STILL SEPARATE AND UNEQUAL:

THE STATE OF FAIR HOUSING IN AMERICA

PRESENTED BY…

The National Commission on Fair Housing and Equal Opportunity

WITH

NFHA National Fair Housing Alliance

LC CR Education Fund™

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

LDF DEFEND EDUCATE EMPOWER

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National Commission on Fair Housing and Equal Opportunity

Forty years after the passage of the Fair Housing Act in 1968 and twenty years after the Fair Housing Amendments Act of 1988, the National Commission on Fair Housing and Equal Opportunity has been convened to address the significant and ongoing national catastrophes of housing discrimination and residential segregation. Although their antecedents are found in our country's deliberate history of establishing separate neighborhoods for black and white Americans, these issues are not merely historical. Today, they continue to play an active and significant role in the real estate rental, sales, lending and insurance markets. Furthermore, continuing practices of discrimination and segregation affect not only African-Americans, but also Latinos, Arab-Americans, Asian-Americans, families with children, and people with disabilities.

The National Commission will be co-chaired by two leaders in the area of housing policy and former Secretaries of the Department of Housing and Urban Development: Henry Cisneros and Jack Kemp. Other Commissioners will include Okianer Christian Dark, Associate Dean for Academic Affairs at the Howard University College of Law; Gordon Quan, Houston, Former Mayor Pro Tem and Chair of the Housing Committee for the City of Houston; Pat Combs, past President of the National Association of Realtors; Myron Orfield, Professor at the University of Minnesota School of Law; and I. King Jordan, President-Emeritus of Gallaudet University.

The Commission has and will conduct four daylong regional hearings – in Chicago, Los Angeles, Boston, and Atlanta, and one half day hearing – in Houston – to collect information and hear testimony about the nature and extent of illegal housing discrimination and its origins, its connection with government policy and practice, and its effect on our communities. The first two hearings were held in Chicago on July 15 and Los Angeles on September 9. The other hearings will be held in Boston on September 22 and Atlanta on October 17. The half-day Houston hearing was held on July 31 in conjunction with the annual conference of the National Bar Association. It focused on housing discrimination and re-segregation on the Gulf Coast since the hurricanes and federal housing programs that have failed to promote residential integration.

Each hearing will open with a statement from one or more of the commissioners that will recognize local and regional issues of discrimination and segregation, historically and structurally. At every hearing, witnesses will be included that can speak to the role that government policy, private discrimination, and housing industry practices play in perpetuating housing discrimination and segregation.

The first hearing was in Chicago on July 15, and focused on the history of residential racial segregation and the nature and scope of housing discrimination. Witnesses examined the extent of private actions of housing discrimination in various aspects of the housing market, focused on the demonstrable evidence that racial segregation still exists in our country, and identifed some of the negative consequences of discrimination and segregation and the positive consequences of

integration. In addition, witnesses reviewed the connections between the actions of federal agencies that have fostered segregation and the failures of the federal government to enforce the federal Fair Housing Act to address housing discrimination systematically and systemically.

The second regional hearing was held in Los Angeles. Witnesses at that hearing looked at today's foreclosure crisis, its linkage to acts of discrimination and its connection to segregated communities. In addition, witnesses examined whether or not the federal government is providing vigorous fair housing enforcement and education for the public, for the housing industry, and for victims or potential victims of discrimination. Community decision-making in areas such as zoning, its consideration of affordable housing proposals and the expenditure of federal grants continues to play a major role in how communities are sustained and grown,. Witnesses testified about opportunities to advance fair housing in local communities and at the state level. The nature and extent of discrimination based on disability and on ethnic and language minorities was also examined.

The third regional hearing, in Boston, will focus on some of the key players in advancing fair housing, and the failures, and strengths, of those players. Witnesses will look at the role of housing choice, consistent with fair housing law and policy, in establishing vibrant and integrated communities, the connections between integrated communities and the quality of life for residents, and ways federal programs can be used to achieve these communities. Because effective enforcement of fair housing laws is a critical component of ensuring that communities and especially their schools are integrated, two panels will examine the ways in which stronger fair housing enforcement at the local and national level can be used to confront discrimination and segregation, and what is needed to make fair housing enforcement by non governmental entities and by the government more effective.

The final regional hearing, in Atlanta, will look at the track record of the federal government in enforcing fair housing laws and the ways in which it has failed our country, both in individual cases and in overlooking opportunities to address discrimination systemically. There are federal enforcement actions that can be taken to make fair housing enforcement a reality, and witnesses will testify about their vision of an effective federal, state and local enforcement system.

The hearings will culminate with the release of a report in Washington, DC in December, 2008 which will detail the testimony provided at the hearings and outline recommendations for action in the future.

The hearings will be held at accessible locations and sign language interpretation will be available. Streaming video presentations of the hearings will be available at http://www.ustream.tv/channel/national-commission-on-fair-housing

Maps demonstrating the extent of residential segregation in key communities across the region will be available at each hearing.

A photo exhibit, produced by photographer and civil rights icon Bernie Kleina, on the 1960s Chicago Freedom Movement was featured at the Chicago hearing, along with videos showing some of the ways that discrimination occurs, and its effect on its victims.

The Commission was created through the partnership of four leading national civil rights organizations: the Leadership Conference on Civil Rights Education Fund (LCCR/EF); the Lawyers' Committee for Civil Rights under Law (LCCRUL); the National Fair Housing Alliance (NFHA); and NAACP Legal Defense and Educational Fund (LDF). These organizations are uniquely qualified to carry out this project. All four organizations share a commitment to fair housing carried out over decades and have worked together collaboratively on several initiatives. NFHA, LCCRUL and LDF serve on the executive committee of the LCCR, the sister organization to LCCR/EF, a coalition of nearly 200 national organizations. The LCCRUL, whose mission is to involve the private bar in providing legal services to address racial discrimination, implemented a National Commission on Voting Rights in 2005 and staged ten hearings across the country providing the entire record to the US Congress leading to the reauthorization of that seminal civil rights law in 2007. LCCR/EF, LDF and LCCRUL worked in collaboration with several other organizations to implement a public education campaign about the ongoing need for stronger enforcement of voting rights. The NAACP LDF is America's legal counsel on issues of race. Through advocacy and litigation, LDF pursues racial justice to move our nation toward a society that fulfills the promise of equality for all Americans. NFHA, the leading voice for fair housing, is the only national organization dedicated solely to ending discrimination related to housing in the United States. It is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States.

The Poverty and Race Research Action Council, along with fair housing consultant Sara Pratt and the Raben Group, LLC, are providing staff/consulting support to the Commission, along with pro bono assistance of several cooperating law firms recruited by the Lawyers' Committee for Civil Rights Under Law.

Biographies

Commissioners

Co-Chairman Henry Cisneros

Henry Cisneros is Executive Chairman of the CityView companies, which funds homebuilders across the nation to create homes priced within the range of average families. CityView is a partner in building more than 40 communities in 12 states, incorporating more than 7,000 homes with a value of over $2 billion.

After serving three terms as a City Councilmember, in 1981, Mr. Cisneros became the first Hispanic-American mayor of a major U.S. city, San Antonio, Texas. During his four terms as Mayor, he helped rebuild the city's economic base and spurred the creation of jobs through massive infrastructure and downtown improvements, marking San Antonio as one of the nation's most progressive cities. A scholarly study of America's Mayors, The American Mayor, ranked Mr. Cisneros as one of the fifteen best mayors in the nation in a period that spanned the 20th Century. After completing four terms as Mayor, Mr. Cisneros formed Cisneros Asset Management Company, a fixed income management firm operating nationally and ranked at the time as the second fastest growing money manager in the nation.

In 1992, President Clinton appointed Mr. Cisneros to be Secretary of the U.S. Department of Housing and Urban Development. He is credited with initiating the revitalization of many of the nation's public housing developments, with formulating policies which contributed to achieving the nation's highest ever homeownership rate, and with upgrading the nation's strategies to reduce homelessness. After leaving HUD in 1997, Mr. Cisneros became president and chief operating officer of Univision Communications.

Mr. Cisneros has also has been author, editor or collaborator in several books including: Interwoven Destinies: Cities and the Nation. His book project with former HUD Secretary Jack Kemp, Opportunity and Progress: A Bipartisan Platform for National Housing Policy, was presented the Common Purpose Award for demonstrating the potential of bipartisan cooperation and Casa y Comunidad: Latino Home and Neighborhood Design and was awarded the Benjamin Franklin Silver Medal in the category of best business book of 2006. His most recent collaboration with former HUD Secretary Jack Kemp, Our Homes, Our Communities, is a guide for local leaders in designing comprehensive housing policies.

Mr. Cisneros holds a Bachelor of Arts and a Master's degree in Urban and Regional Planning from Texas A&M University. He earned a Master's degree in Public Administration from Harvard University, studied urban economics at the Massachusetts Institute of Technology, holds a Doctorate in Public Administration from George Washington University, and has been awarded more than 20 honorary doctorates from leading universities. He served as an infantry officer in the United States Army. He is married to Mary Alice P. Cisneros, who in 2001 was elected to San Antonio's City Council, and is the father of three children – Teresa, Mercedes, and John Paul – and has three grandchildren.

Co-Chairman Jack Kemp

Jack Kemp is Founder and Chairman of Kemp Partners, a strategic consulting firm which seeks to provide clients with strategic counsel, relationship development, and marketing advice, helping them to accomplish business and policy objectives.

From January 1993 until July 2004 Mr. Kemp was the co-director of Empower America, a Washington, D.C.-based public policy and advocacy organization he co-founded with William Bennett and Ambassador Jeane Kirkpatrick.

Mr. Kemp received the Republican Party's nomination for Vice President in August of 1996 and since then has campaigned nationally for reform of taxation, Social Security and education.

In 1995, Jack Kemp served as chairman of the National Commission on Economic Growth and Tax Reform, which promoted major reform and simplification on our tax code in order to unleash the American entrepreneurial spirit, increase economic growth and expand access to capital for all people.

Prior to founding Empower America, Mr. Kemp served for four years as Secretary of Housing and Urban Development. He was the author of the Enterprise Zones legislation to encourage entrepreneurship and job creation in urban America and continues to advocate the expansion of home ownership among the poor through resident management and ownership of public and subsidized housing.

Before his appointment to the Cabinet, Mr. Kemp represented the Buffalo area and western New York for 18 years in the United States House of Representatives from 1971-1989. He served for seven years in the Republican Leadership as Chairman of the House Republican Conference.

Before his election to Congress in 1970, Mr. Kemp played 13 years as a professional football quarterback. He was captain of the San Diego Chargers from 1960-1962. He was also the captain of the Buffalo Bills, the team he quarterbacked to the American Football League Championship in 1964 and 1965, when he was named the league's most valuable player. He co-founded the American Football League Players Association and was five times elected president of that Association. In 2006 Mr. Kemp was named as one of the NCAA's "100 Most Influential Student-Athletes". He was also recognized by Sporting News as one of the Top 50 Quarterbacks of All Time in 2005.

Mr. Kemp was born and raised in Los Angeles and educated in the LA public schools. He is married to the former Joanne Main of Fillmore, CA. Both are graduates of Occidental College. They have four children (Jeffrey, Jennifer, Judith and Jimmy) and seventeen grandchildren. The Kemps reside in Bethesda, Maryland and have a home in Vail, Colorado. They are also founding members and Honorary Board members of the Yellowstone Private Ski & Golf Club in Big Sky, Montana.

Commissioner Pat Combs

Pat V. Combs, a REALTOR® from Grand Rapids, Mich., is the 2008 Immediate Past President of the National Association of Realtors® (NAR). NAR is America's largest professional association, representing more than 1.3 million members involved in all aspects of the residential and commercial real estate industries.

Pat served as NAR President in 2007 and NAR President-Elect in 2006. In 2005, she was NAR First Vice President. She served as NAR Regional Vice President in 1997 of Region VI, composed of Michigan and Ohio.

A REALTOR® since 1971, Pat is the Vice President of Coldwell Banker-AJS-Schmidt, the second largest real estate company in Michigan. She holds the professional designations of Accredited Buyer Representative (ABR®); Certified Residential Specialist (CRS®); Graduate, REALTOR® Institute (GRI); and Performance Management Network (PMN).

Pat is a member of the NAR Leadership Team. In 2003, she served as National Fundraising Chair for the REALTORS® Political Action Committee and is an RPAC "Golden R." She has been chair of three major NAR committees: Education, Equal Opportunity, and Public Policy. Pat also served as committee liaison for three years.

At the state level, Pat was President of the Michigan Association of REALTORS® in 1995, and was chosen by her peers as Michigan "REALTOR® of the Year" in 2002. She was Michigan President of the Women's Council of REALTORS® in 1986. Active in her community, she served as chairman of the Michigan Real Estate Commission in 2002.

In 1990, Pat served as President of the Grand Rapids Association of REALTORS® .

Pat V. Combs, and her husband, Guy Combs, have a combined family of six children and four grandchildren.

Commissioner Okianer Christian Dark

Ms. Dark is the Associate Dean of Academic Affairs and Professor of Law at Howard University School of Law. Associate Dean Dark joined the faculty at the Howard University School of Law in the fall of 2001 where she teaches Torts, Products Liability, Advanced Torts and Health Law. She has been Associate Dean for Academic Affairs since July 2005 and also serves on a teaching team on Bioethics at the Howard University Medical School.

Associate Dean Dark served in the United States Attorney's Office (USAO) in Portland, Oregon, where she was an Assistant United States Attorney in the Civil Division and Supervisor of the Community Relations Unit. Prior to joining the USAO, Professor Dark was on the faculty of the T.C. Williams School of Law at the University of Richmond, in Richmond, VA. She joined the T.C. Williams faculty in 1984, where she taught Torts, Products Liability, Antitrust and Gender and the Law. She was the recipient of the University of Richmond's Distinguished Educator Award in 1990 and 1993 and the Distinguished Faculty Award by the Virginia Women Attorneys Association Foundation in 1991. At Howard, she received the Warren Rosmarin Professor Of Law Excellence Award in Teaching and Service and the Graduate Students Award for faculty of the year.

Associate Dean Dark has worked on Fair Housing issues for many years. She has offered her personal story as a victim of housing discrimination in a videotape titled "Who Can Ever Get Used to This?" In 1997, she was one of the recipients of the National Fair Housing Alliance's Awards for Excellence in recognition of her role in the promotion of equal housing opportunity for all. She also received a Hope for People Award in 1991 for her work on Fair Housing Matters from Hope Fair Housing.

Associate Dean Dark is very active in her community. In Portland, Oregon, she established a Saturday School Program for primary school-age children at the Urban League of Portland. She also established a Children's Book Fair (directed at preschool and school age children up to 8th grade) for the Urban League's annual event known as "Do The Right Thing" Day, which encourages children who are in school and are doing the right thing. This Book Fair continues on an annual basis in Portland now sponsored by the Multnomah County Library.

In the field of health, she was a founding member of the Board of Trustees of the Northwest Health Foundation in Portland, Oregon. She also was the Chair of the Grants committee for that foundation which gave out about $2 million dollars in grants to nonprofit and governmental organizations to improve the health of Oregon and Southwest Washington residents. Presently, she is Chair of the Montgomery County Commission on Health which is the only citizen commission in Montgomery County concerned with public health.

Associate Dean Dark is a member of the Pennsylvania and New Jersey Bars and an associate member of the Virginia Bar. She received her Bachelor of Arts Degree Magna Cum Laude from Upsala College, in East Orange, New Jersey and her Juris Doctor from Rutgers University School of Law in Newark, New Jersey. At Rutgers University, Associate Dean Dark was the recipient of the Alumni Senior Prize (awarded to a graduating senior exhibiting the highest achievement in the law school and potential for success in the legal profession).

Commissioner I. King Jordan

King Jordan is the President Emeritus of Galludet University, the world's only university with all programs and services designed specifically for students who are deaf or hard of hearing.

In 1988, Gallaudet students, with support from many alumni, faculty, staff and friends of the University, protested the Board of Trustees' appointment of a hearing person to the presidency. Called Deaf President Now (DPN), the week-long protest was a watershed event in the lives of deaf and hard of hearing people all over the world. At its conclusion, the Board reversed its decision and named I. King Jordan, one of three finalists for the position, the eighth president of Gallaudet and the first deaf president since the institution was established in 1864.

Since DPN, I. King Jordan's leadership has heightened public awareness of the important educational contributions Gallaudet makes to the nation and the world. He serves as an international spokesperson for deaf and hard of hearing people, as well as an advocate for all persons with disabilities. Much sought after as a public speaker, Dr. Jordan continues to challenge the American public to examine their attitudes toward people with disabilities and to open their minds, hearts and workplaces to them.

Dr. Jordan is a native of Glen Riddle, Pennsylvania, a small town near Philadelphia. After graduating from high school, he enlisted in the Navy and served four years. An automobile accident left him profoundly deaf at age 21.

Dr. Jordan earned a B.A. in psychology from Gallaudet in 1970. The following year he earned an M.A., and in 1973 a Ph.D., both in psychology and both from the University of Tennessee. Upon receiving his doctorate, Dr. Jordan joined the faculty of Gallaudet's Department of Psychology. In 1983 he became chair of the department; three years later he was appointed dean of the College of Arts and Sciences.

As professor, department chair, dean, and president, Dr. Jordan made numerous scholarly contributions to his field. In addition, he has been a research fellow at Donaldson's School for the Deaf in Edinburgh, Scotland, an exchange scholar at Jagiellonian University in Krakow, Poland, and a visiting scholar and lecturer at schools in Paris, Toulouse, and Marseille, France.

Dr. Jordan holds eleven honorary degrees and is the recipient of numerous awards, among them: the U.S. Presidential Citizen's Medal, the Washingtonian of the Year Award, the James L. Fisher Award from the Council for Advancement and Support of Education (CASE), the Larry Stewart Award from the American Psychological Association, and the Distinguished Leadership Award from the National Association for Community Leadership. In 1990, President George Bush appointed Dr. Jordan Vice Chair of the President's Committee on Employment of People with Disabilities (PCEPD). In 1993, President Clinton reappointed Dr. Jordan Vice Chair of PCEPD.

Dr. Jordan and his wife, Linda have two grown children, I. King III, an associate professor of bioinformatics at Georgia Institutes of Technology, and Heidi, an administrator at the Florida School for the Deaf.

Dr. Jordan stepped down as Gallaudet president on December 31, 2006.

Commissioner Myron Orfield

Professor Myron Orfield is the Executive Director of the Institute on Race & Poverty, a non-resident senior fellow at the Brookings Institution in Washington, D.C., and an affiliate faculty member at the Hubert H. Humphrey Institute. He teaches and writes in the fields of civil rights, state and local government, state and local finance, land use, questions of regional governance, and the legislative process. For 2005-06, Professor Orfield served as the Fesler-Lampert Chair in Urban and Regional Affairs.

Professor Orfield graduated, summa cum laude, from the University of Minnesota, was a graduate student at Princeton University, and has a J.D. from the University of Chicago, where he was a member of the University of Chicago Law Review. Following law school, he clerked for the United States Court of Appeals for the 8th Circuit and then returned to the University of Chicago Law School as a Research Associate and Bradley Fellow at the Center for Studies in Criminal Justice. After working as an associate at Faegre & Benson in Minneapolis, he served as a Special Assistant Attorney General of Minnesota in the Solicitor General's Division.

In 1990, Professor Orfield was elected to the Minnesota House of Representatives, where he served five terms, and to the Minnesota Senate in 2000, where he served one term. There he was the architect of a series of important changes in land use, fair housing, and school and local government aid programs. His first book, Metropolitics: A Regional Agenda for Community and Stability (Brookings 1997), a study of local government structure and demographic, relates to these efforts.

For over a decade, Professor Orfield has been president of a nationally respected regional research organization undertaking studies involving the legal, demographic and land use profiles of various American metropolitan areas. His second book, American Metropolitics: The New Suburban Reality (Brookings 2002), is a compilation of his work involving the nation's 25 largest regions. Orfield’s third book, Region: Law, Policy and the Future of the Twin Cities is forthcoming (2008, University of Minnesota Press).

Commissioner Gordon Quan

Gordon Quan is the former Mayor Pro Tem and Chair of the Housing Committee for the City of Houston. Mr. Quan has had a long history of community activism. Thee first Asian American elected citywide to the Houston City Council and first to serve as Mayor Pro Tem, Gordon believes each person can make a difference.

Born in China but raised in Houston, Gordon was a founding member of the Asian American Bar Association of Houston and the Asian American Coalition. He has served in leadership positions with several organizations - President, Houston Foundation; President, East Downtown Tax Increment Redevelopment Zone; Chair, Blue Ribbon Commission to End Chronic Homelessness in Houston; Chair, Plan for Affordable Housing in Houston; President, Asian American Democrats of Texas; President, Asian Pacific American Municipal Official of the National League of Cities.

Professionally, Gordon is the founder and managing partner of Quan, Burdette and Perez, P.C., one of the largest and most respected U.S. immigration law firms in America with offices in Houston, San Antonio, The Rio Grand Valley and Mexico City. He has been selected for Best Lawyers in America, Texas Super Lawyers, Best Lawyers in Houston, and is AV Rated by Martindale-Hubbell.

Gordon continues his community service as a member of the board of directors of the Coalition for the Homeless (Houston), the South Texas College of Law, Catholic Charities, and Neighborhood Center, Inc. He also chairs the Asian Chamber of Commerce and is Vice-chair of the Asia Society, Texas Center.

Gordon has been recognized as a "Trailblazer" by the National Asian Pacific American Bar Association, "Spirit of America" by the National Chinese American Citizen Alliance, a "Bridge Builder" by the Masons Society (the highest honor given to a non-Mason), "Friend of the Homeless" by the Coalition for the Homeless, "Councilmember of the Year" by the Houston Police Officers Union, a "Voice for Children" by Children at Risk among many others.

Mr. Quan earned degrees from the University of Texas (B.A. 1970), the University of Houston (M.Ed. 1973) and the South Texas College of Law (J.D. 1977).

Above all, Gordon Quan has always been a person who cares deeply about others and has tried to make life better for all. Married to the former Sylvia Lau for more than 30 years, they are the parents of three daughters, Caroline and husband Patrick Long, Kristen and husband Hunter Hammill, Katherine and grand-daughter Victoria Long

Guest Commissioner Tina Brooks

Tina Brooks serves as the Commonwealth's housing policy chief within the Patrick Administration's Executive Office of Housing and Economic Development.

With more than 18 years of experience in affordable housing finance and development, Brooks is a key architect in expanding affordable housing opportunities in Massachusetts.

“Given Tina’s vast knowledge, experience and expertise in housing and community development issues, she is the ideal person to elevate to the top housing position within the Patrick administration,” said Secretary of Housing and Economic Development Dan O’Connell.

A Jamaica Plain resident, Brooks most recently served as the director of the Boston office of the Local Initiatives Support Corporation (LISC), a program that provides loans, grants and technical assistance to spur the development of affordable housing, new businesses, recreational facilities, schools, safety programs and other neighborhood institutions.

Brooks began her career as a landscape architect with the Pittsburgh firm Environmental Planning and Design, developing site and land plans for various community planning projects. She earned her master’s degree in real estate development in 1989 at MIT’s Center for Real Estate.

Following graduate school, Brooks worked as a development consultant with Greater Boston Community Development, now known as The Community Builders. She moved with TCB to Philadelphia and assisted community-based nonprofit developers in financing and completing affordable housing developments.

In 1994 Brooks became the program director for LISC’s Philadelphia program, successfully introducing a series of housing and other neighborhood revitalization initiatives relying on effective collaboration with local government and the corporate community on behalf of neighborhood interests.

Co-Sponsoring Organizations

Leadership Conference on Civil Rights Education Fund

Founded in 1969 as the education and research arm of the civil rights coalition, the Leadership Conference on Civil Rights Education Fund (LCCREF) uses its research and education campaigns to promote an understanding of the need for national policies that support civil rights and social and economic justice. LCCREF initiatives are grounded in the belief that an informed public is more likely to support effective federal civil rights and social justice policies.

Through its public education campaigns on critical policy issues such as voting rights, judicial nominations, education reform, and affirmative action, LCCREF accentuates the vital relationship between the movement's storied past and contemporary civil rights issues. Our work presents the different perspectives of the constituencies of the coalition, thus providing policy makers, the press, and the public a broader context for the discussion of policy issues than would be available from any one organization.

Lawyers' Committee for Civil Rights Under Law

The Lawyers' Committee for Civil Rights Under Law, a nonpartisan, nonprofit organization, was formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The principal mission of the Lawyers' Committee is to secure, through the rule of law, equal justice under law.

The Committee's major objective is to use the skills and resources of the bar to obtain equal opportunity for minorities by addressing factors that contribute to racial justice and economic opportunity. Given our nation's history of racial discrimination, de jure segregation, and the de facto inequities that persist, the Lawyers' Committee's primary focus is to represent the interest of African Americans in particular, other racial and ethnic minorities, and other victims of discrimination, where doing so can help to secure justice for all racial and ethnic minorities.

National Fair Housing Alliance

Founded in 1988 and headquartered in Washington DC, the National Fair Housing Alliance (NFHA) is the only national organization dedicated solely to ending discrimination in housing, lending and insurance. NFHA works to eliminate housing discrimination and to ensure equal housing opportunity for all people through leadership, education and outreach, membership services, public policy initiatives, advocacy and enforcement. NFHA works to achieve the dual purpose of the Fair Housing Act: to eliminate housing discrimination and to promote residential integration. Today NFHA is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States. NFHA recognizes the importance of "home" as a component to the American Dream and is dedicated to the creation of diverse, barrier free communities across the nation.

NAACP Legal Defense and Educational Fund, Inc.

The NAACP Legal Defense & Educational Fund, Inc. is the nation's oldest civil rights law firm. Founded by Thurgood Marshall in 1940, we have represented African Americans in most of the country's major racial discrimination cases. In many respects, LDF is legal counsel to America on issues of race. Although LDF works primarily through the courts, its strategies include advocacy, educational outreach, monitoring of activity in the executive and legislative branches, coalition building and policy research. LDF focuses on issues of education, voter protection, economic justice and criminal justice. LDF pursues racial justice to move our nation toward a society that fulfills the promise of equality for all Americans

ACKNOWLEDGMENTS

The sponsoring organizations would like to thank the many organizations and individuals who have provided financial and in-kind assistance to the National Commission on Fair Housing and Equal Opportunity. The important work of the Commission would not be possible without their support. Each of our sponsors is committed to an open and honest dialogue on the importance of fair housing and strategies to fulfill the promise of the Fair Housing Act. The opinions expressed at the hearings and final recommendations do not necessarily reflect their views.

We are deeply appreciative for the support of Access Living; Allstate, Dechert LLP; DLA Piper; Fannie Mae; Freddie Mac; the Ford Foundation; Jim Hanna, Hanna Reporting & Video Services; Bernie Kleina, HOPE Fair Housing (IL); MALDEF; Justin Massa, MoveSmart.org; Jim McCarthy and David Laurie, Miami Valley Fair Housing Center, Inc. (OH) webcasting; Mitchell, Silberberg and Krupp; National Association of Realtors; New Bridge Videography; Rosenberg Foundation; Larry Silfen, Tsq Reporting; Southern Poverty Law Center; Wachovia; Weil, Gotshal; and Winston & Strawn LLP.

Conference Agenda

Monday September 22, 2008

National Commission on Fair Housing and Equal Opportunity
The State of Fair Housing in America

Boston
September 22, 2008

8:00 AM Breakfast and Registration

9:00 AM Introductions and Opening Remarks
Tina Brooks, Undersecretary for Housing and Community Development, Commonwealth of Massachusetts

9:30 AM Panel 1
More than Housing Alone: The Impact of Segregated Housing on the Quality of Life in Communities

- John Brittain, Chief Counsel and Senior Deputy Director, Lawyers Committee for Civil Rights Under Law
- Dolores Acevedo-Garcia, Associate Professor, Department of Society, Human Development, and Health, Harvard School of Public Health
- Ingrid Ellen, Associate Professor of Public Policy and Urban Planning and Co-Director of NYU's Furman Center for Real Estate and Urban Policy, Robert F. Wagner Graduate
- David Harris, Managing Director of the Charles Hamilton Houston Institute for Race and Justice at Harvard Law School

10:30 AM Break

11:00 AM Panel 2
Beyond HUD: The Critical Role of the Private Sector in Enforcing Fair Housing Laws, Educating Consumers, and Promoting Integration

- Janis Bowdler, Associate Director, Wealth-Building Policy Project, National Council of La Raza
- Tim Sandos, President and Chief Executive Officer of the National Association of Hispanic Real Estate Professionals
- Erin Kemple, Executive Director, Connecticut Fair Housing Center
- Ginny Hamilton, Executive Director, Fair Housing Center of Greater Boston
- Cathy Cloud, Senior Vice President, National Fair Housing Alliance

12:00 PM Lunch

1:30 PM Panel 3
The Federal Mandate: Removing Barriers to Fair Housing at HUD

- John Goering, Professor, School of Public Affairs, Baruch College and the Ph.D. Program in Political Science at The Graduate Center, City University of New York
- Dale Rhines (former Equal Opportunity Specialist, HUD FHEO Office of Enforcement)
- Michael Allen, Relman and Dane, Ltd.
- Henry Korman, Attorney, Consortium for Citizens with Disabilities Housing Task Force

2:30 PM Break

3:00 PM Panel 4

The Section 8 Voucher Program: Promoting Housing Integration in Federal Housing Subsidy Programs

- Xavier Briggs, Associate Professor of Sociology and Urban Planning, Massachusetts Institute of Technology
- Barbara Sard, Director of Housing Policy, Center on Budget & Policy Priorities
- Cynthia Watts-Elder, Executive Director, Connecticut Fair Housing Center
- Alexander Polikoff, Staff Counsel and Director, BPI public housing project, Business and Professional People for the Public Interest (BPI)

4:00 PM Additional Commentary

5:15 PM Adjournment

Biographies

Witnesses

Panel 1
More Than Housing Alone: The Impact of Segregated Housing on the Quality of Life in Communities

John C. Brittain is the Chief Counsel and Senior Deputy Director of the Lawyers' Committee for Civil Rights Under Law in Washington, DC. Brittain, a veteran former law school dean at Texas Southern University in Houston, law professor at the University of Connecticut School of Law and public interest civil rights lawyer with a career spanning 39 years with residences in 4 states, has served as the president of the National Lawyers' Guild, on the Executive Committee and the Board of the ACLU, and legal counsel to NAACP local branches, state conference and national office of the General Counsel. He received the NAACP's highest honor for a lawyer, the coveted William Robert Ming Advocacy Award for legal service without a fee. *Brittain has focused on the intersection between housing and school segregation. While a law professor, he co-taught a course with Phil Tegeler, Executive Director,* Poverty & Race Research Action Center, *on public policy and legal decisions that contribute to the condition of structural poverty in low income and minority neighborhoods.*

Dolores Acevedo-Garcia has a doctoral degree in public policy and demography. She joined the HSPH faculty in 1998. Her research interests include the effect of social determinants (e.g. residential segregation, immigrant integration) on health disparities, especially along racial and ethnic lines, and the role of non-health policies (e.g. housing policies, immigrant policies) in reducing those disparities.

Ingrid Gould Ellen is Associate Professor of Urban Planning and Public Policy at New York University's Wagner School and Co-Director of NYU's Furman Center for Real Estate and Urban Policy. Her research centers on neighborhoods, affordable housing, and racial segregation. She is author of *Sharing America's Neighborhoods: The Prospects for Stable Racial Integration* (Harvard University Press, 2000) and numerous journal articles. Before coming to NYU, Professor Ellen held visiting positions at the Urban Institute and the Brookings Institution. She attended Harvard University, where she received a bachelor's degree in applied mathematics, an M.P.P., and a Ph.D. in public policy.

David J. Harris is the Managing Director of the Charles Hamilton Houston Institute for Race and Justice at Harvard Law School. Prior to assuming this position he served as founding Executive Director of the Fair Housing Center of Greater Boston. He previously served as a fair housing investigator with the U.S. Department of Housing and Urban Development, before which he was a Civil Rights Analyst with the U.S. Commission on Civil Rights, both in Washington, D.C., and the New England Regional Office. He holds a Ph.D. in sociology from Harvard University, a B.A. from Georgetown University and is an adjunct faculty member of Cambridge College. David serves on the boards of several non-profit organizations, and is the President of the Board of Directors of the Massachusetts Foundation for the Humanities. He lives in West Medford, Massachusetts, with his wife and son, where he chairs the Medford Human Rights Commission.

Panel 2
Beyond HUD: The Critical Role of the Private Sector in Enforcing Fair Housing Laws, Educating Consumers, and Promoting Integration

Janis Bowdler is Associate Director for wealth-building at the National Council of La Raza (NCLR), the largest national Hispanic civil rights and advocacy organization in the United States. At NCLR, Bowdler oversees policy analysis, research, and advocacy on issues related to housing, homeownership, wealth-building and financial services. She has expertise in Latino homeownership and housing discrimination; predatory lending and other financial abuses; asset accumulation and net worth of Latino families; credit cards, auto loans, and other financial services. Before joining NCLR, Bowdler was a project manager for the residential redevelopment project at Famicos Foundation, Cleveland, Ohio.

Timothy Sandos, a former emerging markets executive, is now President and CEO of the National Association of Hispanic Real Estate Professionals (NAHREP). Prior to his appointment, Sandos was executive vice president of Emerging Markets for St. Louis-based CitiMortgage, where he led the company's programs and initiatives that targeted minority and underserved market segments throughout the nation.

A former NAHREP national board member, Sandos has held executive posts at numerous companies during his career. He joined CitiMortgage through the acquisition of his employer Principal Residential Mortgage where he directed emerging markets programs. Prior to that assignment, he was state vice president and chief operating officer for QWEST Communications (formerly U.S. West) and its 3,200-employee operation based in Omaha, Neb.

In the early part of his professional career, he was executive assistant to Denver's former mayor Federico Peña. Sandos was later elected to an "at large" seat on the Denver City Council, that successfully managed the construction and opening of the Denver International Airport (DIA), the largest public works project in the world at the time. In 1994, he was recognized by the U.S. Hispanic Chamber of Commerce as the "Regional Government Advocate of the Year" for his work on behalf of Hispanic businesses.

In 2001, he was chosen by Secretary of Defense Donald Rumsfeld to participate in the Joint Civilian Orientation Conference, a review of all five U.S. military branches. He is also a founding member of the National Hispanic Caucus of State Legislators.

Erin Kemple is the Executive Director of the Connecticut Fair Housing Center (“the Center”), a private non-profit fair housing organization founded in 1994 serving the entire state of Connecticut. She graduated from the College of the Holy Cross in 1981and Suffolk University Law School in 1985. In 1989, Ms. Kemple and a coalition of legal services lawyers, shelter workers, and community advocates concerned about the rising rate of homelessness due to discrimination founded the Housing Discrimination Project. She became the organization’s first legal director in 1995 and was appointed Executive Director in March 1996.

In February 2003, Ms. Kemple joined the Connecticut Fair Housing Center. Since beginning work at the Center, she has overseen an expansion of the Center's staff from five full-time employees to ten full and part-time personnel. In addition to its fair housing enforcement work, the Center is partnering with State of Connecticut's Department of Economic and Community Development to provide guidance and training to state housing providers and Small Cities CDBG recipients on the requirements of the fair housing laws for those programs as well as assisting in revising state housing manuals and procedures on fair housing. She is currently serving on the Board of the National Fair Housing Alliance, an organization representing private fair housing groups from around the country.

Ginny Hamilton is the Executive Director of the Fair Housing Center of Greater Boston (FHCGB). Founded in 1998 to eliminate housing discrimination and promote open communities throughout the region, the FHCGB is the region's only comprehensive fair housing organization. The FHCGB provides expertise and a full tool kit of services: training, community outreach, testing, case advocacy, research and public policy advocacy. Ms. Hamilton has been with the FHCGB since its inception as a founding board and staff member. She was promoted to Executive Director in October 2006. Ms. Hamilton has more than sixteen years professional experience in campaign organizing and policy advocacy for social change. Since 1995, her work has focused in the area of housing and homelessness. Formerly Director of Public Policy for the Massachusetts Coalition for the Homeless, Ms. Hamilton has utilized her policy and grassroots organizing expertise to build alliances promoting civil rights and affordable housing.

Cathy Cloud is Senior Vice President of the National Fair Housing Alliance. Ms. Cloud joined NFHA in January of 1991, shortly after it opened its first office. As Senior Vice President, she is responsible for supervising NFHA programs in the areas of compliance, membership services, education and outreach, consulting, community development, finances, and administration. Ms. Cloud is responsible as well for the development and implementation of Fair Housing School©, NFHA's comprehensive training and education program for fair housing personnel.

During her tenure at NFHA, Ms. Cloud has been responsible for supervision of national testing and investigation programs in the areas of homeowners insurance and mortgage lending. These efforts led to settlement agreements with many of the nation's largest homeowners insurance companies who changed their underwriting guidelines and implemented compliance programs. Ms. Cloud has provided training and consulting services to public and private fair housing organizations, the housing industry, federal financial regulatory agencies, mortgage lending institutions, homeowners insurance providers, and national retail chains. She is also the author of articles on mortgage lending discrimination and co-author of chapters in books on mortgage lending and insurance discrimination.

Ms. Cloud received an M.A. in Public Policy from the University of Chicago and a B.A. in Political Science from the University of Illinois (Urbana).

Panel 3
The Federal Mandate: Removing Barriers to Fair Housing at HUD

John Goering received his Ph.D. from Brown University, Ph.D. in sociology and demography and is currently a Professor at the City University of New York, with appointments the School of Public Affairs at Baruch College and in the Ph.D. Program in Political Science at the Graduate Center. While at the Office of Research at HUD from 1978 to 1999, he designed research on neighborhood change and civil rights issues. His research has focused upon housing, neighborhood development, and race and ethnic issues. He is author of roughly fifty articles and reviews, as well as editor or author of six books including, The Best Eight Blocks in Harlem; Housing Desegregation and Federal Policy; Mortgage Lending, Racial Discrimination and Federal Policy; the first book length study on MTO: Choosing a Better Life? Evaluating the Moving to Opportunity Experiment; Wars on Terrorism and Iraq: Human Rights, Unilateralism, and U.S. Foreign Policy; and most recently Fragile Rights Within Cities: Government, Housing, and Fairness.

Dale Rhines worked on fair housing issues from 1985 to 2003 and was employed by the U.S. Department of Housing and Urban Development from 1991 to 2003, with the exception of one year. He worked as an investigator out of the Chicago Regional Office for Fair Housing and Equal Opportunity, was Acting Director of the Denver FHEO Office for a period of time, served as an Acting Division Director in the Atlanta FHEO Office and worked with the Washington, DC FHEO Office of Enforcement for a total of six years. Dale worked on complex and difficult cases and often worked with various offices across the country. He also served as the Special Assistant to the General Deputy Assistant Secretary fro FHEO. Prior to working for HUD, Dale worked for the Ohio Civil Rights Commission, the City of Cleveland Community Relations Board and served as the Director of two non-profit agencies in the Cleveland area.

Michael Allen is Counsel to the civil rights law firm of Relman & Dane, PLLC where his practice focuses on litigation under the Fair Housing Act and Americans with Disabilities Act. He joined the firm in June 2006, after 20 years of litigation and other advocacy on behalf of poor people and people with disabilities. A nationally recognized expert on the disability provisions of the Fair Housing Act, Michael has litigated and lobbied at the federal and state levels, and appeared in national print and electronic media. In addition, Michael has written, lectured and consulted widely on civil rights and NIMBYism. He is a 1979 graduate of Georgetown University School of Foreign Service, and received his law degree in 1985 from the University of Virginia. He is admitted to practice in the District of Columbia and Virginia.

Henry Korman is an attorney with a national legal practice specializing in affordable housing development, civil rights and fair housing, and in the financing, operational, and compliance requirements associated with local, state and federal affordable housing programs. He provides legal representation to individuals, non-profit and for-profit developers, property managers, asset managers, social services providers, and local and national civil rights and advocacy organizations. Mr. Korman's background includes service as in-house transactional and corporate counsel to The Community Builders, a national non-profit affordable housing developer,

providing representation in complex transactions involving such programs as low income housing tax credits, tax-exempt bond financing, and HOPE VI and HOME. He also served as a civil rights specialist at the U.S. Department of Housing and Urban Development.

He is a member of the Board of Trustees of the Boston Center for Independent Living, the Newton Housing Partnership, is the chair of the City of Newton Fair Housing Task Force, and is the co-chair of the Fair Housing Committee of the American Bar Association's Affordable Housing Forum.

Panel 4
The Section 8 Voucher Program: Promoting Housing Integration in Federal Housing Subsidy Programs

Xavier de Souza Briggs is Associate Professor of Sociology and Urban Planning at the Massachusetts Institute of Technology (MIT) and a faculty associate of The Urban Institute. A former community planner and senior U.S. government official, his work is about democracy, inequality, and racial and ethnic diversity in cities. He is the editor of The Geography of Opportunity: Race and Housing Choice in Metropolitan America (Brookings, 2005), which won the highest book award in planning, and author of Democracy as Problem-Solving: Civic Capacity in Communities Across the Globe as well as the forthcoming Moving to Opportunity: The Story of an American Experiment to Fight Ghetto Poverty. He ran the Clinton Administration's urban policy research and development unit at the U.S. Department of Housing and Urban Development.

Barbara Sard is the Director of Housing Policy at the Center on Budget and Policy Priorities in Washington, D.C., where she has worked since 1997. The housing work of the Center is focused primarily on the housing voucher program and on the intersection of housing and welfare reform, nationally and at the state and local levels. Prior to working for the Center, Barbara was the Senior Managing Attorney of the Housing Unit at Greater Boston Legal Services, where she worked for more than 19 years. She began her career as a legal services attorney in 1974 after graduating from Harvard Law School, and has worked extensively on family welfare, homelessness and housing issues and their intersections. Barbara is a leading expert on tenant-based rental assistance and the intersection of housing and welfare policy, and is a board member of the National Low Income Housing Coalition. In May 2004 she was elected as one of the five members of the Board of Commissioners of the Brookline (MA) Housing Authority.

Cynthia Watts-Elder attended the University of Connecticut and its law school, graduating from law school in 1988. She ended her fifteen-year public sector legal career as the Executive Director of the Connecticut Commission on Human Rights and Opportunities, serving from 1999 until 2003. Since 2003, she has been employed as in-house Counsel at The Phoenix (a life insurance and financial services company) in Hartford, CT concentrating on labor and employment matters. Believing in giving back to her community, Cynthia currently serves as Co-Chair for the CT Fair Housing Center; is a member of the Board of Directors for the Urban League of Greater Hartford, Connecticut and serves as an adjunct professor at Manchester Community College in Manchester, Connecticut.

In September 1999, **Alexander Polikoff** stepped down as Executive Director of BPI (Business and Professional People for the Public Interest), a Chicago-based public interest law and policy center, having held that position for 29 years. He continues to serve on the BPI legal staff, and retains responsibility for BPI's ongoing Gautreaux public housing litigation as lead counsel for the plaintiff class.

Before coming to BPI in April 1970, Polikoff was a member of the Chicago law firm of Schiff Hardin & Waite. He received his bachelors and masters degrees from the University of Chicago (the latter in English language and literature), and a J.D. from the University of Chicago Law School, where he was editor-in-chief of the Law Review.

Polikoff has served as a director and General Counsel of the Illinois Division of the American Civil Liberties Union, and is a former national ACLU board member. For both BPI and ACLU he has carried on litigation in the housing, civil rights and environmental fields, including a successful argument before the United States Supreme Court in the Gautreaux litigation. In 2006 he received the Lifetime Achievement Award of The American Lawyer magazine.

Witness Testimony Summaries

Panel 1
More than Housing Alone: The Impact of Segregated Housing on the Quality of Life in Communities

John Brittain, Lawyers Committee for Civil Rights Under Law

John Brittain will discuss the connection between fair housing enforcement, integration, and the quality of life in neighborhoods, communities and for individuals; the importance of integration for education, health and employment.

Dolores Acevedo-Garcia, Harvard School of Public Health

Dolores Acevedo-Garcia will discuss the relation between fair housing and public health.

Ingrid Ellen, Robert F. Wagner Graduate School of Public Service at NYU

Drawing on her research on racial integration, Professor Ellen will discuss policies that might encourage households to consider a broader set of neighborhoods when making their residential choices and foster the development of stable, racially integrated communities.

David Harris, Harvard Law School

David Harris will discuss local fair housing enforcement and its role in residential and school integration.

Panel 2
Beyond HUD: The Critical Role of the Private Sector in Enforcing Fair Housing Laws, Educating Consumers, and Promoting Integration

Janis Bowdler, National Council of La Raza
Janis Bowdler will discuss Enforcement issues within Latino communities.

Tim Sandos, National Association of Hispanic Real Estate Professionals
Tim Sandos is President and Chief Executive Officer of the National Association of Hispanic Real Estate Professionals. His testimony will identify the nature and extent of the exclusion of Latino homebuyers from the housing market and the effect of those actions. He will also address the effect of subprime lending and foreclosure on Latinos, and offer a vision for change for Latino homebuyers.

Erin Kemple, Connecticut Fair Housing Center
Ms. Kemple will highlight the importance of the Center's enforcement work in ensuring integration and preserving diverse communities. The strategies highlighted by Ms. Kemple include legal assistance given to the victims of housing discrimination both by the Center's attorneys and by partnering with large national firms who agree to assist the Center's client pro bono. In addition, the Center is undertaking several systemic solutions to Connecticut's hyper-segregation by performing homesales audit testing, mortgage lending audit testing, and testing of newly constructed multi-family units to determine if they meet the federal Fair Housing Act's accessibility regulations. Finally, Ms. Kemple will outline the difficulties faced by the Center in performing its work because of an unstable and insufficient funding base.

Ginny Hamilton, Fair Housing Center of Greater Boston
Ms. Hamilton's comments before the National Commission on Fair Housing And Equal Opportunity will stem from the premise that systemic action is necessary to undo longstanding patterns of residential segregation. She will discuss examples the FHCGB is undertaking through community engagement, legal action, and policy advocacy, and detail policy recommendations for action beyond the scope of private efforts.

Cathy Cloud, National Fair Housing Alliance
Cathy Cloud is Senior Vice President of the National Fair Housing Alliance. She will testify about HUD's flawed Fair Housing Initiatives Program and offer a vision of how private fair housing groups might be adequately funded and work in full partnership with federal fair housing enforcers.

Panel 3
The Federal Mandate: Removing Barriers to Fair Housing at HUD

John Goering, City University of New York

John Goering is Professor at the School of Public Affairs and Ph.D. Program in Political Science, Baruch College and the Graduate Center, CUNY. He will describe HUD's own research on fair housing and related issues and the most recent national indicators of housing discrimination and failure of fair housing education and conclude that federal fair housing work needs a "clean break and a fresh start." He will call for the establishment of a strong, independent Commission for Equal Housing Justice and related structural changes.

Dale Rhines

Dale Rhines is a former investigator for HUD's Office of Fair Housing and Equal Opportunity. He will address the structural and commitment barriers that weigh against fair housing enforcement at HUD.

Michael Allen, Relman and Dane, Ltd.

Michael Allen is a lawyer at Relman and Dane, LLC. His testimony will address structural and enforcement issues in HUD's fair housing process primarily as they affect people with disabilities. He will also describe current litigation in which his client has sued Westchester County, New York for a violation of the False Claims Act for allegedly falsely claiming that it was affirmatively furthering fair housing.

Henry Korman, Consortium for Citizens with Disabilities Housing Task Force

Henry Korman is a lawyer and former Community Builder at HUD. He appears today representing the Consortium for Citizens with Disabilities Housing Task Force. He will testify about how HUD's programs fail people with disabilities.

Panel 4
The Section 8 Voucher Program: Promoting Housing Integration in Federal Housing Subsidy Programs

Xavier Briggs, Massachusetts Institute of Technology

Professor Briggs will review research findings on families who have participated in housing mobility programs to move to lower poverty areas, and will discuss the implications of this research for policy.

Barbara Sard, Center on Budget & Policy Priorities

Ms. Sard will discuss the barriers to fair housing choice and integration that are built into the current administration of the Section 8 voucher program. She will also address the promise of the pending "Section 8 Voucher Reform Act" to remove some of these barriers, and the additional steps that will be needed in the longer term to incentivize and promote fair housing choice and racial integration in the voucher program.

Cynthia Watts-Elder, Connecticut Fair Housing Center

Cynthia Watts-Edler will discuss the need to strengthen source of income discrimination protections at the state and federal level.

Alexander Polikoff, Business and Professional People for the Public Interest

Mr. Polikoff will touch on the origins and prosecution of the landmark case, Gautreaux v. Chicago Housing Authority, and the multi-pronged housing integration remedy that emerged from the case, including the famous Gautreaux housing mobility program, which successful placed thousands of families voluntarily in integrated neighborhoods in the 1970s and 1980s. Mr. Polikoff will address the urgency and the feasibility of creating a national Gautreaux-type program to affirmatively assist low income families of color who wish to move to high opportunity, low poverty neighborhoods in our most segregated metropolitan areas.

Witness Testimony

Panel 1

Testimony of David Harris, Managing Director of the Charles Hamilton Houston Institute for Race and Justice at Harvard Law School

FHA: Forty Years…and a Mule

The Fair Housing Act, as amended, is one of the nation's most important, and I would argue most powerful civil rights laws. With it, declared President Johnson as he signed it, fair housing became the law of the land. But as we all know about our country's troubled history, the law of the land can be vague and variable, indeed. And though most people today are willing to give lip service to the notion of fair housing, it was folly then and would be folly now to think that the history of housing discrimination could have been corrected or remedied in a single act. It is, I believe, also folly to think that history can be reversed through a series of individual complaints. I am not, however, one of those who looks at the equivocal history of the Fair Housing Act and dismisses it as a failure. On the contrary, if we are honest about the situation we faced 40 years ago, we will recognize the progress we have made even as we reflect on how far we still have to go. Such a perspective allows us to learn from but not dwell on past mistakes and shortcomings. In a word, I would argue that the Fair Housing Act has not been used to anything near its full potential and, further, that we can do much better in the future by expanding our understanding of and expectations for the law.

When we to think back 40 years we are reminded that in 1968 the United States was characterized by increasingly segregated communities. Our cities were being abandoned by whites, who were fleeing to white suburban enclaves, leaving core cities of people of color to experience concentrated poverty. We remember Dr. King saying he experienced greater racial antipathy in northern suburbs than he remembered in the violent clashes of the early civil rights era. I, for one, remember there were still places in which homes for sale included racial

covenants and the refusal to sell or rent to people of color was an accepted practice. It was time when segregation was bolstered by formal redlining, blockbusting and steering.

The practices that perpetuated racial segregation were outlawed by the Fair Housing Act and over the 40 years since, many of these overt acts have been greatly diminished if not eliminated. If for no other reason, we must consider the control of these blatant practices a victory. Yet even as we do, we look around and realize that our communities today look very much like they looked 40 years ago. In Boston, for example, we find stark evidence of the mixed results. Harvard University researcher Guy Stuart found that though an increasing number of people of color were purchasing homes outside the city of Boston. He also found, however, that nearly half of those black and Latino home buyers were buying homes in 7 of 126 cities and towns – a swath running north south through Boston known affectionately as Blue Hill Avenue extended. During a press conference releasing his report a realtor stood up and objected to Stuart's suggestion that discrimination might be playing a role in the result. According to the realtor Stuart's findings reflected simple market choices in which people of color purchased homes where they could afford or chose to live among themselves. That realtor, I would argue, suffered from a form of market-induced blindness that has recently become epidemic as many around us herald the onset of a color blind, post civil rights era. This is, of course, a topic for another day, but I would argue that color blindness is a deficiency of sorts; it signals an inability (or unwillingness) to see color, not that color doesn't exist.

But the Fair Housing Center of Greater Boston responded to the realtor's challenge in two ways. First, with the help of Nancy McArdle, another Harvard Researcher, we conducted a study to test the affordability argument so often used to explain the housing patterns we see. I refer you to the Fair Housing Center website to find a copy of our study, *More than Money*, which included

extensive data, but will simply summarize here by saying affordability did not explain the patterns of segregations across the region's cities and towns. Indeed, with over 80 percent of the cities and towns in the region containing less than half the number of families of color one would expect if the price of homes purchased explained where people were buying homes, it was clear something else was going on. We also went on to conduct a sales testing audit across the region to gauge the extent to which discriminatory practices contributed to the patterns of segregation. The results, contained in *You don't know what you're missing* [also available at www.bostonfairhousing.org/publications] were disturbing but not surprising. We found a pattern of discriminatory practices that had the overall effect of advantaging a white buyer over a buyer of color in half the instances in ways that severely hampered the latter's' chance of success.

Now I would argue that the Fair Housing Act can be a critical tool in addressing these practices and our experience has been that realtor associations respond positively to the results of our audits by trying to address the practices of their members. Of course it doesn't hurt to have a few large awards to concentrate the mind on corrective action.

Let me draw upon another Boston example to underscore my point and suggest how we might – indeed must – expand our use of the fair housing act in the future. Specifically, I would like to point your attention to yet another study, published by the U.S. Commission on Civil Rights and the Massachusetts Commission against Discrimination. The report, "Route 128: Boston's Road to Segregation," described itself as "concerned with white enclaves rather than black ghettos" and it went on to document exactly how those enclaves were maintained. By way of introduction the report states:

At the end of the 1960's, it was not uncommon for leaders in the Greater Boston academic community to assert that greater racial integration in Boston's suburbs would occur. More recent census data have shown this not to be the case. At the end of the 1960's, it was also suggested by some experts that discrimination in sales and rental of housing was of diminishing importance in shaping residential patterns.

The authors went on to report that "in suburban areas public officials of narrow outlook and parochial interests control access to housing in such a way as to exclude most black and Spanish speaking families from their communities" and "In an effort to maintain the status quo and preserve the 'character' of their communities, local residents of suburban areas have sought to restrict the housing supply and exclude outsiders from the economic, environmental, educational, and social benefits related to land use."

Now most of you will recognize this as language from today's debate over affordable housing, in Massachusetts around our Chapter 40B anti-snob zoning law. Others will recognize the themes of today's smart growth and regional equity movements. But let me add that the report included a warning that the failure to act in truly affirmative fashion to address these trends would extend Boston's road to segregation from Route 128 to Route 495. Right. This report and its hauntingly familiar language, were written in 1975, seven years after passage of the Fair Housing Act but more than three decades ago.

My basic point here is simple. To be sure, money has been allocated for outreach and education, but for the past 40 years we have largely used the Fair Housing Act as an enforcement tool. And although we continue to fiind routine discrimination against individuals, it has proven that it can provide some relief. Indeed, drawing another example from Boston, it can also be used to gain critical equitable relief for entire classes of people. When I was an

investigator at HUD in the mid 90s I had a case that was brought by nine women of color against the Boston Housing Authority. In 1989 the BHA had been required to dismantle the system of racial segregation it had maintained for many decades until a law suit brought by the Lawyers' Committee for Civil Rights under the Fair Housing Act forced the agency to institute a unified rather than site based waiting list, but that it had to implement a plan to protect persons of color who were moved into previously all white developments maintained in all white neighborhoods. During the term of the consent decree the plan worked well but with its expiration the BHA became lax in its protection, leading to the creation of what I argued was a racially hostile environment from which the authority refused to protect these complainants. After considerable wrangling all the way to HUD leadership in Washington, with no small dose of national politics, the case was finally transferred to DOJ for prosecution. After several years the case was settled. Not only did the complainants receive sizable monetary settlements, but the BHA was required to institute a revised protection plan and transfer policy.

Again, this is an example of a good use of the Fair Housing Act, but it also points out a major deficiency. The BHA case dragged on and on and had to wait for the right political moment before it could move.

I would close today by making several provocative suggestions for us to consider. All of us who work with HUD know that FHEO is subject to considerable political and bureaucratic arbitrariness. It should not be so. Fair housing and all civil rights are too important to be thwarted by political expedience or exigencies of the moment. More than that, there is too close a relationship between HUD and those who often violate the Fair Housing Act. Even more, HUD policies themselves often contribute to negative fair housing outcomes, beginning but not ending with the early FHA mortgage underwriting policies. For that reason, I believe responsibility for

implementation of the Fair Housing Act should be removed from HUD. I know this is sacrilege to many, who, like me, fought to prevent having FHEO moved to DOJ. I am not sure whether it should go to DOJ, but I am convinced it needs far greater autonomy than it has had over the past 40 years.

Please note that I called for implementation of the Fair Housing Act rather than enforcement, because my second major point is that the newly independent agency should give far greater stress to several features of the act delegated to the Secretary under Section 808 of the current law. Here the Secretary is authorized to "make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States…publish and disseminate reports, recommendations, and information derived from such studies, specifying the nature and extent of progress made nationally in eliminating discriminatory housing practices and furthering the purpose of this title, obstacles remaining to achieving equal housing opportunity, and recommendations for further legislative or executive action; and to cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices… and to administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter."

Now there is no doubt that HUD would point to various activities as fulfilling these functions. Indeed, they would point to the FHAP and FHIP programs for some and to the simple descriptive reports of activities it issues occasionally; or even to the larger audits it commissions to gauge the extent of discrimination in various parts of the country. And, of course, it would point to the infamous Analyses of Impediments to Fair Housing as exemplifying its efforts to ensure that

recipients of federal funds are, in that grammatically challenged term, affirmatively furthering fair housing. But I would urge us to look more closely at these powers and to think about the ways they can and should be used to create an entirely new environment for carrying out the work of fair housing; an environment that couples rigorous social science with innovative legal strategies; one that conducts comprehensive policy analysis to craft creative policy alternatives.

It is high time we demand and expect more than the simple, plodding activities that characterize our national fair housing programs and policies. I would suggest to you that it is more than the observation of an anniversary that demands this. I believe that 40 years out from passage we face a similar crisis/opportunity to that which faced us in 1968. We face a U.S. Supreme Court that shows signs of adopting colorblindness as a standard. This is not only evident with Justice Roberts' cynical claim that the way to end discrimination is to stop discriminating, but even more alarming from what we thought was a possible voice of reason in Justice Kennedy, who with no apparent irony suggested during oral arguments in the Parents Involved case that a plausible alternative to voluntary school assignment plans would be to build new schools on the border between black communities and white communities. Let us leave for a moment whether such communities would last and think about what it means for a justice of the supreme court to basically give sanction and blessing to segregated communities by suggesting public policy based on their persistence. While the court is the challenge, the opportunity is that one way or another next January will inaugurate a new administration and I would urge us all to think about truly new and innovative fair housing directions for that administration. It's time to trade in our mule for a more modern conveyance…

I hope I have succeeded in being provocative to some extent and look forward to discussing these ideas further.

Panel 2

Testimony of Erin Kemple

The National Commission on Fair Housing and Equal Opportunity
in Housing Hearing

September 22, 2008 – Boston, MA

THE ROLE OF FAIR HOUSING ENFORCEMENT IN ENSURING DIVERSE COMMUNITIES

My name is Erin Kemple and I am the Executive Director of the Connecticut Fair Housing Center. Thank you for giving me the opportunity to speak here today.

The Connecticut Fair Housing Center ("the Center") is a statewide fair housing organization dedicated to ensuring that all people, and principally those with scarce financial resources, have equal access to housing opportunities in Connecticut. The Center provides its clients with the legal services necessary to assert their civil rights in housing discrimination cases. Because Connecticut's low-income residents are disproportionately affected by discriminatory housing practices – in fact 97% of those served by the Center have incomes at or below 125% of the federal poverty level – the Center is particularly attuned to the importance of assisting Connecticut's low-income residents.[1]

The Center was founded in 1994 by a group of community leaders, legal services attorneys, civil rights advocates, and others concerned about housing discrimination in Connecticut. With a principal focus on removing barriers to full housing choice for Connecticut's low-income residents, the Center (1) provides legal assistance to victims of housing discrimination and other unfair housing practices, (2) offers education and outreach to potential victims and housing

[1] The term "low-income" refers to households with incomes at or below 125% of federal poverty levels.

providers, and (3) promotes community involvement in and resource development for fair housing issues.

Today, I am here to address the important role enforcement plays in creating and preserving diverse communities.

Enforcement of the fair housing laws plays a variety of roles in ensuring the diversity of the nation's neighborhoods. My testimony will focus first on the enforcement work of the Connecticut Fair Housing Center and then on the work being done by others around the country.

Because the Center is known as a resource on fair housing issues throughout the state, the organization has been involved in several important efforts to ensure that the victims of housing discrimination are protected even if they are not represented by the Center. First, the Center was instrumental in organizing three *amicus curiae* briefs filed with the Connecticut Supreme Court and the Connecticut Appeals Court. All involved issues that significantly impact the rights of Connecticut residents to obtain the housing of their choice in the community of their choice. In the first, *Commission on Human Rights & Opportunities v. Sullivan*, a large Connecticut landlord challenged the application of Connecticut's lawful source of income protections to tenants with housing subsidies. Through the efforts of the Center, two *amicus* briefs were filed with 15 local and national organizations signing on. The briefs pointed out the importance of housing subsidies in assisting low income households in moving to neighborhoods with access to jobs and good schools. In a decision handed down in January 2008, the Connecticut Supreme Court rejected the defendant's challenge and reaffirmed an earlier decision that the state's anti-discrimination laws apply to housing subsidies thus preserving this important tool in housing integration.[2] The third brief organized by the Center focused on the appeal of a state Superior Court decision which prohibited housing discrimination complainant's from intervening in court cases brought on their behalf by the Commission on Human Rights and Opportunities (the CHRO).[3] There, a disabled woman sought to intervene in a Superior Court case after her landlord removed the case to Superior Court. The *amicus* organized by the Center points out to the Court the importance of having the victim's voice heard in cases involving their rights. That case is still awaiting a decision.

Second, the Center's attorneys have challenged illegal practices that affect large numbers of people. For example, when the CHRO demanded copies of medical records from tenants alleging disability discrimination, the Center challenged the practice and the CHRO backed down. Similarly, when I began work at the Center in 2003, the average damage award given by hearing officers in housing discrimination cases was $5,000. By bringing in compelling evidence of the effects of housing discrimination on those who experience it as well as by bringing a significant number of cases in state and federal court, the Center is now receiving more than double that figure when settling cases or going to hearing at the CHRO. Receiving larger damage awards not only fulfills the purpose of the fair housing laws, but also has a deterrent effect on others who violate the law.

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[2] *Commission on Human Rights & Opportunities v. Sullivan Associates*, 250 Conn. 763, 739 A.2d 238 (1999) (*Sullivan I*);

[3] *Commission On Human Rights And Opportunities v. Litchfield Housing Authority, et al.*, Connecticut Appeals Court (Docket No.: A.C. 29269 2008).

Third, when faced with illegal policies undertaken by several entities at once, the Center has moved quickly to block the practices from taking effect. For example, when several cities and towns moved to exclude sober houses from their neighborhoods, the Center began challenging the actions of the cities and towns by representing the homes. The Center's advocacy has resulted in several towns rescinding cease and desist orders thus keeping the men and women in recovery housed. Recently, the Center settled one such case for $350,000 in compensatory damages and attorneys' fees.[4] In every case, the Center was able to preserve the right of people in recovery to live in a family setting fully integrated into the community.

Fourth, the Center has recently brought two cases against insurance companies whose policies violate the fair housing laws. In one, owners of a sober house received a notice that their residential liability policy was cancelled because the property was being used to house people in recovery from drug and alcohol addiction. The Center not only challenged the policy cancellation, but also challenged the insurance company's practice of writing only commercial insurance policies for sober houses.[5] In the second case, the Center is challenging a company's refusal to write residential insurance policies for properties where tenants with housing subsidies reside.[6] Again the Center is seeking not only a residential insurance policy for our client, but also to ensure that the company's underwriting guidelines are applied without violating the fair housing laws. By preserving the rights of these housing providers to obtain good insurance policies at competitive rates, the Center is removing the incentive for all landlords to discriminate against people with disabilities and those receiving a lawful source of income.

In addition to its work on behalf of the victims of housing discrimination, the Center has also spearheaded several unique initiatives designed to ensure that the fair housing implications of state and local policies and practices are addressed. During the past year, the Center worked with the State of Connecticut's Department of Economic and Community Development (DECD) to ensure that Connecticut's Small Cities Community Development Block Grant (CDBG) program as well as other federally supported housing "affirmatively furthered fair housing" as required by federal regulations.[7] The Small Cities CDBG program is one of the largest sources of funding for housing development and rehabilitation for Connecticut's small cities and towns. These same communities are among the least integrated in Connecticut. By having one of its attorneys meet with DECD staff regularly, the Center was able to have significant input into the criteria used to determine if the cities and towns already receiving funding were complying with their fair housing obligations.

Before the State put out its notice of Small Cities CDBG funding availability, DECD staff and one of the Center's attorneys revised the fair housing application questions to determine if the town had previously complied with its obligations to affirmatively further fair housing as well as whether the applications comply with the fair housing requirements of the federal law. All of these efforts are designed to ensure that even Connecticut's smallest cities and towns

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[4] *Turning Point Foundation, et. al. v. John DeStefano, et al.,* 3:05-CV-895 (D.Conn.) Press release attached.

[5] *Clement et al. v. Merrimack Mut. Fire Ins.*, 3:07-CV-1832 (D.Conn.)

[6] *Francia v. Mt. Vernon Fire Insurance,* CV-08-0432039 (Sup. Ct. Conn.)

[7] 24 CFR §91.225.

affirmatively market their housing to people of color and are committed to diversifying their citizenry.

The Center's work has also focused on ensuring that Connecticut's communities with large numbers of homeowners are diverse. The Center has been conducting systemic testing of the homesales market which reveals frequent instances of steering of people of color to communities of color and steering Caucasians to communities that are majority white. In addition, the Center worked to ensure that Connecticut's homebuyers of color are not disproportionately steered to the sub-prime lending market or victimized by predatory loans. The Center applied for and received one of only seven fellowships given by the National Legal Aid and Defender's Association in 2006 to work on discrimination in the lending market. As a result of that grant, the Center has a full-time attorney focused solely on discrimination in the sub-prime market.

Unfortunately, during the course of that grant, the Center discovered that the tools available to assist the victims of predatory lending, whether they were white, black or brown, were woefully inadequate. To remedy this, the Center brought forward and testified about legislation designed to reform the Center's sub-prime lending laws during the 2008 Connecticut legislative session. Because the Center had been leading an anti-predatory lending task force for four years, Connecticut legislators sought the organization's input on proposed changes and compromises to the bill that was originally proposed. As a result, Connecticut now has one of the strongest sub-prime lending laws in the country. In addition, the Center has been working with Connecticut's Judicial Department and local housing counseling agencies to ensure that borrowers in foreclosure have access to court appointed mediators and the tools necessary to renegotiate their loans into more affordable mortgages.

