

TESTIMONY OF ROBERTA ACHTENBERG  
BEFORE THE COMMISSION ON FAIR HOUSING AND EQUAL  
OPPORTUNITY

SEPTEMBER 9, 2008

Thank you for the opportunity to testify before the Commission. I served as Assistant Secretary for Fair Housing and Equal Opportunity for the Department of Housing and Urban Development between 1993 and 1995. In the more recent past, I have served for seven years as a member of the Board of Trustees of California State University, and in 2006 I became chair of the Board.

Our country's commitment to fair housing enforcement does not start, or end, with the adoption of fair housing laws. The Fair Housing Act in 1968 and the Fair Housing Amendments Act in 1988 provide only the skeleton—a strong skeleton but still a skeleton -- for the much broader process of advancing fair housing throughout the country. The Act was passed, and amended, as a strong law amidst powerful discussions of the role that discrimination, exclusion, and segregation played in our communities; it is how the law is implemented that can make change, if not in people's attitudes, in their behavior.

I would like to address some of the structural issues that, in my experience, were serious barriers to full fair housing enforcement at HUD. Keep in mind that I came to my position with a Secretary of the Department, Henry Cisneros, who was fully committed to and supportive of fair housing and with other Assistant Secretaries who, in the main, were equally committed to fair housing principles.

Structural conflicts and powerful internal constituencies limited the promise of the law

One of the most significant challenges in managing fair housing enforcement at HUD was the organizational structure of the agency. There were a number of large offices – Public and Indian Housing, Housing, Community Planning and Development—with strong housing and lending industry constituencies, established ways of doing business, and a lack of knowledge about the recently amended fair housing law. My staff at HUD advised me repeatedly of resistance from deeply entrenched career staff in other offices to changes that would advance fair housing principles; in some part that resistance was due to resistance to change and in some part because there were opinions of strong constituencies that ran counter to fair housing positions.

The traditional way of trying to resolve such conflicts was at the career staff level, which often resulted in losses for fair housing, or cramped interpretations of the law. Although my staff took the position repeatedly that a fair interpretation of the

Fair Housing Act would support our position, staff was used to resolving disagreements based the principle that everything was negotiable and sometimes that included even basic fair housing principles. Unfortunately, that was often the case when various industry groups made their views known; HUD is, after all, an agency that produces and supports housing, and the reality is that industry constituents either don't know or don't care about the intricacies of strong fair housing interpretations.

Ultimately, Secretary Cisneros took the unprecedented step of placing the Office of Fair Housing and Equal Opportunity in a position of "first among equals." That step along with the Secretary's strong support for pro fair housing positions, eventually helped overcome much of the resistance from the top down. However, I have been advised that the structure and priorities have changed at HUD and that fair housing issues again meet that same resistance at the staff level—both in the field and in headquarters.

#### Structural issues affecting fair housing enforcement

The structure of fair housing enforcement was also harmed, I believe, by the separation of the legal and the investigative functions at HUD into entirely separate departments under different management. There was a need, early in my administration, to address some confusion about which part of the Department was to make the final decision about whether or not there was reasonable cause to believe that the Act had been violated after an investigation had been conducted. I concluded that that decision was, by statute, required to be made by my office, and changes were implemented accordingly.

I have been told that FHEO issued more reasonable cause determinations during my administration than at any other time in its history. I believe that was the case in part because the attorneys and the investigators were working closely together to develop cases. I continue to believe that the most appropriate model for civil rights enforcement is to have attorneys and investigators working together on a day to day basis and to make them responsible to the same direct manager. In a reformed fair housing enforcement agency I would place attorneys and investigators in the same office, provide them with the same training opportunities from a common perspective, and establish a structure that required attorneys to develop the most challenging cases together with investigators, as a team. Different structural and management hierarchies, even with the best will in the world, create internal confusion about priorities, staff responsibilities, and timing that can get in the way of fair housing enforcement and delay cases unnecessarily.

There were even disputes and disagreements between my office and the Department of Justice. The Department of Justice has several functions that are critical for strong fair housing enforcement:

- the ability to seek injunctive relief
- the obligation to proceed in federal district court after a determination of reasonable cause to believe that the Act has been violated
- the authority to bring cases involving a pattern and practice of discrimination,
- The ability to bring cases involving discrimination in land use and zoning.

Requiring a case to go through multiple levels of review and analysis, each requiring additional time that delays final decision making, does not serve fair housing enforcement well. I suggest that the Department of Justice assign attorneys to a reformed fair housing enforcement agency to expedite bringing more cases for injunctive relief and assist in developing cases involving patterns of discrimination or zoning and land use discrimination from the initial investigative stage.

However, the forces that resist fair housing are far bigger than the internal conflicts found at HUD or among federal agencies. For fair housing work to reach the power that it needs to make genuine change in our country, there are key elements that must be provided.

Staffing for fair housing work was limited by the overall constraints on HUD staffing ceilings; adequate staffing is critical for fair housing enforcement

A constant difficulty within HUD was the imposition on the agency of various staffing ceilings, or limitations on the number of staff that could be hired or retained by HUD. There were also times where there were limitations on the number of persons who could be placed in senior executive positions. These limitations can seriously impair fair housing activities.

