

## **Comment on Martin D. Abravanel's "Public Knowledge of Fair Housing Law: Does It Protect against Housing Discrimination?"—Organize! The Limits of Public Awareness in Ensuring Fair Housing**

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### *Abstract*

Public awareness may contribute to enforcement of fair housing law. But available resources would be more productively used if they were invested directly in more aggressive and innovative law enforcement activities. Emerging debates over land use practices, particularly those pertaining to sprawl and affordable housing, may create new avenues for fair housing activity. The overriding challenge for the fair housing community, however, is to organize an effective constituency that can demand greater attention to education, enforcement, or other actions to achieve fair housing goals.

**Keywords:** Affordability; Fair housing; Sprawl

For decades, public opinion polls have demonstrated consistent increases in the percentage of white respondents who support the basic principle of equal opportunity, if not specific tactics to achieve it (Schuman et al. 1997). As Abravanel observes, over the past three decades there has been a consistent decrease in the share of whites who would tolerate restrictions in home sales based on race. His article reveals that those who are more knowledgeable and supportive of fair housing law are more likely to use it. But critical areas of fair housing law were not addressed in the survey he describes. More important, it is not clear whether additional investment in public awareness initiatives would have a greater payoff than investing those same resources both in familiar but underused enforcement strategies and in broader community development initiatives that would likely further fair housing objectives.

The overriding challenge to the fair housing community, however, is organizing an effective constituency that can demand greater attention—in terms of education, enforcement, or other actions—to fair housing issues on the part of elected officials, enforcement agencies, and housing providers. The building blocks of an effective fair housing movement may be in place, and the emergence of related community development concerns (sprawl, affordability) offer the prospect of a far more powerful fair housing movement than has existed to date.

## More about what we do not know about fair housing

While Abrevanel provides important preliminary findings about linkages between knowledge and action, significant gaps in our knowledge of what people know and think about fair housing remain. In fact, some of the areas that have received the greatest attention in recent years are not acknowledged. How those who believe they have been subjected to violations of the law would respond might well differ depending on their understanding of many issues not addressed in this survey.

### *Predatory lending*

Predatory lending may be the most salient housing-related public policy issue of the day, but it is not explored. In the 2001–02 legislative year, five anti-predatory lending bills were introduced in Congress, 33 states considered new legislation, and 14 cities and counties debated local ordinances (National Community Reinvestment Coalition 2002). This raises a host of complex issues, many of which have not been resolved as a matter of law and about which people no doubt have varying knowledge and perspectives. For example, under what conditions do overages (interest rates above an institution's posted rates that individual loan officers are permitted to negotiate) constitute a violation of the Fair Housing Act? Should mandatory credit insurance be prohibited? Are lenders required to monitor the yield spread premiums of their brokers?

### *Insurance redlining*

Insurance redlining has been the subject of many complaints to the Department of Housing and Urban Development (HUD) and important settlements with the nation's leading property insurers, including State Farm, Allstate, Nationwide, American Family, and others. But this issue is not addressed in the survey. Many questions therefore arise. Are maximum age or minimum value underwriting guidelines a violation of the Fair Housing Act? Does the location of an insurer's agents matter in determining compliance with the act? Should it?

### *Resources available to fair housing complainants*

Under the Fair Housing Act, HUD is obliged to investigate all complaints and provide complainants with a range of services of which many people are likely unaware, for example, representation in an

administrative hearing or before a federal court. Would people's willingness to file complaints be affected if they knew more about the services available and the full administrative process?

### *Disparate impact standard of the Fair Housing Act*

This survey focused only on disparate treatment, thereby ignoring the far more controversial disparate impact standard of the law. This may reflect, in part, the fact that this is a less developed area of the law. But it is an area that nonetheless offers potential for the greatest gains. Age and value underwriting rules of not just insurers, but lenders, appraisers, and others, may constitute a violation of the act. Many suburban zoning ordinances exclude low- and moderate-income housing, thus exerting an adverse disparate impact on racial minorities. Does the public favor retaining or eliminating such rules?

### *Variation of fair housing knowledge across different groups*

Knowledge of fair housing requirements differs across various population segments. Arguably, such knowledge is more important for some than for others. For example, it would be useful to see what housing providers know about the law. Presumably, real estate agents, apartment managers, and mortgage loan officers know more than most. But just how extensive is their knowledge? Should educational resources be directed at particular groups in the general public (for example, young racial minorities or families with children trying to buy their first home) or particular groups of housing providers?

Clearly, there is much to be learned about what we do not know about fair housing. The question that arises is whether education is where we should put scarce resources in efforts to achieve equal housing opportunity.