Finally, the Center is at the forefront of efforts to determine how to create opportunities for integration from the sub-prime loan disaster. In an editorial published in the *Hartford Courant* on September 10, 2008, Erin Boggs of the Center argues that Connecticut should follow the lead of the city of Baltimore and determine where high and moderate opportunities for integration exist among neighborhoods with foreclosed properties. Ms. Boggs suggests the state should buy or rehabilitate housing in these neighborhoods for resale to people of color thus providing for greater integration in the State's most highly segregated neighborhoods.[8] The Center has recently commissioned a study of Connecticut's neighborhoods in order to move forward with this work.

Of course, efforts to integrate and preserve diversity in Connecticut's neighborhoods have not been limited to the work of the Center. The Connecticut Civil Liberties Union under legal director Philip Tegeler was instrumental in challenging many illegal housing practices in the state. A neighborhood group represented by CCLU attorneys objected to the allocation of low income housing tax credits to build low-income housing in highly impacted neighborhoods in Hartford, a city that is majority minority. State law requires that all housing agencies must "affirmatively promote fair housing choice and racial and economic integration in all programs."[9] By building in areas with high concentrations of people living in poverty, the CCLU argued, the state promoted

[8] "Slump Offers Affordable Housing Opportunity," *Hartford Courant*, September 10, 2008. Copy attached.

[9] Con.Gen.Stat. §8-37cc(b).

segregation and not integration. While that challenge was ultimately rejected on other grounds by the Connecticut Supreme Court, the effort has resulted in a greater awareness of the fair housing laws and increased efforts to use the low income housing tax credit program to integrate all of Connecticut's cities and towns.[10] It goes without saying that the CCLU's landmark case, *Sheff v. O'Neill,*[11] spotlighted the role housing segregation plays in school segregation. Finally, the largest fair housing settlement in Connecticut's history was brought by a private attorney working with the Fair Housing Association of Connecticut, another private fair housing organization in Connecticut. The case challenged the Bridgeport Housing Authority's refusal to grant reasonable accommodations requests to disabled tenants and resulted in a settlement of $760,000 to compensate the victims of the Housing Authority's illegal practices.

While I just spent considerable time outlining the enforcement work that is happening in Connecticut, much of the work done here builds on successes from other parts of the country. Other fair housing organizations have fought insurance companies' illegal discriminatory underwriting policies thus giving the Center insight into which practices to challenge and the types of remedies to pursue.[12] The Center's work with DECD and the Small Cities CDBG program mirrors the lawsuit recently brought to challenge the way Westchester County has distributed its Community Development Block Grants.[13] The Center's efforts to prevent predatory lending in Connecticut are similar to private enforcement efforts in Baltimore seeking to hold liable the lending companies who blighted many of that city's urban neighborhoods with predatory lending.[14] In addition, the Center began investigating design and construction cases after learning that other fair housing centers uncovered egregious violations of the FHA's accessibility standards.[15] Of course the recent case of *Kennedy et al. v. City of Zanesville* where the plaintiffs were awarded more than $11 million in compensation for the racially motivated refusal to provide public water to the town's African-American citizens is without equal any place in the country.[16] All of these efforts ensure that the nation's neighborhoods are integrated.

Unfortunately, not all private fair housing agencies can provide the broad array of enforcement tools outlined here in part because not all such agencies have attorneys on staff or private attorneys to assist the victims of housing discrimination. In the administrative process, a complainant often faces a housing provider with more power and more money as well as legal counsel who can more persuasively present the landlord's case. Incorrect decisions, decisions

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[10] *Asylum Hill Problem Solving Revitalization Ass'n. et al v. King et al.*, 277 Conn. 238, 890 A.2d 522 (2006)

[11] 238 Conn. 1, 678 A.2d 1267 (1996)

[12] *Nevels, et al. v. Western World Insurance Co., Inc.,* C.A. No. 04-1024Z (U.S. District Court, W.D. Washington)(Case challenging insurance underwriting policy that charged higher premiums to group homes);

[13] *US ex rel. Anti-Discrimination Center of Metro New York v. Westchester County, NY,* 1:06-cv-02860-DLC (S.D.NY)

[14] *Mayor and City Council of Baltimore, et al. v. Wells Fargo, et al.,* 1:08-cv-0062, Baltimore Div. of the District of Baltimore.

[15] *Equal Rights Center v. Avalonbay Communities*, 8:05-cv-26265 (S.D. NY)

[16] *2:03-cv-01047, S.D. Ohio (2008)*

unsupported by evidence, or inadequate monetary judgments cannot be challenged because the complainant and the private fair housing agency do not have the ability to appeal these decisions to court. Even when attorneys in the private bar agree to represent the victims of housing discrimination, representation can be limited by cost and the fair housing experience of the attorney involved. In addition, private attorneys are reluctant to take cases where there may be important legal issues at stake but where the chance of prevailing is in doubt or where the amount of money to be recovered is small.

The result is that many of the nation's smaller cities, towns, and rural areas are without effective enforcement of the fair housing laws. I have spoken with colleagues who have prevailed at an administrative hearing only to have that decision appealed to court by the housing provider. The complainant is then at the mercy of an assistant attorney general or other state attorney whose interest in presenting a fair housing case may be limited by the prominence and political clout of the housing provider or the attorney's caseload.

Several fair housing organizations have been horrified when, after appealing a reasonable cause decision to court, the housing provider counterclaims against the complainant and the state attorney refuses to represent the complainant on the counterclaim. The complainant is then faced with paying a private lawyer to represent her in the counterclaim or appearing on the counterclaim *pro se.* Both alternatives discourage complainants from going forward. Fair housing organizations around the country have difficulty recruiting attorneys from their local bar to assist in these cases. Too often the private attorneys have a direct conflict because they have represented the landlord in a closing or other legal matter or a situational conflict where they do not want to go after landlords who are the source of other legal business.

If adequate funding was available, I believe most fair housing organizations would be able to perform the enforcement and policy work undertaken by the Center. The problem is money. The Fair Housing Initiatives Program funded by HUD permits agencies to get up to $275,000 per year in funding. This covers some fair housing testing, some administrative costs and rarely, the costs of an attorney. Even if a fair housing agency is able to contract with an attorney in private practice for assistance, the specialized knowledge and commitment to fair housing that is necessary to do these cases is lacking. Unfortunately, there is little private support for enforcement work. The Center is fortunate to receive funding from the State of Connecticut but that grant is in danger now that the State is projecting a $146 million deficit for 2009. In addition, many private foundations are reluctant to support staff involved in litigation. Even some federal programs such as the money made available as part of the recently passed Homeownership Preservation Act prohibit the use of such funds for direct legal representation. As you have already heard from Ms. Catherine Cloud of the National Fair Housing Alliance, adequate funding for private fair housing organizations in essential to ensuring that the nation's fair housing laws are enforced.

Thank you for your time and attention. I would be happy to answer any questions.

OP-ED

Slump Offers Affordable Housing Opportunity

Connecticut faces a triple housing threat: skyrocketing foreclosure rates, a severe lack of affordable housing and extreme racial and economic segregation.

ERIN BOGGS

Could there be a silver lining to the foreclosure crisis that will address all three problems?

On May 7, the General Assembly passed a bill that encourages the state to purchase foreclosed properties for redevelopment as affordable and supportive housing. On July 30, President Bush signed legislation, championed by Sen. Christopher Dodd, which allocates $3.92 billion nationally to, in large part, help municipalities buy foreclosed properties. Cities and private groups in Boston, Minneapolis and San Diego reportedly are starting to purchase and redevelop foreclosed properties. The creation of desperately needed affordable and supportive housing could be the silver lining to the foreclosure crisis.

Unfortunately, a variety of forces could lead the state and others to purchase foreclosed properties in struggling racially segregated urban areas and convert them into housing for the poorest of the poor. This is not fair to the children currently living in these neighborhoods or the children who will potentially be added to the school rolls. Why not acquire foreclosed properties in more economically and racially integrated neighborhoods with high-performing schools?

We've seen this pattern before with the overwhelmingly urban placement of public housing and developments funded through programs such as the federal Low-Income Housing Tax Credit Program. Underlying these decisions are assumptions about expediency, economy, race and class that exacerbate a history of public and private actions.

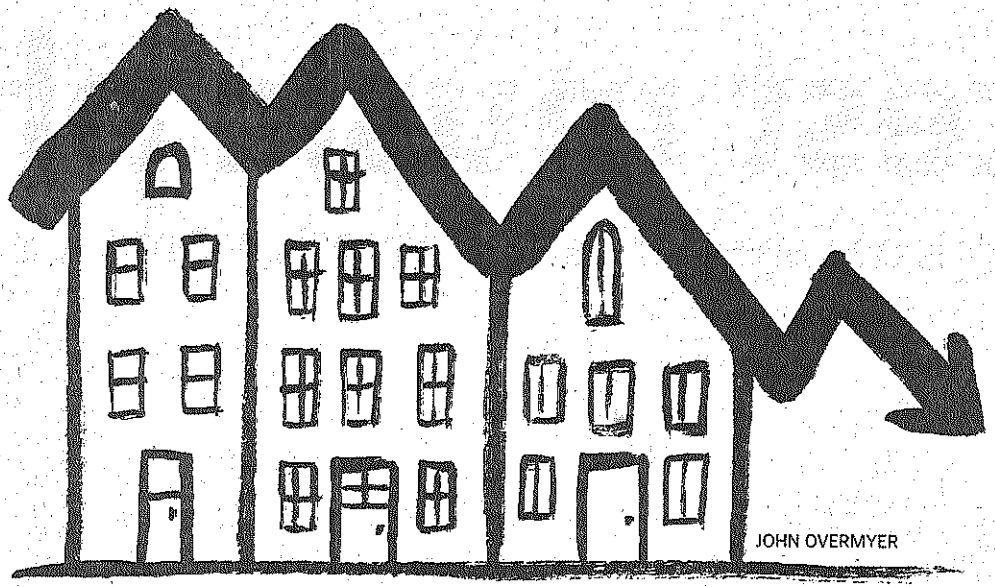
This has created housing for poor people in areas of excessive poverty and has led to Connecticut's own special brand of racial and economic apartheid. Studies by the Urban Institute and others show that isolated distressed inner-city neighborhoods with high levels of crime, struggling schools, adverse health outcomes and lack of jobs mean a denial of all kinds of opportunities for residents.

Connecticut should make a deliberate decision to develop desegregated affordable housing. The state and its private partners should purchase foreclosed properties and create affordable and supportive housing in areas where the public schools are thriving, crime is low and employment opportunities are high.

In Baltimore, housing advocates studied a range of factors, such as school performance, availability of good jobs, access to transportation and low levels of crime, that, when combined, allowed neighborhoods to be classified as "high," "moderate" or "low opportunity" areas. They then overlaid the map of "opportunity areas" with a map of foreclosed properties. Surprisingly, they discovered that there are significant numbers of foreclosed properties in each of these areas. The Fair Housing Center has commissioned such a study for our state and we predict that similar patterns will be found in Connecticut.

This study will allow the state to assess the feasibility of buying properties in high- and moderate-opportunity areas to convert into affordable and supportive housing. It would also help the state gauge the appropriate income mix for properties it purchases in low opportunity areas. Thoughtful desegregating development will help the state comply with its obligations under the federal Fair Housing Act and boost town compliance with the state Affordable Appeal Act. Foreclosed properties in high- and moderate-opportunity areas will likely cost more. But, with a depressed housing market, now is the time to invest in these properties.

Will there be neighborhood opposition? Perhaps, but may be less so if the proposals are not for massive developments. If done right, the real silver lining to the foreclosure crisis might not be just the creation of affordable housing, but the first step toward undoing decades of governmental and privately sponsored discrimination. Without this kind of strategic investment, our cities will never thrive, our suburbs will never be integrated and our schools will continue to be disgracefully segregated.



JOHN OVERMYER

Erin Boggs is a lawyer and director of special projects for the Connecticut Fair Housing Center in Hartford.

OP-ED

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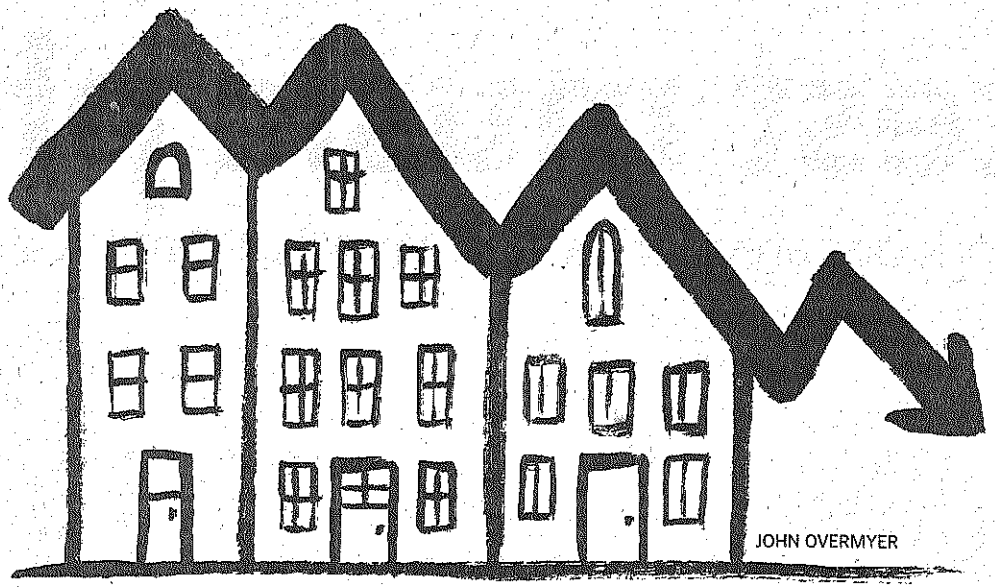

JOHN OVERMYER

Erin Boggs is a lawyer and director of special projects for the Connecticut Fair Housing Center in Hartford.

Panel 2

Supporting documentation for testimony by **Ginny Hamilton**, Executive Director of the Fair Housing Center of Greater Boston September 22, 2008

The Fair Housing Center of Greater Boston (FHCGB) works to eliminate housing discrimination and promote open communities throughout the region. The FHCGB is the region's only comprehensive fair housing organization, providing expertise and a full tool kit of services. We pursue our mission in six main program areas:

TESTING: The FHCGB is the region's sole source of housing discrimination testing. Testing provides a credible picture of how and if discrimination occurs using a controlled method of documenting variations in the treatment of home seekers by housing providers.

CASE ADVOCACY: The FHCGB fields hundreds of inquires annually from people who don't have the knowledge and/or means to advocate for themselves. We provide full case advocacy, including testing for proof of discrimination, representing complainants throughout HUD's or Massachusetts Commission Against Discrimination's (MCAD's) processes, and securing *pro bono* legal counsel if litigation is required.

TRAINING: Our extensive expertise in the complexity of fair housing laws and practices makes the FHCGB a respected source of fair housing training. We provide training to housing associations, public agencies, realtors, and housing search professionals.

COMMUNITY OUTREACH: Discriminatory housing practices affect us all, limiting our experiences and impacting the region's economic well-being. The FHCGB promotes tools to prevent and respond to discrimination and guides local advocates in activities designed to make all of our communities welcoming places to live.

PUBLIC POLICY ADVOCACY: The FHCGB collaborates with other fair housing, legal, civil rights, and community organizations to add fair housing expertise and promote equity in policy debates and advocate for strong local, state, and federal housing laws and policies and ensure their effective implementation.

RESEARCH: To inform our advocacy, the FHCGB researches and document the nature and extent of housing discrimination – including the fair housing impacts of public policies -- both on our own and with area universities.

Compared to overt practices of the past, housing discrimination today is often more subtle. **Yet FHCGB testing has found that African Americans and Latinos experience discrimination in half of their attempts to rent, purchase, or finance homes in Greater Boston.**

Since our inception, the FHCGB has operated on the principle that every community contains people of good will. If informed and organized, these residents will take action to promote open

communities. Thus, we organize residents in predominately white suburbs to participate in local community education, local and state policy advocacy, and legal challenges to discriminatory policies and practices. One component of these efforts, *the Race and Place Dialogue Series,* opens an important dialogue about why we see race the way we do now, and how our communities have become and remained so segregated.

Race and Place is a 4-session dialogue series using the PBS video series and discussion guide "RACE - the Power of an Illusion." The three-episode documentary traces the historic creation of race as a social construct. Scholars from various backgrounds – anthropology, biology, history, genetics, and law – deconstruct the concept of separate biological races, then build historic context for racial division through social and cultural institutions. The third hour-long episode, "The House We Live In," focuses on how institutions shape and create race, giving different groups vastly unequal life chances.

Race and Place adds a fourth session discussing local history designed to help a group of people understand and discuss how issues of race and housing affect their community. A key outcome of *Race and Place* will be increased awareness on the part of community leaders and members about the historic relationship between race, place, and current economic prosperity. In addition, the fourth session focuses on what the community can do now to address this issue.

RACE & PLACE DIALOGUE SERIES: SESSION 4 INTRODUCTION AND BACKGROUND

People often assume that the reason behind ongoing segregation today is a matter of preference or affordability and miss the systemic, ongoing forms of discrimination as well as the more subtle messages from communities with unwelcoming images to people of color, families with children, people with disabilities, and others who may no reflect the "character" of the community.

Why does it Matter Where People Live?

Housing can be a catalyst or a deterrent to upward mobility for all residents of the Commonwealth. Existing fair housing laws are designed to remove discriminatory practices from the housing market and foster freedom of choice for all home seekers. The ultimate goal is to allow everyone to enjoy the social and economic benefits of living in diverse and welcoming urban and suburban communities.

By 2020, it is estimated that over a quarter of the Commonwealth's working-age population will be people of color. Already, over a quarter of children in the Commonwealth are of color. The state's economic destiny is inextricably linked to that of this next generation, upon whom we will depend to compose a skilled workforce critical to attract business and prosperity to the region. Where we live determines the quality of our children's education and our access to jobs, as well as aspects of our health and well-being. Welcoming communities provide equal education opportunities for all residents—new and old—and afford all students exposure to and interaction with peers from multiple cultures that will prepare them for success in the global economy.

Political, business and community leaders in the state have recognized housing as a critical element to economic success. These leaders understand that Massachusetts must offer open communities in order to cultivate, keep and attract a skilled workforce.

Suburbanization and how it contributes to "hidden discrimination" TODAY:

The development of the suburbs magnified the effects of segregation by increasing the physical separation between whites and minorities. Suburbanization in Massachusetts was aided by the development of Route 128. "Because there was no consideration of social planning in terms of its impact on the poor and minority groups, Route 128's history represents a social failure and aided in the persistence of segregation." Source: MCAD - "Route 128: Boston's Road to Segregation."

In the 1950s and 1960s, towns near the road responded to the possibility of in-migration by enacting large lot zoning ordinances. People were careful and fearful of housing densities; they did not want to overcrowd their schools and lose their green spaces.

For example:

During the 1950's, towns like Lincoln and Weston, threatened with a massive inrush for single family housing on their graceful stretches of farmland, were among the first to protect themselves in this way. The magnitude of the demand for any kind of housing raised the price of older housing stock and raised rents. This created a serious problem for persons outside the labor force in older communities such as Waltham. Little if any public housing was constructed in the communities adjacent to the road during this period. In this way, persons in the lower income group were squeezed out of the more affluent towns or filtered into the older dilapidated sections of the less affluent ones. The suburbs became increasingly homogenous with respect to income.

Source: MCAD - "Route 128: Boston's Road to Segregation."

Today, the situation is very similar:

- Boston's Metropolitan Area Planning Council (MAPC) projects that based on current zoning and development trends, more than 85% of new housing in developing suburbs in Metropolitan Boston in the coming decades will be large, expensive single-family houses on lots of one acre or more. MAPC concludes: "There will be a lack of modestly priced housing for young families, municipal employees, and minorities along I-495, even though this is where much of the region's job growth will occur." *Source: FHCGB - Zoning Barriers to Fair Housing*

- Forty-three percent of the metro's municipalities have over 90 percent of their land zoned for single-family use, and another 27 percent have between 81 and 90 percent zoned for single-family use. The remaining communities represent less than 30% of the total. Forty percent of land in the metro area is located in municipalities with minimum single-family lot sizes of over one acre. *Source: FHCGB - Zoning Barriers to Fair Housing*

- Many communities allow multi-family housing and single-family housing on small lots for residents who are 55 or older. Communities promote age-restricted housing for a variety of reasons. Senior housing is usually more readily accepted by existing residents than regular multi-family housing because of the reduced levels of automobile traffic, the maturity of the residents, and the realization that such housing is needed to accommodate the increasing number of seniors. Such restrictions many times have a discriminatory impact on families with children - protected class under the Fair Housing law. *Source: FHCGB - Zoning Barriers to Fair Housing*

- While age-restricted zoning affects housing availability for families directly, the effect of zoning on minorities is less direct. Zoning restrictions have a disparate impact on blacks and Hispanics because they limit affordable and rental housing (blacks and Hispanics have much lower household incomes and homeownership rates.) Age-restricted housing also has a disparate impact on minorities because 48% of minority households in Boston have children, vs. 32% of white households. *Source: FHCGB - Zoning Barriers to Fair Housing*

Racial Disparities in Income and Homeownership
Boston NECTA, 2005 from ACS

	Med. Hhld Income	Homeowner Rate
Non-Hisp White	67,232	70.0
Asian	70,362	50.1
Black	39,210	35.3
Hispanic	32,483	26.6

From 2005 American Community Survey
(NECTA=New England City and Town Area)

1950's vs. Today--Has Anything Changed??

In the 1950's…

When Route 128 was constructed it stimulated the growth of many Boston suburbs. In 1975 a study (Recommendations from Route 128: Boston's Road to Segregation) was released on the impact the creation of Route 128 had on segregation. The study made several recommendations on how to address the issue, and they are strikingly similar to what is still needed today:

Federal and state subsidies, such as, but not limited to urban renewal, improvement of municipal services, and the acquisition of open space for suburban towns, should be made contingent upon demonstrable efforts of the part of the town to

1. develop policies with respect to housing and land use which will consider the needs of all income groups and
2. establish affirmative action programs to provide housing and employment opportunities for minorities and
3. implement outreach programs to attract minority homeseekers. *Source: MCAD - "Route 128: Boston's Road to Segregation."*

And Today…
In 80% of the cities and towns in Metro Boston, the number of African American and Latino homebuyers is *less than half* what we would expect based on the amount these buyers can afford and the distribution of affordable homes throughout the metro area. *Source: "More than Money" Issue Summary*

The number of Latino homebuyers in Lawrence and Chelsea is over eight times what we would expect based on the amount these buyers can afford and the distribution of affordable homes throughout the metro area (See *Slide2*). *Source: "More than Money" Issue Summary*

The number of African-American homebuyers in Randolph and Brockton is over five times what we would expect based on the amount these buyers can afford and the distribution of affordable homes throughout the metro area (*See Slide 3*). *Source: "More than Money" Issue Summary*

Poor African-Americans are twice as likely as their poor white counterparts to live in concentrated poverty neighborhoods, and three times more likely to live in severely distressed neighborhoods. Thus, poor whites are benefiting from the opportunities available of living in a more affluent environment while their African American counterparts are not (*See Slide 4*). Source: Beyond Poverty: Race and Concentrated Poverty Neighborhoods in MetroBoston, Nancy McArdle. Harvard Civil Rights Project. December 2003.

The Civil Rights Project found that, "Almost 70 percent of Hispanics and an overwhelming 85 percent of African Americans believe that members of their **group miss out on good housing because they fear they will not be welcome** in a particular community." (*See slides 5 and 6*) *Source: "We Don't Feel Welcome Here" Issue Summary*

These fears are not unwarranted. FHCGB's extensive paired testing, shows that African Americans and Latinos experience discrimination in roughly **half** of their attempts to rent, purchase, or finance a home. Half of the time discrimination still happens.

- For example in Newton rental testing showed discrimination 45.8% of the time against four protected classes, familial status, source of income involving Section 8 vouchers, race (African Americans), and national origin. *Source: Fair Housing Center Greater Boston*

From October 2005 to January 2006, the Fair Housing Center of Greater Boston tested for discrimination against homebuyers of color seeking mortgages in Boston:

- Mortgage discrimination testing revealed differences in treatment that disadvantaged homebuyers of color in 9 out of 20 matched pair tests, or 45%.
- In 6 out of 20 tests, white testers were given more information about different types of loans and rates.
- In 4 out of 20 tests, white testers were offered discounts ranging between $500 and $3,500. Testers of color were not offered discounts.
- In tests that showed differences, lenders followed up with half of the white testers, but none of the testers of color. *Source: Fair Housing Center of Greater Boston*

- Upper income African Americans are 8 times more likely to have high cost loans than their white counterparts.
- Upper and middle income African Americans and Latinos are ten times more likely to have high cost loans that low income whites. *Source: MA Community Banking Council*

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Testimony before the

National Commission on Fair Housing and Equal Opportunity

"The Fragility of Fair Housing Rights in the United States: Recommendations for Improved Administration"

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September 22, 2008

Note: The author is currently Professor in the School of Public Affairs at Baruch College and a member of the doctoral faculty in the Ph.D. Program in Political Science at the Graduate Center of CUNY. He served as program manager for fair housing research and policy issues in the Office of Policy Development and Research at HUD for 21 years (1978-1999). He is the author of the following books related to fair housing: *Housing Desegregation and Federal Policy* (1986); *Mortgage Lending, Racial Discrimination, and Federal Policy* (1993); *Choosing a Better Life? Evaluating the Moving to Opportunity for Fair Housing Demonstration* (2003); as well as five dozen articles and reviews.

At HUD, he began the Moving to Opportunity for Fair Housing Demonstration under Secretary Kemp, completed it under Secretary Cisneros, and served on the policy staff of President Clinton's Initiative on Race at the White House. His most recent book, *Fragile Rights within Cities: Government, Housing and Fairness* (2007) provides the foundation for his testimony today.

Introduction & Recommendation:

American's rights to effective protection against all forms of housing discrimination have not been realized, as promised by both the Constitution and the 1968 Fair Housing Act (FHA). At the core of this failure has been the fact that the Federal FHA has been ineptly administered for decades at HUD and often by the Department of Justice as well.

After roughly 30years of examining the operations and effects of the fair housing act, I have therefore concluded that a revitalized set of Title VIII functions should be transferred out of HUD into a newly created Equal Housing Commission. This new agency would handle all aspects of fair housing education, outreach and enforcement, most especially the development of a major new systemic enforcement cases.

Title VI and CDBG related fair housing act requirements would remain at HUD to ensure the agency does not neglect its public sector programmatic civil rights duties.

The Evidence: May I briefly outline the evidence and reasoning that led me to this conclusion and recommendation (at the conclusion of my written testimony I provide a table listing the major studies which I have drawn upon, most of which are cited at length in my *Fragile Rights* book; see appendix 1). [1]

During the time that HUD has been the primary administrator of the FHA act - for the last 40 years - we know several important facts about the American public that help us in judging whether we need better or different methods to administer on-going fair housing protections.

There is Good News:

1. The attitudes of the general population have become more supportive of equal justice, and, at least verbally, more supportive of neighborhood racial mixing.
2. Levels of housing discrimination for blacks declined between 1989 and 2000.
3. Levels of housing segregation declined and measures of housing integration showed slow increase between 1990 and 2000.
4. In national surveys most Americans know a little bit about what the FHA does; what it protects against.

But there is also considerable bad news or evidence that leads to uncertainty about the effects of the FHA:

[1] With the support of the Ford and Fannie Mae Foundations, PD&R/HUD, and Freddie Mac, I convened fair housing researchers, policy analysts, and advocates at a national conference on fair housing in March 2003 in Washington DC. In preparation for this conference I funded some research on the nature of the enforcement of the Act.

1. No one, including the Federal government, social scientists, or policy analysts, knows with any degree of certainty why or how any of these changes for the better have occurred. Until some clear level of causal responsibility can be established and assigned, it would be inaccurate and misleading to say we have a cup at least half full because of the effects of the FHA. It would be inaccurate to conclude that actions tied to the FHA created these changes rather than broader changes in society as a whole.
2. Despite some improvements in measured levels of housing discrimination, it still occurs roughly 20% of the time; roughly 1 of every 5th transaction has some discriminatory content. For the disabled the rate is closer to 50% in one location (see appendix 2; Margery Turner's testimony before you on July 15th).
3. While there were declines in housing discrimination between 1989 and 2000 for blacks, the levels of mistreatment for Hispanic renters did not decline and there is evidence that racial steering of African Americans actually *increased*. The latter suggests that real estate actors may have learned to substitute steering for other more easily measured forms of mistreatment (Galster and Godfrey 2005).
4. Despite millions of apparent acts of discrimination, the number of FHA complaints filed by citizens with HUD has been declining over the last decade (see appendix 3 on stages of FHA compliance and case resolution). Official government reports indicate that a total of only roughly 2,000 to 3,000 cases of housing discrimination are filed annually with HUD (see NFHA 2008; GAO 2004: 24; GAO 2005: 12; Walton 1988: 96). A National Council on Disability (NCD 2001) report found that by the end of the 1990s the number of complaints filed with HUD declined to 30% of the 1992 level. [2]The bulk of complaints alleging housing discrimination are reported to nonprofit, local agencies: roughly another 18,000 in 2004 and nearly 17,000 in 2007 (NFHA 2005; 2008).
5. We now know a central reason why there are so few complaints. Americans do not file complaints and use their fair housing rights because they have concluded they are essentially useless. HUD funded two national probability surveys of the knowledge and attitudes of Americans towards FH and fair housing enforcement, and I conducted a comparable survey only in New York City in 2005, which reveal stunning level of misinformation about what is and is not protected and, most startlingly, substantial disinterest and unwillingness to use the procedures established by and at HUD. Over 80% (83) of Americans, including 88% of New Yorkers, state that they would do nothing when confronted with acts of discrimination essentially because, as they told us, "it would do no good." [3]Two thirds of the people who took no action in response to perceived discrimination thought that it would not have been worth the effort or that it would not have helped. A much smaller share (11 percent) said that they did not know how to complain.
6. The perception that most Americans have of HUD is justified by what independent studies have shown us about the way FH cases are handled at the agency. For example, while the FHA of 1988 requires HUD to act on cases within 100 days, we learn that even with small numbers of cases to handle, HUD still has a "substantial backlog" of cases – a backlog which even existed even at the beginning of fair housing enforcement (Walton

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In 2003 (GAO 2004: 25), HUD took in an average of only 2,200 cases a year and state and local agencies received double that number (GAO 2004: 72). For 2004 HUD received a total of 2,800 complaints (GAO 2005: 12).

Only 1 percent of the people who believe that they experienced discrimination said they would go to a fair housing group to seek help or file a complaint, only 1 percent would complain to a government agency, and 2 percent said they might talk to a lawyer.

1988: 96). Shill reports that it took over 470 days to close a case or more than five times longer than the time mandated. GAO's 2004 study (2004: 38) reported that in 2000 only 14 percent of cases were investigated on time. And in their 2005 report, they GAO found that 98 percent of cases, other than those with reasonable cause, did not meet the required time frame (GAO 2005: 35). When asked, the people who administer the law told GAO investigators that there is a perverse tradeoff between meeting this timetable and investigating cases carefully and thoroughly. They said there is a "tension between the need to meet the 100-day benchmark and the simultaneous need to conduct a thorough investigation and said that at times one goal cannot be achieved without some cost to the other" (GAO 2004: 56).

7. GAO in 2005 (16) also used telephone testers and learned that ten percent of those who wished to complain could never get a call back even after three attempts. In these test calls, over a third said they "had difficulty contacting staff" after the first call back. When they did reach a person at an agency over half of the time the personnel required them to wait a week or more to fill out an intake form that would be mailed to them "during which the caller could loose a housing opportunity" (GAO 2005: 17). [4] GAO summarized their evidence by arguing that "the time it takes to receive the form can delay the enforcement process potentially resulting not only in the loss of a housing opportunity but also in complainants becoming frustrated with the process and deciding not to pursue their complaint" (GAO 2005: 21-22).
8. Even with declining case loads, the number of cases in which HUD finds "reasonable cause" to proceed is infinitesimal; suggesting that either the public - victims - does not know when "real" discrimination has occurred or else the rules HUD has established to decide a case is "reasonable" are far too opaque and stringent to make for anything more than a hot-house version of creaming the best. Not only is one of every five cases is typically closed administratively" or for the convenience of the agency, in nearly half of all cases that are investigated, the agency decides there is no legal basis to proceed (this is called a determination of no reasonable cause; GAO 2004: 33). GAO, however, could find no explanation as to why out of a sample of 2,000 complaints that appeared at intake to potentially involve a fair housing violation, that only 306 ever became a real or "perfected" complaint (GAO 2005: 250). Large numbers of complaints that enter HUD's door are therefore shut down without any proof or evidence that a full investigation has occurred that might show whether discrimination has occurred. Prof. Michael Schill reports that only 3.3 percent of all cases filed since 1989 resulted in a reasonable cause charge being issued. [5] This "disappearance of reasonable cause charges from HUD" is among the major findings reported by Schill and others and is among the reasons to wonder whether the average person for whom the fair housing laws were enacted already knows that they will not likely receive help. [6] Too few cases in turn lead to substantial relief to make it

[4] One test caller who stressed how urgent her situation was nevertheless told that filling a complaint was " 'a slow process' and that her complaint would not be acted on for some time" (GAO 2005: 17).

[5] State and local agencies have a somewhat better track record and have found reasonable cause in seven percent of their cases (GAO 2004: 36).

[6] GAO (2005: 48) reports that over half of complainants were not offered any of the help required for conciliation and in a quarter of cases (26%) agency 'staff suggested that the

worthwhile for the rational consumer to use such a slow and burdensome process for obtaining what often needs to be but is not prompt justice – timely access to a vacant unit.

9. Satisfaction Levels: After four decades HUD should have developed a process that worked for victims and consumers. However, when GAO (2005: 56) conducted a sample survey of complainants and report that "half of all complainants were somewhat or very dissatisfied" with the fair housing enforcement process. And 40 percent of those who did complain said they "would be unlikely to file a complaint in the future." GAO (2005: 72) summarizes their evaluation by commenting that people's negative views towards the fair housing investigative process diminishes "the Act's effectiveness in deterring acts of housing discrimination or otherwise promoting fair housing practices."
10. Levels of housing segregation have only slowly declined in most cities while remaining high in places like NY and LA -experiencing virtually no change over the last 20 years. The slow improvements that have occurred cannot be traced directly to FHA enforcement and to programs linked to the mandate to "affirmatively further the purposes of the act" but rather appear to most closely relate to the rising incomes and the gradual suburbanization of African American and other minority groups. (You have received previous testimony about HUD's inept requirements of jurisdictions in completing effective Analyses of Impediment to Fair Housing that could address these issues but yet represent yet another system failure.)
11. A potentially crucial part of the enforcement of the FHA rests in the hands of private fair housing organizations. Since 1989, HUID has received funding for private enforcement and has used annual NOFAs to award funds to new or established groups. Private fair housing groups have since the inception of FHIP been pushed and pulled with varying policy/political emphases in annual NOFAs that have stressed current concerns and priorities with less concern about how to build and integrate private fair housing testing and investigative functions into ongoing HUD case work to reduce the vast numbers of cases where HUD decides to dismiss the case, administratively, or concludes there is no reasonable cause to believe that discrimination has occurred. HUD's love-hate relationship with private FH groups needs to end.
12. In the newly established Commission for equal housing justice, private groups should receive, when they have proven their effectiveness steady, five year or more of funding to work with clients and with any other agency receiving complaints, such as state and local agencies, to create a local network of client support and investigative skills to enable the prompt and effective resolution of complaints. The new Federal fair housing Commission would be built upon a foundation which accepts that local enforcement is typically – with the major exception listed below - far superior to that done in Washington. [7]
13. Lastly the new agency should be enabled and funded to seriously begin and sustain a program of national systemic investigations of housing markets and lending, including major brokerages, builders, developers, and lenders, to assure housing justice is fully provided. Fair housing needs to become a real and not fictive entitlement for this country

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parties work out their differences on their own." On these issues see the testimony of Jim McCarthy on July 15, 2008 before this Commission..

[7] I note that in HUD's 2009 budget, funds for private enforcement and for education and outreach were each reduced so that the funding allowed could be used to fund the 2010 HDS. Robbing Peter to pay Paul is never good public policy; merely expediency. PD&R's budget should have been separately increased to fund this research.

to be able to rightfully claim its purported standing as a moral arbiter of human and civil rights.

Conclusions: Over four decades, HUD should have achieved ever increasingly efficient administration of fair housing complaints, with ever increasing levels of consumer satisfaction, wider and more comprehensive awareness and use of fair housing complaint procedures, and ever higher and more systemic levels of relief for victims, including major strides in creating the investigative tools for large scale systemic investigations. However, despite changes in attitudes, and with ample time to demonstrate effective administrative practices in significantly reducing the levels of housing discrimination, housing segregation, and increasingly making Americans aware of their rights to fair housing, 20-30 percent of rental and sales market transactions still reveal evidence of differential treatment, over 80% of Americans state in national surveys that they would not use the FHA enforcement mechanisms to enforce their right to housing justice, and communities are promoting stable forms of housing integration at a glacial pace.

I witnessed and observed small legions of mostly earnest, committed Assistant Secretaries and Deputy Assistant Secretaries for fair housing struggle to understand and then reform the system of regulations, regional administration, grants, and programs to make the act work better, or at least more effectively for complainants, mostly to no avail. This occurred for three major reasons:

1. Both Assistant Secretaries and Deputy Assistant Secretaries for enforcement were typically too short-lived to make a sustainable impact given the long lead time that many cases, especially systemic ones, require. The idiosyncrasies of regional and field offices imperiled the application of nationally consistent, timely reforms, just as local communities resisted many forms of HUD efforts to promote the inclusion of housing integration as a central or serious part of their planning efforts. In addition, the normal delays of convincing Congress and OMB to increase funding or change legislative directions has for many years encountered the persistent concern that no changes should be asked of Congress for fear of loosing rather than gaining ground at the hands of conservative critics.

2. The system they administered had long ago been established as a marginal, secondary part of HUD's overall mission. And what was even more onerous, for many years, during the 1980s and 1990s, the entire agency was at risk of being marginalized if not terminated because of accusations and evidence of mismanagement, fraud or waste (Bratt and Keating 1993). The mounting criticism of HUD as a whole is symbolized by an oft quoted comment from then-House Majority Leader Newt Gingrich: "You could abolish HUD tomorrow morning and improve life in most of America" (Dreier 1995: 5).

3. The vast majority of whites in this country either are not aware or will not support a more aggressive campaign addressed to housing justice issues, given the range of other domestic policy funding priorities with which they are they are confronted.

The evidence shows us then that we are a nation whose principled commitment to open housing is full of holes. The law is administered with a bewildering set of shortcomings and pitfalls for those it was designed to help. We are a country in which sizeable residues - up to a quarter of the population - are afflicted with racial ambivalence, hostility, or

hypocrisy and where large numbers of real estate industry actors practice illegalities seemingly without fear of penalty or exposure and perhaps without knowing they are breaking federal laws. Allied to these shortcomings generations of political leaders of both political parties have regularly condemned all forms of discrimination as un-American but then just as predictably have done measurably too little to ensure those laws are effectively enforced to make the claim real. We make assertions about our support for claims of justice but we find that there has been at best a fragile, ambivalent commitment to enforce the claims on housing justice that this nation agreed to roughly decades ago.

It is high time for a clean break and a fresh start. A new Commission properly chartered and funded could only do better than an office with a cabinet level agency besieged with countervailing claims and ever reducing public and Congressional support.

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Appendix 1: Select Recent Research on the State of Fair Housing in America: Titles of studies, chapter reference, Methods

Report	Chapters	Methods/Data
1. "Discrimination in Metropolitan Housing Markets: Phases I, II, III of Housing Discrimination Study (HDS) 2000"	Turner chapter within *Fragile Rights*	Roughly 7000 tests; 46 metro areas; 20 MSAs for blacks/Hispanics; Two Asian sites Phase II;
2. "All Other Things Being Equal: A Paired Testing Study of Mortgage Lending Institutions"	Released April 2002	250 matched paired tests of a sample of lenders in Chicago and Los Angeles
3. "Discrimination against Persons with Disabilities"	Released July 2005	200 tests; Chicago MSA
4. "Multifamily Building Conformance with Fair Housing Act Accessibility Guidelines"	Report produced 2003; released 2005	988 engineering surveys of a sample of 397 newly constructed multifamily building projects; interviews with 20 developers/architects
5. "How Much Do We Know: Public Awareness of the Nation's Fair Housing Laws"	Released April 2002; Replicated in 2005; New York City sample 2005	National telephone sample survey of 1,001 adults; New York sample of 375 adults
6. Enforcing the Fair Housing Act (Schill; Schill/Friedman)	*Cityscape*; chapter within *Fragile Rights*	Fair Housing Act complaint resolution data; interviews with 161 complainants and 126 respondents
7. Links between fair housing enforcement and housing discrimination	Chapter within *Fragile Rights* (Steven Ross/ George Galster)	Regression analysis of 1989-2000 changes in discrimination and associated measures of enforcement
8. Measures of residential segregation and integration	Chapters within *Fragile Rights* by Iceland and Ellen.[8]	Multiple indices of residential separation and integration using decennial census tract data from 1980 to 2000
9. Evaluations of program effectiveness	GAO reports 2004; 2005	Telephone tests; agency interviews; Title VIII complaint data from FH&EO/ HUD

[8] See also John Iceland, Daniel Weinberg, and Erika Steinmetz. 2002. Racial and Ethnic Residential Segregation in the United Sates: 1980-2000. US Census Bureau; see additional analyses including Logan, Stutts, and Farley (2004).

Appendix 2: Evolution of Testing Research funded by HUD on Rental and Sales Market Discrimination: 1975 to 2005

- 1975: HUD Research Design Competition -Advocacy Group Precedent
- 1977a: The Housing Market Practices Survey (3,264 tests; 40 MSAs; black& white only)
    - 1977b: Rental Market/Chicanos/Dallas
- 1989: The Housing Discrimination Study (3,2000 tests; 25 MSAs; blacks and Hispanics)
- 2000/2005: The Housing Discrimination Study 2000 (7,000 tests; 46 MSAs blacks/Hispanics; Asian, Native Americans; disabled). Total cost HDS 2000: $16million

Table 3: Stages of Fair Housing Enforcement: Requirements for Individuals and System Managers

	Individual Factors	System Factors
Process & Elapsed Time	1. Housing consumers are aware of their legal rights	1. Agencies routinely advertise and educate public about FHA purposes, process, and outcomes
	2. Individuals are aware they have been victims of discrimination	2. Testers provided to ensure discrimination evidence is credible
	3. Willingness to report discrimination to an official agency	3. Intake offices widely available to readily accept complaints; agency's seen as germane & effective
	4. Ability/patience to pursue claim through enforcement process	4. Clients provided support & information on the timely processing of cases
	5. Satisfaction with remedy/relief	5. Adequate penalties imposed; evidence used to obtain effective relief
	6. Informs others of effectiveness of relief	6. Success of case used to promote law's benefits
Costs:	Individual's time; humiliation	Public/private resources made available for each step above
Outcome:	Discrimination eliminated in single transaction for consumer	Marketplace discrimination and segregation incrementally reduced

Panel 3

Testimony before the

National Commission on Fair Housing and Equal Opportunity

"Where Have You Gone- Fair Housing Enforcement at HUD"

Dale Rhines

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Fair Housing and Equal Opportunity

Boston
September 22, 2008

Having been given the opportunity to serve my country as a federal employee is something that I have been profoundly grateful for since 1991. I grew up in a family that instilled the belief in all of its children that service to one's country is one important way to repay it for the freedom and prosperity that it can provide. When I left a management job at the State of Ohio to serve as a fair housing investigator for the United States Department of Housing and Urban Development, which to me meant being given a chance to fight the terrible effects of discrimination at the highest level of government, I took that responsibility seriously. I worked at HUD for almost all of the 12 year period between 1991 and 2003. I served in field offices, regional offices and at the headquarters office for Fair Housing and Equal Opportunity (FHEO). I investigated over 150 fair housing complaints, and I reviewed, approved or commented on hundreds of others. I was hired while Jack Kemp was the Secretary of HUD and served under Henry Cisneros during his time with the agency. I want to thank you both for the opportunities I received while working at HUD during your tenures. During my time at FHEO, I worked in a field office, a regional HUB office, and served as an acting HUB Director, an Acting Division Director, as a Special Assistant to an Acting Assistant Secretary and in other staff positions at FHEO headquarters.

Perhaps the proudest moment of my entire federal career was when I worked on the Vidor task force, a task force that I am sure Secretary Cisneros recalls. I was one of the many people from FHEO and other parts of HUD who went to Vidor, Texas to investigate, and ultimately take over, the public housing authority in that town after it was revealed that an African-American man living in public housing was terrorized and forced to leave his home. His death just days later, though not directly linked to the discrimination he encountered in Vidor, was a rallying cry to many in and out of HUD to fight discrimination and to aggressively enforce the nation's fair housing laws. It was my distinct privilege to be one of the two co-

authors of the final investigative report of the fair housing complaints filed regarding Vidor, Texas. Ultimately, HUD did something it had never done before and took over the public housing authority. Unfortunately, the Vidor investigation may have been the high water mark for federal fair housing enforcement in the United States. And it's not because housing discrimination has disappeared. As you have been told by others with far more expertise than I, fair housing enforcement has failed to make a significant dent in the housing discrimination faced by Americans. Too often, decisions have been made, whether by Republican or Democratic administrations, to minimize enforcement efforts and to shift resources elsewhere. One significant example of this took place in 2001 and 2002 when millions of dollars meant for enforcement were shifted to research projects such as the Housing Discrimination Study and the Homeownership Testing Project. Money that should have gone to fair housing groups for enforcement work in local communities instead went to a testing project that, surprise, showed that there is housing discrimination. Although many of us fought to at least have the tests used for enforcement efforts, to my knowledge, that was never truly accomplished. I personally read accounts of discrimination in those tests that should have at least been further investigated but such action was discouraged by others at HUD.

Too often, testing is considered a rather dubious form of evidence at FHEO, despite the fact that it has been routinely relied on by courts as reliable evidence for over 30 years. Attorneys at HUD are not comfortable with testing as evidence of discrimination, and I can't recall a single instance where any attorney at HUD considered one test to be enough evidence to move forward to enforcement action in a fair housing complaint. What has happened at HUD, and I think in much of the federal government, is that lawyers have gotten more cautious. The win-loss record becomes more important than the number of times actions are actually brought forward. I think this type of thinking has set everyone back in the fair housing community. I would rather have an office that wins 80 percent of its cases and

brings forward 100 actions a year than one which brings forward 15 actions and wins them all. The great strides in civil rights made in this country were not made by lawyers too frightened to lose. They were made by lawyers who were not afraid to lose. Now I am not advocating sloppy work or suggesting that every complaint that comes to HUD deserves an enforcement action. Far from it. I believe that bringing a fair housing action against someone is a serious matter, and that there should be strong solid evidence of discrimination. What there should not have to be is a 100 percent rock solid case. I suspect that there are a number of attorneys working for the Office of General Counsel at HUD that have never appeared before an ALJ on a fair housing case. This is not because of a lack of opportunity, but rather a lack of will. The appropriate standard for issuing a charge under the Fair Housing Act is whether there is reasonable cause to believe that the Fair Housing Act may have been violated. Congress did not tell HUD only to bring cases that are slam dunk winners.

What then happens is often a self-fulfilling prophecy. As complaints become more difficult to move through the system, everyone in the chain becomes more cautious. Investigators become reluctant to suggest a complaint should be moved forward for possible enforcement. Managers and then supervisors are not quite as willing to move the complaints up the chain of command. Then the Office Director has to give her seal of approval. Then headquarters gets to weigh in on the decision. Of course, OGC in the region and in headquarters also will have input into the decision, if they don't actually make the decision. There are too many steps, and too much fear, in the process of making a reasonable cause determination. The end result is that only a handful of charges occur each year, while high levels of housing discrimination continue unabated throughout the nation.

What has to happen to make sure that enforcement of the Fair Housing Act is accomplished by the federal government? I believe there are five specific actions that need to take place in order for HUD to be a successful enforcement agency in the future.

1. Commit to being an enforcement agency. This seems obvious but given the declining number of enforcement actions and the poor reputation of the agency within the civil rights community it means that a fair housing enforcement office must go back to the basics. It must strongly commit to enforcing the Fair Housing Act. The Act has great powers- TRO's, award significant damages, subpoena power, the power to levy financial penalties, the ability to conduct Secretary-Initiated Investigations- use them. On HUD's website for the Office of Fair Housing and Equal Opportunity, the section on Secretary Initiated Investigations was last updated on October 31, 2006. That is not using the resources available to them.
2. Develop consistency among the regional offices. There must be a consistent application of the Fair Housing Act among the offices that perform fair housing enforcement functions – the ten regional offices in FHEO. That means a common understanding about jurisdiction, standing, testing standards and other enforcement concerns. It is simply counterproductive to have the Seattle Office accept a complaint as jurisdictional only to have the same fact pattern be rejected by the Atlanta Office as non-jurisdictional. This leads to the third item which is....
3. Training. And more training. I don't mean the large mandatory events that fill up a hotel once a year at Disney World or in Phoenix that force FHAP and FHIP agencies to use limited resources to attend. I mean training for HUD staff that will increase skill level and productivity. When I worked for HUD, I developed week long training sessions that we held in cities that had low cost accommodations and inexpensive airfares. The training was peer focused because I felt that the best way to develop staff was to have others who did the work well, and could teach the techniques to others, do the training. Often, we would use real cases and actually have the staff investigate the case through the steps of asking for and obtaining the right evidence,

interviewing witnesses and viewing the actual documents used in the original case. FHEO got away from this model when it committed money to a training academy. We were able to do inexpensive training and bring in the best staff in the country to share their experiences with others. Bringing large numbers of staff to Washington, DC to learn from those who do not have field experience may make for a nice brochure but it does not create good investigators. It is expensive to bring people to Washington and does not encourage using the expertise often available in other parts of the country.

4. Define the mission and staff it properly. The mission of federal fair housing enforcement is "To create equal housing opportunities for all persons living in America by administering laws that prohibit discrimination in housing on the basis of race,color, religion, sex, national origin, disability, and familial status." Although it may be a legal distinction, I wonder if the mission should be to enforce those laws, not administer them. There has to be a commitment to training existing staff and holding them to high performance standards. Others may disagree with me, but I don't think the answer is necessarily more staff. Rather, it is having a staff that is committed to fair housing and to having the resources (training, travel funds, expert witnesses, etc.) to allow that staff to do its job in an effective manner.
5. Work with those in the private sector who share the values of your agency. For too long, the tension between the private fair housing groups and FHEO has had a damaging effect on fair housing enforcement in this country. While the roles should be different, the mission of private fair housing groups and HUD, and for that matter all Americans who believe in justice and fairness, is the same. Although many employees of FHEO have a high regard for the private fair housing groups, I saw and heard many comments over the years that showed nothing but a lack of respect for these groups by many at HUD who had a role to play with these groups. I believe this

has evidenced itself through the years with changes in rules regarding those eligible for funding, the consistent scheduling of HUD national conferences to conflict with those held by the National Fair Housing Alliance, the reallocation of millions of dollars in enforcement funds to research work and the hurdles that fair housing groups were forced to jump through on jurisdictional questions just to file a complaint. This relationship, which is vital to the future of fair housing enforcement, must be repaired.

I have dedicated my career to the enforcement of civil rights. I hope that your dedication to this issue can bring about positive change in fair housing enforcement and bring a renewed sense of purpose to the people of FHEO. Thank you.

National Commission on Fair Housing and Equal Opportunity
Public Hearing
September 22, 2008

Boston, Massachusetts

Testimony of **Michael Allen**
Counsel, Relman & Dane, PLLC

Strong Enforcement is Required to Promote Integration on the Basis of Race and Disability

The Affirmatively Furthering Fair Housing Obligation is a Vital Toll Against Racial Segregation

"Today's Federal housing official commonly inveighs against the evils of ghetto life even as he pushes buttons that ratify their triumph—even as [she] OK's public housing sites in the heart of the [African-American] slums, releases planning and urban renewal funds to cities dead-set against integration, and approves the financing of suburban subdivisions from which [African-Americans] will be barred….These and similar acts are committed daily by officials who say they are unalterably opposed to segregation, and have the memos to prove it….But when you ask one of these [HUD administrators] why, despite the [fair housing legislation] most public housing is still segregated, he invariably blames it on regional custom, local traditions, personal prejudices of municipal housing officials." --Senator Edward Brooke: 114 Cong. Rec. 2281 [1968]

Senator Brooke, one of the chief architects of the Fair Housing Act (FHA) made it clear that a primary purpose of Title VIII was to remedy the "weak intentions" that have led to the federal government's "sanctioning discrimination in housing throughout this Nation." As a consequence, §3608(e)(5) of the FHA explicitly requires HUD to "administer [housing] programs…in a manner affirmatively to further the policies of [the Fair Housing Act]," including the general policy to "provide, within constitutional limits, for fair housing throughout the United States."

Federal courts have repeatedly held that §3608 reflects a Congressional "desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases…." *NAACP v. Sec'y of Housing and Urban Development*, 817 F.2d 149, 155 (1st Cir. 1987). Or, as the Third Circuit previously put it, "[HUD cannot] remain blind to the very real effect that racial concentration has had in the development of urban blight…[and] must utilize some institutionalized method whereby, in considering site selection or type selection, it has before it the relevant racial and socio-economic information necessary for compliance with its duties under the 1964 and 1968 Civil Rights Acts." *Shannon v. HUD*, 436 F.2d 809, 821 (3d Cir. 1970).

The obligation imposed by §3608 is an affirmative obligation, and calls on HUD to ensure that federal housing and community development funds are used to reduce racial segregation, not to perpetuate or exacerbate it. The Second Circuit made clear that "[t]he affirmative duty placed on the Secretary of HUD by § 3608(e)(5)… requires that consideration be given to the impact of proposed public housing programs on the racial concentration in the area in which the proposed housing is to be built. Action must be taken to fulfill, as much as possible, the goal of open integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunities the Act was designed to combat." *Otero v. New York City Housing Authority*, 484 F.2d 1122, 1134 (2d Cir. 1973).

"[E]very court that has considered the question has held or stated that Title VIII imposes upon HUD an obligation to do more than simply refrain from discriminating (and from purposely aiding discrimination by others)…This broader goal [of truly open housing] … reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases." *NAACP v. Sec'y of Housing and Urban Development*, 817 F.2d 149, 155 (1st Cir. 1987).

The statute's mandatory provisions apply not only to HUD itself, but to its grantees. As one federal court has put it: "When viewed in the larger context of Title VIII, the legislative history, and the case law, there is no way—at least no way that makes sense—to construe the boundary of the duty to [AFFH] as ending with the Secretary…. [t]hese regulations unambiguously impose mandatory requirements on the [public housing authorities] not only to *certify* their compliance with fair housing laws, but actually *to comply*." *Langlois v. Abington Housing Authority*, 234 F.Supp.2d 33, 73, 75 (D.Mass. 2002). *See also Otero v. New York City Housing Authority*, 484 F.2d 1122, 1133 (2d Cir. 1973)(holding that the affirmative duty placed on the HUD Secretary by § 3608(d)(5) also applied to "other agencies administering federally-assisted housing programs.")

In fact, HUD itself can be liable for violation of §3608(d)(5) "when HUD is aware of a grantee's discriminatory practices and has made no effort to force it into compliance with the Fair Housing Act by cutting off existing federal financial assistance to the agency in question." *Anderson v. City of Alpharetta, Ga.*, 737 F.2d 1530, 1537 (11th Cir. 1984).

The AFFH obligation is imposed on grantees of all of HUD's housing and community development programs, including the Community Development Block grant program (24 C.F.R. §570.601 *et seq.*), the HOME program (24 C.F.R. §92.350, incorporating 24 C.F.R. §5.105), Public Housing (24 CFR §982.53(b)), the Section 8 Housing Choice Voucher Program (24 C.F.R. §982.53, incorporating 24 C.F.R. §903.7(o)), and all entities required to complete a Consolidated Plan (24 C.F.R. §§91.225, 91.425). All of these entities are required to conduct an analysis of impediments to fair housing (sometimes referred to as an "AI"), take appropriate actions to overcome those impediments, and maintain records reflecting the analysis and the actions taken.

Federal law makes clear that the AFFH certification is precondition to the receipt of federal funds. In other words, no AFFH certification, no federal funds. But while HUD's statutory and regulatory mandate concerning AFFH is clear and explicit, the agency has not developed the enforcement tools or the political will to take on the powerful constituent groups, like mayors, governors and county executives who are the primary recipients of CDBG and other related funds (totaling roughly $7 billion per year). HUD's office of Community Planning and Development ("CPD") clearly sees those elected officials as its chief constituents, and HUD's office of Fair Housing and Equal Opportunity ("FHEO") is often seen as an obstacle to satisfying those constituents. Under those circumstances, and given the strong political influence that elected officials have had within CPD and with HUD Secretaries of both political parties, it is little wonder that HUD rarely, if ever, actually terminates or suspends CDBG and other HCD funding for failure to AFFH. In fact, at the April 2008 National Fair Housing Policy Conference in Atlanta, a long-time HUD employee said he could think of only three instances over 20 years in which HUD such action.

My firm is currently engaged in a lawsuit called *U.S. ex rel. Anti-Discrimination Center v. Westchester County, New York*, filed under the federal False Claims Act, and pending in the U.S. District Court for the Southern District of New York. My client chose this particular enforcement mechanism, in part, because HUD's own enforcement of the AFFH obligation has been so minimal and ineffective, and many observers have lost faith in HUD's ability to enforce the AFFH obligation. When recipients of federal funds know that HUD will not be looking closely at their AFFH certifications, many will be tempted to just sign whatever certification they need to sign to get the money from HUD.

Westchester has historically received between $7 million and $10 million per year in federal housing and community development funds, most notably from the CDBG program. Like the other 1100 CDBG recipients around the country, Westchester is required to submit a certification that it will affirmatively further fair housing. 24 C.F.R. § 570.601(a)(2), 24 CFR § 91.225(a). In the face of strong evidence of residential racial segregation (while comprising just over 15% of the County's population, African-Americans are highly concentrated in Yonkers, New Rochelle, Mount Vernon, White Plains, Peekskill, Ossining and Greenburgh, and nearly half of Consortium Municipalities have African-American populations of 1% or less), Westchester repeatedly certified, over many years, that it was AFFH.

But Westchester's Analyses of Impediments (AIs) from 1996, 2000 and 2004 do not identify any impediments on the basis of race, color, national origin or any other protected class, even though County is part of one of the most segregated regions in the country. There is no mention in any of them of race discrimination or racial segregation, and no analysis of whether these might operate to diminish fair housing choice. Westchester refused to identify or analyze community resistance to integration on the basis of race and national origin as an impediment.

The complaint alleges that, as a matter of policy, the County refused to monitor the efforts of participating municipalities to further fair housing and did not inform them that Westchester might withhold federal funds if the municipality did not take steps to further fair housing, and that from April 2000 to April 2006 (the so-called "false claims period"), Westchester never required a participating municipality to take any steps to increase the availability of affordable housing or otherwise affirmatively further fair housing.

In its court filings, the County has defended its failure to identify race-based impediments in its AIs by suggesting that "income is arguably a better proxy for determining need than race when distributing housing funds," and that race is "not among the most challenging impediments" to fair housing in Westchester.

In July 2007, the Court denied the County's motion to dismiss the lawsuit holding, in part: "In the face of the clear legislative purpose of the Fair Housing Act, enacted pursuant to Congress's power under the Thirteenth Amendment as Title VIII of the Civil Rights Act of 1968, to combat racial segregation and discrimination in housing, an interpretation of 'affirmatively further fair housing' that excludes consideration of race would be an absurd result." *Westchester,* 495 F.Supp.2d at 387-88. Cross-motions for summary judgment will be filed September 30, 2008.

Policy Recommendations

Bringing any private civil rights litigation can be complicated and expensive, and that is particularly true in litigation under the False Claims Act. But there are a number of concrete steps that could be taken immediately to strengthen the federal government's enforcement of the AFFH obligation:

- Remove federal oversight and enforcement of the AFFH obligation from HUD as a means of overcoming the political influence of recipients with CPD and the Secretary's office. Invest that authority in an independent agency whose director is a career

employee and not a political appointee, and empower the agency to investigate and resolve complaints involving recipients' failure to AFFH in any program receiving federal housing and community development funding.

- Make the AFFH obligation enforceable by private parties (including fair housing and other community groups) who are knowledgeable about impediments to fair housing and about appropriate actions to overcome those impediments. This could be accomplished by amending the definition of "discriminatory housing practice" provided in 42 U.S.C. §3602 to include "a failure to comply with the obligations of section 3608(e)(5)."

- Promulgate AFFH regulations that contain performance standards, and that require municipalities to obtain the concurrence of local fair housing enforcement groups that the Analysis of Impediments has actually identified and analyzed fair housing impediments in the jurisdiction, implemented appropriate actions to overcome those impediments and that the AI otherwise complies with those performance standards.

- Require that recipients of federal funds submit their AIs to the new independent agency, and fund an organization with the capacity to collect and analyze all AIs for their compliance with the federal statutory and regulatory requirements. Such an organization would also work with fair housing and community groups around the country to enhance their capacity to review and analyze AIs and to participate in the process of identifying fair housing impediments and appropriate actions to overcome them. Such an organization would also be charged with identifying exemplary AIs and promoting them as models for other communities.

Strong Enforcement of the FHA's Disability Provisions Required for True Community Integration

When Congress passed the Fair Housing Amendments Act of 1988, it said the new law was:

[A] clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream. It repudiates the use of stereotypes and ignorance, and mandates that persons with handicaps be considered as individuals. Generalized perceptions about disabilities and unfounded speculations about threats to safety are specifically rejected as grounds to justify exclusion.

H.Rpt. 100-711, at p. 18, reprinted at 1988 U.S.C.C.A.N 2173, 2179.

Having spent most of the past 20 years immersed in housing issues affecting people with disabilities, I have come to the conclusion that HUD's enforcement of disability provisions of the Fair Housing Act does not evidence any such "national commitment." Rather, enforcement has grown stodgy and bureaucratic. Even though disability claims comprise the largest category of complaints in many regions, many complaints languish on the desks of investigators who do not understand some of the basic elements of a disability discrimination claim. Processing times are still too slow, particularly for cases in which the refusal to grant

an accommodation or modification means that a person with a disability loses the opportunity to live in a house or apartment that meets her other needs.

I have heard countless stories from victims of disability discrimination and their advocates that investigators from HUD and its partner state and local enforcement agencies require that disability discrimination complaints be fully supported with evidence before they are accepted as complaints. Rather than follow its own 1999 guidance on the reasonable cause standard. In that guidance, HUD explained why using more stringent tests (like the summary judgment standard in litigation, or the "more likely than not" or Rule 11 standards) was inappropriate. That memo concludes that

[Reasonable cause] exists when FHEO can conclude based on all relevant evidence, viewed not as an advocate for either complainant or respondent but rather objectively in light of the Act's prohibitory language and case law, that a violation may have occurred. In the event of conflicting yet reasonable believed evidence after a full investigation, the evidence may be construed in favor of complainant. If the evidence appears to support complainant and respondent equally, a reasonable cause finding also may be made.

When victims of disability discrimination feel like they have been given the "third degree" in order to get their FHA complaints processed, it is no wonder that they feel that the HUD administrative system will not give them justice.

As a co-author of the report *Reconstructing Fair Housing*, published in 2001 by the National Council on Disability, I know that there is wide variability between HUD regions concerning the quality of investigations and the thoroughness and speed with which cases are resolved. None of those variables has changed appreciably in the past seven years since the report was released. And while HUD has upgraded the training for its own employees and the staffs of state and local government fair housing enforcement agencies, I still consult regularly with complainants or their advocates who have encountered investigators who don't understand the basic elements of disability case and so make determinations that are plainly wrong.

When NCD issued its report in 2001, we were appalled to report that HUD had found cause in only 96 cases in FY 2000. That number now looks very robust as compared to 31 cases that HUD charged in FY 2007. Further, the fact that HUD administrative law judges heard only two cases in the three-year period ending with FY 2007 suggests that the responsive, inexpensive and prompt administrative enforcement option envisioned by Congress in the 1988 Amendments Act has proven to be anything but. These days, a victim of discrimination who cannot find or afford a lawyer to litigate her claim is left with little more than the empty shell of an administrative process at HUD.

NCD's report concluded in 2001 that "ineffective enforcement has led to a loss of public trust that the protections of the Fair Housing Act [and related laws] will be enforced." *Reconstructing Fair Housing,* p. 4. The dysfunction, or disappearance, of HUD's administrative complaint system sends a message to housing providers around the country: Fair housing enforcement is not a national priority, and most acts of discrimination will not be detected and punished.

Beyond complaint processing and ALJ hearings, HUD has other means of articulating its enforcement position in a way that can improve compliance with the FHA. The enormously

helpful joint HUD-DOJ statements on reasonable accommodation and reasonable modification are the two most obvious examples. These plain-English guides have been used by thousands of advocates and people with disabilities to secure the rights protected under the FHA, without the need to hire a lawyer or file a complaint. That makes it all the more puzzling that HUD has not taken a similar approach in other areas, most significantly on the issues of the statute of limitations and continuing violations theory in new construction, and the application of the FHA's disability provisions to assisted living and continuing care retirement communities.

Policy Recommendations

For people with disabilities, "integration" means being part of the "American mainstream," and not being treated unfavorably because of a housing provider's biases or stereotypes about disability. Vigorous and timely enforcement of the FHA is especially important in the context of disability because a single discriminatory act (being it disparate treatment, the refusal to accommodate or inaccessible design and construction) can be the difference between someone being housed in an integrated setting and being relegated to some more institutional setting like a group home or assisted living or other housing set aside for people with disabilities.

- Congress should establish an independent agency, headed by a career employee, to investigate Title VIII complaints and to take enforcement action.
- Congress should fund that agency in a manner that will permit investigation of claims and determinations of cause within 100 days so that people with disabilities are not left wondering whether their rights will be enforced
- HUD should issue guidance providing that the continuing violations doctrine applies in the context of the design and construction of "covered multifamily units."
- HUD should guidance, either by itself or jointly with DOJ, on the applicability of the FHA to seniors with disabilities living in assisted living or continuing care retirement communities.

