of Minnesota study was that households with children were disproportionately affected by the foreclosure crisis.[21]

Of the foreclosed addresses, almost 40% were households that had children in the Minneapolis public schools.[22] Based upon census statistics, only about 16% of Minneapolis households have a child in public schools.[23] Thus, the incidence of children in school was roughly two and a half times higher for foreclosed households than the general population of the city.[24]

Then, when the ethnicity of the foreclosed households with children in school is determined, the study finds that 60% were African-American.[25] The percentage is almost double the percent of African-American households in Minneapolis.[26] In contrast, there is a

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[17] *Id.*
[18] *Id.*
[19] Ryan Allen, *The Unraveling of the American Dream: Foreclosures in the Immigrant Community of Minneapolis*, Report to Minneapolis Public Schools REA Division at 3 (March 2009) http://www.hhh.umn.edu/people/rallen/pdf/unraveling_american_dream.pdf;Steve Perry, *Who's Getting Hurt? UM Study crunches the numbers on foreclosures in Minneapolis,* MinnPost (Feb. 19, 2009) http://www.minnpost.com/steveperry/2009/02/19/6811/whos_getting_hurt_um_study_crunches_the_numbers_on_minneapolis_foreclosures
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*

significant under-representation of white households.[27] While 50% of Minneapolis households with children in school are white, only about 10% of foreclosures matched school records for a white household.[28]

C. Lending Patterns In North Minneapolis.

There are three questions that were examined as it relates to lending patterns in North Minneapolis. First, who was originating the loans in North Minneapolis? Second, of those originating the loans in North Minneapolis, were their lending practices different than elsewhere in the metropolitan area? Third, who originated the loans that ultimately failed and were foreclosed upon in 2006?

To answer the first two questions, data obtained through the Home Mortgage Data Act indicates that the most active lenders in North Minneapolis were "sub-prime" lenders. These subprime lenders primarily worked through mortgage brokers, and, based upon the nature of these lenders, it is assumed that most, if not all, of these loans were ultimately securitized. Overall, 1.8 % of the Minneapolis-Saint Paul Metropolitan Statistical Area's home purchase and 2.0 % of area's refinancing loans were issued in North Minneapolis.

Of those originations, 49% of these home purchase loans were subprime and 46.8% of refinance loans were subprime. In the rest of the region, the corresponding rates are 13.5% for home purchase loans and 20 % for refinancing loans. In other words, a home purchase loan in North Minneapolis was 3.6 % more likely to be subprime, than a loan for a home located elsewhere. Likewise, a refinancing loan for a home located in North Minneapolis was 2.3 times more likely to be subprime than a refinancing loan located elsewhere in the area.

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[27] *Id.*
[28] *Id.*

The data provided through the Home Mortgage Data Act ("HMDA"), further shows that many subprime lenders did a disproportionate amount of their lending in North Minneapolis, while many prime lenders did disproportionately little lending in North Minneapolis.

For example, Wells Fargo Bank (a prime lender) made 286 of its home loans in North Minneapolis and 34,233 loans in the rest of the area. This means that Wells Fargo made 0.8 percent of its loans on the North Minneapolis. If the North Minneapolis had received a proportionate amount of Well Fargo's loans, 635 loans would have been originated in North Minneapolis, 349 fewer than were actually issued in the area. Similarly, CitiMortgage, Voyager Bank, and PHH mortgage were among other prime lenders who were disproportionately absent from North Minneapolis loan records.

Figure 3.1: Data Related To Purchase Origination Lending Patterns of Prime Lenders

Home Purchase	Percentage of all loans issued in North Minneapolis (1.8% overall)	Percentage of Northside loans that are subprime	Percentage of loans issued in the rest of the metro that are subprime	Northside Denial Rate Total	Northside Denial Rate Racial minority	Total Northside loans/Total Loans	Total Northside Records with no race in HMDA
Wells Fargo Bank NA	0.8 %	8.0 %	2.2 %	16.0 %	26.4%	286/ 35272	46
US Bank NA	0.9 %	0.0 %	1.2 %	10.6%	15.6 %	75/ 8645	4
PHH Mortgage	0.7	4.1 %	0.6 %	1.6%	0.0 %	49/ 6751	4
Bell America	0.6 %	7.1 %	3.7 %	5.4 %	20.0 %	28/ 5082	2
ABN Amero	0.5 %	0.0 %	0.3 %	18.5 %	33.3 %	16/ 3024	4
PHH home loans	0.5 %	7.7 %	2.1 %	0.0 %	0.0 %	13/ 2774	9
Bankers Mortgage Co.	0.3 %	0.0 %	4.3 %	0.0%	0.0%	8/2661	1
Universal American	0.0 %	N/A	0.7 %	0.0 %	No	0/ 2322	0

