

Testimony before the

National Commission on Fair Housing and Equal Opportunity

“Where Have You Gone- Fair Housing Enforcement at HUD”

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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.