When HUD was subjected to Congressional ceilings on its overall numbers of Full Time Equivalent (FTE) positions, FHEO was subjected to limitations in staffing and inability to replace staff that departed. Effective fair housing enforcement requires adequate and consistent staffing levels, and the ability to replace lost managers. During my administration, we were approved for a large number of temporary employees to increase our staffing levels. Unfortunately by the time those employees reached the end of their tenure we lacked the capability to continue their employment because of a hiring freeze. Civil rights enforcement operations should not be subjected to stringent staffing restrictions.

I understand that a study by the National Council on Disability issued in 2001 found that 750 FTEs was an appropriate minimum national staffing number for fair housing enforcement activities.<sup>1</sup> That was the number of positions FHEO

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<sup>1</sup> "Reconstructing Fair Housing," National Council on Disability, November 6, 2001, <http://www.ncd.gov/newsroom/publications/2001/fairhousing.htm>.

had in 1994, but was unable to sustain thereafter. I have no reason to disagree with that assessment.

In some cases, staffing restrictions also meant an inability to replace managers, sometimes for extended periods of time. Close direct supervision by knowledgeable, well trained managers is another essential component of federal civil rights enforcement. A business process redesign system conducted by external contractors of fair housing enforcement during my administration found that adequate numbers of mid level managers (for example, one manager to every seven or eight employees) were important to effective enforcement.<sup>2</sup>

Competing priorities within FHEO meant that fair housing enforcement often did not get a full complement of resources; adequate resources are critical for effective fair housing enforcement.

As an office, FHEO has many more responsibilities than its core fair housing activities. The core programs for enforcement are, of course, the fair housing intake, investigations, and conciliation function, as well as the Fair Housing Assistance Program (FHAP) that oversees enforcement activities by state and local fair housing enforcement agencies funded by HUD to conduct fair housing investigations and the Fair Housing Initiatives Program (FHIP) oversight function that administers the program that funds private fair housing groups to support private enforcement of the Fair Housing Act.

In addition, there is the extremely critical need for fair housing education for the public with great materials, high levels of outreach using various media, and powerful messages. Related to that is the need for training, educational materials, and support for fair housing education for various components of the housing industry and the strong need to support a systematic training and education program for HUD and the FHAP and FHIP groups that it funds. The Title VIII Handbook developed during my administration was a first effort to put investigative policies and procedures together in one public document. It was needed because when I became Assistant Secretary that was no central resource for policy guidance and no investigative manual to ensure consistency. The Handbook should be expanded to include more substantive guidance; it should be required reading for all managers and investigators whether federal or state. Policy changes and interpretations of the fair housing requirements must routinely be put into written documents that are publicly available so that advocates and industry representatives can know and understand the principles that are being applied to fair housing enforcement. Training programs should be readily available, perhaps on line, and educational materials directed at consumers, advocates, and various housing industry members should be available as well.

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<sup>2</sup> Id., pp. 208-211.

Other core fair housing enforcement and education functions include funding and staff support for systemic investigations and development of systems that ensure consistent application of fair housing interpretations across the country in all aspects of fair housing activities.

Under my administration, the business process redesign system also recommended increased use of computer-based systems to document investigations. While initial funding was approved for such a system in my administration and a version of the system is currently in use (known as TEAPOTS, the Title Eight Automated Paperless Office Technology), there are a number of significant areas where computer and internet technology could be expanded to support fair housing enforcement. To monitor the FHAP and FHIP programs, an agency could, for example, use a computer based system. Such a system could ensure that monitoring activities were conducted consistently across regional boundaries. It could support the collection and maintenance of products that were developed as deliverables under federal funding. It could provide some assurance that these important fair housing partners are not micromanaged, but managed productively to make the best use of federal funding while ensuring that they follow basic rules of good performance. Data systems should be enhanced to support more effective monitoring of fair housing enforcement across the country; prompt, consistent, and effective investigations must be a hallmark of fair housing enforcement.

It is my experience that industry can be a partner in developing education and training materials with fair housing offices and that industry groups in general support consistent prompt enforcement, when enforcement is warranted, and they also support consistent guidance and application of the law to avoid inconsistent outcomes from city to city, state to state, or region to region.

The internet could be used effectively to provide and share resources developed by many organizations, whether they are private fair housing groups, state or local enforcement agencies, or industry groups. Such resources as determinations, settlements, case developments, interpretative guidance and high quality written materials that can be replicated and distributed could be posted on the internet and available to all.

In addition, there must continue to be funding to support major national educational campaigns that will operate at multiple levels and in multiple languages and cultures to advise people about their rights and obligations under the Fair Housing Act. Our country needs to know more about fair housing and the strengths that it brings to our communities; there are still too many people who don't know what the law is or how it applies; it is part time to correct that gap in public knowledge.