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Articles

Underwriting for Fair Housing? Achieving Civil Rights Goals in Affordable Housing Programs

Henry Korman

Part I: Introduction

For more than thirty-five years, all public housing development in Chicago has been subject to the oversight of a federal district court in order to enforce a consent decree designed to reverse "intentionally perpetuated racial segregation" in public housing authority (PHA) tenant assignment and siting policies.[1] In decisions spanning 2003, 2004, and 2005, public housing residents displaced by the demolition and revitalization efforts of the Chicago Housing Authority withstood motions to dismiss two separately filed cases claiming that the PHA's relocation efforts perpetuated racial segregation and violated fair housing laws.[2] In Florida, a district court allowed public housing residents to proceed with fair housing and civil rights claims against a PHA seeking to demolish and revitalize a public housing development with HOPE VI funding from the U.S. Department of Housing and Urban Development (HUD).[3] A court in Massachusetts blocked the use of selection preferences favoring local residents in the Section 8 housing choice voucher programs administered by several suburban housing authorities because the preferences improperly excluded minority applicants from program participation.[4] A federal court in New York stopped the use of selection preferences for working families because the preferences undermined implementation of a civil rights consent decree.[5] Fair housing principles blocked prepayment of a Rural Rental Housing Program loan and termination of a project-based Section 8 contract in Arkansas.[6] In Maryland, a district court ruled against HUD's motion for summary judgment on tenant claims that the agency violated its responsibilities under the Fair Housing Act in the disposition of a foreclosed multi-

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family property.[7] After ten years of litigation in Baltimore, a separate federal court said that HUD violated fair housing requirements by failing to engage in regional activities to end residential segregation in public housing.[8] In New Jersey, it must have seemed as if civil rights law would bring a complete stop to the development of Low-Income Housing Tax Credits (LIHTCs). There, civil rights groups argued that the housing credit agency's allocation of tax credits perpetuated racial segregation by concentrating LIHTC properties in urban, segregated neighborhoods.[9]

These cases are connected by a single principle, a principle that federal, state, and local housing agencies, developers, and property managers disregard at considerable peril. In all of the cases, the courts held that housing providers have an affirmative duty to further fair housing.[10]

The governmentwide obligation to affirmatively further fair housing is codified in the federal Fair Housing Act.[11] The mandate directs all federal executive departments and agencies to ". . . 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 to affirmatively further the purposes of [the Fair Housing Act]. . . ."[12]

The goal of this directive is not only to deploy federal resources against all forms of housing discrimination but also to ensure that active steps are "taken to fulfill, as much as possible, the goal of open, integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunity [Title VIII] was designed to combat."[13] As a result, and as evidenced by the litigation that seeks to enforce it, the responsibility to further fair housing reaches into every aspect of affordable housing, from site selection, demolition, displacement, and relocation to architectural design, marketing, tenant selection, and occupancy policies.

The disputes that underlie the litigation highlight a divide between community development activists whose efforts focus on the revitalization of distressed neighborhoods in urban centers and civil rights advocates committed to the development of affordable housing in suburban areas as a means of breaking down persistent patterns of residential segregation, isolation, and poverty.[14] The divide has been a feature of debates concerning civil rights and housing and community development from the first years after the enactment of Title VIII.[15] It also is evident that the day-to-day work of achieving a fair housing result in affordable housing is challenging and sometimes comes with its own human cost in terms of displacement that can drive poor households further into high-poverty, segregated neighborhoods.[16] Under the circumstances, it is not entirely out of bounds to wonder whether the obligation to further fair housing is incompatible with the business of building and providing affordable housing.

Such a conclusion would be false. The three decades of litigation that have followed the enactment of Title VIII have been characterized by numerous civil rights successes, such as the renewal and desegregation of

public housing in Dallas, Texas, resulting from *Walker v. U.S. Department of Housing and Urban Development*.[17] Moreover, a housing provider that is attentive to civil rights concerns has substantial discretion in choosing the methods deemed necessary to fulfill the responsibility to further fair housing.[18] Consequently, the "threat" to the construction of affordable housing posed by the obligation to further fair housing, if it exists at all, should not be different from any of the other risks routinely considered in the development process, including, for example, environmental hazards or financial risks.

A large and important body of literature directed at policy makers urges reforms to federal, state, and local government housing practices as a means of promoting equal opportunity and reversing entrenched conditions of segregation and discrimination. The audience for this article is not policy makers but rather development practitioners, i.e., the developers, lenders, syndicators, and lawyers involved in the day-to-day mechanics of designing, building, and leasing or selling affordable housing.

This article examines what it means to affirmatively further fair housing and considers the difficulties faced in the employment of the strategies used "to fulfill, as much as possible, the goal of open, integrated residential housing patterns." It argues that the obligation to further fair housing can and should be served by treating civil rights concerns with the same level of care and attention devoted to any of the other risks typically underwritten in an affordable housing real estate transaction. Tax credit developers are familiar with underwriting criteria that address tax-related financial risk factors from the standpoint of statutory and judicial standards, agency regulation, and subregulatory guidance. This article examines the possibility of fair housing underwriting from a similar perspective.

Part I is this introduction. Part II explores the judicial interpretations of the obligation to further fair housing, including the responsibility to utilize institutionalized methods to ensure compliance with civil rights duties. Part III describes the federal interagency standards that define and implement the responsibility, focusing on the fair housing mechanisms used by the two federal agencies with the largest stake in affordable housing: HUD as the lead federal fair housing and housing and community development agency, and the Internal Revenue Service (IRS) as the agency charged with administering the LIHTC program. Parts IV and V identify fair housing risk factors. Part IV explores civil rights critiques of affordable housing programs, and Part V assesses civil rights progress in affordable housing development and the difficulties in implementing civil rights reforms; it also examines strategies commonly used to achieve fair housing goals. In Part VI, the article considers housing development underwriting techniques. It concludes by urging the use of comparable fair housing underwriting methods that assess and mitigate civil rights risks as one modest means of carrying out the duty to affirmatively further fair housing.

Part II: Judicial Enforcement of the Duty to Further Fair Housing

Consider for a moment the legal opinions that are a routine feature of affordable housing transactions. Opinions assure lenders and syndicators that the borrower is a properly formed business organization with the capacity and authority to complete a transaction. Opinions state that the transactional documents are enforceable against the executing parties. A tax attorney's opinion will address a host of considerations regarding statutory compliance with the Internal Revenue Code (Code) and IRS regulations, audit risks based on judicial interpretations of the Code and the regulations, and the effect of the transaction's structure on an investor's expected rate of return in light of those requirements. Opinions tell a lender or an investor that a knowledgeable professional has examined and approved the transaction after reviewing applicable legal requirements. Elements of affordable housing transactions naturally involve risks, and civil rights compliance is no different. Like other risks, civil rights compliance is a risk that has its origin in statute as interpreted by the courts, if the case law on the obligation to further fair housing is any measure. This section of the article examines that element of the obligation to further fair housing.

Courts enforce the statutory responsibility to comply with Title VIII and to further fair housing against federal agencies such as HUD, the Office of the Comptroller of Currency, the Department of Veterans Affairs, and the Rural Housing Service of the U.S. Department of Agriculture.[19] State allocating agencies administering the tax credit program;[20] state agencies serving as lenders of federal funds in the HOME program;[21] state quasi-public agencies administering tax-exempt bonds;[22] owners operating multifamily assisted housing;[23] owners seeking to refinance assisted housing;[24] housing authorities administering public housing, HOPE VI grants, and tenant-based Section 8 vouchers;[25] and redevelopment authorities and cities administering community development and urban renewal funds[26] all face the possibility of a challenge for disregard of the obligation. The responsibility to further fair housing protects all classes of people covered by the Fair Housing Act, which prohibits discrimination against families with children and people with disabilities and forbids discrimination based on race, color, national origin, religion, and sex.[27]

As interpreted by the courts, the responsibility has several elements. First, discrimination is prohibited, including deliberate discrimination, acts that aid or disregard the discrimination of others, and facially neutral practices that have a discriminatory effect on the classes of people protected by fair housing laws.[28] Next, those with the obligation to further fair housing have a responsibility to consider the civil rights impact of housing and development decisions. This second obligation requires agencies to consider, for example, whether the siting of new assisted developments or the demolition and disposition of existing developments will result in segregation and isolation of minorities.[29] It also imposes a more global respon-

sibility to "utilize some institutionalized method whereby . . . [the agency] has before it the relevant racial and socio-economic information necessary for compliance with its duties" to further fair housing.[30] Finally, the codification of a duty to further fair housing reflects the congressional desire "to fulfill . . . the goal of open, integrated residential housing patterns and to prevent the increase of segregation" and "to assist in ending discrimination and segregation to the point where the supply of genuinely open housing increases."[31]

When an agency or recipient assumes and carries out the responsibility to further fair housing, the actions of the agency receive considerable deference. Judicial enforcement of the obligation in actions against federal agencies is through the Administrative Procedure Act (APA). An agency action for a violation of the responsibility to promote fair housing under the APA will be set aside only if it is "arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law."[32] Under this standard, an agency "possesses broad discretionary powers to develop, award, and administer its grants and to decide the degree to which they can be shaped to help achieve Title VIII's goals."[33] Though not subject to the federal APA, state agencies enjoy a similar level of deference.[34] Agency discretion is not unlimited, however. Deference to the exercise of discretion "simply means that a court is less likely to find against the agency, for the agency is less likely to have acted unlawfully."[35]

For Title VIII purposes, the threshold for ascertaining whether there is an abuse of discretion and a consequent disregard of the obligation to further fair housing

> implies, at minimum, an obligation to assess negatively those aspects of a proposed course of action that would further limit the supply of genuinely open housing and to assess positively those aspects of a proposed course of action that would increase that supply. If [the agency] is doing so in a meaningful way, one would expect to see, over time . . . activity that tends to increase, or at least . . . does not significantly diminish the supply of open housing.[36]

Under this approach, a disregard of the overall regional civil rights effect of decisions about the allocation of housing resources violates the duty to further fair housing while allocation practices that balance the distribution of resources in a manner that is attentive to fair housing concerns do not.[37] Demolition of assisted housing is unlawful when it results in an unmitigated discriminatory burden on racial minorities.[38] Demolition of public housing as part of a HOPE VI plan that includes "attempts at integration and opportunities for residents rather than publicly funded, high density, high rise apartments" is consistent with Title VIII, especially where "the record demonstrates consideration of impact and pursuit of a course of action that, on its face, demonstrates responsiveness to the perceived [racial] impact."[39] Selection practices will violate the obligation to further fair housing when they have a discriminatory effect. Marketing and admission

standards implemented as part of an agency's obligation to comply with civil rights laws or to operate within a statutory mandate governing selection preferences are permitted.[40] Relocation activities are permissible when an agency acts to mitigate a discriminatory effect.[41] Inattention to that effect will have the opposite result.[42] The same principles apply to site selection, even where assisted housing is located in a segregated neighborhood.[43] They also apply to the way an agency uses the data collected as it assesses the civil rights environment in which its programs operate.[44] In sum, to do nothing invites litigation and liability. Addressing civil rights concerns in a thoughtful and comprehensive manner invites respect from the courts.

Part III: Federal Implementation of Civil Rights Obligations

Like other underwriting factors that affect affordable housing development, civil rights responsibilities have their own regulatory and subregulatory structure implemented through agencies charged with administrative obligations under civil rights-enabling statutes. Part III explores the federal mechanisms for implementing civil rights laws with the aim of additionally defining the obligation to further fair housing and identifying more detailed standards that could form the basis of civil rights underwriting.

Federal Structure for Implementation of the Responsibility to Further Fair Housing

The Fair Housing Act is not the only civil rights law affecting housing programs. Programs that receive federal financial assistance are governed by Title VI of the 1964 Civil Rights Act, which forbids discrimination based on race, color, and national origin; Section 504 of the 1973 Rehabilitation Act, which outlaws disability discrimination; and the Age Discrimination Act of 1975, which prohibits age discrimination.[45] Title IX of the Education Amendments of 1972 prohibits gender discrimination in educational programs receiving federal financial assistance, including those offered in connection with housing, such as the Public Housing Resident Opportunities and Self-Sufficiency (ROSS) program, under which training is an eligible activity.[46] Title II of the Americans with Disabilities Act (ADA) bars disability discrimination in programs and services of state and local government, including state and local housing programs. Title III of the ADA prohibits disability discrimination in public accommodations like homeless shelters and in social services offered in connection with housing.[47] Governmentwide implementation of these laws is coordinated through presidential executive orders, and some courts have relied on those executive orders to impose duties directly on housing providers to further fair housing.[48]

The earliest of the presidential directives was Executive Order 11,063, issued in 1962, which assigned to the President's Committee on Equal Opportunity in Housing governmentwide coordination and enforcement powers for combating discrimination based on race, color, creed, and national origin.[49] Responsibility for interagency civil rights leadership has shifted

over the years. The Department of Justice is currently assigned coordination responsibilities for Title VI, Title IX, Section 504, and those parts of the ADA addressing disability discrimination in state and local governmental services and in public accommodations.[50] Governmentwide responsibility for the Age Discrimination Act has always been with the U.S. Department of Health, Education and Welfare (HEW) and its successor agency, the Department of Health and Human Services (HHS).[51] Primary responsibility for Title VIII enforcement falls on HUD, which shares certain duties with the Justice Department.[52] HUD is responsible for leadership in the federal effort to affirmatively further fair housing.[53]

All federal agencies are required to promulgate regulations effectuating federal laws like Title VI and Section 504 and the related executive orders.[54] Justice Department Title VI rules provide a template for all the rules that affect recipients of federal housing assistance, for the public and private entities governed by the broader scope of Executive Order 11,063, and for the state and local services subject to Title II of the ADA.[55] HUD rules for federal financial assistance and ADA rules, both derived from the Justice Department template, define a scope of civil rights conduct that is nearly identical to the Title VIII obligation to further fair housing.

Like the Fair Housing Act, these rules forbid not only intentional conduct and segregation but also neutral practices that have a discriminatory effect.[56] The rules outlaw activities that aid or assist the discrimination of others.[57] They require planning activities and affirmative steps to remove conditions of discrimination, including conditions caused by the grantee's conduct, conditions not caused by the grantee that interfere with equal choice and program participation, and architectural barriers that prevent participation by people with disabilities.[58] They forbid site selection practices that aid or perpetuate discrimination.[59] The rules require that grantees keep records from which it is possible to monitor compliance with civil rights requirements.[60] They also require grantees to advise program participants about civil rights requirements, designate employees to accept complaints, and establish civil rights grievance procedures.[61] In short, they reflect a coordinated, governmentwide definition of what it means to further fair housing and, thus, a framework on which to base fair housing underwriting criteria.

HUD and the Devolution of Affirmative Fair Housing Practices

HUD rules do more than forbid discrimination. Agency regulations and associated subregulatory guidance try to operationalize the objective of using federal resources to end segregation and create open housing by devolving affirmative responsibilities to HUD grantees. HUD calls these mandates "civil rights-related program requirements."[62] Like HUD's Title VI and Section 504 rules, they apply to recipients of HUD program funds. They touch virtually every aspect of a grantee's interaction with HUD and with the low-income families that are the ultimate beneficiaries of HUD programs. It is useful to examine these requirements not just for their direct

effect on civil rights program operational standards, but also because they offer an additional template for the kinds of activities that might constitute fair housing underwriting.

Civil rights-related program requirements begin when grantees compete for federal funding or complete the certifications required to qualify for noncompetitive funds. For example, an application for competitive funding under a HUD notice of funding availability (NOFA) will not be processed if the applicant is the subject of an administrative charge under the Fair Housing Act, is a defendant in a Title VIII pattern and practice lawsuit, or has received a letter of findings asserting violations of Title VI or Section 504.[63] Applicants must also address the duty to further fair housing by including in their application a description of specific steps to "(1) [o]vercome the effects of impediments to fair housing choice that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice; (2) [r]emedy discrimination in housing; or (3) [p]romote fair housing rights and fair housing choice."[64]

The reference to the AI addresses the affirmative civil rights obligations of recipients of formula-based, noncompetitive HUD grants. Under the consolidated planning requirements applicable to the states, counties, and municipalities that receive HUD community development and HOME funds and the public housing agency plan requirements applicable to PHAs that receive public housing and Section 8 funds, recipients must certify that they will affirmatively further fair housing by developing a written "analysis of impediments to fair housing choice" that identifies barriers to fair housing and designs and implements an action plan to remove those barriers.[65]

As part of the consolidated plan, the AI creates opportunities for comprehensive civil rights planning across multiple programs. For example, HUD consolidated planning rules require state community development and HOME grantees to "describe the strategy to coordinate the Low-Income Housing Tax Credit with the development of housing that is affordable to low-income and moderate-income families."[66] At least one court has recognized that fair housing planning obligations under the consolidated plan rules impose the responsibility to further fair housing on state and local agencies, including state housing credit agencies.[67]

Additional civil rights-related program requirements govern the day-to-day operations of HUD programs. Contracts for HUD funds include general civil rights-related covenants.[68] Fair housing duties are incorporated in relocation responsibilities when households are displaced as the result of HUD-assisted development activities.[69] Once a property is ready for occupancy, civil rights standards affect application, waiting list, and tenant selection requirements. They govern

> use of residency preferences in a manner that does not have a disparate impact on members of any class of individuals protected by federal civil rights laws . . . ; [they require] [c]onsistent maintenance requirements; and . . . [c]onsistent policies across properties owned by the same owner to ensure against steering, segregation, or other discriminatory practices.[70]

They include requirements for affirmative fair housing marketing plans designed as a "means to carry out the mandate of" Title VIII in order to "achieve a condition in which individuals of similar income levels in the same housing market areas have a like range of housing choices available to them regardless of their race, color, religion, sex, handicap, familial status or national origin."[71] HUD rules also impose a duty on providers to counsel applicants and participants about equal opportunity and fair housing rights.[72]

The early litigation brought under Title VIII to enforce the duty to further fair housing resulted in the promulgation of a special category of HUD civil rights-related program requirements: agency site and neighborhood selection standards for HUD-assisted housing.[73] With variations that result from program differences, the standards apply to public housing, the Project-Based Housing Choice Voucher Program, the HOME program, properties developed in the Section 202 program of housing and services for elders, and the Section 811 program of housing and supportive services for people with disabilities.[74]

Recently reissued regulations for the Project-Based Housing Choice Voucher Program are the best articulation of the institutionalized standards for site selection that emerged from the litigation under Title VIII. Under the rules, all sites must comply with the general provisions of Title VI, Title VIII, and Executive Order 11,063, including sites for rehabilitated properties and new construction projects.[75] The criteria for new construction try to balance issues of choice, revitalization, and segregation. New projects must not be located in "areas of minority concentration" unless "sufficient, comparable housing opportunities" exist in nonsegregated areas. Reflecting the judicial view that fair housing goals are to be achieved over time, "sufficient housing opportunities" are defined as a condition where distribution of assisted units, "over a period of several years, will approach an appropriate balance of housing choices within and outside areas of minority concentration."[76] The concept of

> overriding housing needs . . . permits approval of sites [in segregated areas] that are an integral part of an overall local strategy for preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably changing the economic character of the area (a "revitalizing area").[77]

Fair Housing in the LIHTC Program

With the exception of a prohibition on refusing to rent to participants in the Section 8 housing choice voucher program, concepts of fair housing and civil rights do not appear in the tax credit statute, 26 U.S.C. § 42 (Section 42).[78] To the extent that civil rights considerations are a factor in the tax credit program, they derive from legislative history, which provides that "residential rental units must be for use by the general public. . . ."[79]

One facet of the tax credit regulations is the manner in which the IRS relies on HUD standards for the housing aspects of the program.[80] The IRS

follows the same practice in setting civil rights and fair housing standards. Implementing rules state that "a residential rental unit is for use by the general public if the unit is rented in a manner consistent with housing policy governing nondiscrimination, as evidenced by rules or regulations of HUD" and HUD's *Multifamily Occupancy Handbook*.[81] The reference to the HUD handbook means that tax credit owners are permitted to offer preferences to classes such as "the homeless [or] disabled" where those preferences are permitted in HUD-subsidized housing developments, but they must not adopt practices "that would violate HUD housing policy," such as providing units "for a member of a social organization" or "by an employer for its employees."[82] Under IRS rules, owners must verify compliance with the general public use requirements through annual certifications that they have not been subject to adverse administrative or judicial findings of discrimination under Title VIII.[83] The court in the challenge to the New Jersey Qualified Allocation Plan (QAP) interpreted the IRS regulation to apply "only to the rental of units within a project financed by the tax credit program"; that is, only to individual cases of fair housing violations and not to larger systemic issues of siting, segregation, or furthering fair housing that are at the heart of Title VIII and the related executive orders.[84]

It is hard to know precisely what the IRS intends in the reference to HUD nondiscrimination rules. HUD civil rights standards encompass a broad range of requirements that apply to some housing programs but not others.[85] The regulations include rules that apply to recipients of federal financial assistance promulgated under Title VI, Section 504, Title IX, the Age Discrimination Act, and the implementing rules for Executive Order 11,063. They also include Fair Housing Act requirements applicable to both private and assisted housing and to landlords, sellers, real estate brokers, lenders, and others providing financing for housing, whether or not federal financial assistance is involved.[86] Privately owned HUD-assisted multifamily properties are also subject to affirmative fair housing marketing standards.[87] Nearly every set of rules in individual HUD programs includes civil rights-related program requirements that incorporate by reference the rules applicable for federal financial assistance, the ADA, and an array of legal requirements that apply to minority and women business development and employment opportunities for residents of assisted housing.[88] HUD rules also include civil rights-related requirements that affect only the operations of particular programs like HOME and public housing.[89] The IRS tax credit audit guide and its draft compliance guide for state housing credit agencies refer to these requirements but offer little guidance on how they should be applied. The draft compliance guide does offer detailed information on the meaning of the general public use requirements, but it discusses only matters that arise under Title VIII.[90]

The IRS regulatory reference to the *Multifamily Occupancy Handbook* also can be confusing. The *Multifamily Occupancy Handbook* is the guidance for privately owned, HUD-subsidized multifamily housing programs.[91] It cov-

ers programs receiving federal financial assistance within the meaning of Title VI and related laws and therefore includes a chapter that offers guidance on all of the civil rights rules found in HUD regulations.[92] As an analytical matter, it is not clear whether all of HUD's rules and the entire handbook actually apply to LIHTC properties, as the IRS regulation suggests. There is no clear guidance on whether tax credits constitute "federal financial assistance" within the meaning of laws like Title VI, Title IX, or Section 504.[93] Indeed, in an entirely different guidance document, HUD's relocation handbook says that LIHTCs are not federal financial assistance within the meaning of the Uniform Relocation Act.[94] These distinctions are potentially significant. For example, Section 504 standards require the construction of architectural accessibility features in properties that undergo "substantial alteration," while Title VIII access requirements apply only to new construction.[95]

The *Multifamily Occupancy Handbook* devotes an entire chapter to the more detailed selection preferences and eligibility standards applicable in individual HUD programs. These standards are presumably relevant to IRS civil rights compliance only when those HUD programs are used in combination with tax credits.[96] The one direct reference in the *Multifamily Occupancy Handbook* to tax credits appears in a discussion about single-sex housing programs and gender discrimination under Title VIII. In that context, the handbook states that "HUD does not interpret the Internal Revenue Code to require housing providers to obtain a certification from HUD that they are operating in compliance with nondiscrimination requirements as a prerequisite to obtaining" tax credits. The handbook does invite providers to contact HUD field offices with questions.[97]

The IRS has taken some steps to expand the scope of the civil rights oversight in the tax credit program beyond monitoring for individual cases of discrimination. In August 2000, the Department of Treasury, the Department of Justice, and HUD entered into a memorandum of understanding in an effort to coordinate fair housing activities among the three agencies.[98] For the most part, the memorandum supports the IRS's focus on fair housing issues in the rental of individual units.[99] It aims for better interagency coordination by requiring HUD to notify the IRS and the appropriate state housing credit agency of pending administrative and judicial fair housing cases involving tax credit properties and by requiring the IRS to advise owners about the possible loss of credits in connection with an adverse finding or judgment.[100] The memorandum also calls for joint fair housing training for Treasury and housing credit agency staff by HUD and the Justice Department, activities to encourage monitoring and compliance by syndicators, improved enforcement of Title VIII architectural access standards, and annual civil rights meetings with housing credit agencies.[101] It appears, however, that the memorandum has produced very little actual activity by HUD, the IRS, and the Justice Department.[102]

Part IV: The Civil Rights Critique of Federal Fair Housing Efforts

A long history of intentional race discrimination in federal housing and development programs, especially against African-Americans, informs Title VIII's imperative to further fair housing and should form the basis for fair housing underwriting. Segregated, blighted areas were razed for highways, new homes, and businesses in the name of slum clearance and urban redevelopment. The African-American inhabitants of the affected neighborhoods were corralled into concentrated, high-rise public housing developments. Federal mortgage underwriters drew bright red lines on area maps to demark the African-American neighborhoods where no federally insured loans could be made. Housing officials maintained separate developments for African-Americans and whites through the use of discriminatory admission and unit assignment policies. The complicity of federal housing officials in creating the resulting patterns of segregation and poverty in affordable housing programs is well established.[103] In its better moments, HUD acknowledges the role played by the federal government.[104] Although conditions of segregation have somewhat eased in recent years, they still persist. Improvements "did not extend to black housing residents, who continued to live in low-income, predominantly black-occupied neighborhoods."[105]

There is no single, consistently applied standard for measuring levels of poverty and racial segregation. The general view in HUD programs is that a "low-poverty" area is one in which no more than 10 percent of the residents live with household incomes at or below the federal poverty line.[106] A "high-poverty" area is a neighborhood where 30 percent or more of inhabitants live in poverty.[107] There are varying standards used to measure levels of segregation. A common measure defines a segregated area as one in which a particular racial or ethnic group comprises 50 percent or more of the total population.[108]

By these standards, the LIHTC program is on its way to replicating the conditions that plague public and assisted housing programs. In a February 2000 assessment of thirty-nine tax credit properties placed in service between 1992 and 1994, researchers found that 86 percent of the tax credit properties studied were located in neighborhoods with rates of poverty greater than 10 percent; 46 percent of the properties were in areas with poverty rates greater than 30 percent.[109] Seventy-two percent of the surveyed properties were located in central cities.[110] Nearly half were in census tracts where 80 percent to 100 percent of the residents consisted of racial and ethnic minorities; another 39 percent were sited in neighborhoods where the percentage of minority residents ranged from 21 percent to 79 percent.[111] Fifty-two percent of the surveyed properties were occupied only by minority tenants; 78 percent of the properties had minority tenant populations of greater than 70 percent.[112] More than half of the properties were

occupied by a resident population that was more minority than the surrounding neighborhood.[113]

A December 2003 survey examined 9,311 projects, in metropolitan and nonmetropolitan areas, consisting of 633,080 LIHTC units placed in service between 1995 and 2001.[114] The 2003 study found that some 21 percent of all the surveyed units placed in service in that time period were located in high-poverty areas.[115] Nearly two-thirds of the 1995 to 2001 units were located in census tracts with poverty rates greater than 10 percent, and 18.2 percent of the projects were in areas with rates of poverty greater than 30 percent.[116] More than a fifth of LIHTC properties, or 21.4 percent, were in areas where minorities made up over 80 percent of the population.[117] Nearly half of the properties, or 48.5 percent, were sited in neighborhoods where the percentage of minority residents ranged from 21 percent to 79 percent.[118] Slightly more than 40 percent of the 1995–2001 units were located in areas where the minority population exceeded 50 percent.[119] These facts led to litigation in New Jersey and Connecticut and foretell more lawsuits.[120]

Despite the federal apparatus for affirmatively furthering fair housing, segregated living patterns also persist in private housing throughout metropolitan housing markets, where segregation diminished only incrementally between 1990 and 2000.[121] The work of reversing these injustices remains unfinished decades after the enactment of Title VIII and motivates powerful critiques of federal, state, and local housing policies. Writing in 1998, Florence Roisman, for example, criticized both the IRS and state housing credit agencies for failing to further fair housing.[122] Roisman proposed three types of changes to Treasury regulations to correct that failure. First, she urged the IRS to amend LIHTC rules to explicitly acknowledge that tax credit housing is subject to Title VIII and to incorporate into the rules the statutory obligation to not discriminate against Section 8 participants.[123] Second, she proposed new civil rights compliance standards for state housing credit agencies. The specific proposals track many of the requirements embodied in HUD's civil rights-related program requirements, including state certifications of compliance with fair housing laws, fair housing planning, civil rights complaint mechanisms, standards for affirmative fair housing marketing, data collection and fair housing monitoring, threshold civil rights eligibility requirements for tax credit applicants, and site and neighborhood standards.[124] Finally, Roisman suggested devolving some of these responsibilities to developers applying for and operating housing assisted with LIHTCs, again in much the same way HUD devolves similar duties to its grantees.[125]

Other critiques of government policies focus more broadly on civil rights and housing within a regional context of opportunity that also encompasses jobs, education, transportation, child care, environmental enforcement, and structures for local political participation. These critiques argue that racial and economic equity is accomplished with an emphasis not just on removing conditions of segregation, but also on opening up access to

the "complex, interconnected web of opportunity structures . . . that significantly affect . . . quality of life."[126] To proponents of this "opportunity-based" model of civil rights, a variety of factors combine to cement in place racial isolation, exclusion, and segregation:

- shortage of affordable housing;
- increasing number of people of color as a percentage of the overall population;
- persistence of racial discrimination in housing, education, health care, and employment;
- increased income inequality;
- movement of jobs away from urban centers;
- poor networks for public transportation;
- fiscal policies that divert government resources away from affordable housing and the social safety net; and
- fragmentation of government authority for planning and land use.[127]

The opportunity-based civil rights model calls for regional planning and resource utilization, as opposed to the current fragmented model that directs housing resources to local, place-based governments and entities. It suggests policy changes that break down local land use barriers to affordable housing development, such as fair share housing laws that impose a duty on municipalities to build enough affordable units to accommodate a proportionate share of a region's low-income population, inclusionary zoning and density bonus criteria, and linkage fees that raise funding for affordable housing from developers that build commercial facilities and market-rate dwellings. It supports race-conscious strategies that link housing location with considerations of environmental safety and employment and educational opportunities. It calls for voting reforms and improved structures for participation by low-income households and people of color in the political processes that govern local decision making.[128]

With respect to housing programs, the opportunity-based housing model urges a larger government financial commitment to programs that preserve existing affordable housing and construct new affordable housing units.[129] It supports increases to the Section 8 housing choice voucher program and expansion of programs that promote regional mobility with Section 8 vouchers.[130] Opportunity-based housing calls on federal policy makers to promulgate regulations that break down segregated living patterns through affirmative steps to further fair housing.[131] It urges an increased financial commitment to fair housing enforcement, meaningful and strengthened civil rights compliance activities, and data collection to monitor the civil rights effect of housing policies.[132] It recommends federal leadership in regional strategies to open up and desegregate metropolitan housing markets.[133]

Part V: Uneven Progress and Difficult Tasks

One measure of compliance with the responsibility to further fair housing is to understand whether there is "activity that tends to increase . . . the

supply of open housing."[134] From that standpoint, it is worth understanding whether there is evidence of civil rights progress on the policy front with corresponding improvements in actual fair housing conditions. Part V examines those questions, first by looking at the extent of policy changes and then at the results of the changes. It concludes that policy improvements have been modest at best. The resulting conditions suggest a means of understanding the civil rights difficulties and the risks associated with developing affordable housing and a way of understanding the practical implications of fair housing underwriting.

Policy Progress

Some of the civil rights policy recommendations discussed in Part IV are now making their way into practice. IRS regulations were amended in January 2000 to require housing credit agencies to monitor for compliance with the general public use rule by obtaining owner certifications about the existence of fair housing complaints and compliance with Section 42's nondiscrimination provisions for participants in the Section 8 housing choice voucher program.[135] Section 42 was amended to limit the LIHTC "basis boost" in allocations of tax credits to buildings in high-poverty qualified census tracts that are also "revitalizing areas."[136] By 2001, forty-three state QAPs "awarded preference points to projects that contributed to locally drafted community revitalization plans" and thirty-seven states "gave preference points to projects based on whether they were located in metropolitan or non-metropolitan areas. . . ."[137] An explicit acknowledgment of the applicability of Title VIII, threshold civil rights eligibility, standards, and affirmative fair housing marketing requirements are becoming features of state QAPs.[138] QAPs also increasingly use preference points in competitive applications to target allocations to projects serving households protected by fair housing and civil rights laws. The majority of states, for example, offer preferential selection to "special needs" tax credit projects serving people with disabilities, elders, and large families. Two states offer extra selection points to projects with "minority preferences."[139]

The recommendations of advocates of opportunity-based models of affordable housing development are also gaining some currency. In states like Connecticut, Illinois, Massachusetts, and New Jersey, long-standing laws offer relief from local zoning laws, provide smart-growth incentives for inclusionary zoning practices, and impose fair share housing obligations on suburban communities.[140] Advocates promote models of local engagement in which developers enter into dialogues with local officials and neighbors to neutralize opposition to affordable housing.[141]

The federal public housing program has also been the target of reform. Public housing income deconcentration requirements apply to virtually all federal public housing and encourage PHAs to link opportunities in higher-income public housing developments with regional solutions to racial integration.[142] Spurred by the findings of the National Commission on Severely Distressed Public Housing, the HOPE VI program has allocated

some $5 billion to demolish, rehabilitate, and replace severely distressed public housing and revitalize the neighborhoods in which the housing is located.[143] The worst public housing is occupied by the victims of the deliberate policies of race discrimination practiced by local, state, and federal housing and community development officials, i.e., the extremely poor, African-American or Latino people, and minority female-headed families with children. The neighborhoods surrounding public housing are also overwhelmingly occupied by the poor and minority groups.[144] Consequently, well-executed public housing revitalization has within it the potential to affirmatively further fair housing by reversing deep and intractable conditions of discrimination.

Reforms have changed the Section 8 housing choice voucher program. From 1994 to 1998, HUD sponsored a Moving to Opportunity (MTO) demonstration program intended to measure the benefits of using Section 8 vouchers to enable low-income households to move from high-poverty public and assisted housing to private market homes in low-poverty census tracts. The agency's Section 8 Management Assessment Program incorporates some of the mobility principles learned from the MTO demonstration program by requiring PHAs to adopt a written Section 8 policy to encourage participation by landlords outside areas of minority concentration and closer to jobs, schools, and transportation. PHAs also receive extra assessment points by placing Section 8 households in census tracts with poverty rates of less than 10 percent.[145]

The Practical Difficulties of Implementation

Despite indicators of progress on a policy level, it is not clear that these strategies have been implemented on a comprehensive basis. Furthermore, the record suggests that, even when implemented, their civil rights effectiveness is moderate at best. This outcome seems true even in the context of court orders in public housing desegregation cases.[146]

The tax credit program, for example, has shown "a slight trend toward the development of more tax credit units in the suburbs and fewer in central cities and non-metro areas." That minor change did not improve civil rights conditions for LIHTC residents. "[T]he data show no clear trends in the percentage of LIHTC units developed in census tracts with high rates of poverty, minority population, or renter-occupied units."[147] Consequently, the LIHTC portfolio, characterized by a significant degree of concentration of poverty and racial segregation,[148] appears unchanged from 1992 to nearly the present day.

Zoning relief laws in New Jersey, Connecticut, and Massachusetts have resulted in the construction of thousands of new units of affordable housing in less segregated, low-poverty suburbs. The evidence shows, however, that many suburban projects proposed under these laws do not survive the permitting process or local opposition.[149] Negotiated approaches to neighborhood opposition often lead to smaller projects with fewer affordable units, selection preferences that favor local residents, and a bias towards

homeownership and housing that serves higher-income households.[150] Even though enactment of laws that break down regulatory barriers is often motivated in part by a desire to promote racially integrated residential housing, none of the laws directly addresses questions of race. As a consequence, most properties in suburban areas are occupied by white, local residents and do little to promote integration.[151]

Race-conscious public housing development in low-poverty, white areas sometimes is a feature of court orders in desegregation cases. The greatest successes occur in communities where a single organization like a PHA or a community development agency commands most of the required financial resources. Even successful efforts must contend with substantial resistance from receiving communities and therefore require patient, negotiated approaches to development.[152] Nevertheless, restrictive zoning practices, governmental inertia, and organized community resistance can stall, and in some cases thwart, the construction of racially integrated housing in outlying areas.[153] On occasion, there have been incidents of racial violence.[154] In some communities, even the courts are hostile to race-conscious remedies intended to undo decades of deliberate discrimination.[155]

Section 8 mobility programs evidence some efficacy in breaking down patterns of isolation and poverty. Research studies show improvements for participants in neighborhood conditions, employment, health, and educational outcomes as compared to residents of public housing.[156] Mobility programs are most successful when voucher use is geographically restricted to low-poverty areas; when no geographic restrictions apply, households more often move to somewhat better conditions but remain in segregated, high-poverty settings.[157] Moves are sometimes inhibited by a short supply of units in low-poverty areas available within voucher payment standards. On occasion, poor planning floods the market with vouchers, making their use difficult at best. Participating families may be reluctant to leave the community and the social ties established in their former neighborhoods, fearing social isolation; racial harassment in the new neighborhoods; and loss of connection to family, friends, and social services. Lack of access to jobs and transportation may also diminish interest in moving.[158]

Mobility programs are also successful when a large number of participants receive substantial support and counseling to move to low-poverty areas. Success in racial integration is less evident, except in circumstances related to desegregation court orders, where a participant's choice of housing may be limited by the racial makeup of the neighborhood.[159] In HUD's MTO mobility demonstration program, participants were divided into groups of families who were restricted to living in low-poverty areas and groups whose vouchers involved no geographic restrictions. For both groups, more than 90 percent of the participants leased units in neighborhoods with minority populations greater than 20 percent. Some 59.4 percent of participants with restricted vouchers and 76 percent of the households with unrestricted vouchers found themselves in areas with minority populations greater than 80 percent.[160] These results are replicated in stud-

ies of households relocated with Section 8 vouchers from demolished public housing in the HOPE VI public housing revitalization program.[161] Section 8 mobility programs in connection with desegregation orders show the same pattern. Even households that initially move to better areas often return to their former neighborhoods. This tendency to return to segregated settings leads some researchers to conclude that consistent, long-term supportive services for individual households are required for mobility programs to succeed in accomplishing desegregation.[162]

The legacy of public housing segregation has resulted in huge disparities in physical conditions between favored white-identified developments and deteriorated, isolated African-American developments. Efforts to equalize conditions by improving conditions in and around isolated public housing are most successful when one stakeholder, usually the PHA, controls the resources and pursues innovative approaches that include public housing demolition, on-site replacement, housing and economic development activities in the surrounding area, and a mix of homeownership and rental development. Efforts that modernize existing developments usually involve grants, capital funds, operating funds, and properties under the PHA's control. That level of control makes it possible for a PHA to use available financial resources to redress imbalances in living conditions between predominantly minority and predominantly white developments. However, the ability of a PHA to carry out reforms and equalize living conditions is compromised by diminished appropriations for public housing. The civil rights success of revitalization activities in high-poverty, segregated areas may depend heavily on the commitment of city and state authorities and a corresponding willingness to contribute community planning and development funds to the initiative. Success also can be affected by a low demand for new housing in the overall market and the overall conditions of the public housing neighborhoods, which often were selected in the first place precisely because they were isolated, undesirable locations.[163] On-site redevelopment that results in a loss of subsidized units is a source of criticism. By itself, a public housing capital improvement campaign does little to integrate individual properties or improve conditions in surrounding neighborhoods, which are likely to suffer the same high levels of poverty and racial isolation as the public housing.[164]

The HOPE VI program epitomizes these dynamics. The program often is applauded for replacing deteriorated public housing with new, well-designed modern housing characterized by rental and homeownership units, mixed-income developments with public housing, moderate-income tax credit, and market-rate residents. The program offers new models for development that combine public housing funds with tax credits and private sources of financing and innovations in public housing management. HOPE VI is credited with restoring distressed neighborhoods in urban centers and moving displaced households to better living conditions.[165] However, HOPE VI is also criticized for subjecting public housing residents to the very conditions of poverty and segregation created by previous delib-

erate policies of discrimination in federal housing programs.[166] It is also the subject of some of the most recent litigation alleging race discrimination in affordable housing programs.[167]

Civil rights criticism of the program is not unfounded. HOPE VI has resulted in a significant reduction in the number of assisted units. Quite apart from the diminished supply of assisted housing, few of the original residents, estimated at 20 percent to less than 50 percent, return to the revitalized communities. Although the displaced former tenants live in areas with less poverty, at least 40 percent still live in census tracts with rates of poverty greater than 30 percent. Relocation has not resulted in less segregation. One study of Chicago's HOPE VI efforts "found that nearly all original residents who moved with vouchers ended up in neighborhoods that were at least 90 percent African-American."[168] The least likely candidates for rehousing in new HOPE VI communities are "hard-to-house" families, that is, those households that contain people with disabilities; large households; "grandfamilies" consisting of elders caring for minor children; elderly households; and families with multiple barriers to access to housing, such as histories of mental illness, substance abuse, lack of education or work history, and criminal backgrounds. These families may be ineligible for HOPE VI housing opportunities because of admissions policies that limit occupancy to working households, units that are designed for smaller families, rigorous requirements associated with past histories of even minor criminal conduct, or credit requirements that are based on private rental market standards.[169] There is a civil rights dimension to exclusion of these families, if only because the denial of a right to return may exclude people with disabilities protected by disability discrimination laws, elders protected by age discrimination rules, or families with children under the protection of the Title VIII prohibition against discrimination based on familial status.[170]

The intractability of existing conditions of segregation and discrimination also works to hamper civil rights advances. For example, in public housing desegregation cases, it is a relatively simple matter to change discriminatory tenant selection practices. "The most common remedy . . . is to merge the Section 8 and public housing waiting lists to increase housing opportunities for all housing assistance applicants. Other changes include revisions to transfer procedures such as race-conscious tenant selection procedures. . . ."[171] The ability of such changes to achieve racial integration is questionable. Waiting lists are often predominated by racial and ethnic minorities, and, over time, the proportion of whites in family housing may be substantially reduced.[172] Minorities and nonminorities alike are reluctant to move to developments that are populated with majorities of other races because of racial bias, fear of racial violence, poor quality housing, bad neighborhoods, isolation of developments from jobs and transportation, and opposition by tenants of the receiving properties.[173] Fears of racial violence are real. In at least one jurisdiction subject to a consent decree, de-

segregation was thwarted by "racial taunts, bomb threats, and [Ku Klux] Klan intimidation" directed against African-Americans.[174]

Objective concerns about neighborhood conditions and racial violence are not the only factors that impede integrative moves. There is sometimes a mismatch among the tolerances that different racial groups have for living with one another. Surveys show, for example, that many whites prefer to live in neighborhoods where they are a clear majority, and they show a higher level of intolerance for living with African-Americans as opposed to other racial and ethnic groups. African-Americans and Latinos show a willingness to live in areas equally balanced between whites and minorities or in communities where they are in an only slight minority. Among African-Americans, indications are that integration is of lesser priority than access to equality of opportunity.[175]

The success of civil rights strategies in affordable housing programs is also affected by the extent to which federal agencies are engaged partners in implementation, oversight, enforcement, and financial support. For example, regional approaches to desegregation cases succeed where HUD provides leadership and exercises authority over multiple agencies. In other cases, however, "HUD's follow-through on implementation often falls short. . . . [L]ack of aggressive monitoring from HUD has exacerbated problems at some sites, including poor compliance and mistakes that have left some African-American tenants in poor quality housing."[176] Lack of staffing, staff capacity, and inadequate funding result in weaknesses in HUD's ability to monitor compliance with civil rights requirements in federally funded programs. Even though the Office of Fair Housing and Equal Opportunity has made significant progress in closing a large backlog of aged Title VIII administrative complaints,

> [t]he total number of complaints filed each year with "Fair Housing Act enforcement agencies" makes up less than 1 percent of the estimated acts of housing discrimination that occur annually. . . . Taken together, it is reasonable to conclude that justice may not be forthcoming in a timely way for many victims of housing discrimination.[177]

Finally, as the current administration moves to terminate or reduce federal funding for public housing, Section 8 vouchers, Community Development Block Grants, HOME, homeless programs, and fair housing enforcement, the ability to secure the needed financial resources to carry out civil rights reforms and affirmatively further fair housing is severely compromised.

Part VI: Conclusion

The lessons learned in the HOPE VI and Section 8 mobility programs, from the implementation of court orders in public housing desegregation cases and from the application of land use laws that break down regulatory barriers to suburban development, show that civil rights progress in affordable housing programs will be achieved only with financial commitment,

patience, and discipline. It is plain that the focus must be on more than the physical revitalization of segregated, high-poverty neighborhoods and the construction of new units in low-poverty areas of opportunity. The experience of successful mobility programs and HOPE VI public housing revitalization activities indicates that in order to further fair housing, it is critical to focus on the human aspects of affordable housing and civil rights. In other words, equal housing opportunity has true efficacy if housing providers are cognizant of people; supportive of individual human needs within the context of a community; and protective of the right to live free of bias and fear, near to real social and economic opportunity, without regard to race, color, ethnic origin, disability, age, and other protected characteristics.

It is unlikely in the current political environment that the public financial resources will be made available or that agency capacity will be sufficient to sustain a federally led and concerted effort to promote civil rights aims in affordable housing. Lack of federal leadership will not, however, protect against litigation for the state and local agencies, lenders, syndicators, or developers that disregard civil rights requirements in general and the obligation to further fair housing in particular. Consequently, the nonfederal stakeholders in affordable housing development would be well served by some approach ensuring that fair housing considerations receive a proper level of attention.

Housing credit agencies, state and municipal lenders, private lenders, syndicators, and developers all play very particular and specialized roles as stakeholders in affordable housing projects. As stakeholders, they rely on carefully designed program requirements, audit and enforcement procedures, financial underwriting criteria, and development and property management standards to meet the compliance requirements and financial expectations for all participants. These techniques are driven by concerns for financial risk avoidance, risk management, and risk mitigation. Consider, for example, how lenders, syndicators, and government agencies conduct due diligence to ascertain the environmental risks associated with a proposed site, examine budgets to determine financial feasibility, and gather financial statements and audits to ensure that a borrower or developer has the financial capacity to carry out a project. Or consider the "comprehensive market study of the housing needs of the individuals to be served by the project"[178] required in the LIHTC program and the way lenders and syndicators routinely require market studies to ensure that there is a demand for proposed housing developments.

Investors and lenders also look for ways to shift the risk of financial loss to others by asking for representations of legal authority to transact business, warranties of financial condition, promises of regulatory compliance, and other covenants. Legal opinions, including tax attorney opinions that address complex topics of audit risk, serve a similar purpose. Guarantees and repurchase agreements, through which a developer or owner promises to cover the losses of the lender or the investor for such matters as cost

overruns, failure to complete construction, failure to deliver tax benefits, and environmental losses, are additional tools used to shift responsibility when things go wrong. In order to ensure that affordable housing properties are operationally viable after construction completion and lease-up, partnership agreements, loan documents, and regulatory agreements often require owners to make regular reports to lenders and investors. Noncompliance with operating standards or evidence of financial difficulties may trigger remedial actions or force financial contributions by general partners and guarantors and can result in removal of a general partner or a management agent from day-to-day operations. These devices not only protect investors or lenders but also impose discipline on developers and provide powerful incentives for ensuring that projects are developed properly and on time.

The responsibility to affirmatively further fair housing by utilizing an institutionalized method to analyze the "relevant racial and socioeconomic information necessary for compliance with" Title VIII is, in many respects, the civil rights equivalent of financial underwriting in an affordable housing transaction.[179] Consequently, it ought to be possible to underwrite for fair housing and civil rights considerations, including the obligation to further fair housing.

The template for civil rights underwriting is available from the already existing federal and judicial structure for implementing the duty to further fair housing. When taking steps to fulfill the obligation, a housing provider has substantial latitude to determine the nature and scope of appropriate action. A federal regulatory framework common to multiple housing programs defines the key elements of the duty: nondiscrimination, planning, affirmative steps that remove conditions of discrimination over a period of time, monitoring, and record keeping. For recipients of HUD assistance, the devolution of the obligation to further fair housing means that civil rights concerns are addressed at every stage of the process: when applicants seek funds, when projects are selected for funding, when contracts are signed, when HUD funds are distributed, when sites are selected for projects, when households are displaced by development activities, and when dwelling units are made available for occupancy. Judicial decisions teach that fair housing responsibilities are informed and even limited by the statutory and regulatory requirements at work for the particular housing program in question and by the role that the agency or recipient plays within the statutory and regulatory structure.

Underwriting for fair housing means that applicants for financing would be required to meet threshold civil rights requirements, similar to the standards used by HUD to distribute competitive funds under NOFAs. Market studies could scan the racial, ethnic, family, age, and disability status of the households that might be displaced by development. They could include components that identify whether a proposed property is located in a revitalizing area, or whether conditions of racial, economic, and social isolation will result in perpetuation or exacerbation of segregation. Civil rights

elements in market studies also could address the factors associated with the opportunity-based housing approach to fair housing: meaningful access to jobs, transportation, good quality schools, and political participation.

Civil rights underwriting can take into account whether relocation activities will comply with the fair housing–related requirements for relocating families displaced by development activities.[180] It can also include due diligence standards that ensure a proposed project will comply with the architectural access requirements of Section 504, Title VIII, and the ADA. Underwriting for fair housing might include an analysis to ensure that the location of a property will not perpetuate segregation and will lead to wider housing opportunities across a housing market area. Budgeting standards might measure whether there are adequate funds for proper relocation. Underwriting standards used by housing credit agencies, government and private lenders, and syndicators might involve relaxed cost criteria for the higher land acquisition costs and larger per-unit transaction costs that are associated with low-density developments in suburban locations. Like the LIHTC market study, there are ready templates for this kind of due diligence, including, for example, HUD's HOPE VI Relocation Plan Guide, the self-evaluations required by Section 504 and the ADA, affirmative fair housing marketing plans, and the plans proposed by HUD in connection with compliance with Title VI to ensure meaningful access for people with limited English-speaking ability.[181]

After occupancy, an owner can be required to provide more than the certifications of no Title VIII administrative charges required by the LIHTC rules. Owners can be required to monitor and report on the characteristics of applicants on waiting lists and occupants in residency in much the same way HUD regulations require that public housing waiting lists be monitored to ensure that site-based selection practices do not result in segregation.[182]

It bears repeating that some of these techniques are already in use in the affordable housing context. Applicants for tax credits often must certify that they are not the subjects of civil rights charges, and many housing credit agencies require the submission of affirmative fair housing marketing plans in connection with reservations of credits. Recipient and subrecipient contracts for HUD assistance incorporate civil rights compliance covenants.[183] Tax credit regulatory agreements and the forms of partnership documents in use in LIHTC projects often include representations and covenants about compliance with the general public use rule and the nondiscrimination provisions applicable to Section 8 voucher program participants. Guarantees given by developers to cover the loss of investor tax benefits presumably extend to a loss of credits associated with a violation of the general public use rule.[184]

Fair housing underwriting is a modest idea. The objective is only to make fair housing visible in the affordable housing real estate transaction by placing an assessment of civil rights risk on the same plane as an evaluation of financial risk. In a judicial setting where the obligation to further fair housing confers discretion on owners and other stakeholders, fair hous-

ing underwriting does not mean that a project is necessarily blocked if civil rights risks are identified. It should mean that there has been an analysis of civil rights concerns, a consideration of the mitigating steps needed to neutralize discriminatory outcomes, and an identification of the affirmative activities necessary to promote equal choice and residential integration.

Fair housing goals must be accomplished with more than just affordable housing programs. Furthermore, fair housing underwriting in affordable housing cannot take the place of a vigorous federal financial commitment to affordable housing programs. Nevertheless, it is the responsibility of state and local affordable housing programs and the stakeholders in those programs to engage in activities that not only ensure civil rights compliance, but also improve fair housing conditions in the market areas in which we work and in the housing that is developed. To disregard this obligation will lead to litigation, development delay, extra cost, and financial risk to participants in affordable housing programs. Civil rights underwriting can mitigate the possibility of such outcomes. If conducted "in a meaningful way," we can "expect to see" that affordable housing development will "tend to increase" and will "not significantly diminish the supply of open housing."[185] That much is the practical, legal, and moral mandate of fair housing laws.

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1. Gautreaux v. Chi. Hous. Auth., 178 F.3d 951, 952 (7th Cir. 1999).

2. Wallace v. Chi. Hous. Auth., 298 F. Supp. 2d 710 (N.D. Ill. 2003); Wallace v. Chi. Hous. Auth., 321 F. Supp. 2d 968 (N.D. Ill. 2004) (partially allowing plaintiffs' request for reconsideration); Wallace v. Chi. Hous. Auth., 224 F.R.D. 420 (N.D. Ill. 2004) (certifying plaintiff class). *See also* Cabrini-Green Local Advisory Council v. Chi. Hous. Auth., No. 04 C 3792, 2005 U.S. Dist. LEXIS 273 (N.D. Ill. Jan. 10, 2005).

3. Reese v. Miami-Dade County, 210 F. Supp. 2d 1324 (S.D. Fla. 2002).

4. Langlois v. Abington Hous. Auth., 234 F. Supp. 2d 33 (D. Mass. 2002).

5. Davis v. N.Y.C. Hous. Auth., 60 F. Supp. 2d 220 (S.D.N.Y. 1999).

6. Owens v. Charleston Hous. Auth., 336 F. Supp. 2d 934 (E.D. Mo. 2004), *aff'd sub nom*., Charleston Hous. Auth. v. USDA, 419 F.3d 729 (8th Cir. 2005).

7. Dean v. Martinez, 336 F. Supp. 2d 477 (D. Md. 2004).

8. Thompson v. HUD, 348 F. Supp. 2d 398 (D. Md. 2005).

9. *In re* Adoption of the 2003 Low Income Hous. Tax Credit Qualified Allocation Plan, 848 A.2d 1 (N.J. Super. Ct. App. Div. 2004) [hereinafter *2003 QAP*].

10. *See* Gautreaux v. Chi. Hous. Auth., 178 F.3d 951 (7th Cir. 1999); Wallace v. Chi. Hous. Auth., 298 F. Supp. 2d 710 (N.D. Ill. 2003); Wallace v. Chi. Hous. Auth., 321 F. Supp. 2d 968 (N.D. Ill. 2003); Wallace v. Chi. Hous. Auth., 224 F.R.D. 420 (N.D. Ill. 2003) (certifying plaintiff class). *See also* Cabrini-Green Local Advisory Council v. Chi. Hous. Auth., No. 04 C 3792, 2005 U.S. Dist. LEXIS 273 (N.D. Ill. Jan. 10, 2005); Reese v. Miami-Dade County, 210 F. Supp. 2d 1324 (S.D. Fla. 2002); Langlois v. Abington Hous. Auth., 234 F. Supp. 2d 33 (D. Mass 2002); *Davis*, 60 F. Supp. 2d at 220; *Owens*, 336 F. Supp. 2d at 934; *Dean*, 336 F. Supp. 2d at 477; *Thompson*, 348 F. Supp. 2d at 398; *2003 QAP*, 848 A.2d at 1.

11. *See* 42 U.S.C. § 3608(d), (e)(5) (2005).

12. 42 U.S.C. § 3608(d). The Fair Housing Act, also known as Title VIII, was enacted as Pub. L. No. 90-284, §§ 801–19, 82 Stat. 81 (1968) (codified as amended in 42 U.S.C. §§ 3601–3619), and was amended by the Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619 (1988) (codified as amended in scattered sections of 42 U.S.C.), and the Housing for Older Persons Act of 1995, Pub. L. No. 104-76, 109 Stat. 787 (1995) (codified as amended in 42 U.S.C. § 3607). The Act separately directs HUD to "administer the programs and activities relating to housing and urban development in a manner to affirmatively further the policies of" Title VIII. *See* 42 U.S.C. § 3608(e)(5). The Act is not the only federal law that promotes open housing. The congressional declaration of national housing policy directed at all federal agencies includes among its objectives "the development of well-planned integrated residential neighborhoods." 42 U.S.C. § 1441 (2005). Other laws applicable to HUD programs, such as public housing, Community Development Block Grants (CDBGs), and the Housing Opportunities Made Equal (HOME) program, direct grantees to take action to "affirmatively further fair housing." *See* 42 U.S.C. § 1437c-1(d)(15)(2005) (public housing); 42 U.S.C. § 5318(c)(3) (2005) (CDBG); 42 U.S.C. § 12705(b)(15) (2005) (HOME).

13. Otero v. N.Y.C. Hous. Auth., 484 F.2d 1122, 1134 (2d. Cir. 1973).

14. *2003 QAP*, 848 A.2d at 10; Robert Neuwirth, *Renovation or Ruin?*, 5 Shelterforce 8 (Sept./Oct. 2004); john a. powell, *Opportunity-Based Housing*, 12:2 J. Affordable Hous. & Community Dev. L. 188 (2003).

15. *See, e.g.*, Shannon v. HUD, 436 F.2d 809, 822 (3d Cir. 1970) ("Nor are we suggesting that the desegregation of housing is the only goal of national housing policy. There will be instances where a pressing case may be made for rebuilding of a racial ghetto."). *See also* Michael J. Vernarelli, *Where Should HUD Locate Assisted Housing? The Evolution of Fair Housing Policy, in* Housing Desegregation and Federal Policy (John M. Goering ed., 1986).

16. *See* Edward G. Goetz, *The Reality of Deconcentration*, 36 Shelterforce 16 (Nov./Dec. 2004) (criticizing HOPE VI and Section 8 Housing Choice Voucher mobility programs). *See also*, Nat'l Hous. Law Project et al., False HOPE: A Critical Assessment of the Hope VI Public Housing Redevelopment Program (2002), *available at* www.nhlp.org/html/pubhsg/FalseHOPE.pdf.

17. Walker v. HUD, 734 F. Supp. 1231 (N.D. Tex. 1989).

18. *See, e.g., 2003* QAP, 848 A.2d at 88; NAACP, Boston Ch. v. Kemp, 721 F. Supp. 361 (D. Mass. 1989).

19. *See* NAACP, Boston Ch. v. Sec'y of Hous. & Urban Dev., 817 F.2d 149 (1st Cir. 1987); Jones v. Comptroller of Currency, 983 F. Supp. 197, 203 (D.D.C. 1997); Jorman v. Veterans Admin., 579 F. Supp. 1407, 1408 (N.D. Ill. 1984); Debolt v. Espy, 832 F. Supp. 209 (S.D. Ohio 1993) (U.S.D.A.).

20. *See 2003 QAP*, 848 A.2d at 1; Oti Kaga, Inc. v. S.D. Hous. Dev. Auth., 342 F.3d 871 (8th Cir. 2003).

21. *See Oti Kaga*, 342 F.3d at 871.

22. United States v. Mass. Indus. Fin. Agency, 921 F. Supp. 21 (D. Mass. 1996).

23. Liddy v. Cisneros, 823 F. Supp. 164 (S.D. N.Y. 1993).

24. *See* Owens v. Charleston Hous. Auth., 336 F. Supp. 2d 934 (E.D. Mo. 2004).

25. *See, e.g.*, United States v. Yonkers Bd. of Educ., 837 F. 2d 1181 (2d Cir. 1987) (public housing); Wallace v. Chi. Hous. Auth., 298 F. Supp. 2d 710, 719

(N.D. Ill. 2003); Reese v. Miami-Dade County, 210 F. Supp. 2d 1324, 1329 (S.D. Fla. 2002) (HOPE VI); Langlois v. Abington Hous. Auth., 234 F. Supp. 2d 33, 73 (D. Mass. 2002) (Section 8).

26. Resident Advisory Bd. v. Rizzo, 425 F. Supp. 987 (D. Pa. 1976); Garrett v. City of Hamtramck, 503 F.2d 1236, 1247 (6th Cir. 1974).

27. 42 U.S.C. § 3604 (2005). *See also* NAACP, Boston Ch. v. Kemp, 721 F. Supp. 361 (D. Mass. 1989) (African-Americans); Darst-Webbe Tenant Ass'n Bd. v. St. Louis Hous. Auth., 339 F.3d 702 (8th Cir. 2003) (race, gender, and familial status); Am. Disabled for Attendant Programs Today v. HUD, 170 F.3d 381 (3d Cir. 1999) (disability); Hispanics United of DuPage County v. Vill. of Addison, 988 F. Supp. 1130 (N.D. Ill. 1997) (Hispanics); Debolt v. Espy, 832 F. Supp. 209 (S.D. Ohio 1993) (families with children); Fayyumi v. City of Hickory Hills, 18 F. Supp. 2d 909 (N.D. Ill. 1998) (Arab-Americans). Although Title VIII does not distinguish among protected classes in imposing the responsibility to further fair housing, it is less than clear that the courts will enforce the obligation on an even basis. Compare, for example, the outcome in *NAACP, Boston Chapter*, in which the court imposed Title VIII liability for acts of racial discrimination, with the result in *Debolt*, where familial status claims were dismissed with the observation that the Fair Housing Act does not compel the construction of dwelling units for large families. It is worth noting that Title VIII is intended to achieve fair housing goals "within constitutional limits." 42 U.S.C. § 3601 (2005). Constitutional principles subject race-conscious decision making to a form of "strict scrutiny," while classifications based on other characteristics like gender or disability are subject to far less rigorous standards. *See* City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432 (1985). These constitutional distinctions may serve as a backdrop to the apparently varying treatment sometimes accorded to the different protected classes in Title VIII litigation.

28. *See, e.g.*, Clients Council v. Pierce, 711 F.2d 1406, 1425 (8th Cir. 1983) (HUD failed to meet obligation to further fair housing where the agency violated constitutional prohibitions on discrimination); NAACP v. Harris, 567 F. Supp. 637, 644 (D. Mass. 1983); Jaimes v. Toledo Metro. Hous. Auth., 715 F. Supp. 835, 840 (N.D. Ohio 1989) (HUD failure to act on knowledge that housing authority's admissions policies were intended to promote racial segregation); *Langlois*, 234 F. Supp. 2d at 75 (selection preferences for local residents had effect of excluding minority applicants and therefore violated obligation).

29. *See* Otero v. N.Y.C. Hous. Auth., 484 F.2d at 1134 (2d Cir. 1973); Shannon v. HUD, 436 F.2d 809, 821 (3d Cir. 1970); Pleune v. Pierce, 765 F. Supp. 43, 47 (E.D.N.Y. 1991) (siting decisions). *See also Darst-Webbe Tenant Ass'n Bd.*, 339 F.3d at 713; Dean v. Martinez, 336 F. Supp. 2d 477, 488 (D. Md. 2004); *Wallace*, 298 F. Supp. 2d at 719 (demolition, disposition, and displacement).

30. *Shannon*, 436 F.2d at 821.

31. *Otero*, 484 F.2d at 1134; NAACP, Boston Ch. v. Kemp v. Sec'y of Hous. & Urban Dev., 817 F.2d 149, 154 (1st Cir. 1987). *See also* the cases cited in *In re* Adoption of the 2003 Low-Income Hous. Tax Credit Qualified Allocation Plan, 848 A.2d 1, 12 (N.J. Super. Ct. App. Div. 2004) [hereinafter *2003 QAP*].

32. 5 U.S.C. § 706(1)(A) (2005).

33. *NAACP, Boston Ch.*, 817 F.2d at 160. *See also* Darst-Webbe Tenant Ass'n. Bd. v. St. Louis Hous. Auth., 417 F.3d 898, 907 (8th Cir. 2005) (object of APA review "is not a review to determine whether HUD has, in fact achieved tangible results in the form of furthering opportunities for fair housing. Rather,

our review is to assess whether HUD exercised its broad authority in a manner that demonstrates consideration of and an effort to achieve, such results.").

34. *See, e.g., 2003 QAP*, 848 A.2d at 11 (adoption of QAP is a rulemaking process; agency rules are generally considered valid); Langlois v. Abington Hous. Auth., 234 F. Supp. 2d 33, 70 (D. Mass. 2002) (local selection preferences can be based on needs identified by local housing agencies).

35. *NAACP, Boston Ch.*, 817 F.2d at 157.

36. *Id.* at 156. *See also* Shannon v. HUD, 436 F.2d 809, 819 (3d Cir. 1970) (HUD has "broad discretion to choose between alternate methods of" furthering fair housing, "but that discretion must be exercised within the framework of the national policy against discrimination.").

37. *Compare* Thompson v. HUD, 348 F. Supp. 2d 398 (D. Md. 2005) (HUD failure to consider regional approaches to desegregation), *with 2003 QAP*, 848 A.2d at 15–16 (New Jersey QAP provides incentives to investment in minority neighborhoods and expands assisted housing opportunities in nonminority neighborhoods).

38. Charleston Hous. Auth. v. USDA, 419 F.3d 729.

39. Darst-Webbe Tenant Ass'n. Bd. v. St. Louis Hous. Auth., 417 F.3d 898, 908 (8th Cir. 2005).

40. *Compare* Langlois v. Abington Hous. Auth., 234 F. Supp. 2d 33, 72 (D. Mass. 2002) (discriminatory selection preferences), *with* Almonte v. Pierce, 666 F. Supp. 517, 529 (S.D.N.Y. 1987) (fair housing marketing); McGrath v. HUD, 722 F. Supp. 902, 907 (D. Mass. 1989) (implementation of Title VI voluntary conciliation agreement), *and* Liddy v. Cisneros, 823 F. Supp. 164, 176 (S.D.N.Y. 1993) (statutory selection preferences).

41. Jenkins v. State of Missouri, 593 F. Supp. 1485 (W.D. Mo. 1984).

42. Darst-Webbe Tenant Ass'n Bd. v. St. Louis Hous. Auth., 339 F.3d 702, 713 (8th Cir. 2003); Wallace v. Chi. Hous. Auth., 298 F. Supp. 2d 710, 719 (N.D. Ill 2003).

43. Croskey St. Concerned Citizens v. Romney, 335 F. Supp. 1251, 1256 (E.D. Pa. 1971); Chi. Comm'n v. HUD, 343 F. Supp. 62, 66 (N.D. Ill. 1972); Jones v. Tully, 378 F. Supp. 286, 292 (E.D.N.Y. 1974). *See* Shannon v. HUD, 436 F.2d 809, 822 (3d Cir. 1970).