Mortgage					applications		
CTX Mortgage	0.2 %	0.0 %	0.8 %	14.3 %	20.0 %	5/ 2207	0
Marketplace Home Mortgage	0.5 %	11.1 %	3.2 %	0.0 %	0.0 %	9/ 1785	0
CITIMortgage	0.8 %	9.1 %	4.7 %	12.5 %	0.0%	11/ 1375	3
Voyager	0.6 %	0.0 %	0.4 %	13.3 %	66.7%	10/ 1616	0
Xpulte	0.0 %	N/A	0.2 %	N/A	N/A	0/ 1112	0

Conversely, all of the Twin Cities' large subprime lenders made a disproportionately large number of loans in North Minneapolis. For example, BNC mortgage made 10.8 percent of its loans on the Northside (196 out of 1821), while Long Beach Mortgage Company made 12.2 percent of its loans on the Northside (63 out of 516).

Figure 3.2: Data Related To Purchase Origination Lending Patterns of Sub-Prime Lenders[29]

Home Purchase	Percentage of all loans issued in North Minneapolis (1.8% overall)	Percentage of Northside loans that are subprime	Percentage of loans issued in the rest of the metro that are subprime	Total Northside loans/Total Loans	Total Northside Records with no race in HMDA
Argent Mortgage	9.7 %	84.2 %	79.6 %	241/2481	29
BNC Mortgage	10.8 %	99.0 %	99.3 %	196/ 1821	69

[29] Other subprime lenders doing ten percent or greater of their total business in North Minneapolis: Finance America, First Guarantee Mortgage Corp., The CIT group, Acoustic Home Lenders, Express Capital Lending, Aegis Funding Corporation, Community Lending Incorporated, Saxon Mortgage, Sunset direct lending, Ocwen Loan Servicing, Chapel Mortgage, Hic-star Corp., First NLC financial services, First NLC Financial Services, Nation One Mortgage Co., Academy Mortgage Corp., First NLC financial Services, Nation One Mortgage Co., Academy Mortgage Corp., First Consolidated Mortgage co., Lime Financial Services, American Business Financial,, Meritage Mortgage Co., Boundary Waters Bank, Franklin National Bank, Innovative Mortgage Capital, Southern Star Mortgage, Specialty Mortgage Corporation, Spectrum Funding Corporation, Olympus Mortgage Company, Ace Mortgage Funding,

New Century	6.5 %	83.1 %	75.7 %	154/ 2359	0
Long Beach	12.2 %	93.7 %	85.2 %	63/516	8
Accredited Home	10.6%	85.7%	76.7%	42/398	17
Mila	3.8 %	76.5 %	73.5 %	34/890	30
Resmae	7.0	100 %	95.4 %	33/470	92
Decision One	3.7 %	92.1 %	94.9 %	59/1581	11
Fieldstone	5.4 %	89.3 %	69.5 %	28/514	10

This pattern continues in the refinancing market in North Minneapolis, however, the disparities are somewhat less extreme.

Figure 3.3: Data related to Refinance Loan Originations of Sub-Prime Lenders[30]

Refinance	Percentage of all loans issued in North Minneapolis (2.0% overall)	Percentage of Northside loans that are subprime	Percentage of loans issued in the rest of the metro that are subprime	Total Northside loans/Total Loans	Total Northside Records with no race in HMDA
Argent	6.2 %	69.8 %	61.3 %	295/ 4773	37
Ameriquest	3.8 %	63.6 %	48.1 %	173/ 4605	538
Town & Country	5.8 %	78.8 %	50.9 %	118/ 2027	65
New Century	3.7 %	79.8 %	68.6 %	104 / 2785	42
BNC	6.8 %	95.8 %	94.9 %	95/ 1400	40
Option One	4.5 %	59.5 %	66.5 %	79/ 1745	40

[30] Other subprime lenders with ten percent or more of their total refinance market in North Minneapolis: Finance America, First Guarantee Mortgage Corp., The CIT group, Acoustic Home loans, Aegis funding, Community Lending Inc., Sunset Direct Lending, Ocwen Loan Servicing, Chapel Mortgage, Hic-Star Corp., First NLC Financial Services, Nation One Mortgage Co., Weststar Mortgage, Academy Mortgage, First Consolidated Mortgage, Lime Financial Services, Steward Financial, American Business Financial, Mertiage Mortgage Corp., Boundary Waters Bank, Specialty Mortgage Corp., and ACE Mortgage.