## HUD's programmatic responsibilities to advance fair housing and residential integration

Of course, in addition to its enforcement role, HUD has significant internal fair housing responsibilities—the obligation to ensure that HUD's programs and activities don't discriminate and that they affirmatively further fair housing. This obligation extends to all HUD programs – from Section 8 to public housing to the CDBG and HOME programs. It is reflected in HUD program administration, regulations and guidance, and in HUD's monitoring of the fair housing performance of Public Housing Agencies and other grantees (including states, cities, and counties).

HUD and FHEO also have responsibility for enforcing other federal civil rights laws such as Section 504 of the 1973 Rehabilitation Act and Title VI of the 1964 Civil Rights Act, and Title II of the Americans with Disabilities Act. It enforces Section 3 of the Housing and Urban Development Act of 1968, Section 109 of the Housing and Community Development Act and many other executive orders and requirements. These multiple responsibilities often compete for staff, for resources, for attention, depending on issues that come to FHEO on a day to day basis.

In light of these multiple programmatic fair housing obligations, if there is an independent agency established to undertake core fair housing enforcement functions, I submit that a strong fair housing and civil rights office must also remain at HUD to ensure that HUD's own programs and operations are consistent with all of these fair housing and civil rights laws.

## The President's Fair Housing Council Could be an Effective Fair Housing Tool that Crosses Agency Lines

During my administration, President Bill Clinton signed into law Executive Order 12892, requiring that federal agencies act affirmatively to further the purposes of the Fair Housing Act. The Executive Order also established the President's Fair Housing Council, to coordinate fair housing activities among the key federal agencies that have relationships to housing. HUD, of course, is a key agency, but other federal agencies with housing covered by the Fair Housing Act include the Departments of Health and Human Services, Education, and Transportation, as well as the United States Department of Agriculture and the Department of the Treasury (which issues tax credits for the development of housing). In addition, federal banking regulators are subject to this Executive Order; the state of lending in this country has an obvious and immediate connection to housing. These agencies are all subject to the requirements contained in the Fair Housing Act, including the obligation not to discriminate and the obligation to further fair housing.

The President's Fair Housing Council has an obvious and important role in ensuring that federal agencies do not discriminate and that they go beyond the obligation not to discriminate, to act affirmatively to identify and address barriers to the full exercise of fair housing rights within their specific jurisdictions. The President's Fair Housing Council could, if adequately resourced, serve as a central clearinghouse for advancing fair housing, for supporting cross disciplinary strategies and development of infrastructure that could ensure that integrated communities have great schools, excellent transportation, and access to jobs and health care. A strong President's Fair Housing Council could have pressed for an early end to discriminatory lending practices that continue to destroy our nation's neighborhoods. An effective President's Fair Housing Council could be promoting integrated and strong neighborhoods today.

Coordination of an interdisciplinary strategy at the federal level is a challenging proposition, requiring strong leadership from the Executive Branch, and a commitment of sufficient resources to make the effort a meaningful one. If there is that commitment, the President's Fair Housing Council should become a reality, and be supported by a strong, independent, and well-resourced staff that will truly advance fair housing principles throughout the federal government.

While enforcement must be sensitive to interest-based politics, it should not be politicized

My tenure as Assistant Secretary made me aware of the high level of politicization that civil rights enforcement at HUD carries. By this I mean both the challenges that partisan politics bring to what should be an impartial objective enforcement process and the extent to which special interest politics come into play in any high profile environment, but especially one with many players with an interest in influencing outcomes. As Assistant Secretary I relied on career staff with substantial levels of knowledge and experience and on compliance with appropriate legal standards and processes for decision making because it was my judgment that the most defensible positions were those consistent with advancing fair housing consistent with the legal principles adopted by courts or a good faith extension of those principles.

However, the political leadership of HUD and of FHEO changes every three to four years, as administrations change and this causes a loss of continuity and consistency in leadership. This gap is particularly difficult in civil rights administration. In addition, industry and advocates alike seek to have their opinions heard and their direction taken by the fair housing leadership. In my current position I have learned precisely how effective a process that excludes politicization can be. This does not mean not listening; it means making decisions based on good judgment and the best available information, keeping lines of communication open to stakeholders without adopting any single perspective, and in general trying to accomplish goals agreed to through a

strategic planning process that reflects the concerns of all the interested constituencies.

Strong leadership is the most urgent need for strengthening fair housing

The forces that oppose fair housing work are strong. Combating those forces will require strong leadership from the President and the Executive Branch and from Congress. Making change requires the will to change, and that will must be led from the leadership of our country.

As our national fair housing community looking back at 40 years where not enough has happened to end the old patterns of segregation, exclusion, and discrimination, I believe we must learn from our past. We are not doomed to stay in a time warp where fair housing violations continue unabated and the same mistakes are repeated over and over again. The commitment of strong leadership and a willingness to grow beyond our past can take fair housing and civil rights enforcement to a strong position of consolidating the best from the past and the best new ideas from forward thinking people to make change again—change that is, in its own way, as powerful as the changes we saw in 1968 when the Fair Housing Act was first passed by Congress. Our work as a country is not yet done.