44. Am. Disabled for Attendant Programs Today v. HUD, 170 F.3d 381, 388 (3d Cir. 1999).

45. *See* 42 U.S.C. § 2000d, 2000d–1, –4 (2005) (originally enacted as the Civil Rights Act of 1964, Pub. L. No. 88-352, tit. 6, §§ 601–05, 78 Stat. 291, 252–53 (1964)); HUD implementing regulations at 24 C.F.R. pt. 1 (2005) (prohibition of discrimination based on race, color, and national origin). *See also* 29 U.S.C. § 794 (2005) (originally enacted as the Rehabilitation Act of 1973, Pub. L. No. 93-112, tit. 5, § 504, 87 Stat. 355 (1973)); 24 C.F.R. pt. 8 (2005) (outlawing disability discrimination); 42 U.S.C. § 6101 (originally enacted as the Older Americans Amendments of 1975, Pub. L. No. 94-135, 89 Stat. 728 (1975)); 24 C.F.R. pt. 146 (forbidding age discrimination). The Fifth and Fourteenth Amendments to the U.S. Constitution broadly require equal treatment based on individual characteristics such as race, color, gender, or disability. *See* U.S. Const. amend. XIV, § 1 (Equal Protection Clause). Other federal statutes involve similarly broad statutory mandates, like the federal laws enacted in the years following the Civil War. *See, e.g.*, 42 U.S.C. § 1981 ("All persons shall have the same right in every State and Territory to make and enforce contracts. . . ."); 42 U.S.C § 1982

("All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."). These laws are important. However, the article focuses on the civil rights laws more usually encountered in the context of affordable housing.

46. 20 U.S.C. § 1681 (2005) (originally enacted as the Education Amendments of 1972, Pub. L. No. 92-318, tit. 9, 86 Stat. 235 (1972)); 24 C.F.R. pt. 3. *See also* 70 Fed. Reg. 13,576, 13,578, 14,069 (Mar. 21, 2005) (Title IX applicable to educational activities funded under ROSS program).

47. *See* 42 U.S.C. § 12131 and Justice Department implementing regulations at 28 C.F.R. pt. 35 (Title II); 42 U.S.C. § 12181 and implementing regulations at 28 C.F.R. pt. 36 (Title III).

48. *2003 QAP*, 848 A.2d 1, 12–13 (N.J. Super. Ct. App. Div. 2004); Wallace v. Chi. Hous. Auth., 298 F. Supp. 2d 710, 720 (N.D. Ill 2003); Langlois v. Abington Hous. Auth., 234 F. Supp. 2d 33, 75 (D. Mass 2002).

49. Exec. Order No. 11,063, 27 Fed. Reg. 11,527 (Nov. 20, 1962) (Equal Opportunity in Housing). Although the directive is a predecessor to Title VI, it prohibits discrimination in a broader array of federally related housing activities, including facilities owned or operated by the federal government, housing provided with federal loans, grants or contributions, housing assisted with insured loans, housing developed with real estate obtained with urban renewal funds, and the lending practices of private institutions for any loans insured by the federal government. *Id*. § 101. *Compare* 42 U.S.C. § 2000d-4 (Title VI not applicable to federal "financial assistance extended by way of contract of insurance or guarantee").

50. *See* Exec. Order No. 12,250, 45 Fed. Reg. 72,995 (Nov. 2, 1980) (Justice Department responsibilities under Title VI, Title IX, and Section 504); Exec. Order No. 13,166, 65 Fed. Reg. 50,119 (Aug. 16, 2000) (Justice Department to take leadership role in establishing guidance to implement Title VI requirements ensuring access to federal programs by people with limited English-speaking abilities); Exec. Order No. 13,217, 66 Fed. Reg. 33,155 (June 21, 2001) (Justice Department to share responsibilities with Department of Health and Human Services in federal implementation of obligation to ensure integrated, community-based options for people with disabilities under ADA). The ADA assigns responsibility for accessible transportation to the Department of Transportation, enforcement responsibilities for employment discrimination to the Equal Employment Opportunity Commission, and responsibilities for setting minimum standards for architectural access to the Architectural and Transportation Barriers Compliance Board. Primary ADA duties are otherwise the obligation of the Justice Department. *See* 42 U.S.C. § 12204(a) (2005) (architectural access); 42 U.S.C. § 12116 (2005) (employment); 42 U.S.C. §§ 12134, 86 (Title II and Title III enforcement, except for transportation, assigned to attorney general). Prior to Exec. Order No. 12,250, coordination of implementation activities for Section 504 was assigned to HEW. *See* Exec. Order No. 12,250, 45 Fed. Reg. 72,997 (Nov. 4, 1980).

51. 42 U.S.C. § 6103 (2005).

52. *See* 42 U.S.C. §§ 3608(a)-(b), 3612 (administrative enforcement by HUD). *Compare* 42 U.S.C. § 3610(g)(2)(C) (2005) (primary responsibility for zoning re-

lated cases assigned to attorney general) *with* 42 U.S.C. § 3614(a) (2005) (Department of Justice responsible for pursuing pattern and practice cases).

53. Under 42 U.S.C. § 3608(e)(3), HUD must provide technical assistance to other federal agencies in carrying out duties under 42 U.S.C. § 3608(d). HUD's leadership obligations for furthering fair housing have been reaffirmed several times. *See* Exec. Order No. 12,259, 46 Fed. Reg. 1,253 (Dec. 31, 1980) (Leadership and Coordination of Fair Housing in Federal Programs); Exec.Order No. 12,892, 59 Fed. Reg. 2,939 (Jan. 20, 1994) (Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing). *See also* Exec. Order No. 12,898, 59 Fed. Reg. 7,629 (Feb. 16, 1994) (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) (assigning coordination activities for environmental justice to the Environmental Protection Agency, with significant roles also assigned to HUD and HHS).

54. 20 U.S.C. § 1682 (2005) (Title IX); 29 U.S.C. § 794(a) (2005) (Section 504); 42 U.S.C. § 2000d-1 (2005) (Title VI); 42 U.S.C. § 6103 (2005) (Age Discrimination Act). *See also* Exec. Order No. 11,063, 27 Fed. Reg. 11,527; Exec. Order No. 12,250, 45 Fed. Reg. 72, 995, § 1-402; Exec. Order No. 12,892, 59 Fed. Reg. 2,939, § 4-402; and Exec. Order No. 13,166, 65 Fed. Reg. 50,119, § 3.

55. 28 C.F.R. pt. 41 (Section 504 coordinating rules); 28 C.F.R. pt. 42(f) (Title VI coordinating rules). *See also* 43 Fed. Reg. 2,131 (Jan. 13, 1979) (HEW Section 504 coordinating rules for all federal agencies modeled on Title VI rules); 44 Fed. Reg. 33,776 (June 12, 1979) (to same effect, HEW Age Discrimination Act coordinating rules); 44 Fed. Reg. 55,522 (Sept. 26, 1979) (proposed HUD rules for Exec. Order No. 11,063); 48 Fed. Reg. 20,637, 20,639 (May 6, 1983) (proposed HUD Section 504 rules); 56 Fed. Reg. 35,693, 35,694 (July 26, 1991) (ADA Title II rules based on Section 504).

56. *See* 42 U.S.C. § 3604 (2005) (Title VIII prohibition on discrimination). For Title VIII cases outlawing disparate impact, see, for example, *Metropolitan Housing Development Corp. v. Village of Arlington Heights*, 558 F.2d 1283 (7th Cir. 1977), and *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926 (2d Cir. 1988). HUD regulations that forbid discriminatory conduct, including disparate impact, are codified at 24 C.F.R. § 1.4 (2005) (Title VI), 24 C.F.R. § 8.4 (2005) (Section 504), 24 C.F.R. § 107.15(f) (2005) (Exec. Order No. 11,063), and 24 C.F.R. § 146.13 (Age Discrimination Act). For Title II of the ADA, see 28 C.F.R. § 35.130 (2005).

57. 24 C.F.R. § 1.4(b)(1) (2005) (Title VI); 24 C.F.R. § 8.4(b)(4)(v) (2005) (Section 504); 24 C.F.R. § 146.13(a)(2) (2005) (Age Discrimination Act); 28 C.F.R. § 28.130(b)(1)(v) (2005) (Title II ADA).

58. *See* 24 C.F.R. § 1.4(b)(6) (2005) (Title VI); 24 C.F.R. § 8.24(d) (2005) (Section 504 accessibility transition plan); 24 C.F.R. § 8.33(d) (reasonable modifications in practices and procedures under Section 504); 24 C.F.R. § 8.51 (2005) (Section 504 self-evaluation to remove impediments to full participation); 24 C.F.R. § 8.55 (2005) (Section 504 affirmative action); 24 C.F.R. § 107.20(b)-(c) (2005) (affirmative action under Exec. Order No. 11,063); 24 C.F.R. § 146.13(f) (2005) (special benefits for elders and children under Age Discrimination Act); 24 C.F.R. § 146.25(b) (self-evaluation under Age Discrimination Act); 28 C.F.R. § 35.105 (2005) (self-evaluation, Title II, ADA); 28 C.F.R. § 28.130(b)(7) (2005) (reasonable modifications under Title II of the ADA); 28 C.F.R. § 35.130(c) (2005) (Title II ADA affirmative action); 28 C.F.R. §35.150(d) (2005) (ADA Title II accessibility transition plan). *See also* Notice of Guidance to Federal Assistance

Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 70,968 (draft dated Dec. 19, 2003) (planning requirements to ensure meaningful access by people with limited English-speaking ability).

59. 24 C.F.R. § 1.4(b)(2)(iii) (2005) (Title VI); 24 C.F.R. § 8.4(b)(5) (2005) (Section 504); 28 C.F.R. § 35.130(b)(4) (2005) (Title II ADA).

60. 24 C.F.R. § 121.2 (2005). *See also* 24 C.F.R. §1.6(b) (2005) (Title VI); 24 C.F.R. § 8.55(b) (2005) (Section 504); 24 C.F.R. § 107.30 (2005) (Exec. Order No. 11,063); 24 C.F.R. § 146.27 (2005) (Age Discrimination Act).

61. 24 C.F.R. § 1.6(d) (2005) (Title VI, information for program beneficiaries); 24 C.F.R. § 3.135 (2005) (Title IX, designation of responsible employee, grievance procedures); 24 C.F.R. § 8.53 (2005) (same, Section 504); 28 C.F.R. § 35.107 (2005) (same, Title II, ADA).

62. Office of Fair Hous. & Equal Opportunity, Dep't of Hous. & Urban Dev., FHEO Notice 96-3, Administration of the Civil Rights-Related Program Requirements of the Department's Housing and Community Development Programs Under the March 16, 1995 Delegation and Redelegation of Authority (1996).

63. Notice of HUD's Fiscal Year (FY) 2004, Notice of Funding Availability, 70 Fed. Reg. 13,575, 13,577 (Mar. 21, 2005). Under 42 U.S.C. § 3614(a) (2005), the Department of Justice may commence a civil action when there is reasonable cause to believe that "any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any rights granted by" the Fair Housing Act. In processing administrative complaints filed under Title VIII, HUD is authorized to issue an administrative charge against a respondent after investigation and an unsuccessful attempt at voluntary conciliation. 42 U.S.C. § 3610(g) (2005). HUD regulations provide for similar administrative proceedings under Title VI and Section 504, where a formal letter of findings triggers a respondent's right to further administrative review, and the possibility of sanctions.

64. Notice of HUD's Fiscal Year (FY) 2004, Notice of Funding Availability, 70 Fed. Reg. at 13,576–77 (threshold nondiscrimination criteria); *id.* at 13,578 (affirmatively furthering fair housing). Additional civil rights qualifications for funding include complying with the ADA, providing economic opportunities for very-low-income persons, ensuring participation by minority- and women-owned businesses, and ensuring compliance with requirements to improve access to housing programs and services for persons with limited English-speaking proficiency. *Id.* at 13,578–79.

65. 42 U.S.C. § 1437c-1(d)(15) (2005); 24 C.F.R. § 903.7(o)(2) (2005) (public housing and Section 8); 42 U.S.C. § 5304 (2005) (CDBG); 42 U.S.C. § 12705(b)(15) (2005) (Comprehensive Housing Affordability Strategy for use of HOME funds); 24 C.F.R. § 92.225(a)(1) (2005) (consolidated plan).

66. 24 C.F.R. § 91.315(k) (2005).

67. *2003 QAP*, 848 A.2d 1, 13 (N.J. Sup. Ct. App. Div. 2004).

68. *See, e.g.*, 24 C.F.R. § 1.5(a) (2005) (Title VI); 24 C.F.R. § 8.50 (2005) (Section 504); 24 C.F.R. § 92.504(c)(2)(v) (2005) (contractual obligation of affirmative fair housing marketing for subrecipients of HOME funds).

69. *See, e.g.*, 24 C.F.R. § 92.353(c)(1) (2005) (HOME); 24 C.F.R. § 236.1001(c) (2005) (Section 236 program). 24 C.F.R. § 983.10(c) (2005) (Project-Based Hous-

ing Choice Vouchers). Regulations issued by the U.S. Department of Transportation under the Uniform Relocation Act (URA) impose similar civil rights obligations for displacement resulting from the use of assistance from any federal agency, including HUD. *See, e.g.*, 49 C.F.R. § 24.205(a)(1) (2005) (relocation under the URA must take into account the impact of displacement on minorities, the elderly, large families, and people with disabilities); 49 C.F.R. § 24.205(c)(1) (2005) (URA advisory services must be consistent with Title VI, Title VIII, and Exec. Order No. 11,063); 49 C.F.R. § 24.205(c)(2)(ii)(C) (2005) ("[M]inorities shall be given reasonable opportunities to relocate to . . . dwellings . . . not located in an area of minority concentration.").

70. Office of Fair Hous. Equal Opp'ty, Dep't of Hous. & Urban Dev., HUD Handbook No. 4350.3 REV-1, Occupancy Requirements of Subsidized Multifamily Housing Programs, ¶ 2-9 (2003) [hereinafter Multifamily Occupancy Handbook].

71. Office of Multifamily Hous., Dep't of Hous. & Urban Dev., HUD Handbook No. 8025.1 REV-2, Implementing Affirmative Fair Housing Marketing Requirements, ¶¶ 1–3; 24 C.F.R. § 200.610 (1993). *See also* Multifamily Occupancy Handbook, *supra* note 70, ¶ 2-5(D); 24 C.F.R. pt. 108 (2005).

72. *See, e.g.*, 24 C.F.R. §§ 42.350(a), 941.207(c) (2005) (referrals to replacement dwellings in nonsegregated areas as part of relocation counseling); 24 C.F.R. § 982.301(a)(2), (b)(12) (2005) (PHAs must refer Section 8 participants to housing opportunities in low-poverty areas and must provide participants with lists of accessible dwelling units).

73. HUD site and neighborhood rules are traced to the decision in *Shannon v. HUD*, 436 F.2d 809 (3d Cir. 1970). A more detailed study of HUD's site and neighborhood rules is in *Where Should HUD Locate Assisted Housing? See* Vernarelli, *supra* note 15.

74. *See* 24 C.F.R. § 92.202 (2005) (HOME); 24 C.F.R. §§ 891.125, 891.320 (2005) (Sections 202 and 811); 24 C.F.R. § 941.202 (2005) (public housing); 24 C.F.R. § 941.602(a)(3) (2005) (mixed-finance public housing). *See also* 70 Fed. Reg. 58,891, 58,918 (Oct. 13, 2005) (promulgating 24 C.F.R. § 983.57) (Project-Based Housing Choice Vouchers).

75. *See* 70 Fed. Reg. 59,919 (promulgating 24 C.F.R. § 983.57(b)(2).

76. *Id.* (promulgating 24 C.F.R. § 983.57)(c)(2) and (3).

77. *Id*, promulgating 24 C.F.R. § 983.57(e)(3)(vi). The idea of overriding housing needs also reflects a congressional mandate that HUD not withhold assistance from a neighborhood solely because it is a high poverty, segregated area. *See* 42 U.S.C. § 1436b (2005). In addition, the re-issued rule incorporates regulatory mandates for deconcentration of poverty in public housing. *Compare* 70 Fed. Reg. 59918, promulgating 24 C.F.R. § 983.57(b)(1) with 24 C.F.R. § 903.2 (2005). The new voucher rule's standards for deconcentrating poverty focus on the extent to which the neighborhood of a proposed Housing Choice Voucher project is a target for investment of other HUD resources and development of market rate housing. The deconcentration criteria also examine whether the census tract is losing assisted units to demolition, and whether poverty is declining in the census tract. *Id.* Although deconcentration of poverty is a new feature of the Project-Based Housing Choice Voucher rule, it is worth noting that like the rest of the rule, the deconcentration standards are similar to the site selection requirements imposed by HUD in response to the early litigation under Title VIII to further fair housing. *See* Notice H 81-2 (HUD) Clarification

of Site and Neighborhood Standards for New Assisted Housing Projects in Areas of Minority Concentration (January 5, 1981) at pages 4 and 5.

78. 26 U.S.C. § 42(h)(6)(B)(iv) (2005).

79. H.R. Conf. Rep. No. 99-841 (1986).

80. *See, e.g.*, 26 C.F.R. § 1.42-5(d)(2)(ii) (2005) (housing quality standards for LIHTC units must meet HUD uniform physical conditions standards); Rev. Rul. 94-57 (income eligibility for admission to LIHTC units is measured with reference to HUD area-median-income determinations).

81. 26 C.F.R. § 1.42-9(a) (2005). It may be that the interpretation of the general public use rule has its origin in the favored status nonprofit tax-exempt organizations enjoy under the LIHTC statute. *See, e.g.*, 42 U.S.C. § 42(h)(5)(A) (2005) (nonprofit set-aside). *See also* Tracy A. Kaye, *Sheltering Social Policy in the Tax Code: The Low-Income Housing Credit*, 38 Vill. L. Rev. 871, 884 (1993). Under long-standing IRS policy, the public purpose requirements associated with Code Section 501(c)(3) deny tax-exempt status to organizations that engage in discriminatory conduct. For a discussion of the IRS policy, see *Bob Jones Univ. v. United States*, 461 U.S. 574 (1982).

82. 26 C.F.R. § 1.42-9(a) (2005). *See also* IRS, Notice 89-6, Low-Income Housing Tax Credit—Utility Allowance Requirements, Determination of General Public Use, and Provision of Services (1989), *available at* www.novoco.com/IRS_Rulings/IRS_Notices/notice_89-6.pdf. Under this standard, "any residential rental unit that is part of a hospital, nursing home, sanitarium, lifecare facility, trailer park, or intermediate care facility for the mentally and physically handicapped is not for use by the general public and is not eligible for credit under Section 42." 26 C.F.R. § 1.42-9(b) (2005).

83. 26 C.F.R. § 1.42-5(c)(1)(v) (2005).

84. *2003 QAP*, 848 A.2d 1, 24 (N.J. Super. Ct. App. Div. 2004).

85. *See* Florence Roisman, *Mandates Unsatisfied: The Low-Income Housing Tax Credit Program and the Civil Rights Laws*, 52 U. Miami L. Rev. 1011, 1012 n.107 (July 1998) (IRS reference to HUD rules "comprises almost the entire seven volumes of title 24 of the Code of Federal Regulations.").

86. Title VIII implementing regulations are codified at 24 C.F.R. pt. 100, et seq. (2005).

87. 24 C.F.R. pt. 108 (2005); 24 C.F.R. pt. 200(M) (2005).

88. *See, e.g.*, 24 C.F.R. § 5.105(a) (2005) (Section 8 new construction, substantial rehabilitation and housing finance agency contracts); 24 C.F.R. § 92.103(a) (2005) (HOME program); 24 C.F.R. §200.30(a) (2005) (HUD-insured and -assisted mortgages); 24 C.F.R. § 960.103(a) (2005) (public housing).

89. *See, e.g.*, 24 C.F.R. § 92.103(b) (2005) (affirmative fair housing marketing and minority outreach in HOME-assisted projects); 24 C.F.R. § 960.206(b) (2005) (civil rights standards for local selection preferences in public housing admissions).

90. *See* IRS, Low-Income Housing Credit Audit Guide, ch. 2 (1999), *available at* www.novoco.com/IRS_Regulations/LIHTC_AuditTechniqueGuide.pdf. *See also* IRS, Guide for Completing Form 8823: Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, ch. 11 (2003) (draft on file with author).

91. Multifamily Occupancy Handbook, *supra* note 70, ¶¶ 1–2 and fig. 1-1.

92. Multifamily Occupancy Handbook, *supra* note 70, at ch. 2. Other HUD multifamily programs, such as the mortgage insurance made available

through the Section 221(d)(4) program, do not involve subsidies and are not subject to the handbook or to civil rights criteria for programs receiving federal financial assistance. *See, e.g.*, 24 C.F.R. § 1.2(e) (2005) (term *federal financial assistance* does not include "contracts of insurance").

93. *See, e.g.*, 66 Fed. Reg. 6760 (Jan. 22, 2004) (listing the Treasury Department programs subject to Title IX; the LIHTC program is not on the list).

94. *See* HUD, Handbook 1378.0, Tenant Assistance, Relocation and Real Property Acquisition, ¶¶ 1–14, *available at* www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm. It is unclear how HUD reached the conclusion that tax credits are not federal financial assistance for purposes of the URA because in that law, *federal assistance* is broadly defined to include "contributions provided by the United States." 42 U.S.C. § 4601(4) (2005). *See also* Fed. Reg. 70,589, 614 (2005) (promulgating 49 C.F.R. § 24.2(a)(13) (2005)) (federal financial assistance is "a grant, loan or contribution provided by the United States, except any federal guarantee or insurance").

95. *Compare* 24 C.F.R. § 8.23 (2005) (Section 504) (substantially altered properties must be accessible) *with* 24 C.F.R. § 100.205(a) (2005) (Title VIII fair housing accessibility standards apply only to new construction).

96. Multifamily Occupancy Handbook, *supra* note 70, at ch. 3. The chapter explains, for example, that occupancy in Section 202 projects developed before 1990 might be limited to elders and nonelders with physical disabilities, while Section 202 projects developed after 1990 are available only to elders. Multifamily Occupancy Handbook, *supra* note 70, ¶¶ 3–20. Housing providers have been able to use tax credits in combination with Section 202 funding since the end of 2003. *See* 68 Fed. Reg. 67,315 (Dec. 1, 2003) (promulgating interim mixed finance rule for Section 202 program); *see also* 70 Fed. Reg. 54,199 (Sept. 13, 2005) (promulgating final rule).

97. Multifamily Occupancy Handbook, *supra* note 70, ¶ 3-22(B)(2)(b).

98. *See* Dep't of Hous. & Urban Dev. & Dep't of Justice, Memorandum of Understanding Among the Department of Treasury, the Department of Housing and Urban Development, and the Department of Justice (2000), *available at* www.hud.gov/offices/fheo/lihtcmou.cfm [hereinafter MOU].

99. *See id.*

100. *See id.*

101. *Id.*

102. On inquiry by the author, it appears that, at this writing, the only currently active elements of the memorandum are the referral mechanisms under which HUD notifies the IRS and state credit agencies of pending fair housing complaints.

103. David M. P. Freund, Democracy's Unfinished Business: Federal Policy and the Search for Fair Housing, 1961–1968 (2004), *available at* www.prrac.org/pdf/freund.pdf (report submitted to the Poverty and Race Research Action Council); Arnold R. Hirsch, *Searching for a "Sound Negro Policy": A Racial Agenda for the Housing Acts of 1949 and 1954*, 11 Housing Pol'y Debate 393 (2000), *available at* www.fanniemae foundation.org/programs/hpd/pdf/hpd_1102_hirsch.pdf.; Douglas R. Massey & Nancy A. Denton, American Apartheid: Segregation and the Making of the Underclass (1993). *See also* Raymond A. Mohl, Urban Expressways and the Central Cities in Postwar America (2002) ("[P]ublic officials and policy makers . . . used expressway construction to destroy low-income and especially black neighbor-

hoods in an effort to reshape the physical and racial landscapes of the postwar American city."). This discussion of discriminatory practices in federal housing programs is not meant to disregard other equally unjust practices that cemented patterns of racial segregation, including racial violence, zoning, and land use laws that enforced racial exclusion. Florence W. Roisman, *Opening the Suburbs to Racial Integration: Lessons for the 21st Century*, 23 W. New Eng. L. Rev. 173, 198 (2001).

104. Notice on Site-Based Waiting Lists, 62 Fed. Reg. 1026, 1027 (Jan. 7, 1997) ("For the first 25 years of the [U.S. Housing Act] the Federal Government permitted, if not encouraged segregation by race in public housing developments." Privately owned assisted housing "was disproportionately utilized by nonminority applicants, leading to further isolation of minority tenants in public housing.").

105. Susan J. Popkin et al., 1 Baseline Assessment of Public Housing Desegregation Cases 4 (HUD 2000).

106. *See, e.g.*, 24 C.F.R. § 985.3(h) (2005) (Section 8 Management Assessment Program poverty deconcentration bonus for locating participant households in census tracts with poverty rates of less than 10 percent).

107. *See, e.g.*, 24 C.F.R. § 960.202(b)(2)(ii)(C) (2005) (public housing income targeting requirements define *high-poverty area* as a neighborhood with rate of poverty at or greater than 30 percent). The 30 percent measure is used here because it is used by researchers examining siting practices in the LIHTC program. *See, e.g.*, Office of Policy Dev. & Research, HUD, Updating the Low-Income Housing Tax Credit Database: Projects Placed in Service Through 2001, at 33 (2003) [hereinafter Updating the LIHTC Credit Database]; Larry Buron et al., HUD, Assessment of the Economic and Social Characteristics of LIHTC Residents and Neighborhoods 4-4 (2000), *available at* www.huduser.org/Publications/PDF/lihtc.pdf.

108. *See, e.g.*, HUD, FY 2003 HOPE VI Revitalization Grant Agreement 20 (2003) (hereinafter "FY 2003 HOPE VI Revitalization Grant Agreement") *available at* http://www.hud.gov/offices/pih/programs/ph/hope6/grants/fy03/index.ctm. This fifty percent threshold is a less than satisfying and certainly less than generally accepted measure for understanding the meaning of segregation. It is used here because it is a basis on which researchers have measured levels of segregation in the LIHTC program. *See* Updating the LIHTC Database, *supra* note 106, at 23. The *HOPE VI Revitalization Grant Agreement* actually uses alternative measures to identify conditions of racial segregation, including the fifty percent benchmark, but also including a differential standard where the percentage of a particular racial or ethnic group in a specified area is twenty percent greater than the percentage of that group in the metropolitan statistical area (MSA), and another standard whereby the neighborhood's total percentage of minorities is at least twenty percent higher than the total percentage of all minorities for the MSA as a whole. FY 2003 HOPE VI Revitalization Grant Agreement, *supra* note 107, at 20. Under HUD's siting rules, an "area of minority concentration" is defined as any area where the proportion of minority residents "substantially exceeds" that of the jurisdiction as a whole. Office of Fair Hous. & Equal Opportunity, HUD, Handbook 8004.1, Consolidated Civil Rights Monitoring Requirements for Section 8 and Public Housing (1989). Whether a differential is "substantial" depends on the demographics of the housing market, including living patterns,

numbers of minority and non-minority families, patterns of reinvestment and disinvestment, and other factors. *See*, NOTICE H-81-2 (HUD), CLARIFICATION OF SITE AND NEIGHBORHOOD STANDARDS FOR NEW ASSISTED HOUSING PROJECTS IN AREAS OF MINORITY CONCENTRATION (January 5, 1980) at pages 2 and 3. HUD's *Fair Housing Planning Guide,* applicable to programs subject to consolidated planning requirements, like HOME and CDBG, defines a "racially non-impacted location" as an area where a particular ethnic or racial group is less than 30% of the total population of the area. OFFICE OF FAIR HOUS. & EQUAL OPPORTUNITY, HUD, FAIR HOUSING PLANNING GUIDE, para. 2.5 (1996) (hereinafter "FAIR HOUSING PLANNING GUIDE"), *available at* http://www.hud.gov/offices/fheo/images/ghpg.pdf. By that measure, a neighborhood where thirty percent or more of the population is characterized as minority residents would be considered segregated. The Census Bureau evaluates segregation by reference to five categories, based on nineteen statistical measures. The five categories evaluate the *evenness* of the distribution of minorities within an area, the *isolation* of racial and ethnic groups from other groups, the *concentration* of racial and ethnic minorities in a particular geographic area, the degree to which racial and ethnic minorities are *centralized* around the urban core, and the extent of *clustering* of minorities in adjoining areas. *See* U.S. CENSUS BUREAU, RACIAL AND ETHNIC RESIDENTIAL SEGREGATION IN THE UNITED STATES: 1980–2000 (2002), *available at* http://www.census.gov/hhes/www/housing/resseg/pdf/censr-3.pdf. Measures of segregation are laden with value judgments about what constitutes an appropriate level of racial mixing. For a thoughtful discussion about these issues, see, SHERYLL CASHIN, THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM 41-42 (2004) (to define an integrated neighborhood as one that is between ten percent and fifty percent African-American "seems to buy into the dangerous logic that a predominantly African-American neighborhood cannot be an integrated one").

109. BURON ET AL., *supra* note 107, at 4-3.
110. *Id.*
111. *Id.*
112. *Id.* at 4-17.
113. *Id.* at 4-19.
114. *See* UPDATING THE LIHTC CREDIT DATABASE, *supra* note 107.
115. *Id.* at 29.
116. *Id.*
117. *Id.*
118. *Id.* at 23.
119. *See id.* at 23 (location in metro and nonmetro areas); *id.* at 30–33 (characteristics of neighborhoods by race and poverty). Unlike the 2000 study of thirty-nine sample properties, the HUD LIHTC database on which the 2003 study is based does not compile information about the characteristics of occupant tax credit households. *See* BURON ET AL., *supra* note 107 and accompanying text.
120. *2003 QAP*, Allocation Plan, 848 A.2d 1 (N.J. Super. Ct. App. Div. 2004); Asylum Hill Problem Solving Revitalization Ass'n v. King, No. (X02) CV030179515S, 2004 Conn. Super. LEXIS 27 (Jan. 5, 2004) (unreported) (order dismissing fair housing claims because Title VIII creates no private right of action against housing credit agency).

121. Lisa Robinson & Andrew Grant-Thomas, The Civil Rights Project, Harvard University, Race, Place, and Home: A Civil Rights and Metropolitan Opportunity Agenda 13–21 (2004); powell, *supra* note 14.

122. Roisman, *supra* note 85.

123. *Id.* at 1032.

124. *Id.* at 1033–47.

125. *Id.* at 1047.

126. powell, *supra* note 14, at 189.

127. *Id.* at 192; Robinson & Grant-Thomas, *supra* note 121, at 33.

128. powell, *supra* note 14, at 205–17; Robinson & Grant-Thomas, *supra* note 121, at 87.

129. Robinson & Grant-Thomas, *supra* note 121, at 72–73, 85; Florence Wagman Roisman, *Long Overdue: Desegregation Litigation and Next Steps to End Discrimination and Segregation in the Public Housing and Section 8 Existing Housing Programs*, 4 Cityscape: J. Pol'y Dev. & Res. 178 (1999).

130. Robinson & Grant-Thomas, *supra* note 121, at 80; Roisman, *supra* note 129, at 176. *See also* Alexander Polikoff, *Race Inequality and the Black Ghetto*, 13 Poverty & Race 1 (Nov./Dec. 2004) (arguing for a national Section 8 mobility program), *available at* www.prrac.org/mobility/polikoff.pdf.

131. Robinson & Grant-Thomas, *supra* note 121, at 86.

132. Robinson & Grant-Thomas, *supra* note 121, at 87–88; Roisman, *supra* note 129, at 175, 178.

133. Robinson & Grant-Thomas, *supra* note 121, at 87.

134. NAACP, Boston Ch. v. Sec'y of Hous. & Urban Dev., 817 F.2d 160 (D. Mass. 1989).

135. 65 Fed. Reg. 2323, 2325 (Jan. 14, 2000) (promulgating 26 C.F.R. § 1.42-5(c)(1)(v) (2005) (Title VIII certification); 26 C.F.R. § 1.42-5(c)(1)(xi) (Section 8 certification). The procedures adopted in the interagency memorandum of understanding through which HUD notifies the IRS of Title VIII complaints also originated as a recommendation by civil rights activists. *See* Roisman, *supra* note 85, at 1040 n.144.

136. 26 U.S.C. § 42(m)(1)(B)(ii)(III) (2005) (as amended by Pub. L. No. 106-554, § 1(a)(7), 114 Stat. 2763 (2000) (Title I § 137(b))).

137. Jeremy Gustafson & J. Christopher Walker, Urban Inst., Analysis of State Qualified Allocation Plans for the Low-Income Housing Tax Credit Program 6 (2002), *available at* www.huduser.org/publications/pdf/AnalysisQAP.pdf.

138. Roisman, *supra* note 85, at nn.125, 130 & 168.

139. Gustafson & Walker, *supra* note 137, at 10–12.

140. *See* Municipal Housing Finance Assistance Act, Conn. Gen. Stat. § 8-300 (2004–05); Affordable Housing Planning and Appeal Act, Ill. Pub. Act § 93-0595 (2003); Regional Planning Law, Mass. Gen. Laws, ch. 40B (1969) (zoning relief); Mass. Gen. Laws, ch. 40R (1969); Fair Housing Act, N.J. Stat. Ann. §§ 52:27D-301 to 52:27D-307 (West 2005).

141. Tim Iglesias, *Managing Local Opposition to Affordable Housing: A New Approach to NIMBY*, 12 J. Affordable Hous. & Community Dev. L. 78 (2002).

142. *See* 65 Fed. Reg. 81,222, 81,215 (Dec. 22, 2000) (promulgating deconcentration rule and urging regional mobility strategies to promote racial integration). HUD's rule for poverty deconcentration in public housing aims at opening developments with higher-income profiles to residents of lower incomes.

The regulation says that income deconcentration obligations operate separately from fair housing requirements. However, the rule explicitly states that HUD will challenge a PHA's certification under 24 C.F.R. § 903.7(o) (2005) that it is affirmatively furthering fair housing where a PHA "does not reduce racial and national origin concentrations in developments or buildings and is perpetuating segregated housing." 24 C.F.R. § 903.2(d)(3) (2005).

143. 42 U.S.C. § 1437v (2005). *See also* Nat'l Comm'n on Severely Distressed Pub. Hous., Final Report to Congress and the Secretary of Housing and Urban Development (1992).

144. Susan J. Popkin et al., The Urban Institute, A Decade of HOPE VI: Research Findings and Policy Challenges 8 (2004), *available at* www.urban.org/UploadedPDF/411002_HOPEVI.pdf.

145. 24 C.F.R. § 985.3(g) (2005) (expanding housing opportunities); 24 C.F.R. § 985.3(h) (deconcentration bonus). For a description of the MTO program, see Larry Orr et al., HUD, Moving to Opportunity for Fair Housing Demonstration Program: Interim Impacts Evaluation (2003).

146. By some counts, from 1968 to the present day, litigation was required to force an end to race discrimination in public housing programs in more than thirty American cities. Roisman, *supra* note 129, at 194 (listing desegregation suits in which HUD is a defendant). The cases range across decades, from the still-active supervision of the federal courts in *Gautreaux v. Chicago Housing Authority*, first decided in 1969, to the recent decision in *Thompson v. U.S. Department of Housing and Urban Development*. *See* Gautreaux v. Chi. Hous. Auth., 296 F. Supp. 907 (N.D. Ill. 1969) (decision on liability); Gautreaux v. Chi. Hous. Auth., 304 F. Supp. 736 (N.D. Ill. 1969) (remedial decree); Gautreaux v. Chi. Hous. Auth., 178 F.3d 951 (7th Cir. 1999) (continuing effect of remedial decree); Thompson v. HUD, 348 F. Supp. 2d 398 (D. Md.). Remedial orders in public housing desegregation cases tend to involve many of the civil rights strategies urged by advocates in affordable housing programs. Typical features include changes to tenant selection practices, public housing demolition, rehabilitation of existing public housing developments, revitalization activities in the neighborhoods surrounding existing public housing, on-site replacement of public housing, and dispersal strategies that limit new construction of public housing to low-poverty, nonsegregated areas and include the use of Section 8 vouchers with geographic restrictions and mobility counseling. 1 Popkin et al., *supra* note 105, at 38–42.

147. Updating the LIHTC Credit Database, *supra* note 107, at 44.

148. *See supra* notes 109–11 and accompanying text.

149. Sharon Perlman Krefetz, *The Impact and Evolution of the Massachusetts Comprehensive Permit and Zoning Appeals Act: 30 Years of Experience with a State Legislative Effort to Overcome Exclusionary Zoning*, 23 W. New Eng. L. Rev. 61, 76–79 (Symposium 2001) (80 percent of proposed projects are denied or approved with conditions; half of the proposed units are built and 55 percent of proposed projects are built); Terry J. Tondro, *Connecticut's Affordable Housing Appeals Statute: After 10 Years, Why Only Middling Results?*, 23 W. New Eng. L. Rev. 61, 76–79 (Symposium 2001).

150. Krefetz, *supra* note 149, at 89–90.

151. *2003 QAP* (N.J. Super. Ct. App. Div. 2004); Roisman, *supra* note 129, at 188. *See also* Naomi Bailin Wish & Stephen Eisdofer, *The Impact of* Mount Laurel *Initiative: An Analysis of the Characteristics of Applicants and Occupants*, 27 Seton

Hall L. Rev. 1268, 1294–95 (1997) (identifying significant racial disparities between applicants and successful occupants).

152. 2 Popkin et al., *supra* note 105, at 3-33 to -35 (Dallas); *id.* at 5-22 to -28 (Minneapolis). *See also* Edward G. Goetz, *Desegregation Lawsuits and Public Housing Dispersal: The Case of* Hollman v. Cisneros *in Minneapolis*, 70 J. Am. Plan. Ass'n (2004).

153. 2 Popkin et al., *supra* note 105, at 1-24 to -25 (Allegheny County); *id.* at 3-33 to -35 (Dallas); *id.* at 5-24 to -27 (Minneapolis); *id.* at 6-14 to -17 (New Haven). *See also* Gautreaux v. Chi. Hous. Auth., 178 F.3d 953 (7th Cir. 1999) (eighteen-year delay in developing scattered-site housing results in appointment of receiver).

154. 2 Popkin et al., *supra* note 105, at 6–15 (arson in New Haven).

155. *Compare* Walker v. City of Mesquite, Tex., 169 F.3d 973 (5th Cir. 1999) (district court desegregation order to site new public housing in predominantly white area violates equal protection), *with* Walker v. City of Mesquite, Tex., 2005 WL 503719 (5th Cir. Mar. 4, 2005) (permitting selection of same site based on nonracial classifications).

156. Robinson & Grant-Thomas, *supra* note 121, at 60–61.

157. Orr et al., *supra* note 145, at 30.

158. 1 Popkin et al., *supra* note 105, at 67–68.

159. James E. Rosenbaum, *Changing the Geography of Opportunity by Expanding Residential Choice: Lessons from the* Gautreaux *Program*, 6 Hous. Pol'y Debate 231, 256 (2005).

160. Orr et al., *supra* note 145, at 29–38.

161. Larry Buron, Urban Institute, An Improved Living Environment? Neighborhood Outcomes for HOPE VI Relocatees (2004).

162. 1 Popkin et al., *supra* note 105, at 67–68.

163. *Compare* 2 Popkin et al., *supra* note 105, at 1-32 (consent decree in Allegheny County, Pa.), *with* 2 Popkin et al., *supra* note 105, at 3-50 to -52 (Dallas).

164. 1 Popkin et al., *supra* note 105, at 80–81, 96 (discussing improvements to existing developments).

165. 2 Popkin et al., *supra* note 105, at 19–26, 30, 45.

166. Nat'l Hous. Law Project et al., *supra* note 16, at 38.

167. *See, e.g.*, Reese v. Miami-Dade County, 210 F. Supp. 2d 1324 (S.D. Fla. 2002); Wallace v. Chi. Hous. Auth., 298 F. Supp. 2d 710 (N.D. Ill. 2003); Cabrini-Green Local Advisory Council v. Chi. Hous. Auth., 2005 WL 61647 (N.D. Ill. Jan. 10, 2005); Darst-Webbe Tenant Assoc. Bd. v. St. Louis Hous. Auth., 299 F. Supp. 2d 952 (8th Cir. 2003).

168. Popkin et al., *supra* note 144, at 29.

169. Susan J. Popkin & Martha Burt Cunningham, *Public Housing Transformation and the Hard-to-House*, 16 Hous. Pol'y Debate (2005).

170. The extent to which the obligation to further fair housing protects large families is not clear. *Compare* Debolt v. Espy, 832 F. Supp. 215 (S.D. Ohio 1993) (USDA obligation to further fair housing does not compel the construction of rental units for large families), *with* 70 Fed. Reg. 59,919 (promulgating 24 C.F.R. § 983.57(e)(3)(iv) (project-based Section 8 site and neighborhood standards; for purposes of determining whether comparable housing opportunities exist outside areas of minority concentration, PHA should consider availability of units for large families).

171. 1 Popkin et al., *supra* note 105, at 38.

172. *Id*. at 71.

173. *Id*. at 75.

174. 2 Popkin et al., *supra* note 105, at 4–12 (describing implementation of the consent decree in *Young v. Pierce*, 544 F. Supp. 1010 (E.D. Tex. 1982), and racial violence).

175. *See* Cashin, *supra* note 108, at 21 n.29 (citing Camille Zubrinsky Charles, *Processes of Residential Segregation*, *in* Urban Inequality: Evidence from Four Cities (Alice O'Connor et al. ed., 2001) ("Whites expressed the strongest degree of racial solidarity" and mean percentage of 52 percent white is ideal neighborhood for white respondents; African-Americans, Latinos, and Asians expressed desire to live in areas that are 40 percent to 45 percent minority); *id*. at 28 (describing "integration fatigue" of African-Americans and the desire for equal opportunity); John Yinger, *On the Possibility of Achieving Racial Integration Through Subsidized Housing, in* Housing Desegregation and Federal Policy 293–95 (John M. Goering ed., 1986) (38 percent of African-Americans willing to move into all-white neighborhood and 95 percent of African-Americans willing to move to area that was 14 percent African-American; "tipping" point of predominance of African-Americans in white neighborhood that would prompt white flight is 7 percent). *See also* Wilhelmina A. Leigh & James D. McGhee, *A Minority Perspective on Residential Racial Integration, in* Housing Desegregation and Federal Policy 34 (John. M. Goering ed., 1986) (57 percent of African-Americans and 15 percent of whites would prefer half-white, half-minority neighborhood; integration is of lesser import to African-Americans than "freedom from impediments to fulfillment of their human potential"); Tara D. Jackson, Harvard Civil Rights Project, The Imprint of Preferences and Racial Attitudes in the 1990s: A Window Into Contemporary Residential Segregation Patterns in the Greater Boston Area 14 (2004), *available at* www.civilrightsproject.harvard.edu/research/metro/Tara. pdf (evidence of "sharp decline in white support for integration as the black population approaches 30 percent and . . . more precipitous drop in white support for neighborhoods fully integrated with blacks").

176. 1 Popkin et al., *supra* note 105, at 79. *See* 2 Popkin et al., *supra* note 105, at 2-33 (HUD follow-up requiring suburban Buffalo communities to complete analyses of impediments to fair housing successful in thirty-one of forty-one municipalities).

177. U.S. Comm'n on Civil Rights, Ten-Year Check-up: Have Federal Agencies Responded to Civil Rights Recommendations? Volume IV: An Evaluation of the Departments of Education, Health and Human Services and Housing and Urban Development and the Equal Employment Opportunity Commission 132 (2004). For similar findings with respect to enforcement of disability discrimination laws, see Nat'l Council on Disability, Reconstructing Fair Housing (2001), *available at* www.ncd.gov/newsroom/publications/2001/pdf/fairhousing.pdf.

178. 42 U.S.C. § 42(m)(1)(A)(iii) (2005).

179. Shannon v. HUD, 436 F.2d at 821 (3d Cir. 1970).

180. *See, e.g.*, 49 C.F.R. § 24.205(a)(1) (2005) (relocation under the URA must take into account the impact of displacement on minorities, the elderly, large families, and people with disabilities); 49 C.F.R. § 24.205(c)(1) (2005) (URA advisory services must be consistent with Title VI, Title VIII, and Exec. Order No.

11,063); *id.* § 24.205(c)(2)(ii)(C) ("[M]inorities shall be given reasonable opportunities to relocate to . . . dwellings . . . not located in an area of minority concentration.").

181. *See* HUD, CPD 02-8, Guidance on the Application of the Uniform Relocation and the Real Property Acquisition Policies Act of 1970 (URA), as Amended, in HOPE VI Projects, app. A (2002); Office of Pub. & Indian Hous., HUD, Notice PIH 2003-31, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973 (2003); Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 (2005); Architectural Barriers Act of 1968, 42 U.S.C. §§ 4151, 4152, 4153, 4156 (2005); 24 C.F.R. pt. 200(M) (2005) (affirmative fair housing marketing); 68 Fed. Reg. 70,968 (Dec. 19, 2003) (LEP planning requirements).

182. 24 C.F.R. § 903.7(b)(2) (2005).

183. *See, e.g.*, 24 C.F.R. § 1.5 (2005) (Title VI); 24 C.F.R. § 8.50(c) (2005) (Section 504); 24 C.F.R. § 92.504(b)(3)(v)(B) (2005) (developer fair housing covenants in HOME program).

184. 26 C.F.R. § 1.42-9(c) (2005).

185. NAACP, Boston Ch. v. Sec'y of Housing and Urban Development, 817 F.2d 154 (1st Cir. 1987).

Panel 4

Strengthening Housing Opportunity through the Housing Choice Voucher Program

Testimony before the National Commission on Fair Housing and Equal Opportunity
Boston, Massachusetts
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America's largest rental housing assistance program for low-income people—the means-tested Housing Choice Voucher program that currently serves nearly two million households[1]—was created in 1974 primarily to reduce rent burden by subsidizing units of acceptable quality. The program consistently reaches very low-income households—those below 30% of area median income—unlike other "affordable" housing programs.

But thanks to influential research and policy debate on the severity of concentrated minority poverty in central cities (e.g., Massey and Denton 1994; Wilson 1987), the past two decades have expanded interest in another policy objective: that of improving the locational outcomes of assisted households, sometimes through counseling, relocation assistance, or other elements of "assisted housing mobility."

Why this "locational turn"? Beyond hopes for enhancing access to jobs and educational opportunity, there is growing evidence that assisted relocation can dramatically reduce exposure to neighborhood crime and the physical and mental risks associated with daily exposure to gun violence and the threat of same, as well as gang recruitment of boys and sexual harassment of girls (Orr et al. 2003; Popkin et al. 2007).

Since 1992, this policy hope—which has also been linked to the controversial transformation of public housing since the early 1990s (Popkin et al. 2004; Popkin and Cunningham 2005; Vale 2003)—has been pursued through the voucher program in four ways: a broad budgetary shift away from supply-side project subsidies to vouchers; reforms to the voucher program that make it a more flexible tool for deconcentrating poverty and/or promoting racial

[1] See U.S. HUD (2007). The number assisted in a given month varies according to administrative action and utilization rates, distinct from the number of households "authorized" through annual Congressional appropriations.

desegregation, for example through higher rent ceilings and "portability" across local housing agency jurisdictions (Priemus, Kemp, and Varady 2005; Sard 2001); judicial consent decrees in which the federal government agreed, as part of racial desegregation efforts, to promote a wider array of neighborhood opportunities in particular jurisdictions (Briggs 2003; Polikoff 2006; Popkin et al. 2003); and Moving to Opportunity (MTO), a voucher-based experiment launched by the U.S. Department of Housing and Urban Development (HUD) in five metro areas in 1994 to examine the effects of voluntary relocation from public or assisted housing in high poverty neighborhoods to privately-owned apartments in low poverty neighborhoods.

Though HUD has been criticized for undermining the focus on locational outcomes in recent years (e.g., Priemus, Kemp, and Varady 2005), that focus nonetheless represents a major shift—a "locational turn"—in the nation's low-income housing policies since the 1980s. And though it is usually invisible in domestic policy debates, housing mobility strategies found their way to the headlines in the wake of Hurricane Katrina, which forced an unprecedented relocation of hundreds of thousands of families from New Orleans, many of them black and poor.[2]

But how much does—or can—demand-side housing assistance actually help? Research has generated mixed evidence that the housing voucher program significantly improves neighborhood quality for users over time. There are glass-is-half-full and half-empty assessments, depending on the reference point: Vouchers do much better, on average, than public housing at offering assisted households a unit outside of high poverty neighborhoods, for example, but a relatively small share of voucher users, particularly if they are racial minorities, live in low poverty or racially integrated areas.[3] According to a 2003 HUD report that examined the nation's 50 largest housing markets, the spatial clustering of vouchers is far greater than the dispersion of housing units at affordable rents alone would predict: 25 percent of black recipients and 28 percent of Hispanic recipients live in high-poverty neighborhoods, compared to only 8 percent of white recipients, and yet the voucher program utilizes only about 6 percent of all units with rents below the HUD-designated Fair Market Rents (Devine et al. 2003). This study could not determine the units actually available

[2] See Leslie Kaufman, "An Uprooted Underclass, Under the Microscope," *New York Times* (September 25, 2005); "A Voucher for Your Thoughts: Katrina and Public Housing," *The Economist* (September 24, 2005); Xavier de Souza Briggs and Margery Austin Turner, "Fairness in new New Orleans," *The Boston Globe* (October 5, 2005); and Briggs (2006). The Katrina relocation also created a "natural experiment," with moves from segregated, high poverty, and often high-crime areas in pre-storm New Orleans to a range of different neighborhood contexts in a variety of metro areas.

[3] There is a large literature. See, in particular, Hartung and Henig (1997), Khadduri (2006), Newman and Schnare (1997), McClure (2006), and Turner and Williams (1998).

to interested voucher users, of course: If landlords are unwilling to rent to them, for example, rent levels do not matter much.

Voucher holders cluster in moderate to high poverty neighborhoods of housing markets (Feins and Patterson 2005; Newman and Schnare 1997), sometimes in distinct corridors or "hot spots" where affordable rental housing tends to be more abundant and minority concentration high (Hartung and Henig 1997; McClure 2001; Wang and Varady 2005). At least some of these areas are poor or transitional neighborhoods or racial ghettos that are relatively vulnerable to decline (Galster et al. 1999; Varady and Walker 2007).

This past summer, Hanna Rosin's controversial article, "American Murder Mystery," in *The Atlantic* magazine thrust the issue of poor voucher holders "tipping" desirable neighborhoods—and enabling crime to "migrate" out of inner-city ghettos to safer areas—back in the spotlight. Though the article's storyline hinges on a correlation between crime rates and voucher concentration in the city of Memphis, and though we have much better evidence that areas in distress attract voucher holders—because landlords are more eager to rent to them—than that voucher holders bring that distress, the article did raise the important issue of responsibly managing the voucher program and attending to the health of receiving neighborhoods.[4] This will only become more important as the foreclosure crisis touches more and more of America's communities.

But to return to the performance of the voucher program on locational outcomes, vis-à-vis the reformer's benchmarks and national policy statements about neighborhood quality from the Housing Act of 1949 to the Millennial Housing Commission report a half century later[5], the nation's largest housing assistance program for low-income people falls short.

Building on earlier testimony before the Commission, in particular that of Professor James Rosenbaum in Chicago, I will focus on the lessons of Gautreaux and MTO for creating meaningful housing choice and expanding opportunity through the voucher program.

Competing Stories

The debate over choice and opportunity reflects stylized versions of the supply versus demand-side explanations of segregation in the nation's biggest low-income housing program.

In the strong—i.e., unqualified—form of the supply-side version, at least for tight housing markets, poor families who win the "lottery" of housing assistance are desperate to live in more

[4] See Margery Austin Turner, Susan J. Popkin, and Mary K. Cunningham, *Section 8 Mobility and Neighborhood Health* (Washington, DC: The Urban Institute, 2000), based on a national symposium.

[5] See Newman and Schnare (1997) and *Meeting Our Nation's Housing Needs: Report of the Bipartisan Millennial Housing Commission Appointed by the Congress of the United States* (Washington, DC, 2002).

racially and economically integrated areas, but market discrimination and scarcity thwart their dream of a better life in a better place. In this telling, even voucher holders who receive information, transportation, or other supports have little meaningful choice.

In the strong demand-side (client-side) narrative, families who receive vouchers only integrate when they are obliged to do so by government planners. Assisted housing mobility, in this telling, reflects the integrator's ideal and not the preferences of families served. Yes, all parents may want the safest possible places for their children, say the demand-side purists, but the inner-city poor, most of whom are racial minorities, also want the comfort of familiarity and social acceptance, as well as support from loved ones—even if that means enduring more dangerous and resource-poor areas. And they need public transportation and other supports, unlike higher-income households, that are harder to come by in many neighborhoods, especially in the suburbs, that are less poor and less segregated.

The Mixed Evidence

To explain disappointing locational outcomes, previous research, as well as the informally reported insights of program staff at all levels, has highlighted a range of supply-side barriers, such as discrimination and a scarcity of affordable and otherwise appropriate rental housing units for voucher holders, as well as varied demand-side barriers, such as: debilitating physical and mental health problems; limited time, money, transportation, information, and other resources vital for effective housing search; a fear of losing vital social support and institutional resources; and ambivalence about moving itself (Pashup et al. 2006; Pendall 2000; Varady and Walker 2007).

Only programs that emphasize relocation to low-poverty neighborhoods appear to achieve such outcomes to any significant degree. Moreover, the evidence that positive effects of special supports—i.e., "assisted" mobility—on locational outcomes persist over the long run is thus far limited to administrative data on the Gautreaux program, which indicate sustained racial and economic integration over more than a decade (DeLuca and Rosenbaum 2003).

This is true even of MTO. First, according to the HUD-funded interim evaluation of MTO, 67 percent of the experimental group—which received relocation counseling and assistance, plus a voucher useable only in a neighborhoods that was less than 10% poor in 1990—had moved at least once more by the interim mark, and that group was only half as likely (18 vs. 38 percent) as compliers who stayed put to be living in a neighborhood less than 10 percent poor (Orr et al. 2003). The most common reasons for compliers' moving on were involuntary: problems with the lease (22 percent), which may include failed unit inspections, rent increases and decisions to sell the unit or for other reasons not renew the voucher holder's lease; and conflicts with the landlord

(20 percent). But almost as many families (18 percent) reported wanting a bigger or better apartment.

MTO's program content helped families get to particular kinds of neighborhoods, using the limited metric of neighborhood poverty rate rather than school performance, job proximity, or other mediators of opportunity. And though the low-poverty areas were (at least) much safer than the high-poverty "projects" left behind, the program was not designed to help families stay in those new areas or move to similar neighborhoods over time.

As James Rosenbaum testified in Chicago, MTO is a stronger study than Gautreaux, because MTO is a fully randomized experiment. But MTO was also a weaker intervention in terms of getting families to much better neighborhoods and schools and, in the Gautreaux case, somehow enabling or encouraging many of them to stay in those places over the long haul.

Generating Better Answers: New Lessons from MTO

Expanding housing opportunity through these programs hinges on generating much better insight into why particular outcomes obtain. Yet most analyses to date have relied on limited, point-in-time structured surveys, which don't shed much light on how families weigh trade-offs or what happens to them as their income, caregiving obligations, or other circumstances change—even as tough housing markets churn "around" them.

With several collaborators, I have tried to address these gaps by combining a large sample of in-depth interviews with MTO families with analyses of three of the program's housing markets—greater Boston, Los Angeles, and New York—over time and in-depth fieldwork with a subset of 39 families. We learned and participated in their daily routines, came to understand the people that were important in their lives—as sources of support as well as burden, risk, and obligation—and we discussed at length their perceptions of neighborhood choices and of what it means to rely on vouchers in tight, high-cost markets.[6]

These are the kinds of markets where much economic growth and competitive advantage is concentrated in this country and where rents and wage levels have diverged so sharply, for those on the bottom, over the past several decades. So while these three MTO regions cannot represent all communities where the voucher program operates, and while many of the MTO families are among the most disadvantaged in the voucher population, their experiences reveal much about the program's strengths and weaknesses, as well as needed reforms.

[6] See the five-year project's major policy briefs at www.urban.org/projects/mto.cfm.

Here's what we found. MTO families faced major barriers in tightening markets, yet a range of housing trajectories emerged among the families, reflecting variation in (a) willingness to trade location—in particular, safety and avoidance of "ghetto" behavior—to get larger, better housing units after initial relocation (some families were willing to make that trade and others not); (b) the distribution of neighborhood traits across metro areas (some markets, such as metro Boston's, offered many more opportunities to lease up outside of poor and segregated neighborhoods); and (c) circumstances that produced many involuntary moves. Access to social networks or services "left behind" in poorer neighborhoods seldom drove moving decisions. And—to our surprise—numerous moves were brokered by agents who provided shortcuts to willing landlords, for a fee, but may, in the process, have steered participants to particular neighborhoods.

So the supply-siders are right about constraints (though our fieldwork was not set up to detect discrimination as a contributor) while the demand-siders largely misconstrue the role of preferences, at least in tight housing markets.

Intense market pressure in greater Boston, Los Angeles, and New York over MTO's first decade, as well as the payment limits, limited landlord pools, and other shortcomings of the housing voucher program, were huge constraints for many families. The less stably housed the family, the more this was true—because each new move forced the family to navigate anew, with little room to maneuver in the choice of best-possible neighborhoods—and this appears to have contributed to many trajectories that led members of the experimental relocation group (the focus of hopes in the program) to poorer neighborhoods of residence over time.

This helps explain why locational outcomes converged over time for the treatment groups even though two-thirds of experimental compliers who had to move on or who chose to do so reported looking for a new apartment in the same neighborhood. In lieu of better locations, when families found affordable units with landlords willing to rent to voucher holders, they took what they could get, making the most of proximity to loved ones, managing in substandard or crowded units for the sake of their children, and otherwise settling.

The first major policy and research implication of this study is clear: In tight markets, voucher-based interventions, even the best assisted, are unlikely to produce enduring improvements in locational outcomes without focused attention on the geography of housing supply that will remain affordable and available. This calls for expanding and accelerating the focus on supply-side strategies with an inclusionary approach in many markets.

Alternatively, it means searching on behalf of families in order to generate wider options, as Gautreaux placement agents did in the program's first wave, and then working with private

landlords to ensure that decent, leased units will remain affordable and in program compliance as long as possible. This need not deny families the opportunity to lease up elsewhere, but it would put the onus of the arduous search task in the most competitive markets on the agencies offering the housing assistance. Given the performance, support, and regulation of those public agencies to date, policymakers should assess the role of private real estate agents in this picture.

In the voucher program, we have a low-income housing assistance policy structured to minimize cost to the taxpayer subject to an inconsistently enforced minimum standard of unit quality. The program lacks a robust rule or incentive to ensure the best-possible locational quality, let alone stability in good locations—safe, resource-rich ones—especially in the tight markets where those mechanisms are needed most.

Stability is a pre-condition, frequently over-looked in policy debates that rely on point-in-time data on housing locations, for more productive engagement by low-income families in schools and community life, especially in less poor, less racially isolated, and also less familiar places: Without stability, no community and fewer positive effects of place. The challenges are greatest where the market is not only tight but offers fewer low-risk neighborhoods to choose from: The striking differences in locational trajectories between Los Angeles and New York on one hand and Boston on the other underscore this.

Yet the demand-siders are right that choice (individual agency) also matters, not just in principle but in the significant choices parents make for themselves and their children over time. Rarely, however, did this take the form of an unconstrained preference for neighborhood A over neighborhood B. We have underscored, based on families' in-depth accounts of their choices and circumstances as well our direct observations of those circumstances, the importance of trade-offs. Where they had a meaningful choice to make, some MTO parents were willing to trade away attractive unit features (including size and quality) in order to stay in a better neighborhood. Others, particularly if they had had to endure the worst of the dilapidated and poorly maintained housing stock in the voucher program, would not make the same choice. They preferred a better apartment in a risky environment, and they were willing to manage the risks.

Only rarely did the location of relatives, friends, or other loved ones trigger a move or determine where families moved. But pre-established ties, most of all the networks that MTO participants did not choose—the kin networks into which they were born—remained the center of most participants' social worlds and so factored into life routines and assessments of neighborhoods. Yes, some families who moved out later moved back and valued the access they regained to loved ones; this was especially true, in our small ethnographic sample, for families

without reliable access to a car. But it is also the case that those ties proved burdensome and draining sometimes and that some parents moved in part to distance themselves from relatives who were chronically needy or who posed special risks, such as addicts and ex-offenders that MTO parents perceived to be bad influences on their children. Likewise, some parents had to deal with dissatisfied, adolescent children who found safer neighborhoods boring, but as a rule, that did not trigger decisions to move.

Like the finding about search and constraint, this finding about the role of choice implies that policymakers should vigorously tackle the factors that define available supply for housing voucher holders, in particular the enforcement of quality standards and the pivotal issue of landlord acceptance. Major developments in behavioral economics underline the wisdom of generating better choices for families, making those better choices the defaults or starting points, and then letting families opt out and make different choices if they so desire (Thaler and Sunstein 2008).

The analogy is to retirement savings: Take-up of 401(k)'s would be much higher if workers were automatically enrolled but able to easily opt out, as opposed to having to enroll themselves.

It is vital that assisted relocation not be thought of as simply a matter of counseling, more generous payment levels, or locational restrictions on vouchers. Wider landlord participation demands responsive housing agencies, and while we do not think our data offer definitive evidence on the question of regional versus municipal management of the voucher program, the integral role of housing quality assurance and wider landlord participation seem as important as, say, better information (through counseling) and search supports for families.

A final implication of this trade-off finding is that car vouchers and other tools could mitigate the trade-off between living in a safer neighborhood and having the desired level of access to one's social supports and cherished institutions, such as "church homes." In related analyses, we have found that the employment challenges for work-ready MTO parents were not merely a reflection of their limited skill levels but of the difficulties of lining up three-way jobs-housing-social support matches. Difficult commutes and transportation constraints figure into that triangle in predictable ways—and not just for those families who use housing assistance to leave unsafe but transit-rich neighborhoods and then lack access to a car.

The Road Ahead: Delivering Next-Generation Policy and Practice

Expanding housing mobility through the voucher programs, and perhaps through complementary efforts that tap supply-side interventions, such as affordable rental housing production in low-poverty, non-segregated areas, are aims that confront important dilemmas about

which clients to target, how to operationalize "choice," which locations to target, and how to implement effectively.

First, it is not clear that the most disadvantaged populations—those that are not only income poor but face barriers to life functioning in the form of chronic physical or mental illness, substance use, or other problems—are well suited to assisted relocation. At least, such hard-to-house populations may not be suited to relocation strategies right away and not without intensive social services or other post-relocation supports (Briggs and Turner 2006; Popkin 2006). To date, most attention has focused on the rigors of involuntary relocation by these extremely disadvantaged households, such as where public housing projects are demolished, but significant barriers to functioning are also evident in MTO, wherein families volunteered for the chance to escape public and assisted housing in high poverty neighborhoods. These major barriers were highlighted in the early assessment of counseling challenges in MTO (Feins, McInnis, and Popkin 1997) but largely ignored in research on MTO thereafter.

Second, given the range of constraints faced by assisted households, simple "choice" may never be enough to dramatically change locational outcomes—and some not-so-simple alternatives pose legal and political dilemmas of their own. Most local housing programs appear to lack the will and/or the way (capacity) to inform voucher holders' choices about the range of neighborhoods that have affordable, eligible units in them; the focus is on leasing up affordable units quickly (Johnson 2005; Katz and Turner 1998; Varady and Walker 2007). McClure (2006) argues that in the tight markets where voucher holders struggle most, it may be that "intensive housing placement"—à la Gautreaux, wherein placement counselors "lined up" the units in racially integrated communities—and not simply helping families search, is the key to lowering poverty concentration and racial segregation in the voucher program.[7] Also, families' unwillingness to make particular kinds of moves might be a major determinant of MTO housing trajectories and locational outcomes over the long run. This was an issue for initial lease-ups in both Gautreaux and MTO (Rubinowitz and Rosenbaum 2000; Feins, McInnis, and Popkin 1997), as well as the major desegregation consent decrees of the 1990s (Briggs 2003; Popkin et al. 2003).

[7] Such placement is the defining feature of the relatively uncommon, small-scale *unit*-based (as opposed to voucher-based) approaches to housing mobility for low-income families, such as in scattered-site housing programs (Briggs 1997; Hogan 1996; Turner and Williams 1998). It also defines supply-side strategies such as inclusionary zoning and area "fair share" requirements—at least when they include very low income households—and efforts to preserve affordable supply in "better" neighborhoods, such as in the Mark to Market reforms for project-based Section 8 housing.

Third, as for which locations to target, voucher users and policy analysts and advocates may not be on the proverbial same page in terms of what neighborhood "quality" means. Poverty rates, racial composition, local school performance, and other measures are obviously proxies for the value of a particular residential location, and as noted above, safety and proximity to loved ones may be the dominant considerations for most assisted households. Future efforts must address these conflicts, and transportation access is an important part of that.

Fourth and finally, effective implementation is a challenge. Because the success of voucher-based assisted housing mobility programs, like that of the voucher program generally, hinge on a chain of cooperative action by landlords, tenants, housing agencies, and sometimes organized interest groups, Briggs and Turner (2006,59) conclude, "This element of the nation's opportunity agenda is particularly vulnerable to the strong-idea-weakly-implemented problem."

Given the risk of NIMBY-ism and other sources of resistance, as well as a history of limited cooperation among local housing agencies in each metropolitan housing market, implementing effectively at scale becomes a particularly challenging prospect (Goering 2003; Polikoff 2006).

Yet we now have clear lessons about what it will take to surmount these challenges, and doing so could be a pillar of a reinvigorated opportunity agenda in America. In light of MTO's major success—moving extremely disadvantaged people to security, more than "opportunity"—doing so could dramatically improve the quality of life of poor people, while policies more directly focused on economic prospects, such as the Earned Income Tax Credit, workforce development, targeted job creation, and school reform help them escape poverty and its risks (i.e., deliver the "opportunity").□

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Panel 4

Testimony before the National Commission on Fair Housing and Equal Opportunity
Boston, Massachusetts
September 22, 2008

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The Section 8 Housing Choice Voucher program is by far the nation's largest low-income housing program. More than 2.2 million housing vouchers have been authorized by Congress and allocated to the approximately 2,400 housing agencies that administer the program. It is also the housing program that is the most targeted on the lowest income families: 75 percent of new families served each year must be extremely low-income.[8]

The voucher program does a better job than any other low-income housing program of enabling families to live in lower-poverty neighborhoods.[9] But there is mounting evidence that in many metropolitan areas it is not doing a very good job at assisting families to live in safer communities with better schools, services and access to jobs. Such inadequate performance deprives families of some of the benefits they could potentially receive from the program. By at times concentrating voucher holders in particular areas, it also may undermine fragile communities and accelerate a process of neighborhood deterioration.

