

TESTIMONY OF ELIZABETH K. JULIAN

BEFORE THE COMMISSION ON FAIR HOUSING AND EQUAL  
OPPORTUNITY

OCTOBER 17, 2008

Thank you for the opportunity to testify before the Commission. I had the honor of serving at HUD under Secretary Cisneros during the Clinton Administration, first as Deputy General Counsel for Civil Rights and then as Assistant Secretary for Fair Housing and Equal Opportunity. Prior to coming to HUD I practiced poverty and civil rights law for 20 years in Texas. I am currently the President and Chief Executive Officer of the Inclusive Communities Project, a Dallas-based fair housing focused non-profit organization which works for the creation and maintenance of racially and economically inclusive communities, the expansion of fair and affordable housing opportunities for low income families, and redress for policies and practices that perpetuate racial and ethnic discrimination and segregation.

At the outset I would like to endorse the testimony of Roberta Achtenberg, my predecessor as Assistant Secretary, from whom you heard at the Los Angeles hearing. I particularly commend to you her assessment of the structural conflicts and powerful internal constituencies at HUD which, I believe present real challenges to HUD playing an effective role in full-filling the promise of the Fair Housing Act. I am familiar with the testimony of numerous witnesses calling for moving the complaint driven enforcement process dealing with private discrimination out of HUD altogether, perhaps to a separate entity along the lines of the Equal Employment Opportunity Commission. About five years ago, I wrote a piece endorsing such a move because of the inherent inability of HUD to adequately fund or effectively handle its responsibilities as they relate to the processing of complaints of private discrimination in all aspects of the housing market. At that time I proposed that the function be transferred to the Department of Justice, and that the mandatory prosecution provisions of the Act be modified to give some degree of prosecutorial discretion to those charged with enforcement at the federal level. Others have spoken at length and given considerable thought to other ways this could ultimately work, all of which I believe have merit. For purposes of my testimony today, I simply want to express support for the idea that the private complaint process be removed entirely from HUD's jurisdiction, as I do not believe the current system works, nor do I think it is likely ever to at HUD, for many of the reasons you have heard.

However, to the extent that there has been any suggestion that the duty to affirmatively further fair housing in the country's federal housing and community development programs and policies be placed anywhere but HUD, I strongly disagree.

Forty years ago the champions of the Fair Housing Act hoped that it's passage would usher in an era of open and inclusive communities, and envisioned the Department of Housing and Urban Development as having a significant role in making that happen.

Section 808(a) of the Act imposed upon the Secretary of HUD the broad duty to "administer" the Fair Housing Act, created the position of Assistant Secretary for Fair Housing, and included additional mandates with important implications for any current efforts to create a more cross-cutting, integrated and effective federal bureaucracy which deals with the issues facing metropolitan areas.

Under the Section delineating the "Functions of Secretary", the statute states the "The Secretary of Housing and Urban Development shall--

"administer the programs and activities related to housing and urban development in a manner affirmatively to further the policies of this subchapter;" Sec. 808(e)(5).

In speaking to the impact of the statute's mandates on other federal agencies, the Act states

**"All** executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purpose of this subchapter and shall cooperate with the Secretary (of HUD) to further such purposes." Sec. 808 (d) (emphasis added)

Taken together the above provisions provide a powerful mandate not only to the HUD Secretary but to all the federal bureaucracies administering programs and activities relating to housing and urban development (including regulation of financial institutions), to affirmatively further fair housing, and specifically mandates the Secretary of HUD to oversee the implementation of those efforts.

Coordination of an interdisciplinary strategy at the federal level, as mandated by Section 808(d), is a challenging proposition but it can be effectively implemented if there is political will to do it. And there is no better time. As we deal with the challenges presented by the bailout of Wall Street, and the mortgage crisis that precipitated it, we must be mindful that there is a plethora of housing and community development programs, most but not all of which are administered by HUD, which can be put to the task of recovery on Main Street. And the Secretary of HUD can and should take a leadership role in the discussions at the Cabinet level to insure that the way that the housing crisis is solved does not further perpetuate the historic segregation that characterizes our

communities. Instead, the recovery can and must be structured in a way that protects and expands housing opportunities for people of color, families with children, and people with disabilities in communities of high opportunity. The foreclosures which litter our landscape can have a silver lining if there is someone who truly understands the importance of and the way to affirmatively further fair housing in all our housing programs.

What do I mean by that? Well, when we were at HUD, the mantra was home ownership, and it carried with it a powerful message. Homeowners were good people, they cared about their neighborhoods because they had a “stake” in the communities in which they lived, and they could build wealth while building strong communities. Well, all that is true. But the ugly underside of that message was not: that renters are bad people, renters don’t have a stake in or care about their communities, and renters and the housing in which they live are a blight on communities, to be avoided at all costs. We rightly pointed out that racial disparities in home ownership rates were not explained simply by racial disparities in income, but neglected to acknowledge that those income disparities were nonetheless real, and meant that, under the best of circumstances, there are likely to be more people of color who are renters, and renters who need housing assistance to be able to access good housing in healthy neighborhoods and communities.