Encore	5.2 %	86.0 %	83.2 %	43/ 830	24
Accredited Home Lenders	4.7 %	94.9 %	75.0 %	39/ 822	36
Aames	5.6 %	56.4 %	53.7 %	39/ 695	24
Aegis	4.7 %	84.2 %	73.5 %	38/ 809	32

Figure 3.4: Data Related To Refinance Loan Originations of Prime Lenders

Refinance	Percentage of all loans issued in North Minneapolis (2 % overall)	Percentage of Northside loans that are subprime	Percentage of loans issued in the rest of the metro that are subprime	Northside Denial Rate	Northside Denial Rate Racial minority	Total Northside loans/Total Loans	Total Northside Records with no race in HMDA
US Bank, NA	0.7 %	0.0 %	0.2 %	14.8 %	20.0 %	43/ 6562	8
ABN AMRO	0.6 %	0.0 %	0.1 %	9.0 %	9.5 %	31/ 5100	23
Provident Funding associates	0.6 %	0.0 %	0.0 %	0.0 %	0.0 %	19/ 3174	2
PHH mortgage	0.7 %	0.0 %	0.0 %	4.0 %	14.3 %	17/ 2311	3
Mortgage Network	0.8 %	0.0 %	1.2 %	6.7 %	0.0 %	14/ 1697	3
Voyager Bank	0.7 %	0.0 %	0.3 %	5.9 %	8.3 %	14/ 1974	2
Wells Fargo Funding	0.7 %	0.0 %	1.0 %	0.0 %	0.0 %	14/ 1884	1
Principal Residential Mortgage	0.4 %	0.0 %	0.3 %	0.0 %	0.0 %	9/ 2008	0
GMAC	0.7 %	0.0 %	2.7 %	61.7 %	66.0 %	9/ 1334	40
Summit Mortgage	0.5 %	0.0 %	0.6 %	33.3 %	33.3 %	8/ 1526	0

The percentage of these loans that ultimately resulted in foreclosure largely mirrors the market-share of the individual lenders. Figure 3.5 provides a list of the top ten originating lenders of mortgage loans that resulted in a foreclosure for North Minneapolis.

There are two issues that are significant in Figure 3.5. First, when the underlying loan documents were researched, the vast majority of mortgage loans that resulted in a foreclosure were originated through a mortgage broker. Based on a review of the companies identified as the "lender," at least 80% were originated using a mortgage broker. According to a report issued by the Center for Responsible Lending, a homeowner who used a mortgage broker to obtain a sub-prime mortgage loan pays over $1,000 more the first year, and, due to a higher interest rate, pays an average of $35,000 more over the life of the loan when compared to a homeowner that obtains a sub-prime mortgage through a retail lender or "branch bank."[31] The deep market penetration of broker-originated loans in North Minneapolis indicates a failure of traditional lending institutions to serve this community.

Second, the majority of loans originated in North Minneapolis were originated by non-bank lenders. As seen in Figure 3.5, the number of lenders in North Minneapolis was fractured, but the majority were not federal banks subject to the Community Reinvestment Act.

[31] The Center for Responsible Lending, *Steered Wrong: Brokers, Borrowers, and Subprime Loans* (April 2008).

Figure 3.5: Originating Lenders of 2006 Foreclosed Mortgage Loans[32]

Rank	Originating Lender	# of Foreclosures	% of Overall Northside Foreclosures
1	BNC	128	12.6%
2	Argent	127	12.5%
3	Fremont Investment and Loan	60	5.9%
4	Ameriquest	34	3.3%
5	Decision One	33	3.2%
6	Wells Fargo	32	3.1%
7	New Century	31	3%
8	Great Northern	24	2.4%
9	Long Beach Mortgage	23	2.3%
10	America's Wholesale	22	2.2%
10	First Guaranty	22	2.2%
10	Maribella	22	2.2%

D. A Study of Foreclosed Property Three Years After Foreclosure.

Although there have been many studies on lending practices, there are relatively few studies on post-foreclosure sales and activities. For this article, one hundred properties were randomly selected from foreclosures that occurred in the City of Minneapolis. When broken down by zip code, the number and percentage of foreclosed properties used in the sample were consistent with the number and percentage of foreclosed properties located in North

[32] Housing Preservation Project, *North Minneapolis Originations and Foreclosures* (October 23, 2008) http://www.hppinc.org/_uls/resources/55411-55412_Foreclosure_Ana_2.pdf

Minneapolis. When comparing statistics derived only from North Minneapolis properties in the sample with all sample properties there was not a significant variation in the findings. Therefore, there is no distinction between Minneapolis and North Minneapolis in the findings.

The findings of the study are as follows:

- The median time from the date of the foreclosure Sheriff's sale to the date that the property sold to another party was 484 days. Assuming a six month redemption period, it took a lender approximately 304 days or ten months for a property to be sold.
- The difference between the amount that a lender purchased a property for at the Sheriff's Sale auction, typically the amount owed on the mortgage loan, and the later sale price was usually a loss of $65,039 (average) or $77,424 (median). As a percentage, the lender later sold the properties for a loss of 25% (average) to a loss of 49% (median).
- 83% of the foreclosed properties had 911 calls post-Sheriff's Sale.
- The average number of 911 calls was eight, while the median was five calls per property.
- The vast majority of 911 calls (74%) occurred after the end of the redemption period when the property was under the control and ownership of either the mortgage loan servicing company or the person who bought the property from the mortgage loan servicing company.

