

“Ground Truths” about Housing Discrimination

Fred Freiberg

Since passage of the federal Fair Housing Act 45 years ago, tens of thousands of “testing” investigations have been conducted. Testers are trained to pose as prospective buyers or renters for the purpose of obtaining information about the practices of housing providers (e.g., real estate brokers, landlords, property management companies, etc.). Simulating ordinary consumer behavior often makes it possible to discern whether housing providers are complying with fair housing laws. From these investigations, we have learned a lot about how, where and why housing discrimination occurs. But do these collective insights into discriminatory housing practices inform our current policies, research and enforcement efforts?

In an effort to understand our complex and changing weather patterns, meteorologists conduct sophisticated modeling and analyze atmospheric conditions, historical patterns and satellite renderings. But they also want to know, particularly during turbulent weather, what the situation looks like on the ground. Storm-chasers and storm spotters are sometimes called upon to provide valuable information as a storm is occurring. Getting the “ground truths” about these storms can keep us all safer in the future, as well as when these destructive weather events are occurring. In developing effective strategies to minimize collateral damage and keep people safe in time of tumultuous weather events, the “ground truths” help decision-makers understand what is happening and plan accordingly.

I currently work for the Fair Housing Justice Center (FHJC), a regional civil rights organization based in New York City that, among other activi-

ties, employs testers to investigate housing discrimination and enforce fair housing laws. After nearly four decades of supervising and participating in thousands of testing investigations across the nation, it is my view that certain “ground truths” about housing discrimination, although commonly known and extensively documented, continue to be ignored or overlooked. This knowledge rarely informs our decision-making when it comes to allocating resources, conducting research or developing effective enforcement strategies for reducing the level of discrimination in our nation’s housing markets.

One way some housing providers minimize contact is to withhold or provide misleading information.

The ground truths about housing discrimination give credence to what should be a fairly self-evident fact, namely that **most violators of fair housing laws try to elude detection.** That should not strike us as unusual. Bank robbers wear masks to conceal their identity, and criminals wear gloves so as not to leave fingerprints. We all slow down when driving on a highway as soon as we see a police vehicle with radar. We do not want our illegal conduct to be detected. We do not need to stretch our imaginations to understand that housing providers who continue to violate fair housing laws also want to avoid getting caught in the act or having a complaint filed against them. But it does mean that we need to consider the nature of these practices when assessing the situation on the ground.

Violators elude detection by avoiding or minimizing contact with unwanted populations.

How do housing providers do this?

Some selectively advertise or refrain from advertising available housing. Most housing providers the FHJC has found engaging in discriminatory practices based on race or national origin do not advertise on craigslist or in online or print media publications that have a more public and general circulation. Some landlords do not advertise at all and resort to word of mouth, referrals from existing tenants, or posting notices or signs that will likely go unnoticed by minority populations. Some selectively advertise in publications targeted to specific audiences based on race, ethnicity or religion.

Another way to avoid or minimize contact with unwanted populations is to profile applicants or selectively respond to inquiries from the public. The use of “linguistic profiling” to screen out people who telephone, by attempting to discern their race or national origin from their voice, is one practice. As a security measure, some housing providers install cameras at the entrance to their buildings. This technology can also be used by on-site agents for more nefarious purposes, to help them decide whether or how to respond to in-person inquiries once a person’s race or ethnicity is observed. Testing has also documented overt instances where on-site agents literally peeked through curtains or blinds to determine whether they should answer the door, depending upon the person’s race. In other instances, testing has revealed that owners or agents agree, over the phone, to meet prospective renters or buyers at a home or apartment building and then drive by and do not stop if they see that the person is not white.

One way some housing providers minimize contact is to withhold or provide misleading information about themselves or their property. Blind ads in newspapers intentionally do not disclose the address of the building or relevant information about the en-

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tity offering an apartment for rent. Some agents in New York assume names other than their own when interacting with people they do not want to rent to. Recently, the FHJC conducted tests at a suburban rental building where a man told an African-American tester that he did not know where the agent was or whether there were any apartments available because he was just doing some work around the building. A short time later, the same man identified himself as the building agent and showed a white tester an available apartment. Withholding identifying information, offering very little information or providing misleading information can make it extremely difficult for someone to later file a complaint. This is particularly true when a renter does not know the agent is lying and has no point of comparison.

Finally, another way some building owners avoid or minimize contact with unwanted populations is to use real estate agents or management companies who implement their discriminatory preferences. It is relatively easy for real estate brokers and management companies that maintain a large inventory of housing to steer applicants to or away from available housing based on their race or national origin. Some agents take pride in the fact that they can find housing for everyone who contacts them, while strictly complying with the discriminatory preferences of individual owners. Unsuspecting renters or buyers have no way to know that they were not shown the full range of available housing options.

Violators elude detection by unequally applying facially neutral policies to exclude or disqualify unwanted populations.

How do housing providers do this? Some initially tell everyone about a set of stringent requirements, qualifications, terms or procedures for renting an apartment or buying a home (e.g., high rents; excessive application fees, security deposits or downpayments; intrusive background checks; long waiting lists; steep an-

nual income or credit requirements, etc.) and then, as applicants express further interest and have additional contact with the agent, the agent offers to waive or reduce the stated requirements for the more “desirable” applicants. The unwanted applicants leave, erroneously believing that fair and objective criteria simply disqualified them from consideration.