What can be done to make the voucher program more effective at increasing integration by race and class, while at the same time maintaining a commitment to the core principle of choice? I have spent much of the last 15 years trying to refine the answers to this question. I want to briefly highlight recommendations in three areas – and then address the important issue of housing *stability* raised by Xav Briggs. Policy changes are needed that would –

1. **Create the right incentives for families;**
2. **Create the right incentives for agencies; and**
3. **Increase participation by owners.**

Or framed more broadly, we need to jettison the now-discredited assumption that the housing market would work for poor and minority families if they just had the means to pay the rent, and reform the program and its administration to overcome the imperfect knowledge, prejudices and other barriers that continue to limit access to opportunity.

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[8] For background, see "Introduction to the Housing Voucher Program," Center on Budget and Policy Priorities, revised July 6, 2007, http://www.centeronbudget.org/5-15-03hous.htm.

[9] Deborah Devine et al., *Housing Choice Voucher Location Patterns: Implications For Neighborhood Welfare,* U.S. Department of Housing and Urban Development, January 2003.

Payment standards – Families may be willing to pay somewhat more than 30 percent of their income (the minimum contribution) to live in a better neighborhood, but poor families have limited discretion to shift spending within tight budgets. Program payment standards – the maximum subsidy payable in a particular area – must be sufficiently high to make it financially feasible for families to choose units in better neighborhoods. Conversely, the subsidy should not be overly generous in neighborhoods where voucher holders may otherwise concentrate, and that already are too poor. Several policy changes would help achieve these objectives.

- *Fair Market Rent areas should be smaller.* HUD now sets FMRs using metropolitan-wide rent data (and on a county level in non-metropolitan areas). Rents typically vary substantially between opportunity areas and poverty-concentrated neighborhoods. But housing agencies have discretion to set payment standards only within 10 percent of the HUD-determined FMR. If FMRs were based on smaller geographic areas they would be more accurate and not be overly generous in lower-cost areas, and the 10-percent flexibility would more frequently be sufficient to enable agencies to set payment standards high enough to promote access to opportunity areas. The more detailed data available through the American Community Survey makes this change feasible. The Section 8 Voucher Reform Act (SEVRA) would require it.[10] But *HUD has discretion to make this change, and could do so when it proposes the 2010 FMRs in the spring of 2009.*

- *HUD should set the FMR based on 50th percentile rents where needed to expand housing choice.* In 2000, HUD issued a new policy by interim rule that bases FMRs on 50th rather than 40th percentile rents in certain large metro areas where data indicate that voucher use is overly concentrated. The Bush Administration never issued a final rule. Initially, 39 metro areas with a substantial share of the nation's population qualified for higher FMRs – and hence higher payment standards – under the interim rule. By 2008, the number of qualifying areas had fallen to 28 (in 2005, HUD dropped many areas to the 40th percentile but increased 10 areas to the 50th percentile). For 2009, HUD has proposed reducing the number of qualifying areas to 14. Based on the last 8 years of experience, it is important to evaluate the statistical and other criteria in the interim rule and refine the policy in a final rule to better achieve the goal.[11]

It is also important to make it easier for housing agencies to adopt "exception payment standards" above 110 percent of the FMR, as discussed in the section on agency incentives below.

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[10] H.R. 1851 passed the House in 2007 by a wide bipartisan margin. The Housing Subcommittee of the Senate Banking Committee held a hearing earlier this year on the companion bill, S. 2684, but the Senate is unlikely to act before the end of the 110th Congress. The Center's website, at http://www.cbpp.org/3-10-08hous.htm, includes our analysis of the Senate and House bills, a side-by-side comparison of the bills with current law, and a powerpoint that provides a brief overview of the bills.

[11] It is not clear how necessary it would be to use 50th percentile FMRs if the first recommendation concerning smaller FMR areas is implemented. This is a statistical question that should be investigated.

Housing search policies and assistance – Housing agencies must set a time limit on the period families can search for housing in which to use their vouchers, and may allow extensions. Where the search period is short – the minimum is 60 days – families may not have sufficient time or be willing to take the risk to search in unfamiliar areas. *Flexible search policies are essential to increasing the mobility potential of the voucher program.* During the Clinton Administration, HUD made the rule changes necessary for housing agencies to be flexible. The policy challenge now is to encourage more agencies to use this flexibility, or to require longer search periods under certain circumstances.

Even with more flexible search periods, however, many families will need assistance to look in unfamiliar areas. Housing agencies rarely provide such direct assistance unless they have special funding for this purpose. Provision of detailed briefing materials is more common, but it is unclear whether this more economical approach is effective. *HUD should investigate the effectiveness of such information-oriented search assistance.*

Additional funding for direct search assistance could be more cost-effective than broad scale increases in voucher subsidy payments, and could potentially be designed so that programs could be relatively short-term but with lasting benefits. HUD never published the evaluation of the specially-funded Regional Opportunity Counseling programs, but anecdotal evidence indicates that those programs had mixed results. Before seeking funding for a new generation of ROC programs, HUD should redesign the program based on the experience of ROC grantees and other agencies that have operated mobility programs to implement litigation settlements and for other reasons.

Portability policies – The administrative geography of the voucher program – its balkanized operation in most metropolitan areas – creates substantial barriers to families moving from poorer and more racially concentrated areas to areas with greater opportunities. Boston is one of the worst examples: more than 60 agencies administer section 8 vouchers in the metro area. There are more section 8 agencies in Massachusetts than in California! Simplistically, this problem can be addressed in two ways: by reducing the administrative barriers, or reducing the number of agencies.

SEVRA takes the first approach, by transforming "portability" policy so that families can move to areas served by other agencies and the "receiving" agencies generally must accept them (and receive additional funding for this purpose). The House and Senate bills differ somewhat on this key policy, and the approach in both bills remains controversial in some quarters, in large part due to a lack of trust in how HUD would administer it. In my opinion, statutory changes are not necessary for HUD to revamp its rules so that portability would work more efficiently and effectively.[12] *This is a key area for leadership and initiative by a new HUD.* But Congress should act if HUD fails to do so.

[12] Section 8(r), which governs portability, is written sufficiently broadly that HUD could jettison the administratively complex and burdensome system it created through regulations and streamline portability procedures. Voucher renewal funding policies in annual appropriations acts could, however, hinder HUD's flexibility considerably. The SEVRA renewal funding policies, discussed below, would give HUD the flexibility it would need to reform portability administratively.

The alternative of reducing the number of agencies operating within metro areas and increasing their scope would pose a far more difficult political challenge. Moreover, there is little evidence at this point that agencies that serve larger areas actually have better success at promoting moves to opportunity areas. HUD commissioned exploratory research on this issue in the mid-1990s. The report found that virtually the only agencies operating across metropolitan regions were state agencies.[13] Of the roughly 30 states that administer voucher programs, however, Center research has found that many are small and their operations are geographically constrained by state law. Reforming portability policies, as challenging as it will be, is a far easier means to the goal. If such changes combined with the additional policy changes discussed below do not produce adequate results, this option should be reexamined.

Keeping the bulk of vouchers tenant-based, and increasing flexibility to project-base vouchers in opportunity areas – Currently, agencies may "project-base" up to 20 percent of their vouchers – that is, attach them to particular projects selected by the agencies (though families retain the right to move with the next available voucher after one year). The statute requires agencies to choose locations that are "consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities."[14] In 2005 HUD adopted a final rule that leaves this decision up to housing agencies, but requires them to consider seven specified factors as part of their annual plan if they choose to use the project-based option.[15] The regulatory policy is a balanced approach to a difficult issue. The problem is its implementation: it appears that there is no HUD oversight of whether an agency has in fact considered the required factors in identifying neighborhoods where project-basing is permitted or encouraged. It may be appropriate for the *Office of Fair Housing to review project-basing plans, at least on a sample basis, and to determine whether further policy changes are required.*

SEVRA would allow housing agencies to increase the share of vouchers that may be project-based to 25 percent, and up to 30 percent to provide supportive housing to formerly homeless people. The across-the-board increase to 25 percent is opposed by key Republican members of the Banking Committee. It may make sense to *condition such an increase on use of the authority in objectively-defined opportunity areas.* Families would be much more likely to move to areas where vouchers are harder to use if they could bypass the search process. It is also important to ensure, if exceptions are allowed to the 20 (or 25) percent limitation on the share of vouchers that can be project-based, that the exception is limited and that at least half of an agency's vouchers are still fully mobile.[16]

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[13] Judith D. Feins, et al., "State and Metropolitan Administration of Section 8: Current Models and Potential Resources, Final Report," July 1996, http://www.huduser.org/publications/pubasst/sec8admin.html.

[14] Section 8(o)(13)(c)(ii), 42 U.S.C. §1437f(o)(13)(c)(ii).

[15] 24 C.F.R. §983.57.

[16] HUD has allowed agencies in the Moving to Work demonstration to project-base an unlimited number of vouchers, *and* to administer the subsidies without a mobility option, like old-fashioned project-based assistance programs. The House version of SEVRA would cap the share of vouchers that may be project-based under MTW or its successor at 50 percent, and constrain the limitations on the mobility option. Given the size and the degree of racial concentration in some of the cities where agencies have MTW status, this policy change is important.

Creating the Right Incentives for Agencies

Many of the policy changes discussed above also would facilitate and encourage agencies to make program design choices that would better promote mobility. From the perspective of the administering agencies, however, there are two key sets of policy changes.

- **Voucher renewal funding policies** must not force agencies to make long-term trade-offs between the adequacy of assistance to help some families live in areas with greater opportunities and the number of families served. The quasi-block grant funding policies adopted by Congress and HUD in 2005 and 2006 prompted many agencies to prohibit portability moves and to reduce payment standards. Beginning in 2007 Congress changed these policies, but the continuing uncertainty about whether the next appropriations act will change the rules discourages agencies from adopting mobility-promoting policies that could increase program costs. *Renewal funding policies that support deconcentration (including but not limited to portability moves across jurisdictional lines) must be incorporated in the Section 8 statute.* SEVRA would make this essential change.

- **Performance evaluation policies** and other incentives must be designed to encourage actions and policies that promote mobility. Agencies respond to produce the types of results HUD pays attention to. The experience with voucher utilization is an excellent example. In the late 90s, Congress and HUD were very concerned that hundreds of thousands of vouchers had been authorized and funded by Congress that agencies were not issuing to families. HUD designed a number of policies to encourage utilization, including emphasizing it in the point system in the new Section 8 Management Assessment Program (SEMAP), conditioning eligibility for new vouchers on a minimum 97 percent utilization rate, and promulgating a policy that would reallocate unused vouchers permanently to other agencies. Agencies got the message, and in only a few years increased the share of vouchers in use from less than 90 percent to about 98 percent in 2003-2004. (Unfortunately, the renewal funding policy changes – including the end of the "use it or lose it" policy – and funding shortfalls in the intervening years resulted in a 90 percent utilization rate in 2007.) Here are a few specific policy changes to create the incentives for agencies to adopt policies and practices that support and encourage families to make mobility moves.

- *SEMAP should be redesigned to more effectively measure deconcentration.* Now, deconcentration is an optional and minor component of the evaluation system, and the metric is not well-designed. (This is not to criticize those who fought for it and prevailed in getting the current measure included in the face of agency opposition.) SEVRA would require this change, but HUD could adopt it without legislation.

- *Agencies that operate regionally or achieve deconcentration objectives should receive preference for new vouchers.* The Senate version of SEVRA includes this policy change. Local agencies that collaborate to make moves between them seamless could qualify for the preference, as well as agencies that administer vouchers over a larger area.

- *Make information about voucher concentration public and require agencies to respond to the data.* SEVRA requires HUD to report annually to Congress and to agencies on voucher concentration and rent burdens; agencies must assess whether the data indicate a need to

increase voucher payment standards or to address the problem in other ways. (The Senate bill refines this requirement, and specifies that data on voucher concentration must be analyzed separately for racial and ethnic groups.) HUD collects these data now from agencies through the annual rent recertification process, and could, without a legislative directive, analyze the data and disseminate the findings.

  - SEVRA also bypasses the burdensome procedures HUD rules establish to qualify for an exception payment standard. (HUD virtually ceased to implement these rules for most of the Bush Administration.) The bills would require HUD to approve an increase in the payment standard to 120 percent of FMR if an agency requests the increase to alleviate excess rent burdens or voucher concentration.[17] *HUD could revamp its rules along the lines of the SEVRA policies to streamline the procedures for approval of higher payment standards.*

- *Provide performance bonuses to agencies that achieve mobility objectives.* A portion of agencies' administrative fees – or a supplement to the formula amount – could be conditioned on performance in achieving mobility and other objectives. The Senate SEVRA bill gives HUD the flexibility to design such a policy; the House-passed bill would preclude it. Not surprisingly, the Senate provision is controversial with agencies, but in my view it is important for HUD to have such flexibility, at least to promote certain policy objectives.

Increase Participation by Owners

The recommendations above will only be effective if there are sufficient owners of properties in opportunity areas that are willing to rent to voucher holders. Experience indicates that agencies can increase participation by owners in the voucher program, including in tight markets, by operating efficient programs and reaching out to owners in various ways to encourage participation. Such landlord outreach is likely to cost far less than direct support for families in their housing search. Many agencies have undertaken such initiatives without special administrative fees or other funds. The key is to create the incentives discussed above for agencies to initiate such efforts. It also would be helpful for HUD to disseminate best practices.

But encouraging participation, operating an effective program and paying a fair rent may not be sufficient, particularly in areas where owners can easily rent their units. Except in the relatively few states and cities that have laws prohibiting discrimination against voucher holders, owners are allowed to refuse to accept voucher payments so long as their refusal is not a pretext for discrimination against protected classes. The only exception is owners that receive certain types of federal subsidies, such as Low Income Housing Tax Credits and HOME block grant funds. Even these owners, who are already prohibited from discriminating against voucher holders, often use policies that have a discriminatory effect. *It is important for HUD and Treasury to clarify the types of policies prohibited by current law*, such as minimum income tests that ignore the value of

[17] The bills differ with regard to the triggers for agency and HUD action, and the Senate bill would apply some additional requirements on agencies to qualify for the increase. These differences are described in the Center's side-by-side on the bills at http://www.cbpp.org/3-10-08hous-tables.pdf. Both bills would give agencies the authority to increase the voucher payment standard to 120 percent of FMR without seeking HUD approval as a reasonable accommodation for individuals with disabilities.

the voucher subsidy. (Owner groups such as the Realtors, Home Builders and the National Multi-Housing Council strongly – and successfully – opposed the addition of such a requirement to SEVRA, or even the clarification that the current requirement is an effects test. The "compromise" included in the Senate bill would require GAO to conduct a study of obstacles to use of vouchers in such properties and to recommend solutions.)

Some opportunity areas have so little rental housing that none of these recommendations will be effective. In such areas, new development is needed (though the obstacles posed by regulatory barriers and other means of local resistance should not be underestimated). Project-basing vouchers in a portion of the units in such new developments can ensure that these substantial investments create opportunities for voucher holders. State (and in some cases, local) agencies that allocate Low Income Housing Tax Credits and other production subsidies can design their selection criteria to reward developers that commit to accept project-based voucher contracts. To encourage states and other agencies to adopt such policies, Congress could give a preference in the award of new vouchers to agencies that will partner with state allocating agencies or can directly implement such initiatives.

One lesson we should learn from the last Administration, however, is *not* to seek to encourage owner participation by adopting policy changes that hurt the very families the program is designed to help. In the early '90s, owner groups urged HUD and Congress to make a set of changes in the voucher program that they claimed would remove barriers to increased participation by "good" owners. Among these changes was the elimination of the requirement that owners have good cause to not renew a lease (pejoratively labeled the "endless lease" requirement). Because of that change, owners in the lower-poverty areas where families moved under MTO could decide not to renew families' leases as markets tightened, forcing families to have to relocate. It may well be time to reconsider that policy change, or at least to investigate whether it in fact had sufficient benefit to outweigh its evident harm.

Panel 4

CT FAIR HOUSING CENTER

The National Commission on Fair Housing and Equal Opportunity
in Housing Hearing

September 22, 2008 – Boston, MA

Written Testimony of **Cynthia Watts Elder**

I. Introduction

I want to thank the Committee for allowing me to address you today. My name is Cynthia Watts Elder and I currently serve as Co-President of the Board of Directors for the Connecticut Fair Housing Center. I am currently employed as in-house counsel for The Phoenix, a life insurance and financial services company located in Hartford, Connecticut. I also have the pleasure of serving on the Board of Directors of the Urban League of Greater Hartford and I served as the Executive Director of the Connecticut Commission on Human Rights and Opportunities from 1999 to 2003.

I am here to discuss Connecticut's lawful source of income protections and how this law assists in providing mobility for some of Connecticut's poorest residents and what Connecticut's experience with this law says about the need for such protections nation-wide.[18]

II. The Need for Source of Income Protections

Residential racial and economic segregation is a recalcitrant reality in the state of Connecticut. The majority of minority residents in Connecticut are clustered in only five cities: Bridgeport, Hartford, New Haven, Stamford, and Waterbury.[19] The concentration of minorities in these urban

[18] I want to thank Joseph Rich and Nicole Birch of the Lawyers' Committee for Civil Rights Under Law in Washington, D.C. and Amy Eppler-Epstein of the New Haven Legal Assistance Association of New Haven, CT. Much of the information in my testimony was taken from briefs they submitted on behalf of *amici curiae* in the case of *Commission on Human Rights and Opportunities v. Sullivan*, 285 Conn. 208, 939 A.2d 541 (2008)(Sullivan II).

[19] *See* Connecticut Department of Economic & Community Development, *Connecticut's Long Range Housing Plan* (2000), http://www.ct.gov/ecd/cwp/view.asp?a=1105&q=250530 (Finding that in 1998, over

neighborhoods is particularly extreme in the hyper-segregated cities of Bridgeport, Hartford, and New Haven where minorities comprise a vastly disproportionate percentage of the population -- 69.1 %, 82.1%, and 64.5 % respectively.[20] The levels of racial isolation these numbers reflect become even more apparent when contrasted with the comparatively minimal percentage of minorities in the suburbs surrounding these cities-- 7.7 % in the suburbs of Bridgeport, 13.7% in Hartford's suburbs, and 19% in suburban New Haven.[21] Further, the poverty rates in Bridgeport, Hartford, and New Haven far surpass those in their suburban counterparts. Specifically, the poverty rates in these three cities are 18.4%, 30.6%, and 24.4%, whereas the poverty rates for the corresponding suburbs are a mere 2.8 %, 5.3 % and 7.3%.[22]

Yet racial isolation is not a result of economic disparities because poor whites are less segregated than poor minorities.[23] Economic realities make it difficult for low income tenants in Connecticut to escape the cities and move to a less impacted suburb. In the 2008 survey of housing costs conducted annually by the National Low Income Housing Coalition, Connecticut ranks as the seventh most expensive state in the nation for housing, with the Stamford-Norwalk region ranking as the most expensive metropolitan area in the entire country.[24]

In such an expensive housing market, one of the only ways low income tenants living on disability payments, welfare assistance, Social Security or similar income sources can afford housing in the private market is if they have a housing subsidy. In addition, the level of residential integration in Connecticut is significantly enhanced by a ban on discrimination against voucher holders, a predominantly minority group who, with the assistance provided by vouchers, are often financially able to reside outside the city centers. Minorities comprise approximately 72% of voucher holders in Connecticut statewide[25] and range from 91% to 96% of the voucher holders in Bridgeport,

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53.3 percent of all minorities in Connecticut resided in these cities); *Connecticut Analysis of Impediments to Fair Housing Choice, Update,* 5 (2006), http://www.ct.gov/ecd/lib/ecd/housing_plans/analysis_of_impediments_10-2006.pdf (noting the clear pattern of socioeconomic segregation in Connecticut and the heavy concentration of racial and ethnic minority groups and low-income families in Connecticut's urban centers, particularly in its largest and majority minority cities of Bridgeport, Hartford, and New Haven).

[20] *See* U.S. Department of Housing and Urban Development, *State of the Cities Data Systems (SOCDS)*(2000), http://socds.huduser.org.

[21] *Id.*

[22] *Id.*

[23] *See Connecticut Consolidated Plan 2000-2005, Section* VI, Antipoverty Strategy, 1 (2000), http://www.ct.gov/ecd/cwp/view.asp?a=1105&q=250556.

[24] Out of Reach 2008, www.nlihc.org/oor/oor2008. Each year the National Low Income Housing Coalition conducts a survey of affordable housing in all 50 states and issues a report which includes state-by-state data. In Connecticut, the Fair Market Rent (FMR) for a two-bedroom apartment, including utilities, is $1,062. In order to afford this level of rent and utilities without paying more than 30% of income on housing, a household must earn $3,540 monthly or $42,480 annually. Assuming a 40-hour work week, 52 weeks per year, this level of income translates into a Housing Wage of $20.42 per hour.

In Connecticut, a minimum wage worker earns an hourly wage of $7.40. In order to afford the FMR for a two-bedroom apartment, a minimum wage earner must work 110 hours per week, 52 weeks per year. Or, a household must include 2.8 minimum wage earner(s) working 40 hours per week year-round in order to make the two bedroom FMR affordable." Out of Reach, Connecticut Data, www.nlihc.org/oor/oor2008.

[25] *See* U.S. Department of Housing and Urban Development, *A Picture of Subsidized Households* (2000), http://www.huduser.org/picture2000.

Hartford, and New Haven.[26] These voucher holders reside in majority minority cities where 23 % to 33% of the population in the census tracts where they reside lives below the poverty level.[27]

Recognizing the urgent need for more housing affordable to low income people, in 1985 Connecticut created its own housing subsidy program, modeled on the federal Section 8 program, called the Rental Assistance Program (RAP). See, Conn. Gen. Stat. § 17b-812. According to the state Department of Social Services, there are currently about 1,800 families in Connecticut receiving RAP certificates. Like Section 8, RAP enables tenants to afford rental housing in the private market, by paying a specified portion of their adjusted gross income for rent and utilities with the government paying the balance of the rent directly to private landlords.

Since its inception, the Section 8 program has been a crucial tool in promoting opportunity for racial and economic housing desegregation. The Section 8 program provides a rare and much needed opportunity for low income and minority families to move into lower-poverty and less-segregated neighborhoods. Unlike other federal housing programs that are site-specific and determine where the recipient of federal aid may reside, (often in economically and racially segregated inner-city public housing communities), the Section 8 program gives the voucher holder an expanded choice of where to live including market rate private housing in suburban communities. Indeed, housing choice is the paradigmatic feature of the Section 8 program.

The official name of the program--the *Housing Choice* Voucher Program--reflects the centrality of housing choice to the purpose of the Section 8 voucher program. As Congress became concerned about the increasing concentration of poverty in urban communities,[28] it initiated the voucher program to provide greater housing choice to low-income residents.[29] The Housing Choice Voucher program seeks to "aid[] low-income families in obtaining a decent place to live and … promot[e] economically mixed housing." 42 USC § 1437f(a).

Further, the Section 8 regulations emphasize voucher holders' freedom of choice in selecting a residence. The regulations provide that Housing Choice Voucher recipients may generally select units anywhere in the country so long as program requirements are met, 24 C.F.R. 982.1(a)(2) and (b) (1), and so long as location restrictions are not necessary to achieve desegregation or to comply with a court order, 24 C.F.R. 982.353(a). Voucher recipients have "freedom of choice", which means that the local public housing agencies (hereinafter "PHAs") administering the Section 8 program may not directly or indirectly reduce families' opportunities to select among available units. 24 C.F.R. §982.353(f). Section 8 voucher holders are also allowed to move with their voucher from

[26] Id.

[27] Id.

[28] *See* Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 101(a)(1), (c)(6), 88 Stat. 633, 633-634 (codified as amended at 42 U.S.C. §5301 (1988)) (the statute creating the Section 8 program in which Congress acknowledges that "the nation's cities, towns, and smaller urban communities face critical social, economic, and environmental problems arising in significant measure from… the concentration of persons of lower income in central cities").

[29] Id. (listing "the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income," as one of the objectives of the program).

one jurisdiction to another with continued rental assistance. 24 CFR § 982.353 *et seq*; 42 USC § 1437f(r)(1). Thus PHAs may not discourage families from utilizing their voucher to live in an area outside their jurisdiction. 24 C.F.R. §982.301(a)(2). PHAs must also take the affirmative step of explaining to Section 8 recipients the advantages of moving to an area with a small concentration of low-income families. 24 C.F.R 982.301 (a)(3).

Additionally, the U.S. Department of Housing and Urban Development has created a Section 8 management assessment program (hereinafter "SEMAP") that provides incentives for PHAs to administer their Section 8 program in a manner that expands housing opportunities for voucher holders in areas that do not have high concentrations of low-income or minority residents. For example, PHAs can receive a more favorable assessment under SEMAP if the PHA has a written policy, and has taken actions indicated in the policy, to encourage participation by owners of units located outside areas of poverty or minority concentration. 24 CFR 985.3 (ii)(g)(3)(i)(A) and (B). PHAs can also increase their assessment score by encouraging voucher holders to search for housing opportunities in areas with low poverty and minority concentration, such as by preparing maps that show various areas with housing opportunities outside areas of poverty or minority concentration both within its jurisdiction and neighboring jurisdictions, assembling information about the characteristics of those areas, and demonstrating that it uses the maps and area characteristics information when briefing voucher holders about the full range of housing options. 24 CFR 985.3 (ii)(g)(3)(i)(C).

Connecticut's rental assistance program is modeled after the federal Housing Choice Voucher program. Conn. Gen Stat. § 17b-812. Like the federal program, the RAP is required to be administered in a manner that "promote[s] housing choice for certificate holders" and allows the voucher to be used for housing in any municipality in the state. Conn. Gen. Stat. § 17b-812(e). Further, it too requires affirmative action on the part of the Commissioner overseeing the RAP to "inform certificate holders that a certificate may be used in any municipality and, to the extent practicable,… assist certificate holders in finding housing in the municipality of their choice." Id. Moreover, similar to the federal program's incentives for PHAs that promote racial and economic desegregation, the RAP must "encourage racial and economic integration." Id.

The ability of these rental assistance programs to promote residential integration is further enhanced by the fair housing obligations placed on the administration of both programs. Specifically, the Fair Housing Act requires HUD to administer its housing programs "in a manner affirmatively to further" the purposes and policies of the Fair Housing Act. 42 U.S.C. 3608(d), (e)(5). Connecticut law requires its housing agencies to "affirmatively promote fair housing choice and racial and economic integration in all programs administered or supervised by such housing agency." Conn. Gen. Stat. § 8-37cc(b).

The promise of these rental assistance programs to promote residential integration, particularly the Housing Choice Voucher program, has been recognized nationwide by advocates and policy makers.[30] As HUD stated in its 1995 report to Congress regarding promoting housing choice in HUD's rental assistance programs:

[T]rue freedom of housing choice is denied when assisted housing opportunities are limited to minority or poor areas in central city locations….HUD rental certificates and vouchers offer a remedy

[30] *See, e.g.*, *Keeping the Promise: Preserving and Enhancing Housing Mobility in the Section 8 Housing Choice Voucher Program*, (Philip Tegeler et al. eds, 2005).

to [the spatial isolation of people by income and race] by providing an assistance mechanism that low-income families can use to rent modestly priced housing anywhere in the private market.[31]

Connecticut has established housing mobility programs in Bridgeport, Hartford, and New Haven to help ensure that the Section 8 and RAP programs serve this remedial purpose. "These programs provide tenants with Section 8 vouchers information about new communities and assistance with the process of finding housing, applying, and securing housing units in suburban towns" to "expand[] access to housing outside of [the] segregated neighborhoods" of Bridgeport, Hartford and New Haven.[32] Housing mobility programs, such as those in Bridgeport, Hartford and New Haven, were first implemented as a remedy in a federal lawsuit that challenged racial discrimination in Chicago's public housing system.[33] Studies of these mobility programs show that the opportunities created by housing mobility have led to a variety of quality of life improvements for the recipient families, including improvements in health, safety, educational success, employment, and earnings.[34]

The important public policy goal of utilizing the Housing Choice and RAP programs as tools for racial and economic integration cannot be realized if tenants are unable to utilize their vouchers because landlords will not rent to them. Research concludes that landlords' refusal to accept rental subsidies in more affluent, predominantly white suburban communities is a significant barrier to economic and racial integration.[35] Prohibiting discrimination in rental housing based on Section 8 and RAP is an important civil rights and public policy tool that helps expand opportunities for Section 8 and RAP voucher holders to live in integrated, low-poverty neighborhoods throughout the state of Connecticut.

Prohibiting source of income discrimination also promotes a variety of other state programs and policies. In addition to Section 8 and RAP, Connecticut administers the federally funded shelter-plus-care program that utilizes housing subsidies similar to Section 8 vouchers to provide social services and to make rental housing affordable to homeless people with mental disabilities. See 42 U.S.C. § 11403. Major state-funded housing initiatives, such the Supportive Housing Pilots Initiative and the Next Steps Initiative, are also premised on the tenant's ability to use a housing subsidy to find rental housing in the private market. See, Conn. Gen. Stat. 17a-485c. Prohibiting source of income discrimination is a critical element in ensuring that these state-supported housing subsidy programs will actually work for their intended beneficiaries. Indeed, in recognition of this

[31] U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Promoting Housing Choice in HUD's Rental Assistance Programs: A Report to Congress* 79 (1995).
[32] *Report of the Blue Ribbon Commission to Study Affordable Housing* 45 (2000), http://www.ct.gov/ecd/lib/ecd/affordable_housing_2000.pdf.
[33] *Hills v. Gautreaux*, 425 U.S. 284 (1976) created a mobility program as part of a consent decree in a lawsuit finding racial discrimination in the administration of Chicago's public housing. The program gave public housing residents Section 8 vouchers and helped over 7000 families move into apartments in mostly white suburbs or in revitalized areas of Chicago. The program was widely studied, and because of its success, HUD funded the Moving to Opportunity demonstration project in five urban areas to provide housing mobility to areas of low poverty using Section 8 vouchers. *See* Housing and Community Development Act of 1992, Pub. L. No. 102-550, § 152, 106 Stat. 3672, 3716 (1992)(codified as amended at 42 USC § 1437f (Supp. V 1993).
[34] *See* Margery Austin Turner and Dolores Acevedo-Garcia, *The Benefits of Housing Mobility: A Review of the Research Evidence* in *Keeping the Promise: Preserving and Enhancing Housing Mobility in the Section 8 Housing Choice Voucher Program, supra* note 11, 14-18.
[35] *See* Susan J. Popkin & Mary K. Cunningham, Urban Inst., *CHAC Section 8 Program: Barriers to Successful Leasing Up* 4-5 (1999). Accordingly, it is not surprising that the majority of Connecticut's voucher discrimination cases have come from minorities. Between 1996 and the present, 61% of the Connecticut Fair Housing Center's voucher discrimination cases were brought by minorities.

goal, the state in 2005 supported tenants in prosecuting housing discrimination cases by providing greater financial incentives to do so, by removing the state lien that normally attaches when welfare recipients obtain money damages in litigation. Conn. Gen. Stat. § 17b-93.

III. The Response of Connecticut and Other States

But these state and federal housing subsidies are usable only if landlords in the private market agree to rent to tenants who have such subsidies. Connecticut legislators were frustrated to learn that their efforts to respond to the affordable housing crisis by creating housing subsidy programs like RAP, and providing public benefits, were being thwarted by landlords who would not rent to tenants with housing subsidies or governmental benefits. As stated by the sponsor of the source of income legislation, Representative Lynn Taborsak, in her floor statements:

Madam Speaker, . . . I would like to tell members why this bill was raised and heard by three Committees and why it is before us today. In 1988, the state provided 198.6 million dollars through these programs to subsidize shelter cost of low and moderate income families. And over and over again, in public hearings and in a 1986 report of the Commission on Human Rights and Opportunities on Housing Discrimination, this assistance that we provide has been reported as the reason used for rejecting a tenant's rental application.

Our assistance disadvantages the people that we are trying to shelter without the protections of this bill. Housing opportunities especially for low and moderate income families are severely limited in Connecticut. The families we assist need an equal chance in the rental housing market." House Transcript, May 24, 1989 (p.8777). [32 H.R. Proc., pt25, 1989 Sess., p.8777]

The Connecticut Legislature adopted the state prohibition against housing discrimination based on lawful source of income, Conn. Gen. Stat. § 46a-64c, in 1989. A lawful source of income is defined as "income derived from Social Security, supplemental security income, housing assistance, child support, alimony or public or state-administered general assistance." Con. Gen. Stat. §46a-63. Unfortunately, this did not end discrimination against people receiving public or rental assistance in Connecticut. According to the Connecticut Fair Housing Center, 39% of the complaints received by the Center between 2000 and the present concern source of income discrimination, more than all of the other protected categories put together except disability. The Center's investigations of these complaints also reveal ample independent evidence of discrimination. The Center's fair housing testing evidence shows that discrimination could be ruled out in only 15% of source of income tests. This is contrasted with tests done on all other protected classes where discrimination could be ruled out in 30% of investigations.

Connecticut is one of only 12 states and the District of Columbia to protect its citizens based on a lawful source of income. Other states with similar protections include California, Maine, Massachusetts, Minnesota, New Jersey, North Dakota, Oklahoma, Oregon, Utah, Vermont, and Wisconsin.[36] An additional 18 cities or counties around the country also protect their citizens from source of income discrimination. Unfortunately, compliance with the law in other jurisdictions is equally dismal. A recent review by the Fair Housing Justice Center (FHJC) in New York City of

[36] See, http://prrac.org/pdf/Appendix_B.pdf.

advertisements listed on the popular website www.craigslist.com revealed that on Monday, July 29, 2008 no fewer than 1,543 advertisements for rental units indicated a limitation or discrimination based on source of income. To ensure that this snapshot was not an aberration the FHJC logged on again to www.craigslist.org on Sunday, August 3, 2008 and examined advertisements for rental housing in New York City. This time, no fewer than 1,641 rental advertisements indicated a limitation or discrimination based on source of income.[37]

Several jurisdictions providing source of income protections, including Connecticut, have faced legal challenges to the statute. In Connecticut, a large landlord, Michael Sullivan, has pursued not one, but two challenges to Connecticut's source of income protection arguing that the law did not apply to recipients of housing subsidies. Both challenges were defeated. *Commission on Human Rights & Opportunities v. Sullivan Associates*, 739 A.2d 238 (Conn. 1999) (Sullivan I) (upholding statute and finding that landlords may only consider the section 8 recipient's personal rent obligation and other reasonable obligations associated with the rental when assessing sufficiency of income); *Commission on Human Rights & Opportunities v. Sullivan*, 939 A.2d 541 (Conn. 2008) (upholding statute and affirming Sullivan I). In Massachusetts, several challenges to the law were defeated in the courts, the most recent occurring in 2007. *DiLiddo v Oxford Street Realty, Inc., and another*, 450 Mass.876, 876 N.E.2d 421 (2007) (holding that the terms of the voucher program lease are requirements that cannot be rejected by landlords or their agents, and that agents can be held liable for discrimination.) Residents of Minnesota have not been as fortunate. A recent case gutted the protections of the statute holding that the law required a showing both of a refusal to rent and a failure to do so because of the tenant's status with respect to public assistance thus permitting the landlord to choose not to participate in the Section 8 program for non-discriminatory reasons, such as an unwillingness to pay for the administrative requirements of the program. *Babcock v. BBY Chestnut Limited Partnership*, Court of Appeals of Minnesota, No. CX-03-90 (2003).

There is also a lack of uniformity in the source of income laws which weaken their effectiveness. For example, Oregon's statute excludes federal rent subsidies from being considered income while Massachusetts prohibits discrimination based on receipt of rental assistance or a housing subsidy. Other states protect lawful sources of income without qualifying the protection where Connecticut's law does not prohibit the denial of full and equal accommodations solely on the basis of insufficient income without defining the term "insufficient income." The lack of uniformity and the patchwork of states providing protections have significantly cut down on the effectiveness of the protections.

IV. A National Response Is Needed

To truly make the Section 8 voucher program as well as any state housing subsidy programs work as a tool for integration, I recommend five strategies. First, source of income must be a federally protected class with a definition that is uniform throughout the country. Exemptions for landlords who do not like the Section 8 lease or other requirements of any housing voucher program must be specifically prohibited. Second, there must be concentrated outreach and publicity campaign to notify housing providers and tenants about source of income protections. As is evidenced by the investigations carried out by the Fair Housing Justice Center in New York City this summer, landlords believe it is legal to openly state their intention to discrimination against voucher holders. Third, fair market rents must be reviewed and increased in order to pay for housing in all

[37] See, http://www.helpusa.org/site/DocServer/License_to_Discriminate_finalDRAFT.pdf?docID=2141.

neighborhoods. Too often housing voucher holders are confined to inner city neighborhoods because that is where the housing is the cheapest and the voucher will go farther. Fourth, the administrative requirements of the voucher program must be streamlined to ensure that there is little time between finding an apartment and lease-up. Many tenants report delays in inspections, rent certifications and lease signing which result in them losing desirable apartments. Finally, there must be vigorous enforcement of any new and all existing protections based on source of income by the state and federal governments as well as by private enforcement groups. Housing location effects every facet of a family's life. It determines access to employment, where the children go to school, access to grocery stores, and even where a family goes to church, synagogue, or temple. Source of income protections enhance housing choice and ensure that our nation's families have access to the housing of their choice.

Thank you for your attention. I would be happy to answer any questions.

Panel 4

National Commission on Fair Housing and Equal Opportunity,

Boston, September 22, 2008

Testimony of **Alexander Polikoff**

Suleiman the Magnificent, one of history's greats, not only presided over the golden age of the Ottoman Empire, but left an impressive legacy in architecture, literature, art, law, theology, and philosophy. His guiding principle was called the "Circle of Justice," and it went like this:

> To control the state requires a large army.
> To support the troops requires great wealth.
> To obtain this wealth the people must be prosperous.
> For the people to be prosperous the laws must be just.
> If any of these is neglected, the state will collapse.

The laws must be just -- that is fair – or the state will collapse? You have been hearing that our housing laws are not fair, but isn't it a ridiculous exaggeration to say that the state will collapse on that account?

I am going to try to explain why it is not, beginning the explanation with Jason DeParle of the *New York Times.* DeParle writes in a powerful metaphorical way about the effect urban poverty has on race relations in America. The effect is, he says, is that of a poison in our national groundwater that is producing a thousand deformed fruits.

Let's ask ourselves what DeParle is really saying. If we push beyond the metaphor, what really is the effect of urban poverty on race relations? How exactly is the effect poisonous? What are these deformed fruits?

I put it to the Commission that urban poverty mixed with American race relations has produced the toxic thing we call the black ghetto, and more recently the Hispanic barrio too. I call it toxic for well-known reasons. Forty five years ago, on the centennial of the Emancipation Proclamation, James Baldwin said it plain – the black ghetto had destroyed and was continuing to destroy hundreds of thousands of lives.

Two years later, in *Dark Ghetto,* wielding words like a surgeon's scalpel, Kenneth Clark unforgettably described the particulars of the destruction. Twenty-two years later, in *The Truly Disadvantaged*, William Julius Wilson did it again.

But I want to emphasize to the Commission that the ghetto is worse now than it was when Wilson wrote 21 years ago. *Truly Disadvantaged* appeared after many inner-city jobs had already been moved to the suburbs and overseas. But not before the full effects of crack-cocaine's appearance upon the inner-city stage in the early and mid-eighties. With the maturation of the War on Drugs,

targeted on inner-city minorities, and mass incarceration rather than treatment as our policy of choice, our black ghettos are not only bigger than they were when Baldwin, Clark, and Wilson wrote, they are also more efficient engines of human destruction.

Now, however, I want to tell the Commission one thing more. Remember, the Circle of Justice speaks of the collapse of the state. Bad as it may be for the state to be destroying the lives of hundreds of thousands of its ghetto-confined citizens, how does that implicate the collapse of the state?

This is the slower acting but equally deadly part of groundwater poisoning. It is the "vicious circle" described by Gunnar Myrdal long ago: "White prejudice and discrimination keep the Negro low in standards of living, health, education, manners and morals. This, in its turn, gives support to white prejudice."

Forty years after Myrdal wrote those words, Elijah Anderson, in his well-known study of a black ghetto and an adjacent gentrifying neighborhood, saw that Myrdal's vicious circle was alive and well White skin, he found, denoted civility, law-abidingness, and trustworthiness, while black skin was strongly associated with poverty, crime, incivility, and distrust. John Yinger, George Galster, and Glenn Loury have all made like observations -- it's not rocket science. Ghettoization leads to ghetto behavior which, widely reported by the media, is seen by whites as validating and legitimizing their prejudicial attitudes.

Still, where does the collapse of the state come in? The answer is in the Commission's briefing book. An article you'll find there, adapted from my book, *Waiting for Gautreaux*, explains how ghettoization led to the break-up of the coalition that birthed the New Deal, and how it has led us to pursue a ghetto-targeted mass incarceration policy that is both mindless and destructive of traditional Americana values.

Can these deformed fruits -- and there are of course many more -- be blamed solely on black ghettos? No, they cannot. Ending black ghettos wouldn't end anti-black prejudice any more than ending Jewish ghettos ended anti-semitism. Yet few things in American society match the black ghetto for its poisoning effect on attitudes, values, and conduct. Disaster may not come in the form of riots and race wars. But it will be no less a disaster for the America we love if American values are sufficiently deformed.

So what, at long last, should we do about it? Here too the answer is in your briefing book. You heard from Jim Rosenbaum in Chicago about the stunning results of the Gautreaux Program. You have heard today from Zav Briggs, Barbara Sard, and Cynthia Watts-Elder about what can be done to make housing mobility a reality. Collectively, these four witnesses are saying something that it is crucial for Americans to hear. And this Commission can be the truth-teller. It *is* possible to deghettoize America. It *is* possible to give our black and Hispanic ghetto-dwellers a way out of hopelessness and despair. And it *is* possible to end the vicious cycle that is poisoning our national groundwater and deforming our country.

A plan to do just that is laid out in *Waiting for Gautreaux* and summarized in your briefing book. Based on what Rosenbaum, and now Briggs, and Sard and Watts-Elder, have told you, the plan in concept is simple. It takes what we already know how to do – effective pre- and post-move mobility counseling – and says, look, just offer this to the residents of our ghettos and barrios. Do it at reasonable scale and over a reasonable time period, but do it. It will not dismantle our ghettos

overnight. And it will not be easy – scaling up never is. But at least we will be dealing with a cancer that has infested our body politic ever since that day in 1637 when the first American slave ship sailed out of Marblehead. And in a reasonable period of time, compared to the more than 370 years of our illness, we will be on the road to recovery.

I have considered all of the responsible objections, and some not so responsible. None in my opinion are persuasive. And the cost would be miniscule. If we used half our so-called turnover vouchers, we wouldn't even have to issue new ones. There is no good reason to wait any longer to bring Gautreaux to scale except lack of political will, a polite phrase for cowardice. In this case, however, we can't afford cowardice.

DeTocqueville prophesied that the American race problem would be insoluble and would eventuate in disaster for the country. The historian George Fredrickson advances the slightly more hopeful view that the problem could be solved by a radical change in basic institutions and values – "perhaps because the social anxieties fueling prejudiced thought and action have been removed." If that is possible, he continues, then it is the responsibility of Americans who believe in the ideal of racial equality to indulge in some serious Utopian thinking, for "there is always the slender but precious hope that today's Utopia can be tomorrow's society."

I put it to the members of this Commission that they should in their report indulge in some serious Utopian thinking about America's ghettos, and about the housing mobility that can end them.

Thank you.

PRRAC

Poverty & Race

POVERTY & RACE RESEARCH ACTION COUNCIL

November/December 2004 *Volume 13: Number 6*

Racial Inequality and the Black Ghetto

by Alexander Polikoff

Reading Jason DeParle's new book *American Dream* (Viking), one is struck once again by the unremitting, intergenerational persistence of ghetto poverty. From W.E.B. DuBois through James Baldwin, Kenneth Clark, and Douglas Massey and Nancy Denton, in compelling reportage by Nicholas Lemann, Alex Kotlowitz and DeParle, in endless statistical analyses, ethnographic studies and academic research papers, the point is made over and over again: The concentrated poverty of urban ghettos condemns generation after generation of black Americans to what Clark called lives of impotence and despair.

Yet, some may object, only 2.8 million black Americans live in concentrated urban poverty — metropolitan census tracts with poverty populations of 40% or more. That's only 1% of Americans. Sad, to be sure, but not a big enough deal to get worked up about unless you're a bleeding heart liberal. The country has more pressing matters to attend to.

Some 170 years ago, Alexis de Toqueville called racial inequality "the most formidable evil threatening the future of the United States." Toqueville went on to prophesy that the evil of racial inequality would not be resolved — indeed, that it would eventually bring America to disaster. How could that be? How could 1% of Americans, confined to ghettos, be a nation-threatening matter? Bear with me, and I'll try to explain.

First, take small comfort from small numbers. In an earlier *New York Times* piece, DeParle makes this point about the small ghetto population:

> The poverty and disorder of the inner cities lacerate a larger civic fabric, drawing people from shared institutions like subways, buses, parks, schools and even cities themselves.... Perhaps most damaging of all is the effect that urban poverty has on race relations. It is like a poison in the national groundwater that is producing a thousand deformed fruits...

What deformed fruits? Among them is nothing less than breaking up the coalition that birthed the New Deal and the Civil Rights Movement, a political sea-change that began in the World War II years, gained strength over the next two decades, then led to Richard Nixon's election in 1968, followed in 1980 by the triumph of Ronald Reagan. In November 1968, American character changed. From a nation concerned with equality we became a nation that closed the doors on school and housing desegregation. Under Reagan, we became an uncaring nation, obsessed with the free market and with crafting rules to foster still more personal acquisition by the most favored.

There is no single explanation for America's character change. But a major factor was disaffection by white ethnics and blue-collar workers, long core elements of the New Deal coalition. Disaffection over what? The answer is over blacks trapped in ghettos trying to penetrate white neighborhoods. Hubert Humphrey, civil rights champion, not Richard Nixon, with his coded anti-black speeches and shameless pandering to Southern segregationists, suffered the consequences. There were other 1968 election issues, to be sure, but a number of historians make a powerful case that it was fear of blacks from ghettos "invading" white neighborhoods that finally sun-

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dered the coalition that had given America its reigning consensus liberalism creed.

Another example of a deformed fruit is the War on Drugs, targeted on black ghettos. Since Reagan assumed office, we have built over 1,000 new prisons and jails, many crowded beyond capacity. Crowded with whom? The answer is blacks from ghettos. By 1990, nearly one of every four young black males in the United States was under the control of the criminal justice system, more in major cities (over 40% in Washington, over 50% in Baltimore). In his book, *Malign Neglect*, Michael Tonry observes that the rising levels of black incarceration were the foreseeable effect of deliberate policies: "Anyone with knowledge of drug-trafficking patterns and of police arrest policies and incentives could have foreseen that the enemy troops in the War on Drugs would consist largely of young, inner-city minority males." Part and parcel of our mass incarceration policy are "three strikes" laws that mandate long prison terms for third convictions. California has meted out a 25-year sentence for the third strike theft of a slice of pizza, another for pilfering some chocolate chip cookies. Thirteen-year olds have received mandatory, life-without-parole sentences.

In short, as a nation we are doggedly pursuing a ghetto-targeted mass incarceration policy that is both mindless and destructive of traditional American values. It is mindless because at enormous cost we insist on sticking with a policy that is having no demonstrable effect on drug availability, drug crime rates or crime rates generally. It is destructive of values because it has driven us to extremities that no fair-minded person can defend.

A final example of disfigured produce is the demise of welfare, but without the jobs supposed to have been part of the deal. At the heart of Newt Gingrich's successful, dump-welfare campaign, was a stick-figure caricature of the ghetto: "You can't maintain civilization with twelve-year-olds having babies and fifteen-year-olds killing each other and seventeen-year-olds dying of AIDS" (Gingrich, as quoted in DeParle's new book).

The concentrated poverty of urban ghettos condemns generation after generation of black Americans to lives of impotence and despair.

Can these deformed fruits be blamed solely on black ghettos? No, they cannot. Ending black ghettos wouldn't end anti-black attitudes any more than ending Jewish ghettos ended anti-semitism. But it is not easy to find anything in American society that matches the black ghetto for its poisoning effect on attitudes, values and conduct.

Sixty years ago, Gunnar Myrdal wrote: "White prejudice and discrimination keep the Negro low in standards of living, health, education, manners and morals. This, in its turn, gives support to white prejudice." Decades later, sociologist Elijah Anderson's studies of a ghetto and an adjacent non-ghetto neighborhood led him to conclude: "The public awareness is color-coded. White skin denotes civility, law-abidingness, and trustworthiness, while black skin is strongly associated with poverty, crime, incivility, and distrust." In American society at large, most whites act like the ones Anderson studied — their public awareness is also color-coded, and they steer clear of poor blacks and keep them in their ghettos. Predictable ghetto behavior then intensifies whites' sense of danger, validates their color-coding and drives their conduct.

Urban economist George Galster describes a self-reinforcing "ghettoizing cycle." First, ghettoization induces "behavioral adaptations" by ghetto dwellers. Widely reported by the media, ghetto behavior is then seen as validating and legitimizing whites' prejudicial attitudes toward blacks. The prejudices translate into withdrawal from blacks, and into discriminatory conduct in housing, zoning, employment and institutional arrangements of all sorts, which in turn lead to more ghettoization.

Ghettoization is growing, in spite of many reasons to have expected the contrary (the Kerner Commission admonition; passage of anti-discrimination laws; the substantial growth of the black middle class; the unprecedented good times of the 1990s). From 1970 to 2000, the number of metropolitan ghetto census tracts (40% or more poverty population) doubled, from around 1,100 to over 2,200, and the number of blacks in metropolitan ghettos increased from under 2.5 to over 2.8 million. And there's every reason to believe the problem has grown since the 2000 Census.

In a nutshell, that is why I think we'd be well advised to play it safe with respect to Toqueville's prophecy. Color-coded poison continues to flow into our groundwater, with disfiguring results that are plain to see. Disaster may not come in the form of riots and race wars, as Carl Rowan predicts in his recent book, *The Coming Race War in America*. But it will be disaster no less if American values are sufficiently deformed.

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A National Gautreaux Program

So what can we do about it? One answer is the Gautreaux lawsuit's housing mobility program writ large (high quality pre- and post-move family counseling, coupled with housing search assistance and unit identification, to enable inner-city families to move with housing vouchers into middle-class neighborhoods far from the ghetto). Let me lay out the elements of what I believe would be a workable program, and then respond to some of the multiple objections that will probably flood your minds — a sketch only: A full rendition would take more than the allotted space.

Suppose 50,000 housing choice vouchers were made available annually, were earmarked for use by black families living in urban ghettos, and could be used only in non-ghetto locations — say, census tracts with less than 10% poverty and not minority impacted. Suppose that the vouchers were allocated to our 125 largest metropolitan areas. Suppose also that to avoid "threatening" any receiving community, no more than a specified number of families (an arbitrary number — say, ten, or a small fraction of occupied housing units) could move into any city, town or village in a year.

If an average of 40 municipalities in each metropolitan area served as "receiving communities," the result would be — using ten as the hypothetical annual move-in ceiling — that 50,000 families each year, or 500,000 in a decade, would move "in Gautreaux fashion." Notably, *the 500,000 moves would equal almost half the black families living in metropolitan ghetto tracts.*

We cannot, of course, assume that half of all black families in metropolitan ghettos would choose to participate. But neither would it require the departure of every black household to change radically the black ghetto as we know it. With enough participants, radical change would be inevitable. Whatever the time frame, we would at last be treating a disease that has festered untreated in the body politic for over a century.

The hypothetical is plainly intended only to show that a national Gautreaux program could operate at a meaningful scale; it is not a real-life working model. Metropolitan areas vary in size — in 2000, the 35 largest of the 331 metropolitan areas contained over half the metropolitan ghetto tracts. An actual program would be tailored to these variations, operating at greater scale in big ghetto areas and at lesser scale (or not at all) in metropolitan areas with small black ghettos.

Housing expenditures "the Gautreaux way" would give us the double payback of ameliorating both our affordable housing and our black ghetto crises.

Several Questions

The hypothetical raises several questions. Would 50,000 vouchers a year be feasible? Could such an enlarged mobility program be administered responsibly? Would enough families volunteer to participate? Could 50,000 private homes and apartments be found each year for the program?

The answers are necessarily speculative because mobility on such a scale has never been tried, but answers there are. The 50,000 annual vouchers, an arbitrary figure chosen for purposes of the hypothetical, really contemplates 100,000 new vouchers each year, with 50,000 of them earmarked for the Gautreaux-type program. The point would be to leave 50,000 new "regular" vouchers for other entering families ineligible for the mobility program or who, for a multitude of perfectly understandable reasons, were unable or unwilling to participate in it. Fairness to non-participants would make the "extra" 50,000 vouchers a necessity. However, 100,000 new vouchers per year is not a fanciful figure; Congress authorized more than that number as recently as the year 2000.

But the hypothetical program could be run without issuing any new vouchers at all. Currently, about 2.1 million vouchers are in circulation. The annual "turnover rate" is about 11%, meaning that for various reasons (for example, a family's income rises above the eligibility ceiling), some 230,000 vouchers are turned back to housing authorities each year for reissuance to other families. A Congressional enactment could direct 50,000 of these turnover vouchers to the hypothetical program.

The cost of assisting mobility moves must of course be included in the calculus. But at an average of $4,000 per family — a reasonable, even generous, figure based on the Gautreaux experience — we are talking about $200 million a year, $2 billion over ten years (excluding inflation). To put that figure in perspective and address the question of whether we could "afford" it, consider that for a single year (FY 2004), the Bush Administration proposed a military budget of some $400 billion, which (excluding inflation) would amount to $4,000 billion over ten years.

It is true that almost any program can be viewed as affordable by comparison with our military budget. But we aren't talking about "any" program. We are talking about a program to end the successor to slavery and Jim Crow that is perpetuating a caste structure in the United States and threatening incalculable harm to American society. Achieving that, for a negligible fraction — .0005 — of our military budget, would be our best bargain since the Louisiana Purchase.

That negligible fraction is the pricetag for mobility assistance only; it does not include the cost of the vouchers themselves. At the current annual cost of about $6,500 per voucher, the ten-year voucher tab for 100,000 new vouchers each year would be just under $36 billion (again excluding inflation). Adding roughly

7% for the administrative fee HUD pays to housing authorities brings the total to about $38.5 billion, less than 1% of the $4,000 billion military figure. Our affordable housing crisis is so severe that, entirely apart from mobility and ghetto-dismantling, we should be — and politics will some day dictate — making affordable housing expenditures of this magnitude. Housing expenditures "the Gautreaux way" would give us the double payback of ameliorating both our affordable housing and our black ghetto crises.

Suppose, however, that the country isn't ready to spend $38.5 billion over ten years for new "double payback" vouchers. Running the hypothetical program with turnover vouchers instead would eliminate entirely the $38.5 billion cost of new vouchers. This would mean that the only additional tab for the hypothetical program — beyond the costs we are today already incurring for the existing voucher program — would be about $200 million a year, taking us back to that .0005 fraction of our military budget. It is mind-boggling to think that, for an infinitesimal expenditure in budgetary terms, we could mount a program that could — to use a storied locution — end the ghetto as we know it.

What about administration? Under a consent decree in a housing desegregation case, the Dallas Housing Authority in a little over two years assisted some 2,200 families, most of them black, to move to "non-impacted" areas (census tracts in which few Section 8 vouchers were already in use, but in practice the receiving areas turned out to be predominantly non-black). Dallas was a case of direct administration by a housing authority. The Gautreaux Program was administered by a nonprofit organization. Moving to Opportunity, HUD's five-city Gautreaux-like demonstration program (using poverty, however, not race, as the measure), involves partnerships between housing authorities and nonprofits. These varied and largely positive experiences suggest that we could handle the administrative challenge of a nationwide Gautreaux-type program.

Would enough families volunteer to participate? We will not know until we try, but the Gautreaux experience suggests that they may. An average of 400 families moving each year in each participating metropolitan area would be required to reach the hypothetical goal (a smaller average number if more metropolitan areas were used). The 400-per-year number was surpassed more than once by the Gautreaux Program even though the number of entering families was artificially limited, not by lack of demand or market factors but by the funding and staff that could be extracted from HUD in the Gautreaux consent decree bargaining process.

For an infinitesimal expenditure in budgetary terms, we could mount a program that could end the ghetto as we know it.

Finally, could 50,000 homes and apartments be found each year? The Gautreaux Program was able to place families in over 100 cities, towns and villages in the Chicago area, while the hypothetical assumes an average of only 40. The Census Bureau counts 331 metropolitan areas in the country, while the hypothetical assumes that the mobility program would operate in only 125. Each assumption is conservative with respect to unit supply. Most importantly, the potential supply of units is not a fixed-sum. More fine-tuning of Fair Market Rents (increasing them in low vacancy times and places, reducing them where they exceed market rents) and more creativity about responding to landlord concerns (for example, paying rent for the several weeks it sometimes takes a housing authority to "clear" a family for an apartment being held off the market) can make a big difference. If the 50,000 annual goal were made a bureaucratic imperative, and if local administrators were given the right tools, it is possible — indeed, likely — that the goal would be achieved.

Go, Florence

Our esteemed founding Board member Florence Roisman (Professor at Indiana Univ. School of Law) has won the 2004 Equal Justice Works Outstanding Law School Faculty Award for her dogged pursuit of equal justice and her pivotal role in nurturing a public interest ethic among law students, and was honored at EJW's Oct. 28 dinner in DC. To further honor Florence, a number of friends have made donations to the IU Foundation to support their summer public interest law fellowship program. If you'd like to participate in this tribute, contact Carol Neary, Dir. of Development, IU School of Law, at 317/274-4209, cneary@iupui.edu.

A Legal Question

A different kind of question is prompted by the notion of setting aside 50,000 vouchers each year for black families. How can one justify denying poor whites, poor Latinos and poor Asians, many also living in high-poverty neighborhoods, an opportunity to participate in the mobility program? Would it even be legal?

A dual justification can be offered. The first is that the proposal is designed to help the nation confront its "most formidable evil," an evil that results in significant degree from fears and conduct generated by confining black Americans, not others, to ghettos. The second is that the country is responsible for the confinement of blacks to ghettos in a manner and degree that is not the case with other groups. This is obviously so for poor whites, who already live mostly among the non-

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poor. Latinos and Asians, for all of the discrimination they have suffered, do not have slavery or Jim Crow in their histories. Nor have they been confined among their own to a comparable degree. Devoting 50,000 vouchers exclusively to blacks in ghettos can thus be justified both by the purpose of the proposal and by the unique history and current situation of blacks in ghettos.

As for legality, no one can be certain in a time when 5-4 Supreme Court decisions are routine. But when in 1988 Congress authorized compensation to Japanese citizens who had been herded into World War II detention camps, no serious legal question was even raised. Though the analogy is obviously imperfect, housing choice vouchers as "compensation" for confining blacks in ghettos is not a bad rationale. It is unlikely that even today's Supreme Court would upset an express Congressional determination to make partial amends in this way for a history of slavery, Jim Crow and ghettoization. (Even so, one can imagine that for reasons of policy or politics, Congress would choose to offer the mobility program to all residents of metropolitan ghettos. That would require a reworking of the numbers, and possibly prioritizing poverty families, but would not affect the basic structure or feasibility of the proposed program.)

Those Who Remain

Even if a national Gautreaux-type program were doable and legal, objections remain to be addressed. One is that the program would be harmful to the moving families, severing them from family, friends and institutional support systems, and subjecting them to hostility and racial discrimination. An answer is to ask who are "we" to withhold a purely voluntary opportunity from "them" on the ground that we know better than they what is in their interest. Moreover, studies of the Gautreaux program show that mobility works well for many participating families.

A variation on this argument is that dismantling the ghetto will undermine black institutions, political power and ghetto communities that have values deserving preservation. As for black institutional and political strength, Italians, Irish, Jews and others have survived far more mobility than black Americans are likely to experience; it is absurd to contend that the strong, resilient black American culture has anything to fear from a Gautreaux-type program. As for values in ghetto communities, it is plain to any objective observer that the bad far outweighs the good.

Housing choice vouchers as "compensation" for confining blacks to ghettos is not a bad legal rationale.

A further variation on the bad-for-them argument is that non-movers will be worse off once some of the ablest and most motivated among ghetto residents leave. Even if true, this is not a sufficient reason to reject the approach. Should we not have passed the Fair Housing Act because the departure of better-off ghetto residents may have left those who remained worse off? Moreover, the likelihood that deconcentration will foster redevelopment means that even many of those who choose to remain will be benefited over time.

The latter point may raise eyebrows. Why will redevelopment be fostered? And if it is, won't gentrification simply drive out remaining ghetto residents? The answer to the first question is a matter of pressure: When, like a balloon being filled, migrants poured in, the ghetto expanded outward; as deconcentration lets out some of the air, the pressure will be reversed. When ghettos are located near desirable areas, redevelopment pressures will be strong. When they are not, the redevelopment pump may need to be primed with government assistance.

In both circumstances, the concern that gentrification will drive out the remaining poor can be addressed. Where government assists the redevelopment process, the assistance should be conditioned on housing for the poor as part of the mix. Where it does not (although usually some form of assistance will be involved), inclusionary zoning can mandate that some low-income housing be included in all new residential development above a threshold number of units. Other techniques — for example, property tax caps — are also available.

Revitalization as an Alternative?

Others reject the Gautreaux approach in favor of preferred alternatives. A major one is "revitalization," but analysis discloses that, absent poverty deconcentration, this is an inadequate alternative. A rudimentary form of revitalization is simply to go in — without worrying about poverty deconcentration through housing mobility — and improve shelter and services for present residents. But with the suburbs having become the locus of metropolitan employment growth, with the opportunity engine the ghetto once was now a destructive, jobless environment, it is hubris to think we could reverse decades-old economic forces through improved shelter and services alone. William Julius Wilson has concluded, correctly, that without increasing economic opportunities for poor blacks and reducing their segregation, programs that target ghettos are unlikely to have much success.

A more sophisticated revitalization approach is community redevelopment. With a nonprofit community development corporation generally leading the way, the idea is to attack all of a depressed community's needs comprehensively and simultaneously — not just housing, but commercial development, job creation, school improvement, health facilities, public and social services, credit supply,

crime and drug control. This form of revitalization is almost always aided by government funding of one sort or another.

The attraction of community revitalization is considerable. Residents of depressed neighborhoods need hope; the revitalizing possibility may supply it. Cities need redevelopment; the prospect of revitalization offers it. Democracy requires a strong citizenry; community-based revitalization builds strong citizens. No wonder community revitalization is the darling of philanthropy, supported by a growing national movement.

But cautions are in order. First, community redevelopment does not generally focus on ghettos, for few black ghettos boast the key instrument — a strong community development corporation. Second, even in the neighborhoods in which most revitalization has been attempted, the record is distinctly mixed. Revitalization is a difficult, multi-faceted, long-term undertaking. Numerous studies make it clear that even after decades of stupendously hard work and much achievement, jobs may still be scarce, neighborhood schools still problematic, poverty still widespread, crime and drugs still unvanquished. Two of revitalization's most enthusiastic supporters, describing one of its most notable successes (Paul Grogan and Tony Proscio, in their book *Comeback Cities,* writing of the South Bronx), acknowledge that the poverty rate did not decline, that employment was mostly unchanged and that "substantial racial segregation and isolation will continue."

The reason has to do with over five decades of metropolitan development patterns which David Rusk examines in his 1999 book, *Inside Game Outside Game*. The "inside game" is being played in many large cities and — increasingly — in many older, inner-ring suburbs as well. Relative to their metropolitan regions, these "inside" places face declining employment, middle-class populations, buying power, relative incomes and tax bases, along with increasing, disproportionately poor minority populations. The "outside game" reverses these patterns, with most of the suburbs, particularly the newer, farther-out ones, garnering a steadily growing share of the region's jobs, as well as middle-class families with their incomes, buying power and tax-paying capacities, while housing a disproportionately low fraction of the region's poor.

In the neighborhoods in which most revitalization has been attempted, the record is distinctly mixed.

Inside Game Outside Game analyzes the powerful social and economic forces that generate these metropolitan development patterns, and the institutional — including governmental — arrangements that foster them. The result is what Rusk calls the "tragic dilemma" of community-based redevelopment programs. "It is like helping a crowd of people run up a down escalator." No matter how fast they run, Rusk writes, the escalator comes back down faster and faster. Some run so hard — some programs function so well — that a few succeed in getting to the top, but most are carried back down, and the climb becomes harder and harder for those trying later.

To be sure, no effort to improve housing and services for poor families should be gainsaid. Some revitalization activity may actually prevent marginal neighborhoods from becoming ghettos. Yet there is a danger that the appeal of community revitalization will lead to plans that leave ghettos intact by focusing exclusively on improving conditions within them for their impoverished populations. We should not be about the business of fostering self-contained ghetto communities apart from the mainstream. We should instead be trying to bring the ghetto poor into the mainstream. The critical point is that only by enabling the poor to live among the non-poor will significant long-term im-

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Selected Readings

Elijah Anderson, *Streetwise: Race, Class, and Change in an Urban Community* (Univ. of Chicago Press, 1990)

Sheryl Cashin, *The Failures of Integration: How Race and Class are Undermining the American Dream* (Public Affairs, 2004)

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Nicholas Lemann, *The Promised Land: The Great Black Migration and How it Changed America* (Knopf, 1991)

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Leonard S. Rubinowitz & James E. Rosenbaum, *Crossing the Class and Color Lines* (Univ. of Chicago Press, 2000)

David Rusk, *Inside Game Outside Game: Winning Strategies for Saving Urban America* (Brookings Institution Press, 1999)

John Yinger, *Closed Doors, Opportunities Lost*: The *Continuing Costs of Housing Discrimination* (Russell Sage Foundation, 1995)

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provements be made possible in the life circumstances of most impoverished families trapped in ghettos.

Experience demonstrates that community revitalization can best be achieved through a mixed-income approach that attracts higher-income families to (formerly) poverty neighborhoods, thereby creating an incentive for private profit and investment. Like housing mobility, mixed-income development also brings with it the crucial benefit of enabling the poor to live among the non-poor. Community revitalization should thus be seen not as an opposing or alternate strategy but as a follow-on, mixed-income complement to housing mobility.