PART II: FIVE QUESTIONS AND AN ANALYSIS OF NORTH MINNEAPOLIS FORECLOSURE DATA.

So often statistics are presented and then the questions raised by such statistics are left unaddressed. Part II of this article identifies seven basic questions that are either raised or implicated by the statistics provided in Part I. Although the questions and responses focus on North Minneapolis, they are questions that likely relate to neighborhoods across the country.

The general responses provided are only meant for moving the discussion forward, whether one disagrees or agrees the conclusions.

Question One: Were early foreclosure relief efforts targeted appropriately and how could they have been more effective?

As it relates to North Minneapolis, the statistics indicate three major assumptions related to foreclosures that were ultimately incorrect. First, there was an assumption that the mortgage loans that were at-risk of being foreclosed upon were properly underwritten. Second, there was an assumption that there was no need to oversee or regulate the terms of loan modifications. Third, the impact of foreclosures on renters was either misunderstood, minimized, or ignored in foreclosure relief efforts. These assumptions resulted in a narrow and limited initial response to providing relief to the first communities affected by foreclosures, which were also often communities of color.

Failure To Properly Underwrite

The belief that mortgage loans were properly underwritten was an assumption fostered by the rhetoric and opinions of regulators and many policy leaders from the late 1990s through 2007: Why would a bank do something that was not in its best interest?[33] Alan Greenspan, then Chairman of the Federal Reserve, believed that, through complex algorithms and computer technology, risk could properly be assessed and avoided by lenders.[34]

It was also an assumption rooted in the traditional notions of mortgagee and mortgagor. Regulators and the public had not yet come to understand that this was not a simple two-party

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[33] Alan Greenspan, Chairman, Bd. of Gov of the Fed. Reserve Sys., Remarks to the Federal Reserve System Community Affairs Research Conference (Apr. 8, 2005), at 5 (transcript available at http://fraser.stlouisfed.org/historicaldocs/ag05/download/29243/Greenspan_20050408.pdf)

[34] *Id.* ("With these advances in technology, lenders have taken advantage of credit-scoring models and other techniques for efficiently extending credit to a broader spectrum of consumers . . . . Where once more-marginal applicants would simply have been denied credit, lenders are now able to quite efficiently judge the risk posed by individual applicants and to price that risk appropriately.")

transaction with each party having a significant stake in the successful repayment of the loan. Rather there were multiple parties involved.[35] In a typical, modern mortgage transaction there is the borrower/mortgagor, mortgage broker, lender/mortgagee, Wall Street investment firm that provided the lender with a wholesale line of credit to originate the loan, a Wall Street investment firm that pooled and converted the mortgage loans into mortgage backed securities (an agreement that typically existed between the lender and firm long before the loan was originated), the credit rating agencies, the trustee of the securitized loan trust, the servicer of the mortgage loans (different from the investor and owner), the purchasers of the securities or bonds, and the competing regulators that oversee the practices of these various actors.[36]

As aptly summarized by law professor Christopher Peterson, the origins of financing a home mortgage purchase had humble beginnings and changed significantly in the 20th Century.[37] It began as a two-party transaction involving neighbors and friends joined together in a building society.[38] These began in the United States in 1831 and were modeled after similar British institutions.[39] Then, after the Great Depression, the government began to assume a role as an assignee for the original lenders.[40] Thus, the government was encouraging more lending by agreeing in advance to purchasing loans originated by others.[41]

In the past fifty years, there were two additional developments. First, there was the development of a government sponsored securitization market.[42] This was done primarily through Fannie Mae and, to a lesser extent, Freddie Mac.[43] Securitization converted the

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[35] Kathleen C. Engel & Patricia A. McCoy, *Turning a Blind Eye: Wall Street Finance of Predatory Lending*, 75 FORDHAM L. REV. 2039, 2070 (2007).
[36] *Id.*
[37] Christophe L. Peterson, *Predatory Structured Finance,* 28 CARDOZO L. REV. 2185, 2186-2213 (2007).
[38] *Id.* at 2191.
[39] *Id.*
[40] *Id.* at 2194.
[41] *Id.*
[42] *Id.* at 2198.
[43] *Id.*

relatively locked nature of a 30-year fixed mortgage, and then made it far more dynamic and flexible. Second, there was the development of the private non-government sponsored securitization market.[44] This may also be called "private label" securitization.[45] It is within private label securitization that risky and illegal behavior arguably began and thrived.[46]

The statistics described in Section I indicate that the loans were not properly underwritten by the lenders, and that the cause of the foreclosure went far beyond the traditional reasons for foreclosure such as job loss, divorce, or medical problems. The mean number of months from the date of origination to the date of foreclosure was approximately 21 months for mortgage loans originated in North Minneapolis, meaning that most borrowers were foreclosed upon within two years of origination. 26% of the foreclosed mortgage loans were foreclosed upon less than a year after origination, which meant that the foreclosure process began, at most, nine months after origination.[47] Indeed, most people owed more than the original balance of the mortgage loan, due to mortgage servicer fees, at the time of the foreclosure Sheriff's Sale than was owed on the date of origination.