Residency preferences proliferate in the New York area. They take different forms and are used by Housing Authorities, subsidized housing developments, tax credit housing, housing cooperatives, and other private housing providers. Some specify that a

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preference will be given to applicants who currently “live or work” in a community. Others prescribe that, to qualify, applicants must be related to someone in a community or be referenced by people who already live in the development. FHJC investigations have found that many times these “preferences” have a discriminatory impact, are not applied equally, or are not really preferences at all, but instead operate as discriminatory residency requirements in predominantly white communities.

Violators elude detection by masking their discriminatory conduct.

How do housing providers do this? One way is to provide friendly, courteous and helpful treatment in all initial contacts, even if it involves lying to or deceiving prospective applicants on the basis of their race, color or national origin. I have talked for years about the need to replace our image of housing discrimination as a “slammed door” with a “revolving door” where people are politely and courteously escorted in, out of and ultimately away from the desired housing. This is the most prevalent form of discrimination that testing un-

covers and often occurs with housing providers who have adopted some of the previously mentioned practices.

Whether the illegal discrimination involves conduct that dodges, conduct that disqualifies, or conduct that is disguised, violators have engineered many creative and effective techniques for eluding detection. So what do we do with this information? While any one of these housing provider practices may not be dominant in the marketplace, collectively these subtle or stealth practices limit the housing choices available to renter and homebuyer populations protected by fair housing laws. The practical implications of these ground truths is that they create a pernicious self-sustaining cycle in our metropolitan regions and help to explain why we have made only limited progress in reducing the level of housing discrimination, particularly based on race and national origin. The cycle operates in this manner:

First, many violators employ practices to effectively elude detection.

Second, if consumers are unable to detect the discrimination, it will not be reported.

Third, if discrimination is not reported, no enforcement action will result.

Finally, if there is no enforcement action, illegal discrimination continues.

The lynchpin to breaking this cycle and reducing illegal housing discrimination is to pursue public policies, research designs and enforcement strategies that take into account the ground truths I described.

For fair housing enforcement professionals, these ground truths point to at least two obvious conclusions:

1. A purely complaint-driven approach to enforcing fair housing laws will never lead to substantial reductions in illegal housing discrimination.

2. A balanced and effective enforcement strategy must include a more strategic use of resources to conduct pro-active testing investigations aimed at documenting systemic housing discrimination.

(Please turn to page 16)

(HOUSING: Continued from page 15)

By committing more resources to and placing a greater emphasis on targeted and pro-active systemic testing investigations, we could significantly accelerate reductions in the level of housing discrimination in our nation and remove many of the barriers to housing choice that continue to harm our communities.

For researchers, we need research that is focused on topics and issues that will help reduce housing discrimination. For instance, can publicly available data (e.g. population characteristics, advertising practices, housing characteristics, etc.) be used to develop useful algorithms or models that might aid enforcement agencies to better identify communities and housing providers of interest for systemic testing investigations? Research that leads to a more strategic use of scarce public resources might improve the effectiveness of fair housing law enforcement programs. In contrast, the recently released HUD-sponsored 2012 Housing Discrimination Study fails to live up to its stated promise of producing a “current national estimate of discrimination against Blacks, Hispanics, and Asians in rental and sales markets nationwide.” Although offering some interesting insights, the sampling methods, testing protocols and analysis employed by HDS 2012 underestimate and overlook many discriminatory practices. We must ensure that the ground truths that emanate from decades of testing investigations and enforcement activity better inform the national research agenda on fair housing.

Policymakers and government officials would also benefit from exploring some of these ground truths to determine if new laws or regulations could curtail the subterfuge that some housing consumers encounter during their search for housing. For instance, should the government better regulate and more closely monitor how housing is advertised and marketed for rent or sale and require disclosure of the entity making the housing available to consumers? Should rental housing

providers and property management companies that control access to multi-family buildings be licensed and regulated by states? Should the federal government conduct a nationwide review of how residency preferences are being implemented by local communities, Housing Authorities and other housing providers who receive federal subsidies, to determine if they discriminate against protected populations, concentrate poverty and per-

Housing discrimination represents an attack on our democratic values.

petuate residential racial segregation?

Even though housing discrimination is underreported by government enforcement agencies and underestimated by researchers, decision-makers in private philanthropy need to understand this is not a social problem that was “solved” by the passage of fair housing laws. Housing discrimination remains a significant barrier to mobility and a potent force that continues to limit opportunity and divide our communities. To those who allocate funding and resources to address the persistent and systemic issues of poverty and inequality in our metropolitan regions, these grounds truths portend serious challenges and require an equally serious response. So long as government pursues a wholly inadequate complaint-driven

enforcement scheme, foundations and private donors must step up and provide more resources to support systemic testing aimed at combatting persistent and pervasive housing discrimination in our metropolitan regions.

We must never lose sight of the fact that housing discrimination inflicts substantial harm on individuals, families and communities. Housing discrimination is an impediment to achieving the type of robust competition that characterizes an open or free market. It limits the opportunity for inter-group contact that can reduce biases, stereotypes and prejudices. It restricts populations from gaining access to areas that may offer greater educational, employment or other opportunities. Housing discrimination reinforces a host of inequalities that continue to undermine social cohesion and impose enormous costs on our nation.

The essential sense of feeling fully enfranchised or belonging to a society is diminished when you find that your ability to obtain housing is going to turn on your race, color, national origin, disability or other illegal factors. It devalues the inherent worth of individuals and entire populations when such a basic human necessity as shelter is denied for these reasons. Housing discrimination represents an attack on our democratic values, and reducing it must, once again, become a major domestic priority for our nation. □

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