The Politics

A final objection is that my entire proposal is an indulgent fantasy. Don't we clearly lack the political stomach for facilitating the movement of large numbers of black families from inner-city ghettos to white neighborhoods? What on earth makes me think that a nation that has treated blacks the way America has through most of its history — the way it still treats the black poor — would give a moment's consideration to the course I am proposing? This very black ghetto issue was instrumental in shifting the political alignment of the entire country just a few decades ago, changing American character in the bargain. We remain today the uncaring nation we then became. Indeed, as this is being written, the Bush Administration is proposing to cut back radically on housing choice vouchers. A Gautreaux-type program would certainly be portrayed as liberal social engineering. Should it ever be seriously considered, wouldn't some modern-day George Wallace whip up the country's hardly dormant Negrophobia, perhaps especially easy to do at a time when working- and even middle-class Americans are having a hard time?

Maybe. Still, history is full of close calls and surprises. England might have succumbed to the Nazis if Roosevelt had not dreamed up lend-lease and persuaded a reluctant America First Congress to go along. Truman beat Dewey. Nixon went to China. The Soviet Union collapsed. In one decade, the Civil Rights Movement ended generations of seemingly impregnable Jim Crow. In a single fair housing enactment, Congress stripped historically sacred private property rights from American landowners. Even with respect to black Americans, history tells us that we can sometimes manage to take forward steps. Leadership is key, but we will not have a Bush in the White House forever.

It is ghetto fear — anxiety about inundation and anti-social conduct — that explains a good deal (though not all) of white attitudes toward blacks in general, and white rejection of in-moving blacks in particular. If the black ghetto were replaced, over time those fears and anxieties would be ameliorated. Gautreaux teaches that the threshold fear of "them" can be overcome by effective pre- and post-move counseling; by certification from a credible agency that the moving families will be good tenants; and, most importantly, by keeping the numbers down. No more than a handful of families a year entering any receiving community makes for a different ball game.

So long as black ghettos exist, most white Americans will fear the entry of blacks, any blacks, into their communities.

Two Courses

America confronts two courses. The first is to continue to co-exist with black ghettos. The second is to dismantle and transform them. The prospect along the first course, as Tocqueville prophesied, is that the evil of racial inequality will not be solved. So long as black ghettos exist, threatening inundation should there be a break in any neighborhood's dike, most white Americans will fear the entry of blacks, any blacks, into their communities. And so long as that is the case, America's "most formidable evil" will continue to afflict the nation.

The other part of Tocqueville's prophecy — result in disaster — is less certain. Yet so long as we continue to tolerate the black ghetto, the prospect is for continuation of the two unequal societies described by the Kerner Commission Report, and continued fear of blacks by white Americans. As long as that fear persists, whites will continue to treat black Americans as the feared Other. They are likely to continue to act fearfully and repressively, possibly to incarcerate still more black Americans in still more prisons. In that event, the Toqueville prophecy of disaster may indeed become the American reality.

The alternative is to dismantle our highest-poverty black ghettos and replace them wherever possible with mixed-income communities, thereby to lessen the fear and the fearful conduct they generate. Nothing can bring that about overnight, and any approach will be fraught with difficulty and uncertainty. But a national Gautreaux mobility program is a sensible way to begin a task that we postpone at our peril.

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Don't forget to send us items for our Resources section.

Summary of Books and Articles

about Fair Housing in the Northeast

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Article 1. Sundown Towns, Poverty & Race Research Action Council, November/December 2005, James W. Loewen

Between 1890 and 1968, thousands of towns across the United States drove out their black populations or took steps to forbid African Americans from living in them. Thus were created "sundown towns," so named because many marked their city limits with signs typically reading, "Nigger, Don't Let The Sun Go Down On You In ___." Some towns in the West drove out or kept out Chinese Americans. A few excluded Native Americans or Mexican Americans. "Sundown suburbs" developed a little later, mostly between 1900 and 1968. Many suburbs kept out not only African Americans but also Jews.

The author resolved to write a book about the phenomenon. Initially, the author expected to find maybe ten of these communities in Illinois (the author's home state, where he planned to do more research than in any other single state), and perhaps 50 across the country. In fact, the author found 472 sundown towns in Illinois, a clear majority of all of the 621 incorporated places of more than 1,000 population (no systematic study of towns smaller than that was made). Similar proportions obtained in Indiana, Missouri, Oregon and probably many other states. The author found hundreds more across the United States and estimates that probably 10,000 such towns exist. By 1970, *more than half* of all incorporated communities outside the traditional South probably excluded African Americans. Sundown towns ranged from hamlets like De Land, Illinois, population 500, to large cities like Appleton, Wisconsin, with 57,000 residents in 1970. Sometimes entire counties went sundown, usually when their county seats did. Independent sundown towns were soon joined by "sundown suburbs," often even larger, such as Glendale, a suburb of Los Angeles, with more than 60,000; Levittown, on Long Island, more than 80,000; and Warren, a Detroit suburb with 180,000 residents.

The History

These towns and these practices do not date back to the Civil War. On the contrary, between about 1863 and 1890, African Americans went everywhere in America. During this "springtime of freedom," many communities, especially those with large Quaker, Unitarian or Republican populations, welcomed them. Then, between 1890 and 1940, blacks commenced a "Great Retreat." This period is becoming known as the "nadir of race relations," when lynchings peaked, white owners expelled black baseball players from the major (and minor) leagues, and flourishing unions drove African Americans from such occupations as railroad worker, fireman and meat processor.

During this era, whites in many communities indulged in race riots that until now have been lost to history. Whites in Liberty, Oregon, for example, ordered black residents to leave in 1893. Pana, Illinois, drove out its African Americans in 1899, killing five in the process. Anna, Illinois, followed suit in 1909, Pinckneyville probably in 1928. Decatur, Indiana, expelled its black population in 1902. White workers in

Austin, Minnesota, repeatedly drove out African Americans in the 1920s and 1930s. Other towns that drove out their black populations violently include Myakka City, Florida; Spruce Pine, North Carolina; Wehrum, Pennsylvania; Ravenna, Kentucky; Greensburg, Indiana; St. Genevieve, Missouri; North Platte, Nebraska; Oregon City, Oregon; and many others.

Many towns that had no African-American residents maintain strong oral traditions of having passed ordinances forbidding blacks from remaining after dark. In California, for example, the Civilian Conservation Corps in the 1930s tried to locate a company of African-American workers in a large park that bordered Burbank and Glendale. Both cities refused, each citing an old ordinance that prohibited African Americans within their city limits after sundown. Other towns passed ordinances in Arizona, Oklahoma, Kansas, Nebraska, Iowa, Missouri, Wisconsin, Illinois, Indiana, Tennessee, Ohio, Maryland and probably many other states. Some towns believed their ordinances remained in effect long after the 1954 Brown decision and 1964 Civil Rights Act. The city council of New Market, Iowa, for example, suspended its sundown ordinance for one night in the mid-1980s to allow an interracial band to play at a town festival, but it went back into effect the next day.

Maintaining Sundown-ness

How have these towns maintained themselves all-white? By a variety of means, public and private. DWB, for example -- "driving while black" -- is no new phenomenon in sundown towns; as far back as the 1920s, police officers routinely followed and stopped black motorists or questioned them when they stopped. Suburbs used zoning and eminent domain to keep out black would-be residents and to take their property if they did manage to acquire it. Some towns required all residential areas to be covered by restrictive covenants -- clauses in their deeds.

The Civil Rights Movement left these towns largely untouched. Indeed, some locales in the Border States forced out their black populations in response to *Brown v. Board of Education*. Sheridan, Arkansas, for example, compelled its African Americans to move to neighboring Malvern in 1954 after the school board's initial decision to comply with *Brown* prompted a firestorm of protest. Having no black populations, these towns and counties then had no African Americans to test their public accommodations. For 15 years after the 1964 Civil Rights Act, motels and restaurants in some sundown towns continued to exclude African Americans, thus forcing black travelers to avoid them or endure humiliating and even dangerous conditions. Today, public accommodations in sundown towns are generally open. Many towns -- probably more than half -- have given up their exclusionary residential policies, while others still make it uncomfortable or impossible for African Americans to live in them.

Adverse Impacts

These towns also have an adverse impact on their own residents. When kids ask parents why they live in a given town, especially if it is a suburb, parents are apt to reply that it is a good environment for raising children. The children know full well that their

town is overwhelmingly white, making it logical to infer that an environment without blacks is "good." While anti-racist whites can emerge from such settings, and some have, it is far easier to conclude that African Americans are bad and to be avoided. Young people from sundown towns often feel a sense of dread when they find themselves in racially mixed situations beyond their hometowns.

Still worse is the impact of sundown suburbs on the social system. The prestige enjoyed by many elite sundown suburbs -- such as Edina, Darien or Kenilworth, the richest suburb of Chicago -- makes it harder for neighboring suburbs to become and stay interracial. When a white family makes even more money than average for the interracial suburb of Oak Park, Illinois, say, they may want to express their success by moving to an even more prestigious (and more expensive) suburb, like Kenilworth. Such a family may not choose Kenilworth because it has no black families (as of the 2000 Census), but because of its prestige -- but the two have been intertwined for a century.

What to Do?

What is to be done about sundown towns? Governmental action does help. Until 1968, new all-white suburbs were forming much more rapidly than old sundown towns and suburbs were caving in. In that year, Title VIII of the Civil Rights Act, along with the *Jones v. Mayer* decision, barring discrimination in the rental and sale of property, caused the federal government to change sides and oppose sundown towns. Since then, citywide residential prohibitions against Jews, Asians, Native Americans and Hispanics have mostly disappeared. Even vis-à-vis African Americans, many towns and suburbs relaxed their exclusionary policies in the 1980s and 1990s. As of 2005, however, *de facto* exclusion of blacks is still all too common.

At a minimum, any former sundown town should now be asked to make three statements: admit it ("We did this."), apologize for it ("We did this, and it was wrong."), and proclaim they now welcome residents of all races ("We did this; it was wrong; and we don't do it anymore.")

The last chapter of the author's 2005 book *Sundown Towns* is titled "Remedies." It suggests things that individual families can do, policies that local governments should put into effect, acts that corporations can take, and a new law that states or the federal government should pass. The last, titled "Residents Rights Act," is modeled to a degree on the very successful 1965 Voting Rights Act. If a community has a provable sundown past (and this can be done, as my research shows), continuing overwhelmingly white demographics, and two or more complaints from recent black would-be renters or homebuyers, then the act would kick in. Among its provisions, residents would lose the ability to exempt mortgage interest payments and property tax payments from their incomes at tax time. After all, by this exemption the federal government, seconded by state governments, means to encourage homeownership in America, a fine aim. However, homeownership by whites in sundown towns is *not* so fine an objective and does not deserve encouragement in the tax code. The day after this act is applied to a given sundown town or suburb, its residents will be up in arms, requesting that their

government and realtors *recruit* African Americans as residents so they can recover this important tax break.

Even if no government enacts the Residents Rights Act, individuals can do the research to "out" sundown towns. Especially elite sundown suburbs, but even isolated independent sundown towns, rely upon deniability for their policy to work. The author calls this the "paradox of exclusivity." Residents of towns like Darien, for instance, *want* Darien to be known as an "exclusive" community. That says good things about them -- that they have the money, status and social savvy to be accepted in such a locale. They do *not* want to be known as "excluding" -especially on racial or religious grounds—for that would say *bad* things about them. So long as towns like Darien, Kenilworth, Edina and La Jolla, California, can appear "accidentally" all-white, they can avoid this difficulty. At the very least, then, making plain the conscious and often horrific decisions that underlie almost every all-white town and neighborhood in America is a first step toward ending what surely remains as the last major bastion of racial segregation in America.

Article 2. The Positive Impacts of Affordable Housing on Health: A Research Summary, Center for Housing Policy and Enterprise, July 2007, Jeffrey Lubell, Rosalyn Crain, Rebecca Cohen

The Center for Housing Policy reviewed research on the various ways in which the production, rehabilitation or other provisions of affordable housing may lead to improved health outcomes. The promising hypotheses regarding the positive contribution of affordable housing to health were discussed in the report entitled, Framing the Issues – the Positive Impacts of Affordable Housing on Health, By Jeffrey Lubell, Rosalyn Crain and Rebecca Cohen, July 2007, and summarized by the Center for Housing Policy:

1. **Affordable housing may improve health outcomes by freeing up family resources for nutritious food and health care expenditures.**

Families paying excessive amounts of their income for housing often have insufficient funds remaining to meet other essential needs, including food, medical insurance and health care. These trade-offs threaten the health of their children. Several studies have found that children in low-income families that do not receive housing subsidies are more likely to suffer from iron deficiencies, malnutrition and underdevelopment than children in similar families receiving housing assistance.

Other studies have found a correlation between the general affordability of housing and the health of children – particularly older children – suggesting the positive health impacts of housing affordability may accumulate over time. By helping increase the amount of residual income available to families for food, health care and other essential expenses, affordable housing can improve children's well-being.

2. **By providing families with greater residential stability, affordable housing can reduce stress and related adverse health outcomes.**

At the extreme, there is little question that residential instability has adverse health impacts. For example, studies continually show that homeless children are more vulnerable to mental health problems, developmental delays and depression that children who are stably housed. Frequent moves, living in doubled-up housing, eviction and foreclosure are also related to elevated stress levels, depression and hopelessness. An emerging body of evidence also suggests that less-severe manifestations of instability related to housing affordability, such as difficulty keeping up with mortgage payments or home repairs, may be linked to lower levels of psychological well-being and a greater likelihood of seeing a doctor.

3. **Homeownership may contribute to health improvements by fostering greater self-esteem, increased residential stability and an increased sense of security and control over one's physical environment.**

Studies consistently show that homeowners achieve better physical and mental health outcomes than renters, including fewer longstanding illnesses, lower blood pressure and lower levels of depression and alcohol abuse. One possible explanation for

this phenomenon is that homeowners experience higher levels of self-esteem, which may be related to improved health. Other research suggests that homeowners are more likely to live in higher-quality housing and have more freedom to adapt their surroundings to their needs, reducing stress and leading to greater levels of satisfaction. Homeowners also move much less frequently than renters and thus enjoy the benefits associated with stability discussed above.

Programs and policies that help families afford and sustain homeownership may extend the apparent benefits of ownership to families at a broader range of income levels. To the extent that homeownership's benefits are related to increased stability, affordable rental programs that improve the stability of families' living arrangements may offer similar benefits.

4. Well-constructed and managed affordable housing developments can reduce health problems associated with poor quality housing by limiting exposure to allergens, neurotoxins and other dangers.

When families have few affordable housing options, they may be forced to live in substandard housing that puts residents at risk of lead poisoning, asthma and accidental injury. Despite a major public health effort, many low-income families still live in homes that have lead-based paint hazards. Poor quality or poorly maintained housing may also be overrun with mold, dust mites, cockroaches and rodents – all of which are sources of allergens that cause asthma and other respiratory illnesses. Unsafe conditions in the home can also threaten resident safety and increase the risk of accidental burns and injuries.

By facilitating the transfer of rental housing from neglectful owners to owners who take their maintenance and management responsibilities seriously, affordable housing policies can help remediate these problems. Evidence suggest that simple measures like the installation of smoke detectors and window guards can have major impacts on resident safety. Lead paint remediation and allergen relief may require somewhat more intense interventions such as window and carpet replacement and integrated pest management. Green building techniques also may help achieve health benefits by reducing exposure to toxic substances and indoor air pollutants. In addition, maintenance and renovations are not enough, housing vouchers and affordable new construction can help families move to safer, healthier housing.

5. Stable, affordable housing may improve health outcomes for individuals with chronic illnesses and disabilities and seniors by providing a stable and efficient platform for the ongoing delivery of health care and other necessary services.

An emerging body of research suggests that affordable housing may help individuals living with chronic diseases such as HIV/AIDS, diabetes and hypertension better maintain their treatment regimes and achieve higher rates of medical care. Homeless patients in particular may have difficulty properly storing medication and syringes, maintaining a recommended diet and going to follow-up appointments when

faced with urgent competing demands, such as finding a place to stay for the night. With stable housing, patients with chronic diseases experience improved health outcomes and can access and maintain the level of care they need. Seniors and disabled households also have special needs for health-related services that can addressed through assisted living housing arrangements that link affordable housing with access to care.

Finally, affordable housing can allow low-income individuals with physical disabilities to access a residential environment that goes beyond the bare legal minimum to truly and effectively accommodate their disabilities.

6. By providing families with access to neighborhoods of opportunity, certain affordable housing strategies can reduce stress, increase access to amenities and generate important health benefits.

Families who can only find affordable housing in very high-poverty areas may be prone to greater psychological distress and exposure to violent or traumatic events. The federally funded *Moving to Opportunity* (MTO) demonstration gave participants in five cities the change to move from public housing located in high-poverty areas to affordable housing in neighborhoods with lower levels of poverty. Based on a rigorous randomized study, researchers found that adults who were offered the opportunity to move to a low-poverty area experienced significant improvements in mental health at levels comparable to those achieved with "some of the most effective clinical and pharmacologic mental health interventions." Other studies provide further evidence that residents of public housing benefit when given the opportunity to relocate to low-poverty areas that would otherwise be unaffordable.

A separate approach that shows promise is to use community development strategies to improve the amenities and opportunities offered by existing neighborhoods or new developments. For example, creating walkable communities facilitates health exercise, and adding retail establishments increases access to fresh fruits and vegetables.

7. By alleviating crowding, affordable housing can reduce exposure to stressors and infectious disease, leading to improvements in physical and mental health.

When housing is not affordable, families may be forced to double-up with other or live in homes that are too small. Individuals who live in a crowded setting may have limited ability to manage daily stressors and successfully maintain supportive relationships, which can lead to increased levels of psychological distress, helplessness and even higher blood pressure. Studies have also demonstrated that crowding can negatively impact physical health through increased exposure to infectious diseases. A randomized study found that the receipt of a housing voucher that helps families afford their housing costs greatly reduced the likelihood of crowding. Other assisted housing programs that increase the availability of affordable housing also may help alleviate crowding.

8. By allowing victims of domestic violence to escape abusive homes, affordable housing can lead to improvements in mental health and physical safety.

Domestic violence is one of the leading causes of homelessness in the United States. Unable to find affordable alternative housing arrangements, many women choose to stay in an abusive situation rather than become homeless. Domestic violence can also impair women's ability to obtain alternative housing by limiting their access to financial resources and causing erratic employment histories and poor landlord references related to disturbances and property damage. Affordable housing can help victims of domestic violence escape the physical and mental health trauma caused by abuse and avoid the health risks associated with homelessness.

9. Use of green building and transit-oriented development strategies can lower exposure to pollutants by improving the energy efficiency of homes and reducing reliance on personal vehicles.

The energy used by the buildings in which families live and the transportation they use to get to work and around town account for nearly 40 percent of the nation's total energy consumption. By using green building techniques to increase the energy efficiency and environmental sustainability of new or renovated housing, the community at large may benefit from reduced exposure to emissions associated with burning fossil fuels and the negative health impacts linked to smog, acid rain and air pollution. Similarly, communities built according to transit-oriented development and other smart growth principles provide an array of amenities within walking distance that may reduce residents' need to use personal vehicles, leading to reduced exposure to unhealthy automobile emissions.

[*See full copy of foregoing Research Summary for extensive list of endnotes.*]

Article 3. The Positive Impacts of Affordable Housing on Education: A Research Summary, Center for Housing Policy and Enterprise, Jeffrey Lubell, Maya Brennan

A growing body of research suggests that stable, affordable housing may provide children with enhanced opportunities for educational success. Schools and teachers certainly bear principal responsibility for children's education, and they should both be held to the highest possible standards. Nevertheless, research shows that a supportive and stable home environment can complement the efforts of educators, leading to better student achievement.

The Center for Housing Policy reviewed the academic literature on the various ways in which the production, rehabilitation or other provisions of affordable housing may lead to improved education outcomes for children. Seven promising hypotheses regarding the positive contribution of affordable housing to education were discussed in the report entitled, Framing the Issues – the Positive Impacts of Affordable Housing on Education, by Jeffrey Lubell and Maya Brennan, July 2007, and summarized by the Center for Housing Policy:

1. Stable, affordable housing may reduce the frequency of unwanted moves that lead children to change schools and disrupt educational instruction.

An extensive body of research documents the separate and combined impacts of two different types of moves on children's education: residential mobility (moving to a new home, with or without changing schools) and school mobility (changing schools, with or without changing residences). Numerous studies document that children who change schools frequently experience declines in educational achievement. The studies also confirm the negative impact of residential moves – especially multiple moves, moving during key educational time periods and moves by nonintact families. In schools with high rates of student mobility, the detrimental impact of moving extends beyond the highly mobile students to their teachers and stable classmates – perhaps because the highly mobile students require a disproportionate share of teacher attention and school resources. For example, a study of schools in Chicago found that in the most mobile schools, teachers are unable to gauge the effect of their instruction, lessons become review-oriented and the curricular pace slows so that by fifth grade, the curriculum at highly mobile schools is a year behind the stable schools.

2. Some affordable housing strategies may help families move to communities that have stronger school systems or are more supportive of education.

While frequent moves appear to have a negative impact on educational achievement, moves to better school systems may have an independent positive impact on educational achievement. Research on families impacted by the Gautreaux litigation in Chicago, for example, found that moves from inner-city urban areas to suburban neighborhoods led to positive educational improvements over the long term. Although the Moving to Opportunity (MTO) research demonstration could not confirm this finding, the researchers suggest this may be due to (a) the evaluation occurring too soon for long-

term effects to emerge, (b) many children in the MTO demonstration staying in the same school or a comparable school even after moving or (c) families staying in lower-poverty neighborhoods for only a short time before returning to neighborhoods essentially similar to the ones in which they started.

Some forms of housing assistance – particularly housing voucher programs with a "mobility" counseling component and the construction of affordable developments in strong neighborhoods are specifically designed to help families access neighborhoods of opportunity, which can include neighborhoods with strong schools. Even housing subsidies not specifically intended to move families to lower-poverty or more integrated neighborhoods can positively impact children's education. A recent study found that children in low-income households that receive Section 8 Housing Choice Vouchers live in better neighborhoods and are less likely to miss school than other low-income children. When well-located, other types of affordable housing developments may have similar impacts.

3. Affordable housing can reduce overcrowding and other sources of housing-related stress that lead to poor educational outcomes by allowing families to afford decent-quality homes of their own.

A number of studies have found that overcrowding is associated with low educational achievement. For example, a study in New York City found that children living in crowded conditions are less likely to graduate from high school than their peers. A national study also found that children growing up in crowded housing complete fewer years of education. One potential explanation is that crowded living conditions may be associated with noise and chaos that interfere with children's studies; alternatively, the problem may simply be that kids have no place to sit down and do homework. By helping families afford decent, quality homes of their own, affordable housing can improve children's educational achievement by reducing overcrowding. Access to decent, affordable housing can also reduce the likelihood that families live in substandard housing, which appears also to be correlated with poor educational achievement.

4. Well-constructed, maintained and managed affordable housing can help families address or escape housing-related health hazards (e.g., lead poisoning and asthma) that adversely impact learning.

Studies show that the exposure of children to lead through poorly contained lead paint in older homes can lead to developmental and educational deficits. Poor housing conditions – notably, the persistent presence of cockroaches, pesticides and mold – also contribute to the incidence of asthma, which reduces educational attainment by causing kids to miss school. Affordable housing programs can help address these hazards by: funding housing rehabilitation activities (such as the replacement of windows in older homes) that reduces hazards, improving the management and maintenance of older homes, helping families move to healthier homes and funding the construction of new homes that provide a healthier living environment.

5. Affordable housing developments may function as a platform for educational improvements by providing a forum for residential-based afterschool programs or, more broadly, by anchoring a holistic community development process that includes new or improved schools.

A number of affordable housing developments use their natural community as a means of providing resident services, such as afterschool programs, on the premises. High-quality afterschool programs appear to have a positive impact on children's educational achievement, and residential-based afterschool programs have a number of potential advantages over school-based programs. First, they reduce transportation problems by eliminating the need to make special transportation arrangements for participating children who might otherwise miss their bus home. Second, in high-crime areas, they may alleviate parents' concerns about their children's safety by providing a safe place and reducing the need to travel outside of the home. Third, by being more convenient for parents, they may increase participation.

More broadly, as the HOPE VI public housing revitalization program has shown, the development of affordable housing can serve as an anchor for more holistic community development efforts that include new or improved schools. A number of HOPE VI redevelopment projects and similar community revitalization efforts have included the construction of new schools, leading to enhanced benefits for children and the community.

6. Homeownership may provide a platform for helping children do better in schools.

A number of studies have shown that the children of homeowners do better in school. For example, one study found that, for children living in owned homes rather than rental units, math achievement scores are up to 9 percent higher, reading achievement is up to 7 percent higher and behavioral problems are 1 to 3 percent lower. Other studies have found that children of homeowners stay in school longer or have higher high-school graduation rates than their peers living in rented homes. It is possible that the benefits of homeownership are concentrated among certain types of households.

For example, one study found a connection between homeownership and educational achievement among the children of households with incomes below 150 percent of the poverty line, but not for higher-income families. While the precise reason for these findings is not entirely clear, the benefit of homeownership for children may be due largely to the fact that homeowners tend to be more residentially stable than renters. To the extent that enhanced stability largely explains the impact of homeownership on education, it is possible that particularly stable forms of affordable rental housing may provide similar benefits. However, to the extent that a neighborhood has poor quality schools or other adverse conditions, homeownership and other forms of residentially stable housing in that neighborhood may have a negative effect by locking families into a poor-quality neighborhood.

7. Affordable housing may support children's educational achievement by reducing homelessness among families with children.

Children who experience homelessness face numerous educational barriers, including difficulties accessing preschool and Head Start programs and obtaining personal records necessary for enrollment. Given their difficulties accessing the public education system, it is no surprise that homeless children are more likely than their low-income peers to drop out of school, repeat a grade, perform poorly on tests and in the classroom and suffer from learning disabilities and behavior problems. By helping children avoid the disruptions associated with homelessness, affordable housing can help improve their educational achievement.

Some Tentative Hypotheses

In addition to the more developed hypotheses summarized above, two additional hypotheses merit further exploration. First, affordable housing may facilitate greater parental involvement in their children's education by reducing parental stress and the need to hold multiple jobs. Second, the development and rehabilitation of affordable housing in distressed neighborhoods may contribute to community revitalization efforts that lead to increases in community support for education. Although some anecdotal evidence and logical reasoning support these hypotheses, additional research is needed to assess their validity.

[*See full copy of the foregoing Research Summary for extensive list of endnotes.*]

Article 4. The Vicious Cycle: Segregated Housing, Schools and Intergenerational Inequality, Prepared by the Civil Rights Project of Harvard University; Published by the Joint Center for Housing Studies, Harvard University, August 2006, Gary Orfield and Nancy McArdle

I. Introduction

The study examines the manner in which housing shapes opportunity and equity in metro Boston especially through the schools, as the area is transformed by demography and by migration of whites (non-Hispanic whites) into and among its sub-regions. The study also sketches a template for analyzing the role of housing in creating opportunity in public schools - a central institution of urban areas. The study focuses on the metropolitan area as the only reasonable unit of analysis of broad social trends in a predominantly suburban, overwhelmingly metropolitan society in which residential segregation of minorities is a basic structural reality. Metro Boston's future is closely linked to its education system and to the success thereof in preparing a more diverse workforce. Evidence indicates, however, that minority young people are not making the connections they need with the vast resources of the metro area being very unequally distributed by location, race and ethnicity.

II. Housing Inequality

Housing is a central part of the American economy and a significant influence on the economic situation of families. Because housing determines a family's location, it is the fulcrum of opportunity, linked to many factors critical to success of adults and children in American society. The study argues that the fundamental flaws in the housing market tend to perpetuate or even deepen the intergenerational inequality. Recent data for metro Boston indicate that it is usually not possible for even economically successful blacks and Latinos to obtain the same kind of housing-linked opportunities as whites. The study argues that the most profound inequality that results from such differences in opportunity is severe location-based inequality of educational opportunity. This dynamic is a devastating threat in a society in which acquisition of equal or better education is one of the only ways to achieve more equal outcomes in an economy where employment and earnings are tightly linked to educational attainment.

The segregation by residence is linked to systemic inequalities in all aspects of education that significantly affect future prospects - qualification of teachers, preparation of peers, power of communities, range and quality of curriculum and connections and networks with higher education and employment. The housing segregation creates a vicious cycle for many nonwhite families. Children in these areas do not obtain the intellectual and social capital and the networks necessary to compete fairly. This is a syndrome of self-perpetuating racial and ethnic inequality.

III. Background

Hundreds of years after it was first settled, Boston has become one of the nation's largest urban settlements - a world city. After absorbing huge waves of immigrants from

Ireland, Italy and elsewhere, Boston's limited growth now comes from immigrants that are heavily Latino and Asian. Such recent growth is reflected in the outward march of housing and employment as large expanses of farmland and forest give way to new suburbs. Such new or rapidly growing communities have been marketed almost entirely to white buyers.

IV. Metro Boston: Its Housing and Its People

Seven counties make up the vast urbanized metro Boston area and are home to 5,290,000 residents in 2000. The metro area is divided into the City of Boston, inner satellite cities (central cities and other cities with densities over 10,000 people per square mile and include Brockton, Cambridge, Lynn, Gloucester and Waltham), outer satellite cities (similarly defined but exist in the outer ring of the metro area and include Worcester, Fitchburg, Lowell and New Bedford), inner suburbs (non-city areas within Route 128) and outer suburbs (non-city areas outside Route 128).

A. Metro Boston Decentralization. During the half century after 1950, the City of Boston added only 19,000 housing units and the inner suburbs saw very little change while the satellite cities gained 82,000 units and the outer suburbs added 398,000 units with the outer suburbs having four times as many units as the City. Less than a quarter of the stock in Boston, the inner suburbs and the satellite cities was built since 1970 while over half of the stock in the outer suburbs was built since 1970. Due to the size of the newly developed lots, the inner metro area has been engulfed in a sprawl with density figures that are lower than Los Angeles. The result of such land use is the creation of schools where almost all of the children are affluent and have highly educated parents and where schools post very high average test scores. Such high test scores are marketed by the real estate industry creating housing demand and resulting higher prices for housing.

B. Racial Change. During the 1950-1970 period, the metro Boston area was 96 to 98 percent white with only 3.2 to 1.6 percent black. The metro area grew by only 5.8 percent in the 1990s and even more slowly since 2000. The white population declined during this period and the metro area went from 87 percent white in 1990 to 81 percent white in 2000 with the Latino population growing from 4.7 percent to 6.6 percent of the population and blacks growing from 5.3 percent to 7.2 percent. The City of Boston became majority non-white for the first time. The combination of fewer graduates, jobs that require more education and a growing share of the population coming from groups with traditionally limited success in schools, produces an urgent economic and social challenge.

C. Segregation Patterns. The reality of piling multiple layers of subsidies to develop new low cost housing in concentrated areas where young people will be educated in segregated and impoverished schools that have been failures for decades shows the cost of separating debates about housing from those of other essential dimensions of opportunity. If housing is not connected to safety, education, socialization into middle class networks and job opportunities, it will be limiting. Based on Decennial Censuses for 1990 and 2000, 63 percent of blacks and 60 percent of Latinos would have to move to

achieve full integration with whites in 2000. In spite of hundreds of thousands of housing transactions in the 1990s, there was little progress on bringing down these high levels of desegregation. A Dr. Guy Stuart analysis of home sales showed that black and Latino home ownership increased significantly in the mid 1990s most of which occurred outside of Boston. However, such growth was concentrated in just 7 of 126 communities, all satellite cities except for Milton.

D. Causes of Housing Segregation in Metro Boston. Despite substantial research, many people still attribute residential segregation to differences in income and preferences and then dismiss it as a result of the natural outcome of market forces. In fact, neither preferences nor income can explain much of the segregation. Instead, segregation appears to reflect a series of "market imperfections" that are so fundamental that housing only vaguely resembles a true market for metro black and Latino families.

1. The Role of Income. Segregation measures between blacks and whites remain high in the Boston metro area regardless of income. Rising incomes bring only moderate decreases in segregation for blacks while Asians, who have lower segregation rates overall, did see their rates decline as income rises. Though slightly less segregated than blacks overall, rising income for Hispanics seems to make no difference in decreasing their isolation from whites. While income has an effect on Boston's residential patterns, race is a much more important factor.

2. The Role of Preferences. Research on attitudes of black and Latino residents shows extremely little preference for living in segregated minority neighborhoods. Strong majorities favor integrated communities but there is also significant reluctance, especially among blacks, to be pioneers into all-white areas.

3. Dynamics of the Housing "Market". The white public often dismisses claims of housing discrimination because they believe their ability to buy in certain neighborhoods is due to the wealth they have accumulated through hard work and that others are free to do the same. Most economic analysis of housing choices simply postulates a market and then treats the outcomes as products of market choices. However, the ideal of a market as a fair and efficient distributor of goods and services (and the opportunities attached to them) assumes certain fundamentals (free entry, adequate information, treatment of transaction parties equally and decision making on purely economic terms). Research suggests that the greater Boston market is flawed on all of these major aspects for blacks and Latinos. Buyers are not shown the same goods, information and networks are very unequal, producers are not allowed to produce the goods most in demand in many areas, government subsidized housing is usually built where schools are weak and segregated, wealth accumulation is greater for those who can buy in the white market and capital is often allocated differently by race. Real estate sales agents of minority race are likely to be in the parts of the market where schools are weak. A Fair Housing Center of Greater Boston conducted two series of tests in 2004 and 2005 and conclude that a "pattern of differences in treatment that disadvantaged homebuyer of color in 17 or 36 matched paired tests." Testers of color were steered to communities other than those where they sought to live and to different communities than their white counterparts. Discrimination was found to be commonplace and well hidden.

The conclusion thus far in the Report is that existing patterns of housing segregation are not the product of economics or preferences and that the resulting segregation of education is not preferred and is involuntary.

V. The Broader Context and the Focus on Education

Housing segregation has many consequences (job opportunities, wealth, public health, crime and violence, polarization of politics, and unequal cultural activities). The inequalities in education described here are only one central element in a many layered system of inequalities that affect blacks and Latino families in segregated communities. The paper focuses on education because of legal limits on where students can attend school, intergenerational dimensions, the existence of detailed data available by race and ethnicity and the ignorance of educational consequences of housing and community development policies and programs.

A. Education and Transmission of Location-Based Inequality. Education is the surest way to transmit class advantage between generations. Inferior education and too little schooling are perhaps the largest threats to maintaining middle class status. School segregation is not just isolation by race or ethnicity; it is a double or triple kind of segregation strongly related to all of the most important influences on academic and economic success.

B. Unequal Neighborhood Resources Affect Schooling and Peer Groups. Many resources of neighborhoods and schools are strongly related to the average income of those neighborhoods. In metro Boston in 2000, the average family income in a white suburb was $68,000 and only 5% of the families were below the poverty line while the average family income in a black or Hispanic suburb was $29,000 to $37,000 and 23 to 24% of the families lived in poverty. As well, over half of the poor whites live in the suburbs while compared to only 10% of poor blacks, 15% of poor Latinos and 24% of poor Asians. Minorities also live in neighborhoods with high levels of other social distress (high share of female head of households, high share of high school dropouts, high share of unemployed males and higher rates of crime victims).

C. The Battle for Desegregation in Metro Boston. Although the wars over desegregation in Boston happened three decades ago, the issues are still very much present in the metro area. A push by the City to return to neighborhood schools in 2004 ran up against serious resistance due to a belief that minorities thought their children would lose a chance to get access to the strongest schools located in whiter neighborhoods. Outside of Boston, the desegregation plans were the product of the state's Racial Imbalance Act (mandating that districts must devise plans to remedy segregation as it developed and offered state funding) and a voluntary student transfer policy, Metropolitan Council for Educational Opportunities ("METCO") (a program beginning in the 1960s allowing some Boston minority students to attend white suburban schools).

D. Boston Metropolitan School Demographics. Whites accounted for four of every five public school students in the inner suburbs and 91% in the outer suburbs with

Asians comprising the largest minority in the inner suburbs at 9% (2001-2002). In Boston (2001-2002), 15% of public students are white, 47% black, 28% Latino and 9% Asian. In inner satellite cities for the same period, 47% are white, 22% are black, 22% are Latino and 8% are Asian. The outer suburbs have more than seven times as many students than Boston. From 1989 to 2001, outer suburbs experienced an explosion of growth with an increase of enrollment of 31% while the satellite cities and inner suburbs each experienced growth in enrollment of mid to lower teens and Boston enrollment grew by only 5%.

E. Interracial Exposure of Students Across the Boston Metropolitan Area. Many students have relatively little exposure to students of other races given the extreme fragmentation of the metro area into many small school districts. Because most metro black students attend school in Boston and Brockton, 27% of black students attend segregated schools with zero to 10% white students. That number increases to 54% for Latino students in Boston. Lawrence has the highest residential segregation for Latinos in the U.S. Asian segregation patterns are bi-modal: 34% of Boston Asian students attend intensely-segregated minority schools while 12% of the city's Asian students attend schools where more than half the students are white. Some Asian subgroups attend schools in the suburbs with substantial white enrollment.

F. Double Segregation: Relationship between Poverty and Racial Segregation. Racial segregation is almost always accompanied by social segregation. Research has shown that segregated schools tend to have high concentrations of poverty. Almost all of the intensely segregated black and Latino schools had majorities of poor students compared to only 1% of intensely segregated white schools which had a majority of students in poverty.

G. Unequal Teacher Qualifications Reinforce Double Segregation. In the typical suburban school, 94% of the teachers were certified by the state. In the schools with similarly small poverty levels that were more than half nonwhite, only 69% of the teachers were certified. In schools with both high minority and high poverty enrollment, 22% of the teachers lacked certification. Teachers leave high poverty minority schools much more rapidly than middle class schools.

H. Triple Segregation: Isolation of English Language Learners. Students are also highly segregated by language. The average Latino English Language Learner (ELL) attends a school that is 47% Latino, more than three times the exposure of the average English Language Speaker to Latino student (14%). Asian ELL students experience on average more than three time as much exposure to fellow Asian students (25% versus 7%) as English speaking Asians. Both are even more isolated in Boston. Many of these students face isolation from whites, from middle class students and from fluent English speakers - three way inequality whose impacts are often compounded by other policies.

I. Segregation and Achievement Test Scores. Metro Boston tenth graders with few poor and minority students in their student bodies did well on the MCAS exam with, on average, 96% of such students passing on their first try. In contrast only 61% of

the students in intensely segregated minority, low income schools passed. In Massachusetts in 2003, 32 of 38 schools facing corrective action under the No Child Left Behind Act were predominantly minority schools with almost a third of these in Boston.

J. Segregation, Dropouts, and Dropout Factories. According to recent estimates, the dropout rate for students in the largest 47 urban districts is nearly twice the national average. Nationally, only about half of the blacks and Latinos are graduating from high school on time. In Massachusetts as a whole, graduating rates for low and high poverty schools differ by 28%. In Boston, less than half of the students in schools with high concentrations of poverty and minority students graduate on time (45%) compared to 78% of their peers in low minority schools. At a metro level in 2001, 67% of whites graduated on time, while 60% of Asians, 49% of blacks and 41% of Latinos graduated on time.

K. Segregation and the Path to College: The AP Dearth. AP courses are especially important factors in admissions and financial aid decisions made by colleges due to the uniform standards as set by the College Board. Among 217 metro Boston high schools, just 51 had 7 or more AP courses per 1,000 students. Highly segregated minority metro schools offered an average of 2.5 AP classes per 1,000 students.

L. Segregation, SAT, Applications, Admissions and Aid. Minority schools have lower SAT scores and their students apply to fewer colleges. The College Board reported in 2005 a 100 point gap between the state's white and black SAT scores in math and verbal tests. While Massachusetts does well nationally (first in 2005) there is inequality among high schools. Changes to both the state assistance program (the Adams scholarship was converted to a test based system from a needs based system) and the federal need based program, families with the greatest housing based wealth had critical advantages over those with less wealth. The gap between rising tuition for college and family incomes has left families with large unmet tuition bills that they can rarely meet. Unequal preparation, family wealth and aid - all of which are related to segregation- have powerful intergenerational effects, further locking in the vicious cycle.

M. How Education Affects Employment: Another Part of the Cycle. Education is strongly related to jobs and income has strong effects on all aspects of family life including the ability to pay for better housing. Studies and polls of employers in the Boston labor market indicate that education mattered greatly. Qualifications for entry level jobs were higher in Boston than in similar studies of metro Atlanta, Detroit and Los Angeles. More than a third of the employers said their requirements were likely to increase. The metro's huge dropout rate for blacks and Latinos is a crisis for the labor market. Integrated schools provide a better chance for nonwhite groups to better prepare themselves more effectively together.

Conclusion

Residential segregation in metro Boston has a large impact on intergenerational inequality by excluding young blacks and Latinos from the opportunities they need to have a fair chance for success. It is clear that this segregation is basically involuntary.

Crossing the color line is not sufficient unto itself, but it is a necessary first condition for achieving a successful and fair multiracial society. Housing and school opportunity are directly linked because most students are assigned to school on the basis of a residence. Few are given the opportunity to leave a municipality in which they live to attend school. This study shows that defects of the Boston metro hosing market mean that, although whites are free to purchase higher school quality by buying in more expensive and exclusive suburbs, blacks and Latinos with similar incomes and goals typically get far less. Their schools are systematically unequal - lower graduation rates, lower achievement gains, less powerful networks, connections to colleges and jobs and less success in higher education. These inequalities mean that the next generation of successful black and Latino families will have systematically less opportunity in the most important institutions outside their families - schools - which help determine their human capital and life chances. The existing trends clearly suggest more polarization, a large loss of talent and a downward spiral in terms of human capital and civic and social prospects as the population changes. However, none of these factors is inexorable. Clearly the huge movement of minority families outside the city of Boston has potential for better outcomes.

The challenge is to change the population flows so that each time a statistical snapshot is taken of the region, the inequalities are decreasing. The real need is for policies that would change the flows enough to create less desegregation and a spreading pattern of significant stable integration of housing and education. Since housing is the underlying mechanism of this intergenerational inequality, housing integration policies are, obviously, central to a solution. The complex of polices that could make a difference would address the market imperfections through an appropriate mix of law enforcement, sanctions, alternative policies, incentive and supports.

It is clear that changing some aspects of school organization and policies could help given that educational segregation is a basic component of the self-perpetuating cycle of segregation and inequality. The most radical form of desegregation, mandatory integration, tends to produce in increase of integration because it ends the incentive for white to flee to overwhelmingly white areas. Committed regional collaboration on metropolitan magnet schools, student transfer policies civil rights enforcement and housing and taxation policies would create much less racially polarized and unequal urban complex.

This study does not claim that school desegregation is the most powerful possible form of desegregation, only that it is the only one that can potentially be implemented quickly on a large scale through public institutions. Very positive experiences that deserve attention are the voluntary desegregation plan by the city of Lynn (allowing students to attend their local neighborhood schools if they wished and to transfer to other schools if the transfer decreased segregation but forbade transfers if they increased segregation), the special form of desegregation known as "special choice" implemented by the city of Cambridge (requiring all families to rank their preferred schools and then assigning student to hem randomly from among those making requests within racial guidelines) and the city-suburban voluntary desegregation policy known as METCO

(where over 30 Boston suburbs voluntarily receive about 3,200 minority students from the city).

Article 5. A Racial Equity and Opportunity Agenda for Metro Boston, Poverty & Race Research Action Council, March/April 2004, Nancy McArdle

In her article "A Racial Equity and Opportunity Agenda for Metro Boston," Nancy McArdle addresses the fact that although the 1990's witnessed a significant growth in the Latino, Black and Asian population of Boston, it remains the nation's third whitest metro area. The growth of the minority population in Boston did not result in greater integration and did not present greater opportunities for racial and ethnic minorities. Ms. McArdle notes that while African-American and Latino homebuyers often have less income than whites or Asians, affordability does not sufficiently explain the patterns of racial segregation evident in Boston.

Ms. McArdle suggests that the most insidious cause of segregation is overt discrimination in housing markets. In one Boston-based matched-pair audit study, it was shown that protected-class individuals were treated differently than white individuals. Latinos and African-Americans were discouraged from looking for homes in certain communities, were more often required to be pre-approved for mortgages, and were less likely to receive informal advice and information from realtors.

Existing programs to increase affordable housing are insufficient to combat the existing problem. Ms. McArdle suggests that if integration is indeed an important goal, local governments should provide additional funds to maintain neighborhood stability and amenities as the racial composition of a neighborhood begin to reach levels where whites begin to leave. Other mitigation strategies include efforts to promote access to quality schools, safer streets and better employment opportunities.

School segregation is another consequence. Eighty-five percent (85%) of the students in the Boston public schools are students of color. Despite efforts to maintain a racial balance in the city of Boston, the exclusion of black and Latino families from most residential suburbs results in a separate and unequal status for their children.

Ms. McArdle concludes that the Boston metropolitan area has the opportunity to become a model for other regions that face similar challenges, and that supporting stable integration as the Boston area continues to diversify presents an important challenge.

Article 6. Creating Balanced Communities: Lessons in Affordability from Five Affluent Boston Suburbs, Business for the Public Interest, February 2005, Susannah Levine

Housing costs in the Boston area are among the highest in the country. To compound this problem, the amount of developable land in suburban Boston is lessening, while construction costs continue to rise. As a result, Boston faces a great challenge with respect to the construction of a sufficient supply of affordable housing.

Chapter 40B, the Massachusetts Comprehensive Permit Law, plays an important role in alleviating this shortage. The law generally requires developers of affordable housing to bypass local zoning approvals and provides for review of zoning denials in communities with less than 10% affordable housing. Chapter 40B is responsible for the creation of 35,000 units of affordable housing since the 1970's.

This article highlights how five suburban Massachusetts communities - Andover, Lincoln, Concord, Lexington and Bedford have acted locally to meet the need for the availability of more affordable housing units. The basic demographics of each community are summarized, including population and median home sales price. The article profiles major multifamily developments that have been introduced in each community, each of which offers units designated as affordable housing units. The article also discusses local affordable housing resources in each community.

The article concludes that despite many obstacles, Boston suburbs have been steadily working toward successfully creating more diverse housing stock. The success of the suburbs is dependent on the following factors:

- Strong commitment of local government;
- Action-oriented housing plans with specific steps and timetable;
- Commitment of local residents;
- Creative use of town-owned land;
- Negotiation with developers;
- Use of inclusionary zoning policies;
- Collaboration with for-profit and non-profit developers;
- Creation of non-profit community land trusts and housing trusts; and
- An understanding that affordable housing can be done in a smart growth fashion.

Article 7. Integrating Affordable Housing with Sate Development Policy, NGA Center for Best Practices, Feather O. Houstoun

The availability of affordable housing is important to the overall health of a state's economy. The lack of affordable housing in a state can make it difficult for a state to attract and retain employees and businesses. Young, well-educated professionals may be required to leave an area due to the lack of affordable housing stock. Moreover, failure to provide affordable housing opportunities close to metropolitan areas leads to problems such as traffic congestion and increased infrastructure costs. Some state governors have recognized the importance of affordable housing availability and have started programs designed to make the construction of affordable housing a priority. The author points to programs instated by the governors of the states of Pennsylvania, Maine, Illinois, Iowa, Arizona and Minnesota.

These states strategies provide an outline for a "toolbox" of housing options that other states can draw from.

Funding for affordable housing is derived from a mix of public and private sources. The number of players – both private and public – result in significant complexity. Many states have addressed this complexity by creating "one-stop" state-run offices or agencies that are responsible for multiple programs. A single point of contact makes it easier for communities that are in need of affordable housing to find developers and financing sources.

Some states are finding that there are economic and social benefits to encouraging the development of housing in certain targeted development zones. In Massachusetts, former Governor Mitt Romney created the Office of Commonwealth Development, a "super agency" that is charged with the management of the commonwealth's environmental, transportation, housing and energy agencies as well as development policies. The Office has targeted areas close to Boston to advance the goal of providing more affordable housing to the commonwealth's work-force. The Office is able to coordinate the construction of new affordable housing units with the development of additional methods of public transportation.

The author concludes that state programs designed to increase the supply of affordable housing build on three steps. First, actions necessary to make affordable housing a priority in the region. Second, identifying key stakeholders, issues and indicators. Third, developing specific goals and action plans. Specific policies employed by many states include:

- Coordination of state agencies;
- Redevelopment of urban and older suburban areas;
- Reducing barriers to the construction of affordable housing; and
- Providing programs for the underserved segments of society (immigrants, minorities and the elderly).

Article 8. Promise and Challenge: Achieving Regional Equity in Greater Boston, PolicyLink, May 2003, Dwayne S. Marsh

This article explores the concept of "Regional Equity". Regional Equity generally refers to the promotion of a system that (i) provides children and families of all races and classes the best possible environment in which to live, (ii) reduces social and economic disparities among individuals, and (iii) reverses the inequitable patterns of development that concentrate poverty in certain areas.

Mr. Marsh cites several challenges to improved Regional Equity. The author states that historical influences such as the early decentralization of the greater Boston area and the suburbanization of many surrounding areas in the 1820's increased the difficulty of Boston and the surrounding towns to centralize responses to problems of affordability. The economic growth that Massachusetts experienced during the 1990's attracted many new residents that, in turn, worsened the affordable housing crises. Lack of adequate new housing created the third highest housing cost in the country. Furthermore, the elimination of rent control in the state in 1994 increased the challenge to build and maintain affordable housing.

To promote greater Regional Equity, the Greater Boston Action Committee, an alliance of urban and suburban groups, suggests the following priorities for action in dealing with the housing affordability crises in the greater Boston area:

- Strengthen and enforce Comprehensive Permit Law 40B;
- Require permanent affordability for all subsidy investments;
- Restore rent stabilization mechanisms.

Mr. Marsh suggests that Comprehensive Permit Law 40B would be more effective if the Commonwealth developed new financing initiatives to stimulate residential construction and infrastructure costs. Mr. Marsh also calls for the restoration of state rent stabilization mechanisms, including the use of tax-credits to reduce the total impact on landlords. Mr. Marsh calls for the expansion of the Implementation of the Community Preservation Act, which enables cities and town to add a surcharge to local property taxes in order to obtain and preserve historic open space. This concept could be extended to include land obtained for the purposes of affordable housing development in the urban core. Lastly, Mr. Marsh suggests that local universities link large-scale institutional development with the development or corresponding affordable housing.

Article 9. A Decade of Hope VI: Research Findings and Policy Challenges, The Urban Institute, May 2004, Susan J. Popkin, Bruce Katz, Mary K. Cunningham, Karen D. Brown, Jeremy Gustafson, Margery A Turner

This report is a summary of research on the achievements and failures of the Housing Opportunities for People Everywhere program. The creation of Hope VI in 1992 was contemporaneous with the election President Bill Clinton and the appointment of Henry Cisneros as the Secretary of Housing and Urban Development. Hope VI's mission was to identify severely distressed public housing projects and prepare an action plan to implement corrective strategies. The programs specific stated objectives were:

- To improve the living environment for residents of severely distressed public housing;
- To revitalize sites on which severely distressed public housing was located;
- To provide housing that would decrease the concentration of very low-income families; and
- To build sustainable communities.

The report explores several shortcomings of Hope VI, including the failure of the program to address issues relating to the appropriate targeting of limited resources, the impact of Hope VI on the larger affordable housing supply, the needs of displaced residents and the role of HUD and local housing authorities in addressing these needs, the role of race and ethnicity in limiting opportunities for affordable housing, and strategies to deal "hard to house" residents, including families with special needs.

The report begins with an exploration of the unfortunate conditions found in several central-city public housing developments. In determining whether public housing projects were "severely distressed", Hope VI identified public housing projects that suffered from dilapidation, vacancy, poor construction, managerial neglect, inadequate maintenance and the wear and tear of young children and vandalism. Severely distressed public housing projects also suffer from very high levels of drug trafficking and violent crime.

The reports continues with an overview of the fundamental changes in public housing policy that occurred in the 1990's and the development of Hope VI. Cisneros' tenure as the Secretary of HUD is characterized as a period of intense focus on broad public housing transformation. Under Cisneros' leadership, HUD encouraged the construction of new, lower-density developments as a replacement for existing distressed locations. Hope VI promoted a theory of "new urbanism" which challenged the way public housing was conceived. New Urbanism called for increased housing mix, the inclusion of shopping areas, parks and footpaths. In addition, the 1990's saw concerted efforts to reduce crime in public housing, including the creation of the Public Housing Drug Elimination Program and its "one strike" policy.

The report concludes that while Hope VI has achieved significant success, many improvements to the program are necessary. The shortcomings of the program include the failure to properly relocate existing residents at Hope VI sites, the failure of the

voucher program to adequately meet the needs of residents, the failure of the program to meet the needs of "hard to house" residents and families, and the failure of some housing authorities to implement Hope VI redevelopment plans properly.

Article 10. Statement of Fair Housing and Civil Rights Advocates on Hope VI Reauthorization

This statement is a set of constitutional and civil rights principles offered for consideration to parties interested in the reauthorization of the Hope VI public housing revitalization program.

- The authors support one-for-one replacement of vacated or demolished housing units. This will avoid even temporary displacement of residents.

- The authors support the involvement of residents in the planning process and the recognition that residents' interests are not monolithic, and will vary depending on the location of the applicable development.

- The authors support requiring public housing authorities to account for and track each family that is relocated, whether temporarily or permanently.

- The authors support every resident's right to be placed in a housing unit that is as good or better than the housing on the redeveloped site.

- The authors support the right of each resident to choose to return to the redeveloped site.

- The authors support the right of all current residents to relocate to an area where their race does not pre-dominate.

- The authors support the right of residents to have a meaningful and enforceable right to participate in decisions about the redevelopment.

- The authors support the replacement of units with units of comparable size. The demolition of units should not result in a smaller number of family units unless there is clear evidence that there is not a need for a larger number of family units.

- If a development is determined to be "distressed" as a result of physical factors and is located in a higher-income, non-minority or racially integrated area, then the revitalization plan should seek to retain as many units at the site as possible.

- If a development is determined to be "distressed" as a result of non-physical factors, but HUD does not consider it infeasible to develop on site, then no more replacement units should be built than is necessary to accommodate the preference of current residents to return.

- The authors support the requirement that each redevelopment plan take into consideration the extent to which public housing has operated to perpetuate racial and economic segregation.

Article 11. An Unfinished Agenda, Shelterforce Online, Issue #152, Winter 2007, Elizabeth Julian

Ms. Julian believes that the most effective response to recent U.S. Supreme Court rulings rejecting certain unconstitutional desegregation programs is to advocate more aggressive fair housing policies. Ms Julian believes that results can only be gained to the extent (a) the fair housing community and community development communities prepare a common agenda rejecting racial segregation, and (b) grass roots advocacy is developed that demands action at federal, state and local levels.

Ms Julian indicates that social and economic inequities cannot be explained solely through an examination of the effects of class. Racial disparities are apparent in almost every indicator of individual health and well-being. The legacy of historical segregation has resulted in, among other things, minority communities that are located in environmentally degraded areas, subjected to discrimination with respect to public services, avoided by private retail investment and subjected to under-funded schools and economic discrimination.

Ms Julian proposes an agenda to combat the problem of racial segregation in our communities. Ms Julian suggests that Congress should hold hearings and determine the extent and scope of the ongoing effect of segregation in communities. Ms Julian believes that specific Congressional findings will spur legislation. Ms Julian notes that while the legislative history of the Fair Housing Act makes it clear that one of the act's purposes was to address segregation, the act itself does not specifically mention segregation. Furthermore, Congress should evaluate all existing housing and community-development programs to determine whether they are designed to reduce segregation. The Hope VI program must balance the interests of current residents with the need to break the pattern of segregation that exists.

Ms Julian also calls for a more realistic implementation of the Section 8 voucher program and a more targeted use of vouchers as well as an amendment to the current Low Income Tax Credit program to more effectively balance community revitalization with the expansion of housing in higher-income areas.

Ms Julian indicated that fair housing organizations should refocus their advocacy on the systemic problem of institutionalized discrimination. Moreover, community development organizations should embrace gentrification efforts, rather than oppose them.

In conclusion, Ms Julian indicates that the time has come, in light of the 2008 presidential election, to deal forthrightly with the national legacy of segregation and its lingering effects on the promotion of fair housing.

Article 12. The Effects of Inclusionary Zoning on Local Housing Markets: Lessons from the San Francisco, Washington D.C. and Suburban Boston Areas, Furman Center for Real Estate and Urban Policy, NYU, November 2007, Jenny Schuetz, Rachel Melzer, Vicki Breen

Inclusionary Zoning ("IZ") is an affordable housing tool that links the production of affordable housing to the production of market-rate housing. Real estate developers who make a certain percentage of their housing units available and affordable to low- or moderate-income residents receive either cost offsets, such as density bonuses that allow the developers to build more units than permitted under conventional zoning, or fast-track permitting, which allows the developers to build more quickly. The IZ Study presents theoretical models and empirical evidence of the effects of IZ on the local housing markets in San Francisco, Washington D.C. and the Boston-area suburbs. The IZ Study addresses three primary questions.

(1) What kinds of jurisdictions have adopted IZ?

The study found that larger, more affluent jurisdictions are more likely to adopt IZ. The study also found that in suburban Boston, jurisdictions near other jurisdictions with IZ and jurisdictions with growth management policies and cluster zoning are more likely to adopt IZ.

(2) How much affordable housing has been produced in different IZ programs and what factors have influenced production levels?

The IZ Study determined that the strongest predictor of how many affordable units a jurisdiction's IZ program has produced is the length of time the program has been in place. Although nearly all IZ programs in the San Francisco area have produced some affordable housing units, the IZ Study found that 43% of the jurisdictions in suburban Boston with IZ programs have not produced any units and 33% are unable to report how many units have been produced. One possible reason for this disparity is that perhaps Boston jurisdictions have adopted IZ programs for reasons other than producing affordable housing, such as creating a mechanism to satisfy the requirements of Massachusetts General Laws Chapter 40B, which requires cities to provide expedited permitting and other benefits to developments that set aside a specified percentage of affordable units. Or, perhaps the disparity is a result of the fact that IZ programs are relatively new in suburban Boston. A final possible explanation is that many of the Boston-area programs are voluntary and apply to a narrow range of developments.

(3) What effects has IZ had on the price and production of market-rate housing?

The IZ Study found that in suburban Boston there is some evidence that IZ has constrained production and increased the prices of single-family homes. However, the study also found that the number of affordable housing units

produced under suburban Boston IZ programs and the estimated size of the IZ programs' impact on the supply and price of housing are both relatively modest.

The IZ Study concluded by providing policymakers with a number of points they should consider when deciding whether to adopt, and if so how to structure, IZ policies. First, each individual ordinance should be considered on its own merits. Additionally, many IZ policies produce affordable units, but IZ is not a panacea for solving a community's housing challenges. The researchers also found that more flexible IZ policies may lead to greater production of affordable units. Moreover, when policymakers are considering whether to adopt, and if so how to structure, IZ policies, the potential impact on the price and supply of market-rate housing should be considered. Additionally, policymakers should also consider that IZ policies that provide meaningful and achievable density bonuses or other benefits to offset the profits lost on affordable units should be less likely to impact adversely the price and supply of market-rate housing. Furthermore, different cost offsets may be needed in different communities and in different market cycles and these cost offsets need to work in practice, not just on paper. Finally, broad-based consultations with stakeholders may be helpful in designing effective policies and monitoring their implementation.

Article 13. Housing Affordability for Households of Color in Massachusetts, UMass Boston, December 2006, Michael E. Stone

The Housing Affordability Study examines the affordability situations of Latino-, Black-, and Asian American-headed households in 1990 and 2000 for Massachusetts as a whole and for such households in Metro Boston and the non-Boston remainder of the state in the year 2000. The study focuses primarily on the shelter poverty affordability standard, which takes into account household size and the cost of non-shelter necessities in determining how much households realistically can afford for housing, rather than the conventional 30% of income and 50% of income standards.

The Housing Affordability Study found that from 1990 to 2000 the increase in renter shelter poverty in Massachusetts was almost entirely among households of color. Moreover, although from 1990 to 2000 there was a tremendous increase in homeownership among all groups, there was also a tremendous increase in shelter poverty, particularly among homeowners of color. Additionally, in 2000, while nearly 27% of all households in Massachusetts were shelter poor, 55% of households headed by Latinos were shelter poor, 42% of Black-headed households were shelter poor and approximately 39% of Asian-headed households were shelter poor. Therefore, while in 2000 households headed by people of color accounted for only 13.5% of all Massachusetts households, shelter poor households of color accounted for 23% of all shelter poor households.

The study also found that renters of color outside of Metro Boston have higher rates of shelter poverty than do their counterparts within the metro area. However, this is not the case with homeowners of color. Rather, homeowner shelter poverty problems inside and outside of metro Boston pretty closely mimic what is true for the state of Massachusetts as a whole.

The Housing Affordability Study concludes that with regard to renters, policymakers should focus on income development along with housing support that is focused primarily in the cities and neighborhoods with concentrations of very low income renters of color. Moreover, with regard to homeowners, permanent mortgage relief programs should be implemented for shelter poor homeowners who cannot afford to pay their mortgages. Finally, the study concludes that policymakers should not focus on expanding conventional homeownership among households of color. Rather, policymakers should focus on promoting models of community and resident controlled non-speculative ownership, such as limited-equity cooperatives, community land trusts and mutual housing associations.

Article 14. A New Paradigm for Housing in Greater Boston, The Center for Urban and Regional Policy – Northeastern University, February 2001, Barry Bluestone, Charles C. Euchner, Gretchen Weismann

The Housing Report examines Greater Boston's housing crisis where vacancy rates are so low that home prices and rents are being bid up substantially faster than most household incomes. The report notes that not only are the poor in trouble, but also an increasing number of working and lower middle income families are afraid that they may be priced out of the Boston housing market. The report argues that this affordability gap can only be eased by a large increase in the supply of housing that is affordable to households of all income levels. The ultimate goal should be to provide enough new housing to keep prices and rents rising no faster, or even slower, than the rise in family incomes.

Although the Housing Report examines housing problems at various income levels, with respect to low-income families, the report suggests the following policy changes. First, at the building level, there could be tax abatements for owner-occupants of private market rate housing who voluntarily agree to keep rents at below-market levels. Additionally, policymakers could also develop programs that provide low or no-interest loans to rehabilitate housing units that will be rented at affordable rates. At the community level, to encourage cities and towns to adopt inclusionary housing, the state should pass legislation that provides legal protection to municipalities that choose to adopt inclusionary housing practices. Inclusionary zoning reserves a specific percentage of housing units for lower income residents at below-market rate rents in new residential developments. Additionally, local communities can provide increased density allowances, which would allow developers to build more market rate units on the same site, thereby adding to the profitability of the development. Local communities can also grant relief from parking or other permit requirements and allow developers to contribute money to an affordable housing fund as an alternative to building the units themselves. Additionally, cities and towns, as well as the state, could provide free land or subsidies to encourage developers to build more than the required percentage of lower income units. The state could also enact a "Good Neighbor" Municipal Housing Bonus, which would award special funding to cities and towns that produce new units of affordable housing. At the state level, the Department of Housing and Community Development's Individual Self-Sufficiency Initiative should be expanded to make more money available for new units for working homeless individuals. Additionally, the state should also focus on developing the Affordable Housing Trust Fund, which should be targeted at the most critical housing needs. At the federal level, there should be increased funding for the Low Income Housing Tax Credit. Finally, at the civil society level, there should be greater corporate investment in affordable housing production and religious organizations should expand their commitment to affordable housing.

Article 15. More than Money: The Spatial Mismatch Between Where Homeowners of Color in Metro Boston Can Afford to Live and Where they Actually Reside, Fair Housing Center of Greater Boston and The Civil Rights Project of Harvard, January 2004, David J. Harris, Nancy McArdle

The Affordability Study examines whether the patterns of residential segregation between whites and communities of color is simply due to affordability or if other factors are involved. The paper contains three sets of data analysis. The first, which uses data from the 2000 Decennial Census, models the spatial distribution of homeowners by race across the Boston metropolitan area as if the value of their homes was the only factor in determining where they live. The second data analysis uses information on mortgage loan amounts from the 1999-2001 Home Mortgage Disclosure Act datasets to predict the spatial distribution of recent homebuyers by race as if the mortgage amount borrowed were the only factor in determining where buyers purchased their homes. The final data analysis alters the loan-to-value ratios for different racial groups to acknowledge that minority groups who borrow the same mortgage amounts as whites may still be buying less expensive homes because of their inability to afford the same down payments. Each predicted distribution is then compared with the actual distribution to identify where certain racial groups are under- or over-represented and to what degree.

With regard to the first data analysis, the Affordability Study found that in the vast majority of municipalities, particularly beyond Boston and its inner and southern suburbs, the actual African-American share of owners is less than half of what would be expected based on what they could afford. However, in certain other areas, such as Boston, Randolph, and Milton, African-American owners are dramatically over-represented. Similarly, Latino owners are particularly under-represented in the far southern and western suburbs and over-represented in Boston, certain inner suburbs and certain satellite cities. Asian owners are particularly under-represented in the outlying suburbs but over-represented in western inner suburbs and certain satellite cities. Finally, there is a large over-representation of whites in the outer suburbs and under-representation in Boston, certain inner and southern suburbs and satellite cities.

The Affordability Study also found that the results of the second data analysis are similar to those of the first data analysis. African-American borrowers are greatly under-represented in the vast majority of municipalities but over-represented in Boston and certain inner and southern suburbs. Latino borrowers are also under-represented in the vast majority of suburban areas and over-represented in Boston, certain inner suburbs and satellite cities. Asian owners are under-represented in the farthest outlying suburbs but over-represented in Quincy and western and northwestern communities, particularly those along major highways. Finally, new white homebuyers are over-represented in far-flung suburbs to the north along the coast, to the south, and to the far west.

With regard to the third data analysis, although there is some reduction in the extent to which African-Americans and Latinos are over-represented in certain municipalities relative to what affordability would suggest, the overall pattern remains strong.