The assumption the mortgage loans were properly underwritten made it easier for regulators and the public to believe that the initial wave of foreclosures were an aberration, and that the market would quickly correct itself. It also made it easier for regulators and the public to believe that the risky lending patterns were not widespread. Thus, early calls for federal intervention were dismissed as unnecessary or an over-reaction.

Lack of Oversight for Mortgage Loan Modifications

Based on the assumption, stated above, that the owners of mortgage loans would not do anything that was not in their own best interest, there was minimal oversight of the types of loan

[44] *Id.* at 2200
[45] *Id.*
[46] *Id.*
[47] *Id.*

modifications that were occurring. Often loan modification studies or reports indicate that there is a very high failure rate of modified loans, and people then interpret that high failure rate as a basis to conclude that loan modifications are pointless. When the loan modifications, themselves, are categorized and defined, a much clearer picture of the problem emerges. Specifically, the loan modifications that occurred were inherently flawed and did not substantively change the terms of the mortgage loan to be sustainable. Further, the loan modifications that occurred were very small relative to the total number of foreclosures that were occurring. Thus, the large number of foreclosures have been wrongly conflated with the large number of "modified" loans that redefault.

A major study funded by the Ford Foundation found that the high redefault rate of modified loans was based on the quality of the loan modifications[48] Specifically, the study compared different mortgage modification scenarios, including interest rate reduction, principal balance reduction, monthly payment reduction, or simple restructuring, which includes an increased monthly payment.[49] Not surprisingly, the loan modifications that resulted in a lower monthly payment combined with a principal balance reduction were the most sustainable and most likely not to re-default.[50] Yet, many mortgages, particularly at the beginning of the foreclosure crisis, modified mortgage loans in a manner that resulted in higher monthly payment.[51] Not surprisingly, most of these modified loans re-defaulted within a year.

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[48] Roberto G. Quercia, Lei Ding, and Janneke Ratcliffe, *Loan Modifications and Redefault Risk: An Examination of Short-term Impact,* Center for Community Capital, The University of North Carolina at Chapel Hill (March 2009 http://www.ccc.unc.edu/documents/LM_March3_%202009_final.pdf); *See also* Office of the Comptroller of the Currency, *Comptroller Dugan Highlights Re-Default Rates on Modified Loans,* Press Release (December 8, 2008) last visited September 11, 2009 http://www.occ.treas.gov/ftp/release/2008-142.htm.
[49] *Id.*
[50] *Id.*
[51] *Id.*; *See also*

Even worse, the vast majority of delinquent modifications were not modified at all.[52] A study released by the Federal Reserve Board in Boston found that less than 8% of seriously delinquent loans received any loan modification.[53] The study examined a large sample of mortgage loans from across the United States that were originated between 2005 and 2007.[54] Ultimately, the study concluded that the widespread opinion that a sustainable loan modification is a win-win is either a myth or mortgage loan servicers, as an industry, are systematically not acting in their own best interest.[55] The two propositions are mutually exclusive.

Misunderstanding, Minimizing, and Ignoring The Impact of Foreclosures On Renters

In Section I, the statistics indicate that there were a large number of renters adversely affected by the initial wave of foreclosures. The findings of the University of Minnesota study were that over 60% of the properties that were foreclosed upon were non-homesteaded, exceeding the proportion of rental property in the neighborhood. Yet, the vast majority of initial foreclosure prevention efforts, both local and national, were designed to only to help homeowners with little or no mention of renters.

Elected officials took pains to distinguish between homeowners and investors, noting that its foreclosure prevention programs would not assist investors and would only cover owner-

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[52] Manuel Adelino, Kristopher Gerardi, and Paul S. Willen, *Why Don't Lenders Renegotiate Home Mortgages? Redefaults, Self-Cures, and Securitization,* Public Policy Discussion Papers No. 09-04, Federal Reserve Bank of Boston (July 6, 2009) http://www.bos.frb.org/economic/ppdp/2009/ppdp0904.pdf

[53] *Id.*

[54] *Id.*

[55] *Id.; See also* Peter S. Goodman, *Lucrative Fees May Deter Efforts to Alter Loans,* New York Times (July 29, 2009) ("But industry insiders and legal experts say the limited capacity of mortgage companies is not the primary factor impeding the government's $75 billion program to prevent foreclosures. Instead, it is that many mortgage companies are reluctant to give strapped homeowners a break because the companies collect lucrative fees on delinquent loans. Even when borrowers stop paying, mortgage companies that service the loans collect fees out of the proceeds when homes are ultimately sold in foreclosure. So the longer borrowers remain delinquent, the greater the opportunities for these mortgage companies to extract revenue — fees for insurance, appraisals, title searches and legal services.")
http://www.nytimes.com/2009/07/30/business/30services.html.

occupied property.[56] While from a public policy and public relations perspective this is an important and justified distinction, in practice it fails to recognize the issues encountered by the renters who live in these foreclosed properties.

