

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”**

*John Goering, Ph. D.
Professor
School of Public Affairs
&
Ph.D. Program in Political Science
Baruch College & the Graduate Center
CUNY*

*Boston
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.*

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.*

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

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.²The 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

²In 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).

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 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 lose 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

³Only 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.

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).

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.ⁱ Too few cases in turn lead to substantial relief to make it 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.)*

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).

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.⁶*
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 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*

⁶ 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.

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 losing 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.

Select References

Bratt, Rachel and W. Dennis Keating. 1993. "Federal Housing Policy and HUD: Past Problems and Future Prospects of a Beleaguered Bureaucracy." *Urban Affairs Quarterly*. 29 (1): 3-27.

Dreier, Peter, 1995. "Housing Policy's Moment of Truth." *American Prospect* (on line). June 23.

GAO. 2004. "Fair Housing: Opportunities to Improve HUD's Oversight and Management of the Enforcement Process." (April). GAO-04-463. Washington, DC: GAO.

GAO. 2005. "Fair Housing: HUD needs better Assurance that Intake and Investigation Processes are Consistently Thorough." October. GAO-06-79. Washington DC: GAO.

Galster, George and Erin Godfrey. 2005. "By Words and Deeds: Racial Steering by Real Estate Agents in the U.S. in 2000." *Journal of the American Planning Association*. 71 (summer): 1-19.

HUD: 2009 Fair Housing and Equal Opportunity budgets for FHAP and FHIP.
<http://www.hud.gov/offices/cfo/reports/2009/cjs/fheo1.pdf>

National Fair Housing Alliance. 2008. "Dr. King's Dream Denied: Forty years of failed federal Enforcement." 2008 Fair Housing Trends Report. April 8. Washington DC: NFHA.
<http://www.nationalfairhousing.org/Portals/33/reports/2008%20Fair%20Housing%20Trends%20Report.pdf>

Walton, Hanes. 1988. *When the Marching Stopped: The Politics of Civil Rights Enforcement Agencies*. Albany: State University of New York Press.

**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 <i>Fragile Rights</i>	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. <i>Enforcing the Fair Housing Act</i> (Schill; Schill/Friedman)	<i>Cityscape</i> ; chapter within <i>Fragile Rights</i>	Fair Housing Act complaint resolution data; interviews with 161 complainants and 126 respondents
7. <i>Links between fair housing enforcement and housing discrimination</i>	Chapter within <i>Fragile Rights</i> (Steven Ross/ George Galster)	Regression analysis of 1989-2000 changes in discrimination and associated measures of enforcement
8. <i>Measures of residential segregation and integration</i>	Chapters within <i>Fragile Rights</i> by Iceland and Ellen. ⁱⁱ	Multiple indices of residential separation and integration using decennial census tract data from 1980 to 2000
9. <i>Evaluations of program effectiveness</i>	GAO reports 2004; 2005	Telephone tests; agency interviews; Title VIII complaint data from FH&EO/ HUD

**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		
	<i>Individual Factors</i>	<i>System Factors</i>
<i>Process & Elapsed Time</i>	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
<i>Costs:</i>	<i>Individual's time; humiliation</i>	<i>Public/private resources made available for each step above</i>
<i>Outcome:</i>	<i>Discrimination eliminated in single transaction for consumer</i>	<i>Marketplace discrimination and segregation incrementally reduced</i>

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

^{i i} See also John Iceland, Daniel Weinberg, and Erika Steinmetz. 2002. *Racial and Ethnic Residential Segregation in the United States: 1980-2000*. US Census Bureau; see additional analyses including Logan, Stutts, and Farley (2004).