Based on the three data sets, the authors conclude that mere financial affordability fails to explain the concentrated residence patterns that currently exist. Rather, the concentrated residence and home buying patterns in the Boston metro area are attributable to more than money. Based on this conclusion, the authors provide various policy recommendations. First, policy makers must recognize that the Boston communities remain segregated and acknowledge the very likely possibility that this will not change without a concerted, coordinated and determined effort that focuses on removing any remnants of discriminatory practices and finding ways to attract and retain people of color in communities that they can afford but from which they are absent. On the state level, the Department of Community and Housing Development ("DCHD") should develop a new analysis of impediments that incorporates 2000 census data as well as recent studies showing the extent of the problem. The DCHD should also use its resources to ensure that all available tools are employed to address this situation. The authors also advocate for a continued commitment to Massachusetts General Laws Chapter 40B and the Low Income Housing Tax Credit. Additionally, the authors believe that banks should expand their outlook and reach to assist people of color to gain footholds in non-traditional communities through marketing and their relationships with realtors. Finally, local leaders in suburban communities should speak out in favor of initiatives designed to increase diversity and openly challenge exclusionary proposals.

Article 16. Is Acquisition Everything? Protecting the Rights of Occupants Under the Fair Housing Act, Harvard Civil Rights – Civil Liberties Law Review, Winter 2008

The FHA Acquisition Article focuses on a trend by courts to deny plaintiffs' housing discrimination claims under the Fair Housing Act ("FHA") because the discrimination occurred after the plaintiffs moved into their homes. The article notes that this trend started with the Seventh Circuit Court of Appeals decision in *Halprin v. Prairie Single Family Homes Association* ("*Halprin*"). In *Halprin*, a Jewish couple's home was damaged and sprayed with anti-Semitic graffiti by an officer of the neighborhood homeowners' association. The officer also used his position with the homeowners association to threaten the couple with legal sanctions, fines and the forced sale of their home. The couple alleged that they were the target of religiously motivated harassment and discrimination by the homeowners' association. However, Judge Posner, writing for the Seventh Circuit, dismissed the couple's substantive claims because the couple already owned their home at the time of the discrimination. Since the decision in *Halprin*, numerous other Federal courts throughout the United States have followed Judge Posner's reasoning. The author of the article argues that *Halprin* and the subsequent cases were wrongly decided and that the post-acquisition discrimination claims are covered by the substantive provisions of the FHA. The author believes that even though certain relevant provisions of the FHA require that the discriminatory conduct occur in the context of a "sale or rental," this does not limit the statute's application to a specific moment in time but rather limits the statute's application to defendants who exercise control over the plaintiff's housing situation. Therefore, under the author's proposed approach, renters and homeowners would be protected against discriminatory actions taken by landlords, property owners' associations and local governments, regardless of when the discrimination occurs. Thus, the author believes that courts should carefully analyze the identity of the defendant and the relationship between the parties when faced with a post-acquisition discrimination claim.

Article 17. Racial Integration and Community Revitalization: Applying the Fair Housing Act to the Low Income Housing Tax Credit, Vanderbilt Law Review, November 2005, Myron Orfield

The low income housing tax credit ("LIHTC") program permits investors to claim tax credits for developing or rehabilitating properties that will be rented to low-income tenants. Part of the LIHTC statute gives preference to allocating these tax credits to poor areas, which has resulted in many state agencies allocating the credits to areas with high concentrations of minorities and people with low incomes. However, the Federal Fair Housing Act of 1968 ("FHA") orders the federal government and all agencies involved in federally funded housing to "affirmatively further" fair housing, which has been interpreted by courts and agency regulations to require support of racial integration and to generally prohibit the federal government and its grantees from developing low-income housing projects in minority and low-income concentrated areas. Because of this interpretation of the FHA, the author of the article argues that allocating credits under the LIHTC program to racially segregated areas arguably violates the FHA and that therefore the FHA should be applied to the LIHTC program.

After describing how housing discrimination created segregated neighborhoods of concentrated poverty, and reviewing the history of the FHA and the application of LIHTC program, the FHA and LIHTC Article uses *In re Adoption of the 2003 Low Income Housing Tax Credit Qualified Allocation Plan* ("*In Re 2003*") as a case study. In 2002 and 2003, the New Jersey Housing and Mortgage Finance Agency ("HMFA") proposed qualified allocation plans. Critics argued that the plans would funnel the tax credits into city neighborhoods that were primarily segregated. In *In Re 2003*, the Fair Share Housing Center ("Fair Share") challenged HMFA's allocation method. One of Fair Share's arguments was that under the FHA the duty to promote fair housing applied to the HMFA via FHA regulations. HMFA responded that it need not comply with the FHA's affirmative duty because doing so would conflict with its duty to promote urban revitalization. HMFA also argued that adopting a plan that includes race would violate race-based remedy case law of the U.S. Supreme Court. The New Jersey Institute for Social Justice ("Institute") filed an amicus brief arguing that federal and state civil rights laws do apply to the LIHTC. The Institute further stated that because court decisions have found that the FHA's "affirmatively furthering" requirement applies to state and local agencies using federal funds, the FHA applies to the HMFA. However, the Institute also argued that although tax credits should be allocated to suburban areas, most of the credits should be allocated to urban communities. The appellate court found that the HMFA has a duty to administer the program in a manner that "affirmatively furthers" the purposes of the FHA. However, the court affirmed the legality of the HMFA's qualified allocation plan because the court held that the plan appropriately reconciled federal and state statutory directives to give priority to projects located in high poverty revitalization areas with the duty under the FHA.

Based on the *In Re 2003* decision, along with legislative history, other case law, and administrative materials, the author argues that the FHA's duty to "affirmatively further" integrated housing applies to all federal housing programs, including the LIHTC. However, the author also notes that there is substantial disagreement as to the scope of

this duty and its relationship to other statutory commands. The author believes that because of the importance and history of the FHA, the FHA's duty should be considered before all other duties and should be applied broadly to cover the LIHTC. For example, the LIHTC program provides a statutory preference that favors projects in qualified census tracts ("QCTs"), which are census tracts where at least 50% of the households have incomes of less than 60% of the area's median income. The author believes that the FHA's duty should be accorded priority over the LIHTC's QCT preference.

The author provides five supporting arguments as to why the FHA's duty should have precedence. First, the author argues that the duty to further integration must be considered before any other duty in order to be consistent with *Trafficante v. Metropolitan Life Insurance Co.*, where the Supreme Court held that the language of the FHA should be construed broadly and inclusively. Second, the author argues that allowing agencies who administer the LIHTC program to weigh the state duty to revitalize against other duties would be invalid under the Supremacy Clause of the U.S. Constitution, which provides that federal law is the supreme law of the land and that judges in each state are bound by federal law. Therefore, if there is a conflict between an agency's mission under state law and its duties under the FHA, state courts should find that the FHA mandate has priority. Third, the author argues that the legislative history and language of the FHA and the LIHTC statute support prioritizing the FHA's duty over the QCT preference. Fourth, the author argues that the U.S. Department of Housing and Urban Development siting regulations show the preeminence of the FHA's duty. The regulations severely limit the siting of public housing in high minority and resegregating neighborhoods. Moreover, the regulations also require that developers who wish to develop in a minority concentrated area prove that the area is free of discrimination. Finally, the author looks to case law as support that the FHA's duty should be prioritized.

The author concludes by providing recommendations for the features of a concerted revitalization plan that allows agencies to place tax credits in the QCTs while meeting the requirements of the FHA. First, the plan should further long-term metropolitan integration. Federal and state agencies should avoid building in segregated communities and communities that are in the process of resegregation. Instead, because the most expensive housing markets and new jobs are created in the whitest suburbs, the author believes that agencies should focus on building new units in school districts that have the highest and fastest growing white enrollment. Additionally, the plan should take into account opportunity structures, such as the availability of good schools and the proximity to good jobs. Finally, the plan should maintain affordable housing and racial integration in areas that are resegregating to all white.

Article 18. Housing Segregation Background Report: Brooklyn, New York from National Fair Housing Alliance, October 10, 2006

In 2003, the National Fair Housing Alliance's ("NFHA") conducted a twelve city enforcement project to test housing discrimination in real estate sales and rental markets. The Brooklyn Report provides specific information with respect to the results of NFHA's testing as well as background information as to the segregation in Brooklyn, New York.

NFHA investigation of real estate agents in Brooklyn, New York revealed that certain real estate agents steered homebuyers to certain communities and denied certain services to African American homebuyers. Specifically, the NFHA found that the Corcoran Group Real Estate, which is a member of NRT, Inc., the largest real estate brokerage company in the country, maintained a pattern of racial discrimination. Real estate agents provided more detailed and various financing options to White homebuyers. In addition, one agent provided White homebuyers with a map whereby he had indicated with a red magic marker the neighborhoods that they would want to live in, which were all predominantly White neighborhoods. In addition, NFHA has found that NRT, Inc. has a consistent pattern of discrimination throughout the country as indicated by the complaints brought in Georgia and Chicago, Illinois.

New York is an extremely racially and ethnically diverse city, but the city is not integrated. New York City ranks among the highest in the top 100 cities for White-Black segregation. The Black population is concentrated into specific areas of the city such as Harlem, south Bronx, eastern Brooklyn and Jamaica, Queens. In Brooklyn, 17 of the 37 zip codes have White populations over 50% and 13 of the 37 have Black populations over 50%. The steering behaviors of the real estate agents only serve to reinforce what is already a very segregated city.

The recommendations in the Brooklyn Report are identical to those set forth in the Long Island Report. More specifically, the NFHA recommends that a nationwide testing program be implemented in order to provide a systematic assessment of real estate agents and companies and take appropriate policy and enforcement actions. In addition, the NFHA recommends enforcement and education programs designed to ameliorate discrimination be developed from the results of the testing program. The final recommendation is for stronger whistleblower policies within the real estate companies. Realtors often commented to their customers that they were not supposed to tell them certain information about the neighborhood or schools, indicating that the realtors are aware that these practices are against the law. Strengthening the whistleblower policies will create better accountability within real estate companies.

Article 19. Housing Segregation Background Report: Long Island, New York, National Fair Housing Alliance, "Long Island Report", June 2006

The Long Island Report provides (i) information on a specific complaint filed against a real estate company in Nassau County, New York, which resulted from the National Fair Housing Alliance's ("NFHA") testing as to fair housing practices, and (ii) background information as to the extent of racial segregation and anti-Semitism in Nassau County.

NFHA conducted an investigation of real estate agents in Nassau County where White and African American testers were sent to various real estate companies with the intention of purchasing homes. The results of this investigation led to the filing of a complaint against Julia Stevens Realty located in Hewlett, New York on June 21, 2006. The complaint alleges that realtors showed homes in white neighborhoods to white homebuyers and homes in predominately black neighborhoods to black homebuyers regardless of the testers income. In addition to the racial segregation that was revealed through this testing program, the realtors were often found to make negative comments about Jewish neighborhoods. Nassau County has the largest Jewish population in New York at 17%. Furthermore, realtors often took the liberty of selecting homes in certain areas for the homebuyer based on the school district, which can be viewed as another way to reinforce or steer homebuyers to racially similar neighborhoods.

A major consequence of the racial steering practices of realtors and racial segregation in general is school segregation. Housing and school segregations have a reciprocal relationship since a segregated neighborhood will produce a segregated school and a segregated school will reinforce the segregated neighborhood. Fear of integration often results in White flight and this is further exacerbated by the steering practices of some real estate agents.

The NFHA recommends that a nationwide testing program be implemented in order to provide a systematic assessment of real estate agents and companies and take appropriate policy and enforcement actions. In addition, the NFHA recommends enforcement and education programs designed to ameliorate discrimination be developed from the results of the testing program. The final recommendation is for stronger whistleblower policies within the real estate companies. Realtors often commented to their customers that they were not supposed to tell them certain information about the neighborhood or schools, indicating that the realtors are aware that these practices are against the law. Strengthening the whistleblower policies will create better accountability within real estate companies. These recommendations will combat both housing and school segregation.

Article 20. 2006 Fair Housing Trends Report – Unequal Opportunity – Perpetuating Housing Segregation in America, National Fair Housing Alliance, April 2006

The 2006 Trends Report discusses the results of the National Fair Housing Alliance's (the "NFHA") real estate sales investigations throughout the country. In addition the 2006 Trends Report addresses the nexus of housing and education and the incidence of housing discrimination as well as provides recommendations for improved enforcement nationwide.

Between 2003 and 2005, the NFHA has conducted extensive testing with respect to the discriminatory practices of real estate firms. The NFHA was awarded a grant from HUD to conduct an investigation in the Northeast, South and Midwest. The investigation was conducted in 12 cities and involved 73 real estate sales offices. The investigation was conducted using 145 groups of paired testers to determine the quality, quantity, content of information and services offered or given to various potential homebuyers by housing service providers. The testing was done to determine if testers were treated differently as a result of their race or national origin. The testing revealed three patterns of discrimination: (i) outright denial of services to African – Americans and Latinos by real estate agents; (ii) real estate agents offering significant financial incentives to Whites, but not to African-Americans or Latinos; and (iii) real estate agents steering potential homebuyers on the basis of race and national original. These tests also revealed two other important practices to note: (i) real estate agents made illegal comments regarded religion and race, sometimes even admitting that these comments were illegal and (ii) schools were often used as a proxy for racial or ethnic composition of a neighborhood. For a more detailed analysis of these findings in the Northeast, please see the Long Island Report and the Brooklyn Report.

The 2006 Trends Report discussed the relationship between housing and education. The reciprocal relationship of housing and schools has a detrimental impact on both the quality of education and the neighborhood. Although an obvious point, segregated neighborhoods create segregated schools since schools draw their students from the surrounding neighborhood. Adversely, a school's socioeconomic and racial composition can lead to assumptions about the desirability of a neighborhood. The practice of steering by real estate agents perpetuates segregated schools and increases the demand for White neighborhoods with "better" schools.

As discussed in the Long Island Report and the Brooklyn Report, the NFHA recommends that a nationwide testing program be implemented in order to provide a systematic assessment of real estate agents and companies and take appropriate policy and enforcement actions. In addition, the NFHA recommends enforcement and education programs are developed from the results of the testing program that are designed to ameliorate discrimination.

The 2006 Trends Report estimates that there are at least 3.7 million instances of housing discrimination just against African-Americans, Latinos, Asian Americans, Pacific Islanders and Native Americans each year. Although the estimate is conservative

it is still quite a bit higher than the number of actual reported complaints, which in 2005 was 26,902. The number of complaints had actually decreased in 2005 since 2004, but NFHA posits that this is because of the significant decrease in the federal government's investment in private fair housing centers. Over ten centers closed in the prior five years due to a lack of funding. In addition, only fiver percent of the federal funds are allowed to be spent on education and outreach. Enforcement cannot be done without the critical components of education and outreach.

Article 21. 2007 Fair Housing Trends Report – The Crisis of Housing Segregation, National Fair Housing Alliance, April 2007

The 2007 Trends Report discusses the results of the National Fair Housing Alliance's (the "NFHA") real estate sales investigations throughout the country, a discussion of which can be found in the summaries of the 2006 Housing Trends Report, the Long Island Report and the Brooklyn Report and will not be repeated herein. In addition the 2007 Trends Report also discusses housing discrimination complaints for 2006, the ineffective enforcement of the Fair Housing Act and the social costs of segregation.

The 2007 Trends Report continues the discussion that was started in the 2006 Trends Report regarding the incidence of reported housing discrimination. In 2006, there were 27,706 complaints, which was the highest number of complaints on record since 2002. The NFHA estimates that this still only represents about 1% of the estimated 3.7 million instances of housing discrimination just against African-Americans, Latinos, Asian Americans, Pacific Islanders and Native Americans each year. The largest number of complaints is in the rental market with over 50% of the complaints in 2006 against apartment owners. The NFHA believes that the mismatch between the number of discrimination incidents and the number of reported complaints is in large part due to the lack of enforcement of fair housing laws. Private fair housing centers processed 63% if the complaints and HUD processed only 2,830 complaints in 2006. In addition to the low number of cases processed by HUD, another issue with HUD's handling of these complaints is the number of "aged" cases that are over 100 days old. The Fair Housing Act requires that cases that are not "complex" be processed within 100 days. In 2006, HUD reported that 1,172 cases had passed the 100 day mark. Another disturbing statistic which NFHA reported was that HUD only issued 34 charges in 2006. NFHA argues that a charge should be issued when there is reasonable cause to believe that there has been a violation, and does not need to pass the reasonable doubt standard. The 2007 Trends Report also states that the DOJ has filed fewer fair housing cases in recent years. The DOJ is supposed to pursue cases charged by HUD, but in many cases it has elected to complete its own investigations instead of relying on HUD, which delays or halts their ability to pursue the case. In addition, the DOJ has refused to take disparate impact cases since 2003. All of these factors have led to a decrease in the enforcement efforts among the relatively small number of reported incidents of fair housing discrimination.

The 2007 Trends Report discusses the improvements that have been made in segregation in the United States within the last 20 years. According to the U.S. Census Bureau there has been a nationwide reduction in racial segregation for African-Americans and Latinos. The improvements that have been made have to be considered in light of all of the statistics. In particular, the NFHA notes that although "Black isolation" declined by 12% in 50 metropolitan areas, "Blacks' exposure" to Whites only increased by 1%. Since there are many different indicators that social scientists use to measure segregation, the composite indicators first used by Massey and Denton in *American Apartheid* (1993) is the best tool for analyzing segregation. In *American Apartheid*, the term "hypersegregation" is used to describe a situation in which an area is deemed segregated on 4 out of 5 dimensions. There are 29 hypersegregated metropolitan areas.

The 2007 Trends Report goes on to discuss some of these metropolitan areas and other areas, such as Boston, that may not be hypersegregated, but still face great challenges. With respect to Boston, the 2007 Trends Report cites the research from the Joint Center for Housing Studies at Harvard's Kennedy School of Government and in particular, the finding that Black and White segregation remains high regardless of the household income indicating that it is more than just affordability that is keeping housing in the Boston metropolitan area segregated.

The 2007 Trends Report also discusses the impact that segregation has on communities. With respect to homeownership, Whites are able to accumulate more wealth through equity in their homes than other ethnic groups. Another consequence of segregation is that there is often a spatial mismatch between residence and job growth. Using Boston as an example again, the largest area for job growth is in the outlying suburbs where few non-Whites reside. There is also a mismatch between health care facilities and professionals and residence resulting in African-American communities receiving less medical treatment and having greater difficulty in accessing healthcare. And, finally, racial segregation has consequences for education since the lack of funding from property taxes deprives schools of resources.

The recommendations put forth by the NFHA in the 2007 Trends Report are substantially similar to the recommendations in the 2006 Trends Report, the Long Island Report and the Brooklyn Report. In addition, NFHA makes specific recommendations for HUD and the DOJ to improve their processing of claims and cases.

Article 22. The Geography of Housing Opportunity in Rhode Island: A Current Assessment of the Extraordinary Depth of the Affordable Housing Crisis in Rhode Island, Its Root Causes, And Solutions and The Need to Balance the Necessary Role of the Private Sector in Affordable Housing with Preservation of Other Important Planning and Land Use Prerogatives, National Fair Housing Alliance, "Rhode Island Report", October 2006

The Rhode Island Report addresses the affordable housing crisis in Rhode Island. Although Rhode Island passed the Low and Moderate Income Housing Act (the "Act") in 1991, the Act has done little to improve the situation for the residents of Rhode Island. The Rhode Island Report recommends improvements that can be made to the Act in order to better address the affordable housing crisis in Rhode Island.

Rhode Island ranks among the bottom 5 states in the percentage of households that are homeowners. In addition, there are approximately 35,000 moderate and low income housing units and there are approximately 175,000 moderate and low income households in Rhode Island. Renters in Rhode Island urban areas are on average paying 44% of their income for rent, which is much higher than the maximum recommendation of 30%. The Rhode Island Report cites these statistics and others to conclude that the shortage of affordable housing in Rhode Island is catastrophic.

In 1991, the Rhode Island General Assembly passed the Low and Moderate Income Housing Act because there was an "acute shortage of affordable, accessible, safe and sanitary housing for its citizens of low and moderate income...". The goal of the Act was for every city and town in Rhode Island to have at least 10% of its housing units be designated "affordable" and available to persons of moderate or low income. Along with this guideline, the General Assembly also expanded the power and flexibility of individual towns and cities to regulate zoning, land development and subdivisions. Note that this "fair share" housing legislation was enacted 20 years after most states adopted similar legislation in the 1970s. Cities and towns are required to meet the 10% requirement or provide a plan that they will eventually attain this goal or they will not be able to use the newly expanded zoning ordinance or subdivision regulations in full force. Cities and towns still have discretion to reject proposals for affordable housing if it is inconsistent with local needs, does not adequately address concerns for the environment and health and safety or is not in conformance with the municipalities comprehensive plan.

Since the Act has been passed the affordable housing crisis in Rhode Island has gotten worse. As of 2002 not a single municipality had developed or implemented a plan to meet the 10% goal of the Act. Only the ten urban areas of Rhode Island met the 10% goal as of the date of the Rhode Island Report. The high cost of developable land and exclusionary zoning practices that do nor permit more dense development even when the carrying capacity of the land is capable of sustaining it are critical components in the lack of success that Rhode Island has seen in meeting the 10% goal.

The author of the Rhode Island Report suggests a number of solutions to improve the affordable housing crisis. First, the author suggests that municipalities use "Smart

Growth" principles to permit higher density development where this would be consistent with the carrying capacity of the land and the existing infrastructure. In addition, communities need to recognize that because affordable housing typically accounts for only 20% of new developments and requires the affordable units to be indistinguishable from non-affordable units, there will be no impact on property values. In addition, the Act itself can be improved to enhance local control and prevent abuse by the suggestions posited by the author, a sample of which follows: improving advisory involvement of Planning Boards to oversee local zoning boards that do not have adequate experience, increasing the time period in which the public hearing must take place after a development application has been filed since most municipalities find the 30 day period cumbersome, changing the deed restriction on affordable units from 30 years to permanent, distinguishing between municipalities that have met the 10% goal and those that have adequate plans to meet this goal and giving municipalities the option of meeting some of the 10% goal by paying money into a pool for a regional arrangement.

Article 23. ***You don't know what you're missing...*** **A Report on Discrimination in the Greater Boston Home Sales Market, Fair Housing Center of Greater Boston, "Boston Home Sales Report", October 2005**

In 2004 and 2005, the Fair Housing Center of Greater Boston (the "Fair Housing Center") conducted a sales audit by sending pairs of testers to regional real estate companies to determine if there were variations in the quality, quantity and consent of information and services offered to potential homebuyers. This sales audit was spurred by recent research regarding housing discrimination in the greater Boston region. In particular the Boston Homes Sales Report discusses three important studies. First, the report by Guy Stuart in which he analyzed Home Mortgage Disclosure Act data from 1993 to 1998 found that although minority populations were moving out of Boston, they were concentrating in a very limited number of communities. The Harvard Civil Rights Project analyzed 2000 census data and found that even as the population of color in the city was increasing, the rate of segregation had also increased making Boston "the third whitest" of all metropolitan areas. Finally, the Boston Home Sales Report sites the 2003 report by the Director of the Fair Housing Center, David Harris, and Nancy McArdle of the Harvard Civil Rights Project entitled "More than Money", which analyzed data on homeownership and mortgages to determine that African Americans and Latinos are greatly overrepresented in certain areas regardless of affordability and concluding that affordability alone does not explain racial concentration patterns. This research indicated to the Fair Housing Center that there was a need to study the experience that potential homebuyers were having in the greater Boston region.

Testing is an important tool in understanding how pervasive discrimination is within the region. Since enforcement is complaint driven it is often difficult to know when discrimination in the housing market is taking place. The reasons for the low incidence of complains may be because African American and Latino individuals may not realize that they are being treated differently then their White counterparts; and second, discrimination is often underreported for many reasons, including the fact that finding a home is often a stressful process and individuals do not have the time or energy to file the necessary complaints. The Fair Housing Center designed this sales audit to determine the level of segregation in the Boston region sales market and to start a dialogue on ways to improve access to housing for minority populations.

The test was designed in two stages. The audit consisted of 12 preliminary paired tests conducted in January 2004 and 24 paired tests conducted between January and May 2005 for a total of 36 paired tests. Testers inquired about 14 cities and towns across the region. Testing occurred in cities and towns where the population of color was much lower than what would be predicted based on affordability alone. The Fair Housing Center chose two to three agencies in each town which were franchisees or affiliates of large real estate brokerage firms active in the region. .During the first stage of the audit, testers called and dropped in on real estate offices making general inquiries. In the second stage of the audit, the testers requested to speak with the same agent inquiring about a specific home. Testers of color were pre-approved for a mortgage in an amount at least $15,000 higher then white testers. White testers were only pre-qualified for mortgages. All testers were first time homebuyers.

Overall the audit found a pattern of difference in treatment in 17 of the 36 matched paired tests. The differences can be divided into four categories: (i) access to agents, (ii) access to properties and listings, (iii) mortgage requirements and (iv) encouragement versus screening. With respect to access to agents, the basic pattern indicated that white homebuyers were given more information regarding their agents on the initial inquiry. For example, one real estate company was willing to give a Latino homebuyer the mobile phone number of an agent, but willing to give the home phone number of the same agent to the white homebuyer. In addition, the listing agents more often tried to be the buyer's agent for white homebuyers than for homebuyers of color. White homebuyers were given greater access to properties often seeing many more homes than their African American or Latino counterparts. In addition, 7 out of 9 agents provided email listings only to white testers and not their African American or Latino counterparts, and in 8 of 14 tests real estate agents provided the homebuyer with substantially more access to listings through email. With respect to mortgage requirements, real estate agents more often required African American homebuyers to be pre-approved for a mortgage before showing them any homes. White homebuyers were able to see homes with just the pre-qualification or were not asked about mortgage qualification before showing them homes. Finally, real estate agents often used "screening" questions to determine if African American homebuyers were financially able to purchase the home and why they wanted to live in the particular neighborhood. White homebuyers were often encouraged to make an offer and told that that the sellers are willing to negotiate the price. In all four of these areas, white homebuyers were treated differently then the African American and Latino counterparts in approximately 50% of the tests.

Although the audit did not reveal any overt racial discrimination, it did reveal striking inconsistencies in the treatment and services provided to white and colored homebuyers. The inability to gain access to home listings and to see homes on the market greatly impacts the housing opportunities of African American and Latino homebuyers. The actions of real estate agents are subtle and would not necessarily be obvious to an African American or Latino homebuyer, but are quite clear to the Fair Housing Center. In addition, the results of this audit show approximately 50% of the time homebuyers of color are treated differently and this is consistent with other audits that have been done in the greater Boston region. The Boston Home Sales Report is entitled "You don't know what you're missing..." and this title indicates that homebuyers miss out on opportunities as a result of the practices of real estate agents; and conversely that real estate agents miss out on opportunities to sell homes to minority first time homebuyers, which is an increasingly large segment of the home buying population. Going forward, the Fair Housing Center recommends continued ongoing testing, comprehensive training for real estate agents and other housing providers, developing stronger internal practices and procedures for agencies and large companies, developing more comprehensive training programs for housing providers and the need for extensive outreach and education for homebuyers.

Article 24. Addressing Community Opposition to Affordable Housing Development: A Fair Housing Toolkit, "Community Opposition Toolkit", 2004, Sara Pratt, Michael Allen

Housing developers often face community opposition to affordable housing. This opposition reflects concerns from the community that their lives will change for the worse. Although sometimes these concerns are concrete and rational, they are more often rooted in stereotypes and anxiety about the new residents. The Community Opposition Toolkit provides resources, behavioral techniques and responses to deal with this opposition.

One effective approach to dealing with community opposition it for developers to take a more active role in anticipating and managing the opposition rather than waiting to respond to specific issues as they arise. Developers need to present to the community facts that specifically address concerns the community may have as to property values, the design of affordable housing, the impact on schools, and potential for an increase in crime and a decrease in personal safety. Many of these issues can be addressed by presenting the community the real facts and not relying on the stereotype; i.e. there are several studies that show that affordable housing does not impact property values. In addition, developers can benefit from a campaign to develop community support from the beginning of the process which will require researching the community and the possible opposition, understanding the zoning process and understanding the history of the neighborhood. The Community Opposition Toolkit provides a step-by-step guide to creating and implementing an effective campaign.

The Fair Housing Act has prohibited zoning discrimination since 1988. The Fair Housing Act will protect developers in the event that they are discriminated against because of a zoning decision based on race, religion, national origin, familial status, sex or disability. In the event that developers thinks that they have been a victim of discrimination, they can bring their claims to HUD or the DOJ for further action; however, the Community Opposition Toolkit endorses a number of ways to avoid litigation. if possible.

The Community Opposition Toolkit provides developers with a summary of their legal rights under the First Amendment and other laws in order to deal with outspoken critics. Also, the toolkit sets out strategies for public hearings and how best to deal with the opposition at the hearing, including trying to control the agenda, encouraging local officials to manage the hearing, and being courteous and respectful. At the hearing the developer should have a well thought out presentation to make to the zoning board and the community as well as written materials to support their position.

Since there is little affordable land available that is zoned for multi-family residence, it is very likely that a developer will need to deal with the local planning and zoning board. Planning and zoning is traditionally a local matter that generates a great deal of citizen involvement. Therefore, zoning board officials are often aware of the views of their constituents. It is important for developers to understand who all the

players are and how each might influence the decision. This is another key aspect in being able to successfully deal with community opposition.

A combination of federal and state regulations that improve the land use process and ensure equitable treatment of minority groups and organizations that have developed new approaches to managing local opposition has led to an increased ability for developers to be successful in building affordable housing. In the event that the developer is not successful, the Community Opposition Toolkit also discusses a number of alternatives.

Article 25. The Seattle/Louisville Decision and the Future of Race-Conscious Programs, Poverty & Race Research Action Council, "Seattle/Louisville Report", July/August 2007, Philip Tegeler

The Seattle/Louisville Report is a commentary from the Poverty and Race Research Action Council ("PRRAC") on the Supreme Court's decision in *Parents Involved in Community Schools v. Seattle School District No. 1* (the "Seattle/Louisville Case"). The Supreme Court heard two school preference cases on a consolidated basis. The Seattle case was brought by Parents Involved in Community Schools against Seattle School District No. 1 claiming that the racial tie-breaker used to determine whether students would be awarded their school preference violated the Equal Protection Clause of the 14th Amendment as well as the Civil Rights Act of 1964. The Supreme Court also heard the case of *Meredith v. Jefferson County*, in which a parent made a similar challenge to the Jefferson County, Kentucky system of assigning students to a school and then requiring them to transfer schools to meet the race guidelines for the school district. The divided decision by the Supreme Court limited the ability of schools to use race as a factor in determining school assignments, which will limit integration programs across the country.

The PRRAC is critical of the Supreme Court's decision and is concerned that the court is close to dismantling state and local power to undertake race conscious programs on a voluntary basis. Although the Seattle/Louisville Report recognizes that the Supreme Court's majority decision supports the principle that racial integration is a compelling government interest, the court does not allow the government to take race conscious steps if those actions classify individuals on the basis of race in the allocation of educational benefits. More disturbing than the decision is the plurality's hostility toward remedial race-conscious measures. In addition, the plurality does not distinguish between steps that the government may take voluntarily and what they are required to do in light of a finding of "de jure" segregation. The precedent cases use a finding of "de jure" segregation to require school districts to implement integration programs and this finding is not necessary when a school district voluntarily employs a race conscious program.

The Seattle/Louisville Report urges the public not be discouraged or complacent about the Supreme Court's decision in the Seattle/Louisville Case. Although the decision did not alter the ability of a school district to create integrated schools based on socio-economic factors, PRRAC does not believe only these factors may be relied on to curb educational isolation that occurs from both race and poverty. The PRRAC is actively looking into alternative methods to improve racial integration in schools and communities, citing the link between schools and housing as critical. In addition, PRRAC recommends the use of voluntary inter-district approaches such as the one used in Boston's METCO plan as a tool to improve racial integration.

Article 26. Senate Bill Would Update and Streamline Housing Voucher Program; Improves on House Bill Passed with Strong Bipartisan Support, Center on Budget and Policy Priorities, February 2008, Will Fischer and Barbara Sard

On March 3, 2008 bill S. 2684 was introduced in the United States Senate the effect of which, if signed into law, would significantly change the "Section 8" Housing Choice Voucher program (the "Program"). The bill is entitled the Section 8 Voucher Reform Act ("SEVRA"). The bill closely resembles H.R. 1851 that the United States House of Representatives passed on July 12, 2007 by a vote of 333 to 83. However, one major difference between the two bills is that the Senate bill omits a House provision to expand HUD's Moving-to-Work ("MTW") demonstration to include up to 80 state and local housing agencies, from up to 29 agencies today. MTW (which the House bill would rename the Housing Innovation Program, or "HIP") seeks to promote innovative housing policies by allowing agencies to operate their voucher and public housing programs without regard to many federal statutes and regulations. A number of the policies that MTW allows agencies to test, however, could have adverse effects on vulnerable families, such as alternative rent schemes that require sharply higher payments from some tenants and time limits that cut off subsidies even for working-poor families who cannot remain in their homes without assistance. The House HIP provision, which could affect as many as one third of all voucher holders and public housing residents in the nation, would place far more tenants at risk of harmful consequences than is necessary to test innovative policies. Moreover, the evaluation requirements of the House provision are not sufficiently rigorous to ensure that the program will fulfill its purpose as a testing ground for future housing policies. A HIP provision will likely be added to the Senate bill later in the legislative process; to build upon, rather than undermine, the improvements made by SEVRA's other components, it will be important that such a provision limit HIP to a size that is appropriate for a demonstration

As background, the last major authorizing legislation affecting the Program was the 1998 Quality Housing and Work Responsibility Act. The Program is the centerpiece of the nation's low-income housing policy and assists approximately two million families. Families generally use vouchers to rent modest housing of their choice in the private market. Voucher programs have been found by studies to reduce homelessness, overcrowding and frequent moves from apartment to apartment and to help families move to lower-poverty neighborhoods with better schools, more jobs, and less crime. The Office of Management and Budget assessment of the Program in its fiscal year 2009 budget documents found it to be "one of the Department's and the Federal Government's most effective programs" and stated that that it "is widely recognized as a cost-effective means for delivering decent, safe, and sanitary housing to low-income families."

SEVRA represents a carefully crafted effort to update and improve certain aspects of the Program while retaining features that have proven effective. Some of the most important SEVRA provisions would

- **Stabilize and make more efficient the voucher funding system.** From 2004 to 2006, voucher funds were allocated using inefficient formulas which resulted in

the number of low-income families using vouchers to be reduced by approximately 150,000. In appropriations legislation in 2007 and 2008, HUD was required to match voucher funding more closely to each agency's actual needs based upon the cost of such agency's vouchers in the preceding year. SEVRA builds on this by

(i) **establishing an ongoing policy of renewing each agency's funding based on the cost of their vouchers used in the prior year.** This will provide agencies and families with a more stable and reliable source of vouchers year to year.

(ii) **limiting the amount of unspent funds that could be held in reserve by agencies from one year to the next.** From 2005 to 2007, housing agencies were permitted to accumulate unlimited amounts of unspent voucher funds which many did to insure against future funding shortfalls.

(iii) **rewarding agencies that most effectively utilize their voucher funds.**

(iv) **providing temporary advances for agencies that use all of their voucher funds.** The additional funds would be borrowed from the following year's funding.

(v) **requiring that HUD allocate administrative fees primarily based on the number of vouchers the agency put to use in the previous year.**

Under these bills, Congress would still determine the amount of annual program funding and so the foregoing incentives to serve additional families would not necessarily increase the cost of the Program. SEVRA also authorizes the expansion of the Program by 20,000 "incremental" vouchers per year for five years. However, such incremental vouchers would be created only if Congress included the funding of such vouchers in future appropriations bills.

- **Simplify rules for setting tenant rent payments**. Tenant's in the HUD housing assistance programs generally must pay thirty percent of their income for rent after certain deductions are made. Both bills would streamline the process for determining tenants' incomes and deductions (although an amendment to the House version allows agencies to establish alternative formulas for setting rents so long as no family pays more than it would pay under the regular program thus creating administrative burdens on agencies which will be required to make two calculations). Most significantly, SEVRA would

(i) **reduce the frequency of required income reviews.** SEVRA would allow agencies to review the income of tenants with fixed incomes (e.g., Social Security, private pensions) every three years rather than every year. Interim recertifications could only be

requested by families where their annual income drops by $1,000 or more.

(ii) **simplify deductions for the elderly and people with disabilities.** Currently, agencies and owners are required to deduct medical expenses and certain disability assistance expenses that exceed three percent of a household income where the head of household is elderly or disabled. SEVRA would increase the threshold for medical and disability assistance deductions from three percent to ten percent of such annual income while increasing the easier to administer standard deduction from $400 to $700 (Senate bill) or $725 (House bill) per household and index it for inflation. Raising the deduction threshold will substantially reduce the number of itemized deductions that would need to be verified while still providing some relief for tenants with extremely high medical or disability assistance expenses.

(iii) **replace complex work incentives with a simple and equitable earnings deduction.** The House bill would eliminate the deduction for child care expense (which evidence suggests is implemented inconsistently) and a complex provision for deducting all or a portion of earnings for certain voucher holders that recently began working. The Senate bill would retain a deduction for child care expenses that exceed five percent of a family's income. In their place, both bills would provide that all working families would have ten percent of their earnings over a threshold deducted (House threshold is $9,000; Senate threshold is $10,000).

(iv) **base rents on a tenant's actual income in previous year.** Currently rents are based on projected tenant income over the period that the rent will cover. The Senate bill would require agencies to base rents on a tenant's actual income in the previous year while the House would require agencies to use prior-year earnings and would allow agencies to decide whether to include the tenant's prior-year or anticipated unearned income.

- **Streamline housing quality inspections rules to encourage private owners to participate in the Program.** The SEVRA bills would allow agencies to make changes in the inspection process used to ensure that houses or apartments meet federal quality standards. SEVRA would allow agencies to (i) inspect apartments every two years instead of annually, (ii) rely on recent inspections performed for other federal housing programs, and (iii) make initial subsidy payments to owners even if the unit does not pass the initial inspection (so long as the failure was not due to life-threatening conditions) with such defects being corrected within thirty days.

- **Protect tenants of owners who face financial difficulties.** Currently, if an owner does not make utility payments or repairs, the related agency must terminate subsidy payments and the family is forced to move creating family disruptions. Both bills would suspend subsidy payments for a few months or until the payments or repairs are made. Families remain in their homes in the interim. The House bill would allow agencies to use subsidy payments to repair any significant defect while the Senate bill would only allow such diversion of payments if the repair was life threatening. The Senate bill would allow the agency to divert such payments to pay delinquent utility bills in order to maintain service.
- **Facilitate use of "project-based" vouchers.** The SEVRA bills would facilitate agreements between housing agencies and owners of housing developments for a share of an agency's vouchers to be used at such project. For example, the bills would eliminate certain unnecessary procedural requirements and reconcile conflicting rules with the Low-Income Housing Tax Credit. Through such project based vouchers, agencies can partner with social service agencies to provide supportive housing for homeless people or the development of mixed use housing. Agencies would also have greater flexibility to preserve housing previously subsidized through other federal programs.
- **Expand housing choice.** The current voucher system allows families to use vouchers to rent housing anywhere in the country where there is a voucher program. SEVRA contains provisions to address barriers that exist for families to use such vouchers in new locations of their choice. One such barrier arises because the agency that first issues a voucher to a family must continue to cover the cost of the voucher after the move unless the agency in the new site voluntarily agrees to absorb the voucher. SEVRA would require the destination agency to absorb the vouchers while allocating additional funding to those agencies to cover resulting costs. Another such barrier arises because local agencies often have little capacity to help families find housing in a region beyond their jurisdiction. The Senate bill would give agencies that provide voucher assistance on a regional basis preferential treatment in the allocation of the new incremental vouchers included in the bill and would allow agencies to transfer some vouchers to agencies in the same or neighboring metropolitan area or county for use in project based voucher developments. Finally, the SEVRA bills require HUD to set Fair Market Rent (used by HUD to establish in local areas the maximum amount of rent a voucher can cover which limit has a ten percent cushion) using smaller geographic areas with more uniform rental costs. The result is that voucher payments will be more closely calibrated to local rental costs which will increase access to housing in lower-poverty neighborhoods.
- **Promote homeownership.** The SEVRA bills would allow vouchers to be used to cover loan and insurance payments and other periodic costs of buying a manufactured home in addition to the cost of renting space for a manufactured home. This would expand the coverage of vouchers from the current system which allows coverage for the full range of periodic homeownership costs for the purchase of a traditional home or a manufactured home set on land owned by the

family. Although this option is likely to be used in a limited number of occasions, the bills would allow a family, with the approval from its housing agency, to use its voucher to pay as much as $10,000 in a single lump sum toward a down payment on a house.

- **Strengthening the Family Self-Sufficiency Program (the "FFS Program").** The FFS Program encourages work and savings among voucher holders and public housing residents through employment counseling and financial incentives. To reverse a recent decline in enrollment in the FFS Program due to numerous changes in the criteria for allocating funds to the FFS Program by HUD, the SEVRA bills provide a stable, dedicated source of funding for FFS Program staff.

The Senate SEVRA bill like the House bill would build on the Program's many strengths through a series of measured, targeted improvements and, moreover, would improve the public housing and project based Section 8 programs as well. If an expansion of the Moving-to-Work demonstration is included in the final bill, it will be important that such expansion be on a more manageable scale than exists under the House bill and that the evaluation requirements be strengthened. If this is done and the bills' other policy changes are maintained, SEVRA will provide significant benefits to the four million families served by the nation's major low income housing assistance programs.

Article 27. The Section 8 Voucher Reform Act (SEVRA): An Overview from National Low Income Housing Coalition, February 13, 2008

Legislation to reform the "Section 8" Housing Choice Voucher program passed the House in July 2007 by a strong bipartisan vote, 333-83. A companion to the Section 8 Voucher Reform Act (SEVRA) will be introduced soon in the Senate, and may be considered by the Banking Committee in the next few months.

Housing Choice Vouchers are the nation's leading source of low-income housing assistance, serving nearly two million households, including families with kids, the elderly, and people with disabilities. Ten years have passed since Congress has done a serious review of the voucher program to make sure it has kept up with changing needs. SEVRA will help the program continue to meet its mission of providing access to affordable housing to millions of Americans, while enhancing its effectiveness. Here are some highlights.

- **A comprehensive solution for voucher funding.** SEVRA establishes a clear funding policy to restore stability to a program that has experienced many financial ups and downs in recent years.
- Consistent with the last two appropriations acts, it provides each agency with an **annual budget based on vouchers in use** and their average cost in the prior year. This ensures that every agency has enough funding to renew its vouchers, while not wasting scarce federal resources on vouchers that go unused.
- SEVRA allows agencies to retain a modest level of **reserves** and provides agencies facing unexpected shortfalls with access to a **temporary advance**, to be repaid the following year. This flexibility ensures that sudden market shifts do not prevent agencies from keeping commitments to tenants and owners.
- SEVRA reforms the financing of "**portability**" moves, so families can more easily exercise their right to move with a voucher and agencies can save burdensome paperwork and avoid cash-flow problems.
- **Simplified rent rules.** SEVRA simplifies the rules governing the calculation of rents in public housing, project-based Section 8 properties, and the voucher program. Tenants would still be required to pay 30 percent of their income, but the bill streamlines the process for determining incomes and deductions, to reduce burdens on housing agencies, tenants, and private owners of subsidized housing. Income of families on fixed incomes would only have to be recertified every 3 years.
- **Streamlining inspections and promoting affordable housing development.** SEVRA makes it easier for landlords to participate in the voucher program, by requiring inspections only every two years rather than every year, and by allowing families to move in right away if a property has been determined to meet other federal housing quality standards (such as for tax credit properties). SEVRA also facilitates the commitment of vouchers to private developers of affordable housing, through improvements to the project-based voucher

option that also will make it easier to use with Low Income Housing Tax Credits.

- **Improving housing conditions and promoting family stability.** SEVRA encourages owners to repair defects and gives housing agencies new tools to ensure housing is safe, which will improve the housing stock and allow more families' to stay in their homes. Families that have to move due to bad conditions are assured of sufficient time and assistance to succeed in using their voucher in a new home.
- **Enhancing cost-effectiveness.** SEVRA encourages housing agencies to make the best possible use of federal funds, by compensating them with administrative fees based on how many vouchers they actually lease. The bill also directs HUD to set Fair Market Rents for smaller communities, rather than vast metropolitan areas, to ensure that voucher payment standards accurately reflect local market conditions.

Article 28. Discrimination Against Participants in the Housing Choice Voucher Program: An Enforcement Strategy, Poverty & Race Research Action Council, January-February 2008, Isabelle M. Thabault and Eliza T. Platts-Mills

In April 2005, the Washington Lawyers' Committee for Civil Rights & Urban Affairs (the "Lawyers' Committee"), on behalf of the civil rights advocacy group the Equal Rights Center, filed three complaints in the Washington, D.C. Superior Court alleging area landlords had violated the DC Human Rights Act by refusing to rent to tenants who participate in the Housing Choice Voucher Program (the "Program"). The cases are based on testing conducted by the Equal Rights Center. The Program is a federally-subsidized rental housing program designed to assist low-income families in moving from high-poverty to lower-poverty neighborhoods through use of a rental assistance voucher. The voucher can be used to pay part of the participant's rent and "travels" with the family in its search for housing. It is distinguished from the Section 8 project-based program in which individual units are subsidized and participating families must live in those subsidized units. HUD oversees the Program which is administered by local public housing authorities.

The Program enables families to rent housing in the private market provided the housing is within certain rent maximums and meets other program requirements. Federally-defined standards for housing vouchers set maximum "Fair Market Rents" for the relevant metropolitan area, rents deemed reasonable compared to the rents for similar housing in that area. Households participating in the Program pay 30% of their gross monthly income (adjusted to account for factors such as disability, dependents or excess medical costs) towards their monthly rent; the remainder of the rent is paid directly to the landlord by the local public housing agency. In tight real estate markets, voucher-holders have a difficult time finding eligible rental units within the rent maximums. Compounding this problem is the refusal of some property owners and local real estate and property management companies to rent to applicants with housing vouchers. Landlords and management companies often refuse to rent to voucher households based on stereotypes about households who participate in public assistance programs. According to the 2004 Metropolitan Washington Council of Governments Assisted Housing Survey, 97% of households using housing vouchers in the District of Columbia are African-American. 2000 Census figures indicate that among District of Columbia residents who rent, approximately 58% are African-American. Thus, a rental policy of not accepting housing vouchers has a significant disparate impact based on race.

Since 1977, the DC Human Rights Act has prohibited private landlords from discriminating against tenants based on "source of income," which is defined to include money secured from federal payments and specifically includes monetary assistance provided under the Section 8 program. In addition to the District of Columbia, 11 states (California, Connecticut, Maine, Maryland, Massachusetts, Minnesota, New Jersey, North Dakota, Oklahoma, Utah and Vermont) and numerous local governments, including Montgomery County and Howard County, Maryland, have enacted fair housing laws that prohibit source-of-income discrimination.

From 2003 through 2005, the Equal Rights Center ("ERC") conducted testing of rental properties in the District of Columbia. The ERC identified advertised rental properties with rents at or below the Fair Market Rent. The testers then contacted the housing provider listed in the advertisement to inquire about the availability of rental housing and disclosed that they would be using a housing voucher to pay part of the rent. Testers conducted 108 tests and contacted 75 apartment buildings and 13 property management companies. The investigation focused on determining the extent of discrimination against voucher-holders, as well as determining the variety of responses a voucher-holder may face when attempting to use his or her housing voucher. The testing results revealed a surprisingly high level of blatant illegal discrimination against voucher-holders. In 58% of the tests, landlords either refused to accept vouchers, or placed significant limitations on their use. In 26% of the calls, the landlords or rental agents flatly told the testers that vouchers were not accepted as a form of rent payment under any circumstances. In 32% of the test calls, housing providers stated limitations or differential terms on use of the voucher that would prevent many or most voucher-holders from renting the available units, including that: an apartment building had reached its capacity for voucher-holders; rent was higher for voucher-holders; or only apartments of a certain size were available to voucher-holders. In some cases, testers were told that voucher-holders, who qualify for the housing subsidy by virtue of their low income, could be accepted for tenancy only if they earned as much money as non-voucher applicants. Some agents also indicated that their building did not pass code inspection. In 5% of the calls, housing providers expressed ignorance about the Voucher Program or indicated that they did not know their company's policy with regard to vouchers. In only 37% of test calls did housing providers say that they accepted housing vouchers as a form of rent without limitation. Based on the number of units owned and managed by the landlords and property management companies tested, it is estimated that the discriminatory policies of the tested landlords effectively make well over 4,000 rental units in DC unavailable to tenants who use housing vouchers. The ERC conducted additional follow-up testing of landlords who had discriminated in the initial testing investigation.

Based on those testing results, on April 11, 2005, the Washington Lawyers' Committee filed complaints in DC Superior Court against three large property management companies, Gelman Management Company, E&G Property Services and Sawyer Realty Holdings, alleging that the defendants discriminated on the basis of source of income and race in violation of the DC Human Rights Act, by refusing to rent to persons who intended to use housing vouchers to pay for part of their rent. The ERC has filed additional complaints against housing providers, based on testing results. To date, the ERC has filed 12 such complaints, five in DC Superior Court, seven with the DC Office of Human Rights, also alleging discrimination against voucher-holders in violation of the DC Human Rights Act. The DC Office of Human Rights has issued probable cause findings of source-of-income-based housing discrimination in two of the pending administrative cases against area real estate companies.

Thus far, five of the complaints have been successfully resolved through settlements or consent decrees. As part of these agreements, defendants will change their policies and rent to voucher-holders. Other terms of the settlements include fair housing

training; an agreement to include in advertising a statement that vouchers are accepted; agreements on the calculation of income requirements for voucher-holders; and the payment of monetary damages to the ERC. Most significantly, the settlements achieved thus far have opened hundreds of units to voucher-holders in the District of Columbia.

Conclusion

Enforcement strategies that include testing and litigation can help open housing opportunities to low-income families. Studies have reported that rents in the District of Columbia have increased over 50% since 2001 and that vacancy rates have dropped. The combination of rising rents and fewer available apartments, abetted by discriminatory practices against low-income voucher recipients, has created a housing crisis for low-income tenants. The enforcement program described in this article could be replicated in other jurisdictions where local or state civil rights laws include source-of-income provisions and can be a powerful tool to combat discrimination against households who participate in the Housing Choice Voucher Program.

Article 29. Build More or Manage Better? Public Housing in Boston and Massachusetts Pioneer Institute for Public Policy Research White Paper No. 16 (July 2001) Howard Husock and David J. Bobb

The authors of the article, who compare public and subsidized housing in Boston and the Commonwealth of Massachusetts against other cities and states, agree that more effective management of the existing stock of public and subsidized housing can materially increase the available supply of such housing without the need to construct additional housing.

The study found that (i) Massachusetts had a high per-capita inventory of public or subsidized housing compared to other states, (ii) Boston had relatively high "long-term" vacancy rates for its supply of such housing units, (iii) such existing housing units were underutilized with a higher than average percentage of "overhoused" units (i.e. more bedrooms than people living in the units), (iv) the subsidized housing market had no incentives to encourage limited tenancy with Massachusetts tenant tenure approximately a year longer than average (84 months compared to 72 months), (v) the vast majority of those using public or subsidized housing were the elderly, disabled, or single-parent (predominantly female-headed) households and (vi) instead of an organized system detailing available public or subsidized housing, people needing such housing were required to put their names onto multiple waiting lists which underserved them, exacerbated some of the problems listed above and inflated estimates of public housing demand.

Recommendations for better management of the existing stock of public or subsidized housing included the following:

1. Reduce long-term vacancies among existing public and subsidized units by emphasizing performance measures for housing agencies and private managers of subsidized housing designed to reduce such vacancies and institute a comprehensive approach (including as it relates to funding) to reducing "offline" vacancies for uninhabitable units prior to constructing new units.

2. Reduce over-housing so that existing units get used most efficiently. Units can be made available for others by improving the match between tenant needs and the units in which they live. Public authorities and managers of other subsidized housing should take steps to share information about available units and offer to move residents, particularly non-elderly residents, to the most appropriate units, which may be in a different locale rather than in the development where the tenant currently resides.

3. Reduce tenant tenure by including it as a performance measure, by providing support and tools for self-sufficiency for tenants through counseling, training and oversight and by providing incentives to tenants who agree to a tenure time limit (or by adopting a tenure time limit) consistent with limits adopted in the welfare system.

4. Develop a single statewide waiting list for all public and subsidized housing to promote quicker occupancy, better matching of needs with units and a more accurate picture of demand.

Article 30. The Fiscal Impact of Mixed-Income Housing Developments on Massachusetts Municipalities, a Report for Citizens' Housing and Planning Association, May 2007, Eric Nkajima, Senior Research Manager, Kathleen Modzelewski, Research Analyst and Allison Dale, Research Assistant

The University of Massachusetts Donohue Institute on behalf of Citizens' Housing and Planning Association prepared a study of eight mixed-income developments in seven municipalities to determine whether mixed-income housing developments built in Massachusetts created demand for public services in excess of the benefits of increased housing opportunities for residents. The primary planning implications from this study are that the fiscal impact of mixed-income developments is not as negative as often assumed and that municipalities, by managing and promoting the development of market rate residential and commercial construction, can offset any negative fiscal impact of affordable and workforce housing.

The study applied three different methods of fiscal impact analysis: the marginal impact method, the per capita multiplier method and a new method, the "fair share" method, original to the study. The marginal impact method evaluates the capacity of a community to absorb a new development and determines the likely marginal fiscal impact of the additional housing units. The per capita multiplier method determines the fiscal impact of a housing unit by multiplying the cost-per-person of municipal services by the number of people in the housing unit, less property taxes paid by the housing unit. The "fair share" methodology distributes the additional fiscal impact of public services by the mixed income development across all municipal property taxpayers by (i) determining for each additional housing unit the average cost of public services per household in the municipality (net of state aid and other sources of revenue and including the effect of the additional housing units) less the property taxes paid by the additional housing unit and (ii) summing those results for all additional housing units in the mixed-income development. Under the per capita methodology, if a low-income housing unit has four public school age children living in it, the public school costs of those four children are attributed solely to that housing unit. In contrast, using the fair share methodology, the cost of public school is included with other municipal services and allocated across the municipality. This is consistent with the fact that the costs of public education are assessed to all property taxpayers in a municipality independent of whether they have children in the school system.

The study found the following:

1. Because the projects were approved by the applicable local authorities, subject to the requirement that the infrastructure costs associated with the development be built and maintained privately, and since increases in educational costs and staffing occurred in the municipalities studied regardless of whether student enrollment increased or decreased, the mixed-income developments had little or no marginal impact on municipal costs.

2. The per capita multiplier methodology failed to take into account the fact that educational costs are distributed equally across tax rates charged to property

taxpayers in a municipality and thus is not the preferred methodology for analyzing the costs of additional housing.

3. Using the fair share methodology, which the authors believe is the best indicator of whether a housing unit pays its fair share of additional municipal expenses over time, the key determinants of whether a development had a net positive or negative fiscal impact on the municipality were the number of market-rate units compared to low income units in the development and the extent to which the value of the market rate units was above or below the median assessed value of residential properties in the town. The mixed-income housing developments in this study had the same fiscal impact as a majority of their neighbors based on the fair share methodology with a range of approximately $1000 negative fiscal impact to approximately $1000 positive fiscal impact in seven out of the eight developments studied based primarily on the mix of market rate and affordable units. The fair share methodology also revealed that most condominiums and many single family homes have a similar fiscal impact on their communities as the mixed-income developments studied.

Article 31. Building on Our Heritage, a Housing Strategy for Smart Growth and Economic Development, October 2003, Edward C. Carmen, Barry Bluestone, Eleanor White, Prepared for The Commonwealth Housing Task Force

The Commonwealth of Massachusetts Housing Task Force makes two recommendations to address the housing problem in Massachusetts where single family home prices and rents are excessively expensive, which results in a barrier to attracting new businesses and employment and a primary reason why many people, particularly young people, leave the state.

First, the Task Force recommends that the state provide incentives to local communities to pass Smart Growth Overlay Zoning Districts, which would allow apartment construction and the building of single family lots on smaller lots in high density areas close to transit stations, town centers and underutilized manufacturing, commercial, or institutional facilities. This would result in more zoned land than there is demand for housing, which would reduce the cost of housing and preventing urban sprawl. The Task Force found that the predominant reason for the lack of production of less expensive housing was the lack of zoning as-of-right for building single-family homes on small lots and the construction of apartments. Massachusetts restrictive zoning results from its long history of local land use control and concern in communities that property taxes from additional construction do not offset additional municipal costs (particularly education costs) with the result that communities have financial incentives to adopt large-lot zoning for single family homes as the predominant land use in the community. To address these concerns and to provide incentives for communities to adopt Smart Growth Overlay Zoning Districts, the Task Force recommends that the state pass legislation (i) rewarding communities for adopting such Districts by paying them up front density bonus payments upon adoption of such Districts of $2,000 for each apartment unit and $3,000 for each single family home that is allowed in the District, (ii) whereby the state assumes 100% of the cost of providing K-12 public school education for each child living in a new housing unit built in the District and (iii) prioritizing such Districts to receive capital investments from the state for infrastructure improvements. The Task Force estimates that additional tax revenues raised by the state from increased housing and employment will offset most, although not all, of the cost of these incentives.

Second, the Task Force recommends that the state increase its commitment to fund affordable housing for those earning up to 80% of the median income by increased funding of its existing programs (the funding for which has decreased over the years due to budget cuts) and by selling surplus state property (with a priority to selling such property for housing and mixed use where appropriate). The state should then use the proceeds to increase state assistance for housing affordability.

Article 32. Poverty & Race Research Action Council, Keeping the Promise: Preserving and Enhancing Housing Mobility in the Section 8 Housing Choice Voucher Program, Appendix B: State, Local, and Federal Statutes Against Source-of Income Discrimination Updated June 2008.

This Appendix provides a compilation of state, local and federal statutes prohibiting discrimination in the housing market based on source of income, including court challenges to the statutes and a summary of the enforcement process provided under the statutes (including contact information regarding where complaints may be filed). For the Northeast Region, the following statutes are highlighted.

State Source of Income Legislation in the Northeast Region

Connecticut: Connecticut General Statutes, §46a-64c, passed in 1989 and since amended, prohibits discrimination against all lawful forms of income, including state and federal housing vouchers, federal welfare or disability assistance, etc., and has been upheld twice by the Connecticut Supreme Court.

District of Columbia: Title 2, §2-1402.21, passed in 2006, prohibits discrimination on the basis of income or its derivation, as defined in the statute.

Maine: The Maine Human Rights Act, passed in 1973 (Me. Rev. Stat. Ann. tit. 5, §4582 (West 2008)), prohibits discrimination against recipients of federal, state and local public assistance (including housing assistance) from discrimination on the basis of their status as a recipient.

Massachusetts: Mass. G.L. Ch151B §4(10), passed in 1995 and amended in 2000, makes it unlawful for any person furnishing credit, services or rental accommodations to discriminate against any recipient of federal, state or local public assistance (including housing assistance) on the basis of their status as a recipient.

New Jersey: N.J.S.A. 10: 5-12, passed in 1991 and amended in 2002, prohibits employment, public facilities and accommodation, publicly assisted housing and other real property discrimination due to, among other things, source of lawful income used for rental or mortgage payments, subject only to conditions and limitations applicable alike to all persons.

Vermont: Vermont Statutes Title 9, §4506, effective in 2003, makes it unlawful to discriminate in a real estate context because, among other things, a person is a recipient of public assistance.

Local Source of Income Legislation in the Northeast Region

New York: New York City: Section 8-101 of Chapter One of Title Eight of the administrative code of the city of New York, as last amended in 2003, prohibits discrimination based on, among other things, any lawful source of income. West Seneca, NY and Hamburg, NY also have local laws prohibiting discrimination based on source of income.

Maryland: Montgomery County, Prince George's County, and Howard County all have ordinances prohibiting discrimination in a real estate context on the basis of, among other things, source of income.

Pennsylvania: The Borough of State College, Pennsylvania prohibits discrimination in the renting or selling of housing based on source of income.

Article 33. A Vision for the Future: Bringing Gautreaux to Scale by Alex Polikoff, Part V. of the Poverty & Race Research Action Council's Keeping the Promise: Preserving and Enhancing Housing Mobility in the Section 8 Housing Choice Voucher Program, Conference Report of the Third National Conference on Housing Mobility, December 2005

Alex Polikoff proposes a national Gautreaux style housing mobility program earmarked for ghetto dwelling black families to enable them, through the use of housing vouchers, to move to middle-class neighborhoods in non-ghetto locations. The goal of the program is to introduce low income black residents to mixed middle class neighborhoods slowly over time in order to dismantle black ghettos and replace them with mixed-income communities while lessening the fear that such moves could have on the receiving community. Specifically, Mr. Polikoff proposes that 50,000 housing choice vouchers be made available annually for voluntary use by black families living in urban ghettos to move to locations with less than 10 percent poverty that are not minority impacted with a small annual number or percentage limit on the amount of occupied housing units that could be used in any particular city, town or village for this program. Hypothetically, using the top 125 largest metropolitan areas and an average of 40 municipalities in each metropolitan area as "receiving communities" with only 10 move-ins per receiving community per year and 50,000 families moving each year, after 10 years 500,000 families would be relocated, which would equal almost half the black families living in metropolitan ghettos.

Mr. Polikoff also answers a number of questions regarding his proposed national program including (i) cost (he estimates it could cost about $200 million per year), (ii) administration (partnerships between housing authorities and nonprofits would administer the programs locally), (iii) concerns that new poverty enclaves would be created (the program would require that families be placed in a dispersed fashion within the "receiving communities"), (iv) whether enough families would volunteer to participate each year (based on past experience with Gatreaux programs, he expects they would), (v) whether enough homes and apartments could be found each year (based on conservative assumptions, the answer is yes), (vi) whether targeting black families for the program and denying other impoverished families the opportunity to participate is justifiable or even legal (Mr. Polikoff makes the case that unlike other poor families, slavery is responsible for confinement of blacks to the ghettos and that this program could be viewed as "compensation" to blacks similar to Congressionally authorized compensation for Japanese citizens held in World War II concentration camps which was not questioned legally; he also recognizes that the proposed program could be expanded to include all residents of metropolitan ghettos), (vii) whether such a program would be "bad for" the movers and the non-movers (Gatreaux worked well for the participating families and the fact that the most motivated leave the ghetto while the less motivated stay is not a reason to reject the program) and (viii) why this proposed program would be more effective than community redevelopment or revitalization programs.

Summary of Key Cases

about Fair Housing in the Northeast

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***Angell v. Zinsser* (473 F. Supp 488)**
United States District Court, Connecticut
May 17, 1979

Significance

Angell holds that a town cannot legally withdraw its participation in a federally-funded community development block program in order to purposefully maintain racial segregation.

Background

For four years in the 1970s, the Town of Manchester, Connecticut applied for and received funds from HUD's Community Development Block Grant program ("CDBG"). However, in 1978, Manchester citizens voted by *REFERENDUM* to pass an ordinance barring the town's participation in CDBG. A group of white, low-income, residents filed suit on behalf of all potential beneficiaries of CDBG funds to enjoin Manchester from withdrawing from the program. They alleged that Manchester violated the equal protection clause and Title VIII of the Civil Rights act by withdrawing from the program with the intent to maintain racially segregated housing.

Case Summary

The United States District Court for the District of Connecticut granted plaintiffs' request for a preliminary injunction to prevent Manchester from withdrawing from the CDBG program. The court explained that an injunction was necessary because the plaintiffs would suffer irreparable harm if Manchester stopped developing nondiscriminatory fair housing. It further held that the complaint successfully stated a cause of action by alleging the town withdrew its participation with the purpose of maintaining racially segregated housing. The court explained that to show invidious purpose, the plaintiffs only needed to show that discrimination was a motivating factor in the decision. They were not required to show that a racially discriminatory purpose was the sole reason for the decision.

***Christian Community Action, Inc. v. Commissioner,* (Docket No. 3:91 CV 00296)**
United States District Court, Connecticut
May 11, 1995

Significance

Christian Community Action illustrates that fear of public outcry alone cannot justify a decision by HUD and local housing authorities to abandon plans to locate public housing in non-minority areas. It also illustrates the power of advocacy groups to spur change in the face of public resistance.

Background

In 1989, the Housing Authority of New Haven ("HANH") demolished New Haven's Elm Haven high-rises and planned to replace them with units located in minority communities.

Case Summary

Christian Community Action Inc., a non-profit service provider and housing advocacy group, filed suit against HUD, HANH, and the City of New Haven arguing that the replacement plan violated the FHA and HUD site location requirements. The complaint alleged that the plaintiffs had initially planned to locate the replacement units in non-minority neighborhoods, but abandoned the projects because they feared public outcry.

In 1995, the parties agreed to a comprehensive settlement that (i) created a scattered-site housing plan requiring that each remaining public housing unit be placed outside areas of minority concentration; (ii) required HUD and HANH to attempt to locate up to 62 of the replacement units in suburban towns and; (iii) created a regional housing mobility program with 450 new Section 8 vouchers to be used in non-minority neighborhoods. The scattered site housing plan was successfully implemented with the vast majority of units in place by 2003. The plan faced some opposition from community groups, neighborhoods, and local politicians, but the issues were successfully resolved outside the courthouse. Unfortunately, the Section 8 program has been less successful as only 80% of families were placed in non-minority areas and all 450 vouchers were not immediately distributed.

Commission on Human Rights and Opportunities v. Sullivan Associates
(250 Conn. 763)
Supreme Court of Connecticut
October 12, 1999

Significance

This case holds that states may require landlords to participate in the federal Section 8 voucher program even though participation is not federally required.

Background

Sullivan Associates, a partnership that owned four residential properties in Bridgeport, Connecticut, rented exclusively to tenants who agreed to sign standard residential leases and whose annual incomes exceeded $38,000. Consequently, Sullivan Associates refused to rent to families who received Section 8 assistance, as their income did not meet the income requirement and the program required use of a different lease agreement. Two individuals receiving Section 8 assistance filed complaints with the Commission on Human Rights and Opportunities (the "Commission") alleging that Sullivan Associates' policy violated state antidiscrimination law. The Commission brought suit on the individual's behalf.