For example, many renters that live in investment properties that are displaced by foreclosure are forced to incur moving costs that were not budgeted and that they may not be able to afford. Renters in foreclosed properties often risk utility shut-offs or delayed maintenance and repair. Renters may also lose their security deposits, because landlords or investors disappear after the foreclosure. Today, three to four years after the foreclosure crisis began, there is still no comprehensive, nationwide plan to protect renters facing foreclosure. There is also no significant effort to try and compensate renters for lost income, unreturned security deposits, or relocation expenses.

Question Two: Did the Community Reinvestment Act force lenders to make loans in North Minneapolis to unqualified, minority borrowers?

There are some that blame the foreclosure crisis on the Community Reinvestment Act.[57] Enacted over twenty years ago, the Community Reinvestment Act, aimed at preventing red-lining and reverse red-lining, prohibited federally insured banks and thrifts from limiting loans or prohibiting loans offered in certain neighborhoods.[58] Critics of the Community Reinvestment Act argue that the government itself was to blame for the current economic crisis by forcing

[56] *See e.g.* House Committee of Financial Services, *House Passes American Housing Rescue and Foreclosure Prevention Act*, Press Release (May 8, 2008) ("Only primary residences are eligible: NO speculators, investment properties, second or third homes will be refinanced."); United States Dept. of the Treasury, *Relief for Responsible Homeowners One Step Closer Under New Treasury Guidelines: Updated Fact Sheet*, Press Release (March 4, 2009) ("[W]hile attempting to prevent the destructive impact of the housing crisis on families and communities. It will not provide money to speculators, and it will target support to the working homeowners…")
")http://treas.gov/press/releases/reports/housing_fact_sheet.pdf

[57] Michael Aleo & Pablo Svirsky, *Foreclosure Fallout: The Banking Industry's Attack on Disparate Impact Race Discrimination Claims Under the Fair Housing Act and the Equal Credit Opportunity Act*, 18 B.U. PUB. INT. L.J. 1, 10-11 (2008) (summarizing and citing various commentaries blaming the Community Reinvestment Act for the foreclosure crisis).

[58] *Id.* at 11.

innocent lenders to originate loans to high-risk black and Hispanic borrowers.[59] Thus, it was not speculators, fraudulent brokers, or negligent lenders who are to blame for predatory loans originated in North Minneapolis. Instead, they argue, it was the government's fault.

For example, Ann Coulter wrote an article entitled, "*They Gave your Mortgage to a Less Qualified Minority*."[60] In her article, Ms. Coulter argues that the foreclosure and economic crisis was caused by "political correctness being forced on the mortgage lending industry in the Clinton era."[61] She then posits that banks were forced to ignore credit scores and lend based on "nontraditional measures of credit-worthiness, such as having a good jump shot or having a missing child named Caylee."[62]

This theory, related to the Community Reinvestment Act, has largely, if not entirely, been de-bunked.[63] The most high-risk lending occurred through non-bank lenders that were not even covered by the Community Reinvestment Act.[64] Some estimates are that three-quarters of the sub-prime loans that were originated by non-bank lenders during the real estate boom were not subject to the Community Reinvestment Act.[65]

The break-down of mortgage loans originated in North Minneapolis, and described in Figure 3.5 above, is consistent with such estimates. Therefore, the Community Reinvestment Act cannot be blamed for compelling people who are not even subject to the Act for behaving in a certain manner. This is, of course, assuming that the Act requires lenders to give loans to people who have good jump shots, which it does not.

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[59] *Id.*
[60] *Id.* (citing Ann Coulter, *They Gave Your Mortgage to a Less Qualified Minority*, HUMAN EVENTS ONLINE, Sept. 24, 2008, *available at* http://www.humanevents.com/article.php?id=28714).
[61] *Id.*
[62] *Id.*.
[63] *See id.* at 12-14.
[64] *Id.* at 12.
[65] *Id.* at 13-14.

Question Three: Is there any correlation between race and the likelihood that a minority in North Minneapolis would receive a sub-prime or high-cost mortgage loan?