We know now, and we should have known before, that, for a multitude of reasons, home ownership is not something that is right for everyone, everywhere, under all circumstances. Yes, maybe someone can get a mortgage payment that is about what they are paying in rent, but we know there is a lot more to successful home ownership than that, and it didn’t do anybody any favors to lure them in with predatory loan products to convince them otherwise. Yes, many people, particularly families with children, desperately want a house rather than an apartment, but maybe we need to work on figuring out how to make that a possibility without people take on a mortgage that they can’t get, or, if they do get, can’t afford. The point is that housing markets are made up of both homeowners and renters, and we need to refocus on helping people get into housing that works for them, rather than housing that meets some sort of idealized notion of what people ought to have. And we must make it clear that a healthy community can (and should) include both home owners and renters, high, middle, and low income people, and non-elderly families with children, as well as elderly singles. Anyone who has sat through a public hearing involving siting of a tax credit development or public housing (the neighborhood associations don’t make a distinction) knows that demonizing people who need affordable rental housing is part of every speech, and the racial attitudes that underlie their words are not really, as some like to say, “thinly veiled.”

Full-filling the duty to affirmatively further fair housing must involve taking on the issue of race and segregation, by taking effective steps to preserve and promote affordable housing outside of poor, minority concentrated areas where

historically such housing had been concentrated. This can be done with carrots (financial incentives to promote more racially and economically inclusive communities), sticks (using the enforcement resources of DOJ through Secretarial referrals to deal with discriminatory land use policies and practices, particularly in the suburbs), and effective use of the “conditioning” power on receipt of federal funds. At this point in our history, there is simply no reason for any city or town to receive federal funds if they refuse to provide a fair and reasonable amount of housing for families at every income level. The “geography of opportunity” as many have called it, could be completely redrawn if that were to happen.

In that regard I want to highlight and commend to you the Expert Report of Dr. Jill Khadduri filed in the Thompson v. HUD litigation in Baltimore. Dr. Khadduri is truly an expert in HUD both programmatically and organizationally. In the final 17 or her 26 years at HUD she was Director of the Division of Policy Development in the Office of Policy Development and Research. Her report is a roadmap to where HUD should go to effectively further fair housing as it relates to segregation of low income families of color in a regional context. I am submitting her Report for the record as part of my testimony.

Broadly speaking, none of her recommendations will surprise you. She urges HUD to de-silo fair housing and instead to require that it be an integral part of the way that all housing and development programs are administered, she urges a regional approach to providing housing, including housing for low income families. There can be no public housing policy, multifamily housing policy, single family housing policy the does not take into consideration and effectively address the duty to affirmatively further fair housing. A Consolidated Plan which does not take seriously to duty to prepare an Analysis of Impediments to Fair Housing, should not be accepted, and failure to implement and make progress under a real plan to address the impediments identified should be the basis for refusing to provide federal funds to such jurisdictions. New housing resources should be required to go into areas with high opportunity which give families access to the valuable things such communities offer, while creating more opportunities for people to know, work and go to school together across the historic lines of race and class.

We know how to do this. There have been those committed to the principles of fair housing in every administration since the passage of the FHA. It is not easy, and it will always require leadership and courage. Secretary Cisneros and Secretary Kemp, you both demonstrated that leadership and courage on this issue at crucial times, and you know how difficult it can be. But you also know that it is right, it is just, and it is imperative if we as a society are to serve our highest principles and achieve our highest aspirations. The passage of the Fair Housing Act in 1968 was the culmination of decades of work on this issue. We have not achieved its vision of an open and inclusive society, but we have made progress. The work of this Commission can be the foundation upon which we

renew our commitment to that vision, informed by our experience, and inspired by those who have gone before.

I want to conclude my testimony by quoting one of those champions. Vito Marcantonio was a Congressman from New York, who, in 1949, urged the House of Representatives to approve his amendment to the housing bill which would prohibit racial segregation and any other form of discrimination in housing receiving federal funds. There were those with progressive credentials who argued that such a prohibition would doom the bill, that it was better to get segregated housing than none at all. To that the Congressman replied:

*“Further, to those who want to use the opportunistic argument, let me tell them that you have no right to use housing against civil rights. Housing and civil rights are an integral part of each other. Housing is advanced in the interest of the general welfare and in the interest of strengthening democracy. When you separate civil rights from housing you weaken the general welfare. You weaken democracy that you pretend to strengthen...I say that we must have both civil right and housing, they are indivisible in the defense of democracy. Do we want housing with Jim Crow? I say No. I say that the issue cannot be evaded. It exists in the very marrow of the bone of this bill. I say the American people want housing with the full guaranty of equality.”*

Of course, his argument did not prevail, and the legacy of that decision is seen in our federal housing programs even today. The mandate to affirmatively further fair housing in those programs was based upon an understanding of that legacy, and reflected a commitment to dismantling that legacy going forward. That we have not fulfilled that commitment is true, but it is also true that we have at our disposal tools to put to the task. I urge the Commission to underscore that need to use them.

Finally, to insure that the duty to affirmatively further fair housing is not ignored for the next 40 years, Congress should amend the Fair Housing Act to clearly provide for an independent private right of action for its violation. Given the well documented and undeniable role of federal, state and local governments in creating and perpetuating segregation, that is the least they can do.