Case Summary

In response to plaintiff's complaint, Sullivan Associates made three arguments in its defense: 1) the state antidiscrimination statute was preempted by the federal Section 8 program that made landlords' participation voluntary; 2) the partnership could not participate in the Section 8 program because its standard lease differed from the mandatory Section 8 lease; and 3) the minimum income requirement was permissible under the anti-discrimination statute because landlords are permitted to reject applicants with "insufficient income." On the first argument, the Supreme Court of Connecticut ruled that the state antidiscrimination statute was not preempted by the federal Section 8 program. It found that the Connecticut statute actually advanced the Section 8 program and did not serve as an impediment to its success. As to the partnership's second argument, the court found that the antidiscrimination statute's legislative history demonstrated that the legislature intended to require landlords to rent to Section 8 recipients. Consequently, the court ruled that landlords must be willing to substitute the mandatory Section 8 lease for its own. Finally, in response to the third argument, the court narrowly construed the "insufficient income" exception to require that landlords specifically determine that an applicant cannot afford to pay the non-Section 8 portion of the rent before refusing tenancy. On this issue, the court ordered a new trial to allow the defendant to make its case in accordance with the new interpretation.

City of Hartford v. Town of Glastonbury, **(561 F.2d 1032)**
United States Court of Appeals, Second Circuit
August 15, 1977

Significance

The Second Circuit Court of Appeals (the "Court") held that the City of Hartford and its residents had standing to challenge approvals of community development grants by the Department of Housing and Urban Development ("HUD") for certain suburban communities. This case showed the need for stronger enforcement mechanisms for towns receiving federal funds.

Background

The Housing and Community Development Act of 1974 (the "Act") provided federal assistance for community development activities and authorized HUD to administer these grants. The Act required grant applications to include a housing assistance plan ("HAP") that assessed the state of housing in the community and included an estimate of the number of low income residents expected by the community. Plaintiff suburban towns that surrounded the City of Hartford submitted applications to HUD for such grants in 1975. Pursuant to a memorandum from HUD giving applicants an option of omitting the "expected to reside" figure on first year grant applications, plaintiffs West Hartford and Glastonbury submitted zero figures and plaintiff East Hartford submitted a figure of 131.

Case Summary

The City of Hartford and two of its low income residents sought an injunction preventing plaintiffs from receiving or expending community development grants approved by HUD because their grant applications had contained an insufficient estimate of the number of lower income persons expected to reside within their communities, as required by the Act. The district court granted a permanent injunction and the suburban towns, on appeal, challenged plaintiffs' standing to seek the injunction.

On appeal, the Court found that plaintiffs had standing to sue the suburban communities because they met the two requirements for standing: (1) they were injured by the alleged misallocation of funds, as Hartford and its low income residents would be the recipients of funds not allocated elsewhere and would benefit from proper administration of the community development grants; and (2) their claim was in the realm of interests to be protected by the Act.

The Court affirmed the district court's finding that the zero figures submitted by West Hartford and Glastonbury constituted an invalid waiver of the Act's requirement, as omitting the figure substantially undermined the value of the HAP. The Court concluded that Congress had intended that an educated guess as to how many low income residents would need affordable housing would be better than zero. The Court also affirmed the district court's finding that HUD's approval of Glastonbury's application, which included

a figure of 131, was arbitrary and "a major error of judgment" because information was available to verify this number. The Court affirmed the district court's issuance of an injunction, prohibiting plaintiffs from using the unlawfully authorized grants. The injunction could be lifted upon filing with the court a new approval of the towns' grant applications.

Sheff v. O'Neill, **(238 Conn. 1)**
Supreme Court of Connecticut
September 28, 1996

Significance

Sheff held that, in Connecticut, the legislature has an affirmative constitutional obligation to prevent and remedy racial and ethnic isolation in the public school system.

Background

In 1989, parents of Hartford public school children filed suit against then-Governor William O'Neill. The complaint alleged that Connecticut's separate city and suburban school districts created racially segregated schools that violated the state Constitution. The Connecticut Constitution imposes an affirmative obligation on the legislature to provide substantially equal educational opportunity for all public school children. The plaintiffs sought a declaratory judgment and injunctive relief. The district court denied their requests. It found that Hartford's public schools provided students with an equal educational opportunity because they received resources, educational programs, and curricula similar to those received by students in other communities in the state.

Case Summary

The Supreme Court of Connecticut reversed the district court's decision. The court found that while the state never engaged in intentional segregation, racial and ethnic isolation in the public school system deprived schoolchildren of a substantially equal educational opportunity and violated the state constitution. Thus, the court opined that the legislature had a constitutionally imposed affirmative responsibility to remedy segregation in public schools in the entire metro region. Nevertheless, the court, recognizing that developing a remedial legislative program was extremely complex, decided to allow the legislature to attempt to independently remedy the violation. The court instructed the legislative and executive branches to prioritize developing an appropriate remedy. The court retained jurisdiction.

Significance

The Second Circuit Court of Appeals (the "Court") held that zoning laws and health and safety laws can not be used to deny handicapped individuals a reasonable accommodation.

Background

Plaintiff Beverly Tsombanidis purchased a house in West Haven, Connecticut in 1997 to use as a group residence for recovering alcoholics and drug addicts. The residence was known as Oxford House-Jones Hill (the "Oxford House") and was overseen by plaintiff Oxford House, Inc. ("OHI"). The community strongly opposed the house, and eighty-four people signed a petition stating that the Oxford House violated planning and zoning laws. The City determined that Tsombanidis violated the City's Maintenance Code and zoning laws by operating "an Illegal Boarding House in a residential zone." Tsombanidis was given two weeks to make alterations to the house and reduce the number of tenants living there to three to avoid penalties. She made the repairs, but did not evict the tenants. The City then ordered her to pay $99 for every day that she was in violation of the laws. OHI sent a letter to City officials stating that it believed the City's demand for eviction violated the Fair Housing Amendments Act ("FHAA") and the Americans with Disabilities Act ("ADA"). Tsombanidis applied to the City of West Haven Zoning Board for a special-use exception to maintain the group home, and her application was denied.

In December 1997, the Inspector for the Fire District informed Tsombanidis that she was required to implement additional safety measures to comply with the Connecticut Fire Safety Code because six unrelated individuals were living in the house. OHI stated that applying the fire code to the Oxford House also violated the FHAA and the ADA.

Case Summary

Plaintiffs Tsombanidis, OHI, and eight current and future residents of the Oxford House sued the Fire District and the City of West Haven for violating the FHAA and ADA in the following ways: (i) intentionally discriminating against them, (ii) implementing policies that disparately impacted them, and (iii) failing to make reasonable accommodations. Prior to trial, the State Fire Marshal agreed to consider the Oxford House a single-family dwelling and exempt Tsombanidis from the fire code. Following a trial, the district court held that the fire code had a disparate impact on the residents, but awarded only attorney's fees and not compensatory damages because plaintiffs had not proved intentional discrimination. The district court further held that the City intentionally discriminated against the Oxford House, the zoning and maintenance regulations disparately impacted the residents, and the City failed to reasonably

accommodate the residents' handicap (as recovering alcoholics and drug addicts are considered handicapped for purposes of the FHAA and the ADA).

On appeal, the Second Circuit Court of Appeals found that the plaintiffs failed to establish a prima facie case of disparate impact against the Fire District because they did not present any statistical information to show that the fire code created a shortage of housing for recovering alcoholics and drug addicts in the City. The Court held that an analysis was needed to determine disproportionate impact, showing that the policies affect individuals who are recovering alcoholics and drug addicts differently from individuals who are not recovering alcoholics or drug addicts.

The Court affirmed the district court's ruling that the City intentionally discriminated against the Oxford House because the City rarely enforced such regulations against boarding houses in residential neighborhoods, the City did not respond to OHI's letters, and the Property Maintenance Code did not authorize officials to order the eviction. The Court also affirmed the district court's finding that the City failed to grant the plaintiffs a reasonable accommodation because the City denied their reasonable request based solely on plaintiffs' handicap. Finally, the Court affirmed the award of attorney's fees and compensatory damages with regard to plaintiffs' claims against the City.

West Hartford Interfaith Coalition, Inc. v. Town Council of the Town of West Hartford
(228 Conn. 498)
Supreme Court of Connecticut
February 8, 1994

Significance

The Supreme Court of Connecticut (the "Court") held that the Town Council of the Town of West Hartford improperly denied plaintiff's application for an affordable housing development because the Town Council failed to prove that its concerns outweighed the Town's need for affordable housing. The Court also held that conclusions reached by a zoning commission must be upheld by a trial court when they are reasonably supported by the record.

Background

Plaintiff West Hartford Interfaith Coalition, Inc. ("WHIC") was a private nonprofit organization that provided entry level home ownership communities for people of low and moderate income. WHIC held an option to purchase a tract of undeveloped land in West Hartford, Connecticut. In May 1991, pursuant to Section 8-30 of Connecticut's General Statutes, WHIC submitted an application to the Town Council of the Town of West Hartford requesting a zone change for the property from a single-family zone to a multifamily zone and approval of an affordable housing development. Following a public hearing where approximately equal numbers of citizens spoke for and against the development, the Town Council denied WHIC's application. The Town Council sent a letter to the plaintiff informing WHIC of the decision, but did not state any reasons for the denial.

Case Summary

WHIC appealed the denial of their application to the Superior Court, and the Superior Court then granted plaintiff's application. The defendant Town Council raised five issues on appeal to the Court: (1) Section 8-30's land use appeals procedure does not apply to legislative zone changes; (2) the trial court failed to apply traditional concepts of zoning review; (3) the trial court did not consider the affordability of all housing in West Hartford in assessing the Town's need for affordable housing; (4) plaintiff should have been required to establish a likelihood that it would succeed in providing affordable housing; and (5) the trial court should have remanded plaintiff's application to the defendant rather than approve it.

The Court held that the trial court properly found that Section 8-30 applied to legislative zone changes, and thus to plaintiff's appeal, based on the plain language of the statute, the legislative history, and the purpose for which the statute was enacted—to encourage and facilitate affordable housing in Connecticut. The Court also held that the trial court properly applied traditional concepts of judicial review because conclusions reached by a zoning commission must be upheld by the trial court when they are reasonably supported by the record. With regard to the defendant's third claim, the Court

found that the defendant failed to prove that substantial public interests outweighed the need for affordable housing in West Hartford, which defendant is required to prove in a zoning appeal pursuant to Section 8-30. The Court also held that the plaintiff was not required to prove that it had the ability to effectuate the plan for the development to be considered "assisted housing." Section 8-30 merely requires the plaintiff to demonstrate either that it received or would be receiving financial assistance under any governmental program for the construction of its affordable housing development. Finally, the Court held that the trial court properly granted plaintiff's application because the plain language of Section 8-30 authorizes, but does not require, the plaintiff to submit a revised application. The statute further permits the trial court to revise the defendant's decision on appeal.

***U.S. v. Housing Authority of the Town of Milford* (Civil Action No. 396 CV 01118)**
United States District Court, Connecticut
October 5, 1998

Significance

This case illustrates that town housing authorities cannot permissibly reject federal funding and affiliated scattered site housing plans for racially discriminatory reasons.

Background

According to the 1990 Census, the City of Milford's population consisted of 1.5% African Americans and 2.3% Hispanics. Conversely, the two largest cities in the area, Bridgeport and New Haven, were populated with 30% African Americans and 20% Hispanics. In 1995, the Housing Authority of the Town of Milford ("Housing Authority") secured HUD funds to construct 30 scattered site housing units. In response, some Milford residents engaged in a racist public campaign against the project, asserting that minority Bridgeport and New Haven residents would inhabit the units. In September of 1995, the Housing Authority unanimously voted to return HUD's funding and end the scattered site program.

Case Summary

On April 24, 1997, the United States filed suit against the Housing Authority asserting that it violated the Fair Housing Act by withdrawing from the HUD-funded program. The complaint argued that city officials cancelled the scattered site housing project in direct response to discriminatory neighborhood opposition. The United States and the Housing Authority settled the dispute and entered into a consent decree on October 5, 1998. The decree required the Housing Authority to acquire 28 new family public housing units over 3 years to be marketed to families in Milford, New Haven, and Bridgeport. Moreover, the Housing Authority stated that it intended that 21 of the 28 units would be occupied by households participating in Milford's Family Self-Sufficiency Program. The program encourages Section 8 voucher families obtain employment and achieve economic self-sufficiency.

***Montgomery County v. Glenmont Hills Associates*, (402 Md. 250)**
Court of Appeals of Maryland
2007

Significance

This case holds that landlords in Montgomery County, Maryland cannot reject potential tenants solely because they participate in the Section 8 housing program.

Background

Glenmont Hills Associates ("Glenmont") owns a multi-unit residential apartment complex in Montgomery County, Maryland (the "County"). It was Glenmont's business policy to deny Section 8 vouchers and, pursuant to this policy, it rejected a Montgomery County Human Rights Commission (the "Commission") "tester." The Commission's director filed an administrative complaint with the County Office of Human Rights alleging that Glenmont's policy violated the County's anti-discrimination statute. The statute makes it unlawful for landlords to reject potential tenants based on lawful sources of income. After investigation and consideration, the County Office of Human Rights recommended issuing a judgment and award in favor of the County and Glenmont sought judicial review.

Case Summary

The Court of Appeals of Maryland found that the legislative history of the County's anti-discrimination law clearly showed that it was intended to prohibit landlords from discriminating against Section 8 applicants. It also ruled that HUD regulations explicitly state that the voluntary federal Section 8 program did not preempt the County's mandatory anti-discrimination law. Finally, the court rejected Glenmont's defense that the Section 8 program requirements were overly burdensome and found in favor of the County. The court affirmed the administrative decision and awarded civil penalties to the County. In a press release after the ruling, a Montgomery County executive stated, "Today's decision by the Maryland Court of Appeals is extremely gratifying for all of us who seek to protect the rights of all our residents to find affordable housing. It validates our County law and sends a message to landlords that discrimination of this sort will not be tolerated in Montgomery County."

Thompson v. Department of Housing and Urban Development
(348 F. Supp. 398)
United States District Court, Maryland
January 6, 2005

Significance

This case faults the Department of Housing and Urban Development ("HUD") for the public housing failures in the city of Baltimore. By failing to consider regional racial and ethnic considerations, HUD had enabled a system of racially segregated public housing to persist.

Background

In 1994, the Maryland ACLU filed a suit on behalf of African American residents of public housing within Baltimore, Maryland. The suit was triggered by the demolition of a high-rise public housing development in Baltimore. HUD and the city had planned to locate the replacement housing in similarly segregated neighborhoods. The ACLU argued that locating the replacement housing in an area of Baltimore with a high minority concentration was essentially the perpetuation of government sponsored racial segregation, in which the city, the city housing authority, and HUD had all approved. In 1996, the parties entered into an agreement which provided for the demolition and redevelopment of several public housing units. Despite this agreement, the parties continued to litigate the historical claims that had charged HUD and the city with creating segregation in public housing.

Case Summary

The District Court of Maryland determined that HUD had failed to affirmatively further fair housing and that the agency had an obligation to do something more than refrain from discrimination. The court looked to nearly 50 years of public housing placement in Baltimore and determined that HUD had failed to properly consider any regional desegregation policies. In doing so the agency had abused their discretion and failed to meet the obligations under the Fair Housing Act. The court was much more lenient on the city of Baltimore and the city housing authority then they were on HUD and determined that the city officials had few options for public housing placement and could not be liable for their attempts to improve highly minority neighborhoods.

***Langlois v. Abington Housing Authority* (234 F. Supp. 2d 33)**
United States District Court, District of Massachusetts
November 27, 2002

Significance

Langlois holds that Public Housing Authorities ("PHAs") may not enact Section 8 voucher distribution policies that have the effect of disproportionately negatively impacting minorities. Additionally, PHAs must affirmatively further fair housing by, at a minimum, investigating the potential impact new policies will have on fair housing availability.

Background

Eight small, suburban, predominantly white Public Housing Authorities ("PHAs") altered their existing Section 8 distribution lottery policies by replacing need-based preferences with local residency preferences. The policies gave preference to applicants currently living or working in the PHA's geographical area. Four low-income, minority women, the class of similarly situated individuals they represented, and the Massachusetts Coalition for the Homeless filed suit. The plaintiffs alleged that the new policies effectively discriminated against minorities by favoring local, predominantly white applicants and violated the PHA's duty to "affirmatively further" fair housing.

Case Summary

The United States District Court for the District of Massachusetts granted the injunction and precluded the PHAs from applying the local residency preferences. The court found that the local preferences would likely violate the Fair Housing Act by disparately impacting minorities. The defendants appealed the preliminary injunction.

The First Circuit Court of Appeals affirmed the district court's decision. The court stated that while the district court's analysis was not perfect, it agreed that the FHA prohibits mere disparate racial impact and does not require discriminatory intent. The 1st Circuit remanded the case to the district court for further proceedings.

The United States District Court for the District of Massachusetts found that the PHA's failure to consider the effect of its new local-residency preferences clearly violated their duty to affirmatively further fair housing. The court stated that the duty to affirmatively further fair housing is clear and absolute and PHAs are required to comply. Nevertheless, the PHAs failed to even keep the records required to determine whether the new policy furthered fair housing. Moreover, the court found that the policies disparately negatively impacted racial minorities. It stated, "...where a community has a smaller proportion of minority residents than does the larger geographical area from which it draws applicants to its Section 8 program, a selection process that favors its residents *cannot but* work a disparate impact on minorities."

N.A.A.C.P., Boston Chapter v. Secretary of Housing and Urban Development
(817 F.2d 149_
United States Court of Appeals, First Circuit
March 19, 1987

Significance

This case illustrates that HUD's obligations under the Fair Housing Act require the agency to do more than simply not discriminate. Rather, the Fair Housing Act requires HUD to affirmatively use its grant programs to assist in ending discrimination and segregation.

Background

In April 1978, the NAACP sued HUD in the United States District Court of Massachusetts claiming that the agency had failed to enforce constitutional prohibitions on discrimination in federally-assisted programs. In 1983, a district court determined that the city of Boston and federal officials were aware of the racial inequity with regards to the city's housing and had failed to properly enforce the Fair Housing Act.

Case Summary

The District Court, while agreeing that HUD had acted unlawfully, found that the court lacked the power to review and correct unlawful agency behavior. On appeal HUD argued that the Fair Housing Act imposes upon the agency only a duty to not discriminate. The United States Court of Appeals for the First Circuit disagreed and stated that the Fair Housing Act requires that HUD administer grant programs so as to "affirmatively further" fair housing and requires "something more of HUD than simply to refrain from discriminating." Finally, the Court of Appeals stated that HUD's actions or inactions are judicially reviewable in order to determine if the agency's pattern of behavior exceeds it broad range of discretionary duties.

***United States v. Boston Housing Authority* (Civ. No. 1:99-11587-RCL)**
United States District Court, Massachusetts
1999

Significance

This case stands for the proposition that housing authorities must take action when they are aware that families living in their public housing developments are being subject to racially discriminatory violence, harassment, and intimidation by other tenants. The housing authorities must take steps to investigate, remedy, and prevent the discrimination.

Background

In 1996, a number of black and Hispanic families filed suit against the Boston Housing Authority ("BHA") and the City of Boston. The families alleged that they were repeatedly subject to racial violence and racially-motivated harassment and intimidation by white tenants in two of BHA's predominantly white public housing developments. The families asserted that they were subject to acts of racially-motivated physical violence and threats of physical violence, destruction of property, racist graffiti, and racist name-calling. The plaintiffs further alleged that they repeatedly complained about the situation to the BHA, and that the BHA failed to take adequate action. After becoming aware of this suit, HUD investigated the BHA and concluded that there was reasonable cause to believe that the BHA had discriminated against the families. Consequently, the U.S. Department of Justice filed a second suit against the BHA alleging discrimination and moved to consolidate its case with the families' original suit.

Case Summary

The parties reached a settlement in 1999. Pursuant to the settlement agreement, the BHA agreed not to discriminate based on race or deny any tenant the right to full enjoyment of public housing. The settlement also required the BHA to prevent future racial harassment by (i) increasing the frequency of police patrols in the developments; (ii) hiring a Compliance Coordinator to ensure compliance with the settlement and to compile reports detailing racial violence, discrimination, and intimidation in the developments; and (iii) advertising and abiding by a "zero tolerance" policy for civil rights violations. Finally, the parties agreed that BHA would pay a total of $1,000,000 to the plaintiffs in addition to attorneys' fees. In a press release outlining the settlement, the Acting Attorney General for Civil Rights declared, "This settlement sends a message to all landlords, large or small - - the federal government will not stand by when racial harassment takes place."

The Hills Development Co. v. Township of Bernards (Mount Laurel III)
(103 N.J. 1)
Supreme Court of New Jersey
February 20, 1986

Significance

The Supreme Court of New Jersey (the "Court") held that the New Jersey Fair Housing Act (the "Act"), passed after *Mount Laurel II* to implement the *Mount Laurel* Doctrine, is constitutional. The Act established the Council on Affordable Housing (the "Council") specifically to handle cases arising under the *Mount Laurel* Doctrine. The Court further held that the legislature intended to transfer every pending *Mount Laurel* case to the Council, except in extraordinary cases where "manifest injustice" would occur as a result.

Background

Following *Mount Laurel II*, the New Jersey state legislature passed the Act to implement the *Mount Laurel* Doctrine. The Act established the Council and authorized it to define housing regions within New Jersey, assess each region's affordable housing needs, and create guidelines for determining each region's fair share of affordable housing. The Council was to handle *Mount Laurel* litigation, i.e. whether municipalities have fulfilled their obligation to provide realistic fair housing opportunities. The Act provided for the transfer of pending and future *Mount Laurel* cases to the Council, except when transfer would lead to "manifest injustice."

Case Summary

Mount Laurel III consisted of twelve cases pending before the Court, each appealing the validity of a trial court's decision on a motion to transfer a *Mount Laurel* case to the Council. Transfer had been denied in all but one of the cases.

On appeal, the Court held that the Act was constitutional despite any potential delay in producing affordable housing, as there was no constitutional guarantee that fair housing issues must be resolved within a specific period. The legislature satisfied the constitutional obligation to produce affordable housing within a reasonable period. The Court also did not find that the Act interfered with the its right to judicial review, as it would continue to protect individuals from invalid regulations. The Court emphasized that actions taken by the legislature and administrative agencies are presumed to be valid until proven otherwise by clear and convincing evidence.

The Court further held that the legislature intended for all cases to be transferred to the Council except for extraordinary exceptions where "manifest injustice" would result, and that all cases on appeal, therefore, were to be transferred. The basis for the parties' claims of "manifest injustice" laid in an alleged delay in producing affordable housing as a result of the transfer, as well as loss of profits to builders. The Court concluded that the legislature did not intend for such effects to constitute "manifest

injustice" given the importance of allowing the plan to take effect. Finally, the Court noted that "manifest injustice" would result if a transfer were to render creation of lower income housing practically impossible, not simply delayed.

***Town of Huntington v. NAACP,* (844 F.2d 926)**
Supreme Court of the United States
November 7, 1988

Significance

The Court of Appeals rejected the Town of Huntington's argument that zoning restrictions were necessary to encourage investment in depressed urban renewal areas because such restrictions were more likely to encourage investment outside of Huntington rather than in economically depressed areas within the town. On appeal, the Second Circuit affirmed the discriminatory impact standard to evaluate challenges to zoning controversies.

Background

During the 1960s, Huntington, New York began urban renewal efforts by creating zoning classifications that allowed for the construction of multifamily housing projects. These projects, however, were restricted to the town's "urban renewal areas" in which the majority of the population was black. The NAACP and a group of low income residents filed suit against Huntington for its refusal to amend its zoning ordinance to allow for the construction of multifamily housing outside of the "urban renewal areas."

Case Summary

The Second Circuit Court of Appeals determined that Huntington's refusal to amend its zoning ordinance had a discriminatory impact on the town's minority population. Minorities composed a disproportionately large number of the eligible citizens that would have utilized the subsidized housing. The zoning ordinance, therefore, increased segregation within the town by restricting low income housing to areas with already high concentrations of minorities. Furthermore, the Court of Appeals rejected Huntington's argument that the zoning restriction was necessary to encourage development in the deteriorated and needy urban renewal areas. According to the Court of Appeals, the restriction was more likely to cause developers to invest outside of Huntington rather than in the depressed urban areas. The court ordered the town to strike the zoning restriction and allow for the construction of multifamily homes outside of the urban renewal areas. The decision was later unanimously upheld by the United States Supreme Court in which the court determined that the record demonstrated that Huntington's actions had caused a disparate impact on the minority community. Furthermore, the Supreme Court upheld the Court of Appeals rejection of Huntington's justification for the restrictive zoning.

***Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel (Mount Laurel I),* (67 N.J. 151)**
Supreme Court of New Jersey
March 24, 1975

Significance

The Supreme Court of New Jersey (the "Court") struck down the Township of Mount Laurel's exclusionary zoning laws and held that a municipality's land use regulations must provide a choice of housing for people of all classes who want to live there.

Background

The Township of Mount Laurel, New Jersey, had zoning ordinances that only permitted residential development of low density, single-family homes. The ordinances prohibited townhouses, apartments, and mobile homes, and zones that permitted residential development were almost fully developed. Further, the regulations set aside almost 30% of the Township's land for industry use, while only 100 acres had actually been developed for this purpose. Developers were therefore unable to build additional residences in much of the Township. Some parts of Mount Laurel allowed for "planned unit developments," whose land use requirements were determined by contract. The Township, however, drastically limited the number of units in such areas with more than one bedroom and the number of school-age children allowed to live in the units. Finally, Mount Laurel established a Planned Adult Retirement Community designed for middle and upper class individuals over the age of fifty-two, which limited units to one child each, over the age of eighteen. These laws in effect excluded people of lower and moderate incomes, including municipal employees. The Township sought to maintain low property taxes and gear development toward only middle and upper class individuals through its zoning laws.

Case Summary

Plaintiffs challenged the lawfulness of Mount Laurel's zoning ordinances, asserting that they excluded low and moderate income families. Plaintiffs consisted of residents of Mount Laurel who lived in substandard housing, former residences who were forced to leave Mount Laurel because of the lack of affordable housing, nonresidents living in substandard housing in the region who sought affordable housing elsewhere, and three organizations representing racial minorities. The Superior Court of New Jersey held that these zoning laws were invalid.

On appeal, the Court found that Mount Laurel's zoning ordinances violated the state constitution by excluding lower income people. The State's power to enact land use regulations stems from its general police power. Local authorities enacting lands use regulations are therefore restricted in the same manner as the State, and land use regulations must therefore further the general welfare. Mount Laurel's exclusionary zoning laws harmed the public welfare by denying groups of people a basic need—

housing. The Township's justification for its zoning laws, to maintain low taxes and government costs, was deemed illegitimate. The Court held that all municipalities must affirmatively provide reasonable housing choices for people of all incomes who want to live there.

***Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel (Mount Laurel II)*, (92 N.J. 158)**
Supreme Court of New Jersey
January 20, 1983

Significance

The Supreme Court of New Jersey (the "Court") strengthened its decision in *Mount Laurel I*, known as the "*Mount Laurel Doctrine*," which required municipalities to provide realistic housing opportunities to people of low and moderate incomes. The Court laid out specific remedies to violations of the *Mount Laurel* Doctrine, found in the State Development Guide Plan and also held that an absolute ban on mobile homes was invalid.

Background

Several years after *Mount Laurel I*, Mount Laurel continued to use exclusionary zoning. Much time, great expense, and many judicial resources had been used in trying to interpret and apply the *Mount Laurel* Doctrine. *Mount Laurel II* consisted of six lawsuits brought against Mount Laurel and other New Jersey townships involving challenges to exclusionary zoning practices. Mount Laurel revised its zoning laws after *Mount Laurel I*, but the N.A.A.C.P. sued again and asserted that more reform was required. The trial court dismissed the complaint, holding that Mount Laurel's rezoning was a good faith effort to provide realistic housing opportunities to low and moderate income people, and that effort was sufficient.

Case Summary

The Court reversed the trial court's decision and held that more than merely a good faith effort to provide realistic housing for lower income individuals was required; a municipality must instead provide a "fair share" of the regional need for fair housing, whether or not the municipality is developing. The Court also held:

- Litigation arising under the *Mount Laurel* Doctrine involves proof of fair share affordable housing in both the immediate and distant future;
- All *Mount Laurel* litigation shall be assigned to judges selected by the Chief Justice and approved by the Supreme Court of New Jersey;
- Affirmative devices should be used to provide a fair share of affordable housing, including lower-income density bonuses and mandatory set-asides;
- *Mount Laurel* cases will proceed with one trial and one appeal;
- Affordable housing should be both low income and moderate income, in appropriate proportion to the population that needs the housing; and
- A municipality may provide "least cost housing", or housing that can be produced at the lowest possible price consistent with minimal health and safety standards, if it is the only way to satisfy its fair share obligation.

The Court held that municipalities, "at the very least, must remove all municipally created barriers to the construction of their fair share of lower income housing." The Court remanded the N.A.A.C.P.'s case to the trial court to determine Mount Laurel's fair share of affordable housing and any further action that may be required.

United States v. Garden Homes Management Corp.
United States Court of Appeals, Third Circuit
September 21, 2001

Significance

This was the Justice Departments 56th case stemming from a nationwide fair housing testing project aimed at detecting illegal discrimination and illustrates the impact that a testing program can have on desegregating housing.

Background

Garden Homes Management ("Garden Homes") owned and managed approximately 30 apartment buildings throughout New Jersey. In connection with the Justice Department's nationwide fair housing testing program, the Department sent pairs of trained African American and white testers to pose as prospective tenants. The testers would inquire about the availability of rental units and based on a comparison of the experiences between the testers, investigators were able to determine whether minorities were treated less favorably than whites. Testing of Garden Home Management properties revealed that at three separate sites minority testers were told that apartments were not available and minorities were discouraged from renting. By contrast, white testers where informed that apartments were available and were encouraged to rent apartments at the subject properties.

Case Summary

In June 1999, the Justice Department filed suit in United States District Court against Garden Homes and the owners of 458 apartment units. The suit alleged that Garden Homes had violated the Fair Housing Act by refused to rent, negotiate or otherwise make unavailable apartment units because of a potential tenant's race. After extensive settlement discussion, an agreement was reached in September 2001 which required Garden Homes to comply with the Fair Housing Act. The agreement imposed a number of obligations on Garden Homes, including requirements to provide public notice of its nondiscriminatory practice, educate and train their employees about their duties under the Fair Housing Act, and take steps to attract minority residents. The settlement also required compensation to the victims of past discrimination and ordered Garden Homes to pay a civil penalty to the United States. The Justice Department was unsuccessful in its attempted to secure Garden Homes' compliance with the agreement and in 2001, a district court held Garden Homes in contempt for failing to adhere to the obligations of the settlement. The district court imposed a penalty of $1,000 for each day that Garden Homes failed to comply with the settlement. The Third Circuit Court of Appeals, however, overturned the penalty, as the district court had misstated pertinent facts in its imposition of sanctions.

Comer v. Secretary of Department of Housing and Urban Development,
(37 F.3d 775)
United States Court of Appeals, Second Circuit
April 18, 1994

Significance

A settlement between HUD and a Buffalo, New York citizens group provided for 800 new Section 8 subsidies and allowed minorities living within Buffalo to receive Section 8 subsidies from both the suburbs as well as within the central city.

Background

Section 8 housing in Buffalo, New York was administered by two housing agencies: the Rental Assistance Corporation ("RAC"), for the central city, and the Belmont Shelter Corporation ("Belmont") for the suburban area. When Section 8 housing began in Buffalo in the mid-1970s the minority population in the city was 26% and was less than 1% in the suburbs. Despite this large disparity in 1976 HUD approved Belmont's use of local residency requirements when allocating Section 8 vouchers. As a result, minority applicants for Section 8 were unable to receive subsidies within Buffalo's suburbs and were instead forced to wait, sometimes up to 10 years, for subsidies within the central city. Low-income minority residents brought suit in 1992 challenging Belmont's use of residency requirements as being discriminatory and promoting racial segregation.

Case Summary

The case was originally dismissed in 1993 on a finding that the plaintiffs lacked standing to bring a challenge to RAC's and Belmont's housing policies. The United States Court of Appeals for the Second Circuit, however, overturned the district court's dismissal and the case was resumed. In 1997, the parties reached an agreement that contained major alterations to the Section 8 allocation process. Most importantly, the settlement provided that local residency requirements for both the city and suburb programs would extend to a countywide preference. Therefore any person residing in Erie County would be able to obtain a subsidy from either the city or suburban program. Furthermore, the settlement provided for 800 new Section 8 subsidies, the intent of which was to remedy the county wide segregation that had been implemented under the local preference policy.

Giddins v. HUD
United States District Court, New York
November 10, 1993

Significance

This settlement reached in a lawsuit between a group of individual families and a variety of government actors was historically significant because it provided over 1,000 minority families with the opportunity to utilize Section 8 vouchers for housing outside of highly segregated areas in Yonkers, New York. In an attempt to silence neighborhood opposition in the east-side of Westchester, the agreement scattered subsidized housing throughout the county.

Background

In 1991, a group of seventeen minority families filed suit against HUD and other New York state agencies. The suit alleged that various government actors had failed to provide sufficient housing opportunities outside of areas of high poverty and racial segregation in Yonkers, New York. The plaintiff's asserted that local New York agencies had steered minority tenants with Section 8 vouchers into apartments in segregated neighborhoods in southwest Yonkers. In addition, the families argued that the agencies had made no efforts to find apartments that would accept Section 8 vouchers in the racially or economically mixed neighborhoods in Westchester.

Case Summary

The parties settled the case in 1993 with an agreement that established a five-year program which sought to entice landlords in non-minority area surrounding Yonkers to accept Section 8 tenants. The agreement called for the establishment of an Enhanced Section 8 Outreach Program which would be financed by both the federal and state housing agencies and a nonprofit social services agency. The program's function would be to bring landlords with apartments in racially diverse neighborhoods into the Section 8 program. The parties to the agreement believed that by moving individual families into existing apartments scattered throughout Westchester there would be less neighborhood resistance to subsidized housing as opposed to placing them all in one community. A previous settlement following the *NAACP v. Yonkers* decision had failed because a group of east-side Westchester property owners had opposed any public housing plans over fears that full scale racial integration would threaten the neighborhoods equity.

***Otero v. New York City Housing Authority,* (484 F.2d 1122)**
United States Court of Appeals, Second Circuit
September 12, 1973

Significance

The Second Circuit Court of Appeals acknowledged that the goals and duties of the New York City Housing Authority ("the Housing Authority") required the agency to consider the benefits to the community as a whole, not just of certain members. The duty to affirmatively further racial integration and fair housing requires more than simply the introduction of minorities into a predominantly white neighborhood. When implementing racial integration the Housing Authority must consider the overall racial make-up of a minority neighborhood.

Background

Two apartment buildings were designed by and built for the Housing Authority with the assistance of federal funds in an urban renewal area in the Lower East Side of Manhattan. Before construction of the apartment buildings could be commenced the Housing Authority had to relocate the 1,852 families who already lived in the urban renewal area. These families were told by the housing authority that they would have first priority to return to the new buildings being constructed on the site. When the new apartments were constructed, the Housing Authority leased apartments to 161 former residents. Another 322 former residents were denied houwing. When these residents discovered that their applications were denied in favor of new residents, most of whom were white, they filed suit against the Housing Authority and HUD in District Court.

Case Summary

The United States District Court for the Southern District of New York granted judgment in favor of the former residents. The court's order prevented the Housing Authority from renting apartments to people other than the former residents until all of the former resident applicants had been accommodated. The United States Court of Appeals overturned the district court's judgment and upheld the Housing Authority's selection of housing applicants. The Court of Appeals for the Second Circuit accepted the Housing Authority's argument that the acceptance of every former resident for the new housing project would have "tipped" the racial balance in the community and resulted in white flight out of the housing project. If the Housing Authority were to accept the applications of each of the former resident, the new housing project would have been over 80 percent white. In response to this potential racial disparity, the Housing Authority had limited the number of former resident applications in order to allow for a racial mix of whites and non-whites. According to the Court of Appeals, the duty to integrate is a two-way street that requires consideration of the community as a whole not just certain members.

***Robinson v. 12 Lofts Realty, Inc.*, (610 F.2d 1032)**
United States Court of Appeals, Second Circuit
November 21, 1979

Significance

The Second Circuit Court of Appeals held that once a plaintiff purchaser establishes a prima facie case of racial discrimination under the Fair Housing Act, the defendant can not defeat the claim simply by asserting hypothetical reasons for having rejected the plaintiff. This case set a framework for how cases of discriminatory intent should be evaluated and how the court should assess the reasons given.

Background

The defendant corporation owned a cooperative apartment building in New York City. In January 1979, the plaintiff, Bennett Robinson, entered into a contract to purchase a proprietary lease of part of the seventh floor from one of the corporation's shareholders, defendant Paul Hanley. Robinson would have been the first Black shareholder of the building. The sale was conditioned on Hanley obtaining the corporation's consent. In May 1979, the corporation's shareholders and directors met to discuss the sale to Robinson. The shareholders voted unanimously to (i) increase the percentage of shareholders needed to approve a resale of stock from 51% to 66 2/3%; and (ii) allow a secret ballot for approving or denying resales and sublets. After the screening committee reported that all matters related to Robinson's purchase were satisfactory, only seven out of eleven shareholders voted in favor of the sale. The seven votes were less than the 66 2/3% majority required, and the sale to Robinson was thus denied.

Case Summary

Robinson sued the corporation, in federal court, seeking damages and a preliminary injunction ordering the corporation to permit the sale. The district court denied injunctive relief even though Robinson had established a prima facie case of housing discrimination because it found that the corporation had met its burden of demonstrating a substantial, non-racial justification for denying the sale. The district court based its decision on the screening committee's opinion that Robinson was uncooperative and rumors circulating among the shareholders that Robinson planned on using the premises as an after-hours club, intended to install plumbing lines through the ceiling, and had uttered vulgar language.

On appeal, the Second Circuit Court of Appeals concluded that the defendant corporation failed to meet its burden of establishing sufficient reasons for denying the sale to Robinson. The corporation agreed that Robinson met all of the corporation's objective criteria. Further, there was no evidence that any of the shareholders believed the alleged rumors to be true or evidence showing which shareholders had voted against Robinson and their actual reasons for disapproving the sale. The Second Circuit held that without such evidence, the district court could not have determined what motivated the rejection. Once a plaintiff establishes a prima facie case of housing discrimination, a

defendant may not defeat the claim by merely asserting hypothetical reasons for having denied the plaintiff. The Second Circuit further held that for the district court to find for the corporation, it must determine that racial discrimination played no roll in the denial of the sale. The Second Circuit emphasized of the need for courts to look carefully for discriminatory motive when there is evidence of a discriminatory effect, as the motive may be present, but subtle. The Court of Appeals warned that ***"clever men may easily conceal their motivations."*** The Court of Appeals further cautioned that courts should be extremely careful when deciding whether to allow a third party to prevent a housing sale between a willing seller and an objectively acceptable buyer.

***Salute v. Stratford Greens Garden Apartments* (136 F.3d 293)**
United States Court of Appeals, Second Circuit
February 5, 1998

Significance

Salute holds that landlords are not required to evict tenants who become eligible for Section 8 vouchers after tenancy in order to remain exempt from the program's regulations and comply with the "take one, take all" provision. The court also found that accepting Section 8 vouchers from disabled applicants is not a "reasonable accommodation" under the Fair Housing Act. Finally, the court ruled that in the Second Circuit, Section 8 non-participation cannot subject landlords to liability for disparate impact discrimination.

Background

Plaintiffs Richard Salute and Marie Kravette are individuals with disabilities who receive Section 8 vouchers. They were denied tenancy by Stratford Greens Garden Apartments in Suffolk County, New York because it does not rent to Section 8 voucher holders. Landlords are not legally required to participate in the Section 8 voucher program. The (now repealed) "take one, take all" provision, however, prohibited a landlord who voluntarily accepted one Section 8 tenant from rejecting any other Section 8 tenant because they receive vouchers. Stratford Greens never accepted a tenant who received Section 8 vouchers at the time of application because it sought to avoid government regulation under the Section 8 program. Rather, Stratford Greens did not evict two tenants who became eligible and received Section 8 vouchers after they moved in. Consequently, plaintiffs filed suit alleging that the landlord's rejection of their applications violated the "take one, take all" and "reasonable accommodations" provisions of the Fair Housing Act.

Case Summary

The United States Court of Appeals for the Second Circuit held that it could properly make an exception to the "take one, take all" provision so that it did not apply to landlords who only received vouchers for tenants who became Section 8 participants during their tenancy. The court reasoned that Congress did not intend to create incentives to evict the very individuals the law was drawn to protect and noted that the provision should be read in tandem with Section 8's voluntary nature. In addition, the court found that defendant's refusal to accept plaintiff's vouchers did not violate the "reasonable accommodations" provisions of the Fair Housing Act. It explained that, "...it is fundamental that the law addresses the alleviation of handicaps, not the alleviation of economic disadvantages that may be correlated with having handicaps." The court found that money was the only obstacle preventing plaintiffs from obtaining tenancy, not their handicaps. Finally, the court found that landlords could not be held liable for disparate impact discrimination for rejecting recipients of Section 8 vouchers. It explained that Section 8 participation is voluntary and non-participating owners routinely reject voucher recipients simply because they don't want to become subject to federal regulation.

***United States v. Starrett City Associates,* (660 F. Supp. 688, 670)**
United States Court of Appeals, Second Circuit
March 1, 1988

Significance

In this landmark case, the Second Circuit Court of Appeals stated that the Fair Housing Act allows for some race-conscious measures to promote integration, but racial quotas, unlimited in duration, are illegal.

Background

Starrett City Associates ("the Association") owned and operated the largest housing development in the United States located in Brooklyn, New York. In order to receive federal monetary assistance for the housing development, the Association agreed to maintain a racially integrated community. In order to reach this goal the Association adopted a number of racial quotas and procedures that were designed to ensure that racial composition of the housing project remained mixed. Applicants for housing were organized into various pools depending on the applicant's racial profile and income. When an apartment became available, the Association would select an applicant that would match the racial and income credentials of the outgoing tenant. As a result of this practice, white applicants were much more likely to receive an apartment upon application and black applicants were more likely to be placed on a waiting list.

Case Summary

The United States Attorney General brought an action against the Association for violations of the Fair Housing Act. The United States District Court of the Eastern District of New York determined that the Fair Housing Act did not allow for the housing complex to deny housing to qualified minority applicants simply based on a desire to maintain racial quotas. Furthermore, the District Court stated that the Association would not use the threat of white flight as a valid justification of denying housing to minority applicants. On appeal, the Second Circuit Court of Appeals determined that a state actor may not employ strict quotas in order to promote the Fair Housing Act's goal of racial integration. The Court of Appeals however, acknowledged that the Fair Housing Act does not prohibit the use of race-conscious measures to promote integrated housing. The problem with the Association's method was that it was employing racial quotas that were unlimited in duration.

***United States v. Yonkers Board of Education* (624 F. Supp. 1276)**
United States District Court, Southern District of New York
November 20, 1985

Significance

This was the first federal case that addressed both housing and school segregation issues in the same complaint. The court held that City officials intentionally created racial segregation by succumbing to overwhelming community pressure to locate almost no subsidized housing in neighborhoods dominated by white residents. City officials were also liable for intentionally maintaining segregated schools as a consequence of their intentional efforts to maintain segregated neighborhoods. After two decades of appeals and various efforts to remedy the segregation, the court approved a settlement agreement with the City.

Background

The court's lengthy opinion details multiple instances of housing segregation committed by the City of Yonkers over a period of thirty-three years. Indeed, the length of the court's opinion is due in large part to the necessity of laying out sufficient facts to demonstrate intentional segregation.

The court detailed various acts of discrimination that ultimately led to virtually all of the subsidized housing units being located in areas of high minority populations. According to the court, 97.7% of such units were located in the predominately minority area of South West Yonkers.[1] Additionally, according to the court, 36 of 38 public housing projects were located in or adjacent to South West Yonkers.[2] Furthermore, the court concluded that locations for public housing were not determined on the basis of population density, as multi-family housing developments were approved in white areas where public housing projects had previously been rejected.[3]

The only two projects that were not built within or near South West Yonkers consisted of a predominately white senior citizens project and a family project built in the black East Yonkers enclave of Runyon Heights.[4] The court explained how Runyon Heights is bounded on all sides to isolate it from the rest of East Yonkers.[5]

Each attempt to provide subsidized housing was met with community opposition. The opposition was often presented in race-neutral ways, but many instances suggested that race was a primary motivation of the opposition. One example the court provided was when various petitions and resolutions to the Planning Board and City Council argued that "such projects in their areas would 'lead to the eventual deterioration of the

[1] United States v. Yonkers Board of Education, 624 F. Supp. 1276, 1290 (S.D.N.Y. 1985).
[2] *Id.*
[3] *Id.* at 1327 n. 36.
[4] United States v. Yonkers Board of Education, 837 F.2d 1181, 1220 (2d Cir. 1987).
[5] *Yonkers*, 624 F. Supp. at 1410.

surrounding community by *the element which they attract.*'"[6] In another example provided by the court, taxpayer and civic groups opposed such projects in their areas and wrote to the City Council, asking: "what safeguards do we have against our having to absorb the overflow from Puerto Rico or Harlem?"[7] In another instance, a Catholic church group opposed the construction of a project in a white area because it "feared an influx of blacks in the neighborhood."[8] In yet another example, the City Council voted to remove a suggested site for a public housing project from the multifamily zoning category "to give the community some peace of mind."[9] These instances of community opposition, along with many others, caused the rejection of many public housing projects. Locations for public housing were rejected even though their rejection at times meant the loss of federal housing assistance the City had obtained for that purpose.[10]

In addition to rejecting construction of various public housing projects, the City Council further restricted public housing through its administration of federal rental subsidies. For the most part, federal rental subsidies were only awarded to individuals in South West Yonkers.[11] Additionally, the City initially awarded only 36 out of 120 available vouchers, despite a waiting list of 800.[12] The court indicated that the record reflected that City officials were reluctant to distribute housing vouchers due to community concerns regarding the mobility the vouchers afforded to their holders.[13] In light of the absence of the usual concerns that had been put forth as the motivating factor in the decisions regarding the construction of public housing, the court concluded that the actions of the City officials were "inexplicable except by reference to the anticipated race of the certificate holders."[14] Ultimately, the court concluded that the evidence "clearly demonstrates that race has had a chronic and pervasive influence on decisions relating to the location of subsidized housing in Yonkers."[15]

Case Summary

The Department of Justice, the NAACP, and a class of black residents of Yonkers affected by the City's actions, as co-plaintiffs, sued the City of Yonkers and the Board of Education, claiming they intentionally maintained racially segregated patterns of living and schools. The court agreed, and held that the City had engaged in a pattern and practice of discrimination in housing, because the segregation was so extreme and consistent over time.

From the outset, the court took great pains to point out that it was "certain" that the City officials involved in the placement and construction of public housing projects in

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[6] *Yonkers*, 837 F.2d at 1187 (emphasis added).
[7] *Id* at 1188.
[8] *Id.* at 1190.
[9] *Id.* at 1192.
[10] United States v. Yonkers Board of Education, 624 F. Supp. 1276, 1306 (S.D.N.Y. 1985).
[11] *Id.* at 1336-37, 1345-46.
[12] *Id.*
[13] *Id.* at 1343-47.
[14] *Id.* at 1347.
[15] *Id.* at 1376.

Yonkers were "entirely well-meaning public servants acting in accordance with their perception of what was feasible in the political and socioeconomic circumstances of Yonkers and in the best interests of that community."[16] Despite this acknowledgement, however, the court essentially held that the actions of the City officials could still be considered "intentional" segregation if the decisions of the City officials with regard to the placement of public housing units were motivated by potentially racially motivated community opposition. The court then took a step further and held that the City officials were also liable for intentionally maintaining segregated schools by virtue of the segregation of housing which resulted in the segregation of the school system.

An important element of the court's holding with respect to the segregation of the school system was the failure of the School Board to implement desegregation measures combined with their other acts and omissions. Essentially, once the housing segregation caused school segregation, the School Board failed to mitigate the effects of the housing segregation by taking action to desegregate the schools and essentially maintained the segregation of the schools by doing nothing to reverse it.

The Remedy in the Wake of Yonkers

The judge involved with the Yonkers case issued remedial orders in May of 1986.[17] The remedial orders required the public schools to, among other steps designed to foster integration, operate a series of magnet schools and implement a voluntary student transfer program.[18] The remedial orders also required the City to implement a fair housing program and find suitable sites for 200 units of subsidized housing in areas other than South West Yonkers.[19]

The main Yonkers case and the remedial orders were subsequently affirmed by the Second Circuit Court of Appeals.[20] Eventually, after persistent community opposition to the remedial orders, the judge involved in the Yonkers case demanded that the City Council begin the implementation of required housing programs or face a $500 per day fine for officials who refused to comply, as well as increasing fines on the City starting at $100 per day and doubling each succeeding day.[21] The potential debt the City faced would surpass its entire annual budget after twenty-two days.[22]

Ultimately, the City remained recalcitrant and the election of new City Council members seemed to bring more defiant politicians to the mix.[23] To force the City's

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[16] United States v. Yonkers Board of Education, 624 F. Supp. 1276, 1289 (S.D.N.Y. 1985).

[17] *See* United States v. Yonkers Board of Education, 635 F. Supp. 1538 (S.D.N.Y. 1986).

[18] *Id.* at 1577.

[19] *Id.* Indeed, the court came to the 200 unit number based on the City's previous application for a Community Development Block Grant from the US Department of Housing and Urban Development. *Id.*

[20] *See* United States v. Yonkers Board of Education, 837 F.2d 1181 (2d Cir. 1987).

[21] *See* United States v. City of Yonkers, 856 F.2d 444, 450 (2d Cir. 1988).

[22] *See* LISA BELKIN, SHOW ME A HERO: A TALE OF MURDER, SUICIDE, RACE, AND REDEMPTION 61 (1999).

[23] *See* PETER H. SHUCK, DIVERSITY IN AMERICA: KEEPING GOVERNMENT AT A SAFE DISTANCE, PETER SHUCK 249 (2003).

compliance, the judge "barred the city from using zoning changes, variances, tax abatements, industrial bonds, or other incentives to assist four pending private developments or any other projects."[24] The judge was prepared to go even further if the City continued its non-compliance, and extend the prohibition to "any and all action with respect to any real estate in Yonkers."[25] Finally, despite the Second Circuit's limitation on the City's fines to no more than $1 million per day, and the Supreme Court's reversal of the fines against the City Council members, the financial pressure of the court's sanctions on the City inevitably forced it to succumb to the dictates of the courts.[26]

Many years later, after various efforts to stall the process, the City finally created scattered housing, and the U.S. Department of Justice reached a settlement agreement to end active court supervision of the implementation of the remedial orders.[27] Prior to the settlement agreement, various court-ordered obligations had led to the City's provision for 200 units of scattered site public housing in East Yonkers and facilitation and assistance of an existing housing program that provided 600 credits of assisted housing in Yonkers.[28] Going forward, the agreement required the City to "maintain a pool of approximately 425 resident-owned housing units and 315 rental housing units for time periods ranging from 10 to 30 years."[29] Additionally, pursuant to the terms of the agreement, the City "will monitor the housing to ensure that the units remain affordable and that the desegregation program standards are maintained," and submit periodic reports of the status of the program to all parties to the settlement agreement.[30] The settlement agreement also provided for the right of the Department of Justice or the NAACP to sue for compliance.[31]

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[24] *Id.* at 250.

[25] *Id.*

[26] *See Yonkers*, 856 F.2d at 460; Spallone v. United States, 487 U.S. 1251 (1988).

[27] *See* JUSTICE DEPARTMENT AGREEMENT WILL RESOLVE HOUSING DESEGREGATION LAWSUIT IN YONKERS, NY, DEPT. OF JUSTICE RELEASE (May 1, 2007).

[28] *See* UNITED STATES OF AMERICA V. YONKERS BOARD OF EDUCATION, SETTLEMENT AGREEMENT, Docket No. 80 CIV 6761 (LBS), 7 (S.D.N.Y. April 1, 2007). Additionally, the City "assisted approximately 300 households to purchase homes" through its down payment and closing cost assistance program. *Id.* at Attachment A. The homes purchased pursuant to these programs contained resale restrictions to ensure that low income individuals would be able to purchase them. *Id.* Steps were also taken to ensure that the owners of these homes used them as their primary residence. *Id.* The City also agreed to maintain its Rental Assistance Program launched in 2002. *Id.*

[29] *See* JUSTICE DEPARTMENT AGREEMENT WILL RESOLVE HOUSING DESEGREGATION LAWSUIT IN YONKERS, NY, DEPT. OF JUSTICE RELEASE (May 1, 2007).

[30] *Id.*

[31] *Id.*

Significance

The United States District Court for the Southern District of New York held that a local government entity that receives housing-related federal funds must consider the impact of race discrimination on housing opportunities in its jurisdiction to fulfill its obligation to further fair housing.

Background

The United States provides federal funding to state and local government entities for housing-related matters. Local government entities who receive these funds must certify to the Secretary of Housing and Urban Development ("HUD") that they will comply with various federal regulations, including the Fair Housing Act, and have an obligation to affirmatively further fair housing. Between 2000 and 2007, Westchester County, New York, applied for and received housing-related federal funds and therefore made the requisite certifications.

Case Summary

The Anti-Discrimination Center of Metro New York, Inc. (the "Center") filed suit against Westchester County, New York, alleging that the county violated the False Claims Act by falsely certifying that it fulfilled its obligation to conduct an analysis of impediments to fair housing and to further fair housing. The Center claimed that Westchester County knew that its certifications were false and the county did not consider racial discrimination in its analyses of impediments to fair housing. The Center thus alleged that Westchester improperly received more than $45 million in federal funds. Westchester filed a motion to dismiss for lack of subject matter jurisdiction and failure to state a claim, arguing that it was not required to consider race discrimination when identifying impediments to fair housing.

The United States District Court for the Southern District of New York held that it did have subject matter jurisdiction and that the plaintiffs stated a claim upon which relief could be granted. The federal statute that authorizes the granting of federal funds to municipalities, such as Westchester, stipulates that the grantees must certify that they will affirmatively further fair housing, which includes identifying impediments based on "race, color, religion, sex, disability, familial status, or national origin." The district court held that Congress's clear intent in passing the Fair Housing Act was to affirmatively counter racial discrimination in housing, and that an investigation that fails to consider race discrimination does not adequately further fair housing.

See also U.S. v. Westchester County, New York, No. 06 Civ. 2860(DLC), (S.D.N.Y. Aug. 22, 2007) (denying motion to certify appeal regarding district court's decision on subject matter jurisdiction).

***Resident Advisory Board v. Rizzo*, (564 F.2d 126)**
United States Court of Appeals, Third Circuit
August 31, 1977

Significance

The Court determined that the City of Philadelphia, Mayor Frank Rizzo, and various state agencies had acted with a discriminatory intent by delaying the construction of public housing in an all-white neighborhood. The city and other defendants had acted unlawfully by failing to provide adequate housing to persons because of their race. The Third Circuit adopted a discriminatory impact standard when assessing local government housing policies.

Background

A plot of land in South Philadelphia was condemned and cleared as a site for low-income public housing in 1959. The original clearance of the land had reduced the total number of black households in the area and had converted an integrated neighborhood of Philadelphia into a non-integrated area. Over time, local opposition to the public housing began to grow including the Mayor Frank Rizzo's disavowal of the obligation to build the public housing at the vacant site. The vocal opposition cause significant delays and by 1977 the site remained vacant. A group of individuals, all low income minority citizens of Philadelphia, filed suit against the city of Philadelphia and various other agencies and state actors.

Case Summary

The United States District Court for the Eastern District of Pennsylvania ruled in favor of the citizens and ordered the city and housing authority to begin construction of the public housing. The defendants appealed the District Court's ruling, as government agencies were still opposed to any public housing construction in the vacant site. The Court of Appeals determined that the City of Philadelphia and its mayor, Frank Rizzo, had taken affirmative actions to delay and frustrate the construction of public housing on the vacant site. According to the Court of Appeals' decision, the city's had acted with a discriminatory intent in their obstruction to the building of public housing. The Court of Appeals stated that in order to determine that a government actor has abridged the constitutional guarantees of fair housing; the citizens group must show something more than simply a disproportionate impact on minorities. According to the Court, this standard is satisfied if, in addition to a disproportionate impact, a discriminatory purpose is shown. The impact of the city's opposition had a disproportionate impact on the city minority population and had restored the racial segregation in an all-white neighborhood. Furthermore, the court also recognized that the actions of the various state and local agencies had also resulted in a racially discriminatory impact on Philadelphia's minority citizens. By clearing the vacant site and failing to provide sufficient public housing in that same area, the agencies had unlawfully denied housing to minority families and had acted with a discriminatory intent.

***Sanders v. Department of Housing and Urban Development,* (872 F. Supp. 216)**
United States District Court, Pennsylvania
December 22, 1994

Significance

The agreement reached between HUD and the plaintiff citizens is an example of one of the most comprehensive and multi-layered remedies to the segregation and urban decay issues in minority communities.

Background

The Allegheny County Housing Authority ("ACHA") and HUD planned to demolish a segregated housing project and construct replacement housing in the same minority community which had experienced years of decay and decreased business. A group of citizens filed suit in 1988 against HUD, ACHA and the county of Allegheny. The citizens alleged that the defendants had combined to establish de jure racial segregation in public housing and had failed to properly combat the county's segregation.

Case Summary

The case never went to trial. In 1993, after a lengthy discovery process, HUD admitted liability for failing to affirmatively provide fair housing in the ACHA public housing program. The following year, HUD established a task force to develop a desegregation plan for Allegheny County. HUD and the plaintiff citizens worked together on an agreement that provided a variety of remedial approaches to the segregation problems in the county. The agreement sought to decrease the level of racial separation in federal housing programs and to increase the housing choices for minorities in desegregated neighborhoods. In the end, the settlement provided an estimated $58 million in funding for public housing and community development and outlined a variety of procedures and recommendations to ensure that future public housing remained desegregated.

Shannon v. United States Department of Housing and Urban Development,
(436 F.2d 809)
United States Court of Appeals, Third Circuit
December 20, 1970

Significance

The Third Circuit Court of Appeals decided that HUD has a duty to consider the racial, socio-economic and ethnic impacts when deciding the location of new public housing. This duty requires HUD to undertake various institutionalized methods to assure that all relevant racial and ethnic information is considered in order to affirmatively further the goals of the Fair Housing Act.

Background

A group of residents, businessmen and representatives of a private civic organization in the East Poplar Urban Renewal Area of Philadelphia filed suit against federal officials of HUD over the location of a new public housing project. Prior to the suit, HUD had approved an apartment project, the Fairmount Manor, which was to be constructed in the East Poplar Urban Renewal Area. In determining where to locate the housing, HUD had failed to sufficiently examine the ethnic and racial impacts of the location of the replacement housing. Accordingly, the plaintiff's believed that the location of the housing project would result in an increase in the already high concentration of low income black residents in that area of Philadelphia.

Case Summary

Initially, the District Court for the Eastern District of Pennsylvania dismissed the plaintiff's suit for lacking any recognizable injury that had been caused by HUD. On appeal in the Third Circuit, HUD argued that the agency retains broad discretion when choosing between alternative methods to achieve national housing objectives and such decisions therefore are subsequently unreviewable by a court. The Court of Appeals agreed that HUD retains broad discretion but such decision making must be exercised within the framework of the national policy against housing discrimination. When weighing the options to locate the public housing, HUD had focused only on land use factors and had made no investigation into the social factors involved in the type and location of the housing. Furthermore, the court required that HUD must utilize some institutionalized method whereby, "in considering site selection or type selection, it has before it the relevant racial and socio-economic information necessary for compliance..."

***Durrett v. Housing Authority of the City of Providence*, (896 F.2d 600)**
United States Court of Appeals, First Circuit
February 14, 1990

Significance

The First Circuit Court of Appeals (the "Court") held that there is a clear public policy in favor of settlements in housing disputes, and that a court may not disapprove a settlement agreement between the parties simply because it gives greater relief than the court could grant after trial.

Background

Tenants in two public housing projects in the City of Providence that offered public housing to largely minority occupants sued various municipal and national entities, alleging substandard conditions. Plaintiff tenants had first filed complaints with the Providence Human Relations Commission (the "Commission") against the City of Providence and the Providence Housing Authority (the "Authority"), and had tried to file housing code enforcement requests with the City, but were unsuccessful in their efforts.

Case Summary

Plaintiff tenants filed three claims against defendants: (1) an equal protection claim against the Commission and the City, that their discrimination complaints did not receive standard orderly processing; (2) a claim stating failure of the City and the Authority to enforce housing code provisions; and (3) a claim regarding violations of the Fair Housing Act, alleging that the Department of Housing and Urban Development ("HUD") deprived plaintiffs of their rights "to decent, safe, and sanitary housing, free from discrimination." The plaintiff requested injunctions requiring the City to give full code enforcement protection to plaintiffs, requiring the Authority to meet city and state minimum standards, and requiring HUD to conform to federal minimum standards and establish a maintenance plan.

After plaintiff tenants went on a rent strike and following a lengthy and difficult negotiation process, the parties created a comprehensive settlement agreement that satisfied the plaintiff tenants and their landlord, the Authority. Pursuant to the agreement, the Authority would undertake the following responsibilities:

> eliminating all hazardous asbestos; landscaping around buildings; repairing or replacing all exterior lighting, roofs, and windows; replacing with new fixtures or equipment all refrigerators, stoves, cabinets, counters, sinks, showers, tubs, toilet fixtures, doors, and floor tiles; and installing modernized heating systems. Other provisions dealt with policies and procedures, such as those relating to a security deposit system, auto repairs on the premises, pets, management and maintenance staff, inspections, tenant screening and evictions, service programs, and the duty to meet and confer in good faith.

The district judge refused to approve the agreement for the following reasons: (1) the settlement agreement was more comprehensive than any relief the plaintiffs would have obtained through trial; and (2) approving the agreement would result in the court being called upon frequently to rule on petty housing-related matters.

On appeal, the Court reversed the district court's decision and implemented the settlement. The Court held that a settlement agreement should be approved when the parties have consented; reasonable notice has been given to all those affected by the agreement; the settlement is fair and reasonable; and the agreement is not unlawful or contrary to the legislature's objectives. Weighing these factors, the Court concluded that the agreement was fair and none of the potential issues were implicated. The Court held that a court is not prevented from approving a settlement agreement simply because it might not have the authority to give the same relief after a trial. Finally, the Court held that the district court's second reason for not approving the agreement was untenable because the district court is capable of distinguishing between matters that belong in federal court and those that do not, and such relief was contemplated by Congress in passing the Fair Housing Act. The Court emphasized that "the clear policy in favor of encouraging settlements, especially in broad-based public housing disputes."

***Project B.A.S.I.C v. Commissioner*, (776 F.Supp 637)**
United States District Court, Rhode Island
April 2, 1991

Significance

Project B.A.S.I.C. illustrates the ongoing responsibility of HUD and local housing authorities to maintain affordable public housing in non-minority areas. Furthermore, this case is an example of the profound affect a local tenant association can have in shaping the future of affordable housing.

Background

In June 1987, the Providence Housing Authority ("PHA") decided to demolish and replace 240 affordable housing units with units scattered throughout the city. Project B.A.S.I.C., a tenant association, opposed the demolition and relocation due to concerns that the plan would relocate minorities from predominantly white neighborhoods to minority areas in violation of the Fair Housing Act and the Civil Rights Act.

Case Summary

Project B.A.S.I.C. challenged PHA's decision to place 50% of the replacement housing in minority neighborhoods and HUD's approval of such decision. In response, HUD and PHA argued that the replacement locations were valid because pursuant to HUD regulation it is acceptable to locate replacement housing in minority areas if sufficient housing already existed in non-minority areas. At trial, the judge acknowledged that a material issue existed as to whether sufficient non-minority housing was already available in Providence, but the court did not make any decision with respect to the facts of this issue. Furthermore, the judge stated that HUD's approval of a housing site did not protect PHA from a determination that it violated the Fair Housing Act by discriminatorily selecting replacement locations. Finally, the judge encouraged the parties to settle the case because he was concerned that the court would be unable to fashion an appropriate solution. Following the judge's advice, the parties reached a settlement in April 1991. The settlement provided that the 109 remaining replacement housing units would be constructed in non-minority neighborhoods.

Outcome

Providence successfully implemented the *Project B.A.S.I.C.* settlement. Commentators suggest this success was due to PHA's reform minded attitude and the cooperation of citizens and political representatives from neighborhoods outside minority areas. The settlement serves as a positive example for communities struggling to successfully place public housing in non-minority neighborhoods.

***Graoch Associates #33 v. Louisville/Jefferson County Metro Human Relations Commission,* (Civ. 06-5561)**
United States Court of Appeals for the Sixth Circuit
November 21, 2007

Significance

This case holds that the Sixth Circuit, unlike the Second Circuit, does not categorically reject disparate impact challenges to landlords' withdrawals from Section 8 participation.

Background

Graoch Associates #33 ("Graoch") owned notified the Housing Authority of Jefferson County that it intended to withdraw its apartment complex in Louisville, Kentucky from the Section 8 voucher program. The Kentucky Fair Housing Council and three residents of the apartment complex who received Section 8 vouchers filed a complaint with the Metro Human Relations Commission. The Commission found probable cause to believe Graoch's withdrawal disparately impacted blacks and violated the Fair Housing Act. Graoch responded that it withdrew from the program because it was impossible to enforce the quality standards required by Section 8 and sought a declaratory judgment that it did not violate the FHA.

Case Summary

The United States Court of Appeals for the Sixth Circuit refused to create a categorical exemption from disparate impact liability for landlords withdrawing from the Section 8 program. It reasoned that the voluntary nature of the Section 8 program was inconsequential given that almost every action that creates disparate impact liability under the FHA is voluntary. The court further stated that it was reasonable to permit liability for withdrawing from Section 8 and prohibit liability for refusing to participate in Section 8. It stated "withdrawal affects and identifiable group: tenants receiving Section 8 assistance. Non-participation could be said to have a theoretical impact...but the size and composition of the affected group is indeterminate."

To allow courts to implement its decision, the Sixth Circuit formulated a burden-shifting framework for analyzing disparate impact claims against private defendants under the Fair Housing Act. First, a plaintiff must attempt to make a prima facie case of discrimination; second if the plaintiff is successful, the defendant must offer a "legitimate business reason" for the allegedly discriminatory practice; and finally, if the defendant is successful, the plaintiff must attempt to demonstrate that the purported reason is merely a pretext for discrimination.

Here, the Sixth Circuit ruled that the plaintiff failed to state a prima facie case of disparate impact. It found that in FHA disparate impact cases, a plaintiff must present statistical evidence to show that the action has a greater adverse impact on one racial group or perpetuates segregation. The plaintiffs provided no statistics regarding the

racial makeup of the apartment complex or the surrounding community as a whole. Therefore, it could not make a prima facie case of disparate impact.