Every study that has examined the correlation between race and the likelihood that a minority in North Minneapolis or the Minneapolis-Saint Paul metropolitan region would receive a high-cost, predatory loan has concluded that there was an extremely high correlation. In a study by the National Community Reinvestment Coalition, the Minneapolis-Saint Paul metropolitan statistical area ("MSA") had the second largest disparity in the entire country between white and non-white applicants in receiving a predatory, high cost loans.[66] When focused on congressional district, African-American men were more than three times more likely to receive a high-cost, sub-prime loan than their white counter-parts in the congressional district that encompasses North Minneapolis.[67]

Another recent study, conducted by the University of Minnesota's Institute on Race and Poverty, found similar results.[68] Not only were persons of color five times more likely to be given a high-cost, subprime loan, the University of Minnesota study also found a large disparity in the denial rates between different races.[69] For example, very high-income blacks, Asians, and Hispanics (making more than $157,000 a year) in the MSA were more likely to be denied a mortgage loan than whites making less than $39,250.[70] The denial rate for blacks with incomes above $157,000 was 25%, while it was just 11% for whites making $39,250 or less.[71]

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[66] National Community Reinvestment Coalition, *Income Is No Shield Part III* at 3 (June 2009).
[67] National Community Reinvestment Coalition, *Black 2006 Subprime Disparity Index by Congressional District* (2009)
http://www.ncrc.org/images/stories/pdf/research/black%20subprime%20disparity%20by%20congressional%20district.pdf
[68] Myron Orfield, *Communities in Crisis: Race and Mortgage Lending in the Twin Cities*, Institute on Race and Poverty (February 2009) http://www.irpumn.org/uls/resources/projects/IRP_mortgage_study_Feb._11th.**pdf**; ***See also*** Jeffrey Crump, *Subprime Lending and Foreclosure in Hennepin and Ramsey Counties* at 15, CURA Reporter (Summer 2007) http://www.cura.umn.edu/reporter/07-Summ/Crump.pdf
[69] *Id.*
[70] *Id.*
[71] *Id.*

Question Four: Does federal funding to address vacant and abandoned houses target the neighborhoods that have the greatest need?

By far the largest recovery program created by the federal government, relating to the vacant and abandoned houses created by the foreclosure crisis, is the Housing and Economic Recovery Act of 2008.[72] Specifically, the section of this Act relating to the creation and distribution of National Stabilization Program ("NSP") funds.[73] Approximately $6 billion of NSP grants were distributed to states across the country, and the states were then required to give "priority emphasis and consideration to those…areas with the greatest need."[74]

Yet, in Minnesota, the funds were not provided to the geographic areas of the greatest need.[75] North Minneapolis and certain neighborhoods in Saint Paul have unquestionably been the State's most negatively impacted areas by almost any measure, but, based upon the formula developed by the State of Minnesota, at least $9 million of Minnesota's $17 million NSP award was automatically directed to other areas of the state.[76] In fact, the State of Minnesota created its own factor (not suggested or authorized by Congress) to create a formula that is "balancing the distribution of funds between the Twin Cities metro area and Greater Minnesota."[77]

This "balancing" is irrelevant to the goal of targeting funds to areas of greatest need, like North Minneapolis, and ignores the reality of the foreclosure crisis.[78] It is also in violation of the intent and language of the statute.[79] This misappropriation of funds is not just limited to NSP grants, but has also been found related to the distribution of stimulus funds for transportation. Rather than transportation funds being spent where people live (two-thirds of the country lives in

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[72] Housing and Economic Recovery Act of 2008, P.L. 110-289, § 2301(c)(2) (2008).
[73] *Id.*
[74] *Id.*
[75] Housing Preservation Project, Harrison Neighborhood Association, and the Northside Residents Redevelopment Council, *Administrative Complaint to HUD* (December 16, 2008).
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*

large metropolitan areas) urban areas received less than half of transportation stimulus dollars.[80] It raises the issue of how our transportation system and other federal recovery spending would look differently, if the spending is focused on the specific inner-city and urban areas that most need the funds.

An article in the New York Times, which profiles its study of stimulus spending, concludes with the following:

> "We have a long history of shortchanging cities and metropolitan areas and allocating transportation money to places where few people live," said Owen D. Gutfreund, an assistant professor of urban planning at the City University of New York who wrote "20th Century Sprawl: Highways and the Reshaping of the American Landscape" (Oxford University Press, 2004).
>
> Professor Gutfreund said that in some states the distribution was driven by statehouse politics, with money spread to the districts of as many lawmakers as possible, or given out as political favors. In others, he said, the money is distributed by formulas that favor rural areas or that give priority to state-owned roads, often found far outside of urban areas.
>
> Mayors had lobbied Congress to send the money directly to cities, but in the end, 70 percent of the money was sent to the states to be divided, and 30 percent was sent to metropolitan planning organizations, which represent the local governments in many metropolitan areas.[81]

Question Five: Is This Crisis Really Just Part Of A Pattern?

Looking at the foreclosure crisis and the impact on North Minneapolis, it is clear that the foreclosure crisis did not occur in isolation of many other issues of race and economics. It is also clear that the foreclosure crisis is not the first confluence of these various issues. Just in the past twenty years, North Minneapolis experienced a high number of house flipping in the late

[80] Michael Cooper and Griff Palmer, *Cities Lose Out on Road Funds From Federal Stimulus,* New York Times (July 8, 2009) http://www.nytimes.com/2009/07/09/us/09projects.html?_r=1
[81] *Id.*

1990s,[82] then from 2002-2006 North Minneapolis experienced a high-level of equity strippers,[83] and then, from 2006 to present, North Minneapolis has had the highest rates of foreclosure in the region.[84] So the answer to the question is yes, the foreclosure crisis is part of a pattern of exploitation and marginalization of a community. The better question is how to stop it.

III. BENDING TOWARD JUSTICE

In an address to the Tenth Anniversary Convention of the S.C.L.C. in Atlanta, Georgia on August 16, 1967, Dr. Martin Luther King, Jr. made an address entitled, "Where do we go from here?"[85] The title of this speech was also the title of Dr. King's last book, entitled "Where do we go from here: Chaos or Community?"[86] Historically, 1967 was thirteen years after the United States Supreme Court issued its decision in *Brown v. Board of Education.*[87] It was six years after the Freedom Rides, four years after the march on Washington, and, it was three years after the passage of the Civil Rights Act.[88]

1967 was a time in which there had been historic victories, but there was much work remaining and communities were anxious for change and prosperity. Indeed, the summer before Dr. King's speech there were a series of riots and disturbances in major cities across the United States.[89] The incidents received significant media attention, some exaggerated, which

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[82] Federal Reserve Bank of Minneapolis, *Property Flipping in the Twin Cities* (November 2002) ("The property flippers recruited buyers from homeless shelters, Laundromats and churches. Most of the homebuyers were low-income, and the flips were geographically concentrated in North Minneapolis neighborhoods.")

[83] Jonathan Kaminsky, *Steal this House*, City Pages (May 16, 2007) (describing a North Minneapolis victim of equity stripping)

[84] Housing Preservation Project, *Analysis of Detailed Sheriff's Sale Data: Includes 2005-2006 Data for zip codes 55411 and 55412* (March 6, 2008) http://www.hppinc.org/_uls/resources/55411-55412_Foreclosure_Ana.pdf

[85] Martin Luther King, Jr., *Where do we go from here?* Indiana University, Democracy: Historical Texts http://www.indiana.edu/~ivieweb/mlkwhere.html

[86] Dr. Martin Luther King, Jr., *Where do we go from here: Chaos or Community?* Harper & Row (1967).

[87] *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

[88] The Civil Rights Act of 1964 (Pub. L. 88-352, 78 Stat. 241, July 2, 1964)

[89] Kerner Commission, Report of the National Advisory Commission on Civil Disorders (February 29, 1968) http://www.eisenhowerfoundation.org/docs/kerner.pdf

heightened tension.[90] It is in this national environment in which Dr. King made this important speech.

In his speech, Dr. King set forth a framework for renewal and progress.[91] First, he identified "where we are" and then demanded that persons of color "massively assert our dignity and worth."[92] Second, Dr. King stated that the community must identify the basic challenges that are facing it.[93] Third, Dr. King stated that we must develop a program and commit to a path of nonviolence.[94] He stated that the "whole structure must be changed," and then concluded with the following:

> When our days become dreary with low hovering clouds of despair, and when our nights become darker than a thousand midnights, let us remember that there is a creative force in this universe, working to pull down the gigantic mountains of evil, a power that is able to make a way out of no way and transform dark yesterdays into bright tomorrows. Let us realize the arc of the moral universe is long but it bends toward justice.[95]

Isn't that the framework that we must adopt in the wake of the foreclosure and economic crisis? A crisis that undermined, in many cases, decades of work and progress toward a more equal society. A crisis that depleted the wealth of communities of color. A crisis that undermined neighborhoods and displaced thousands of families.

This article is intended to start the process of defining "where we are at." But, that is only the beginning. We need to define where we are at as a nation, not just where we are at in North Minneapolis. Doesn't the largest financial crisis in modern history deserve its own government commission to hold the mirror up to ourselves? And then,

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90 *Id.*
91 *See supra* note 85
92 *Id.*
93 *Id.*
94 *Id.*
95 *Id.*

together, we will begin steps two and three---bending the arc of the moral universe toward justice.

Cover Design

Samir Gambhir
Sr. GIS/Demographic Specialist

Craig Ratchford
GIS/Demographic Assistant

For more information on Kirwan Institute, please contact Barbara Carter | carter.647@osu.edu
For more information on this report, please contact Christy Rogers | rogers.441@osu.edu

KIRWAN INSTITUTE FOR THE STUDY OF RACE AND ETHNICITY
THE OHIO STATE UNIVERSITY
433 MENDENHALL LABORATORY | 125 SOUTH OVAL MALL | COLUMBUS OH 43210
Ph: 614.688.5429 | Fax: 614.688.5592
Website: **www.kirwaninstitute.org**