### **Complaints: The Achilles heel of fair housing enforcement?**

The fact that HUD is required by law to investigate all complaints may well be part of the problem. Trivial complaints against individual respondents may drain scarce resources that might be more profitably invested in investigating large housing providers that are systematically violating the law. Many of the 83 percent of those who believed they had been discriminated against but took no action, particularly

those who did not do so because they thought there was no point, might well have acted differently if HUD did not have so many cases to investigate and if its track record for those it handled were viewed more favorably. If potential complainants were better educated, they might file more complaints, but this could simply further clog the system. Or, conversely, if more people were better informed, they might stay away in even greater numbers. More staff would help, of course. But in the current political climate, it is unlikely that more resources will be devoted to enforcement. And it is also unlikely that simply processing more individual complaints would yield substantially different results.

The predominant problem is trying to use individual, case-by-case complaint processing to respond to what is in fact a set of structural and institutional problems (Massey and Denton 1993). Complainants simply do not have the knowledge, expertise, or resources that law enforcement agencies have. Abravanel acknowledges the need for a multifaceted strategy but questions whether public education should be downplayed as much as some observers suggest. However, he offers no convincing evidence to undermine this position. Enforcement strategies that could be more widely and effectively used do exist, and there are emerging changes in urban and regional development that offer potential for fair housing advocates and objectives.

### *Secretary-initiated systemic complaints*

In the case of HUD, the department could make far greater use of secretary-initiated systemic complaints. Using resources and investigative expertise not necessarily tied to an individual complaint, HUD could identify targets that have relatively greater potential for a finding of discrimination, ones that would likely have broader industry impacts than the vast majority of individual complaints. In the area of mortgage lending, for example, HUD researchers could use the Home Mortgage Disclosure Act (HMDA) to conduct preliminary screening of lenders to identify those it would subject to more intense scrutiny. No doubt this is done to some extent at HUD and other enforcement agencies, but current efforts still rely too heavily on individual complainants. As Abravanel states, “[I]t is victims’ complaints to appropriate authorities that trigger the enforcement mechanism.” (p. 499)

### *Paired testing*

Another tool that has proven useful in documenting discrimination is paired testing. Some enforcement agencies, but not all of them, are using this approach. Private nonprofit fair housing agencies rely heavily on testing evidence, which they use quite successfully in negotiating favorable settlements for their clients. For example, HOME (Housing Opportunities Made Equal—a Richmond, VA, nonprofit fair housing organization) negotiated a \$17.5 million settlement with Nationwide Insurance largely on the basis of 15 paired tests of that insurer (“Agreement Reached” 2000). Far more could be done with testing of various housing providers, including landlords, real estate agents, mortgage lenders, property insurers, and others.

### *Greater public disclosure of transaction data*

More public disclosure would also facilitate enforcement. A HMDA-like disclosure program for home insurers would generate more information about insurance redlining and other forms of unlawful discrimination and more public pressure for enforcement. Additional pricing information under HMDA would enhance public awareness about discrimination in mortgage lending, including predatory lending, and reinforce fair lending enforcement.

### *Increased use of advanced research tools*

The value of all of these tools would be enhanced by greater utilization of econometric and other advanced social science research tools (Ross and Yinger 2002). Such research tools would facilitate efforts to pre-screen housing providers to identify those who should be subjected to a more thorough investigation and can also be useful subsequently to determine whether a given housing provider is, in fact, violating the law. All of these approaches require knowledge and resources that the vast majority of complainants simply do not have. Enforcement agencies, however, do have the capacity to initiate more comprehensive investigations and to use the tools that are available.

## **New directions for fair housing**

Recent land use planning debates over sprawl and what (if anything) to do about it (e.g., “smart growth”) and the particular issue of affordable housing offer fair housing advocates new openings. Americans see

affordable housing for low- and moderate-income working families as a bigger problem in their communities than crime or pollution and as big a problem as job loss and unemployment (Fannie Mae Foundation 2002). Patterns of urban and suburban sprawl contribute directly and indirectly to affordability. As businesses and jobs move out to the suburbs and beyond, several unintended consequences follow. New infrastructure (roads, schools) is built, subsidized by taxpayers throughout the region, while older infrastructure in central cities deteriorates. Poverty is concentrated in older areas where jobs are lost or are growing more slowly than in outlying regions (Brennan and Hill 1999; Jargowsky 1997, 2002). Where housing supply increases, it becomes increasingly unaffordable to working families, in part because of exclusionary zoning ordinances in most suburbs. Young couples find that they cannot afford to buy homes in the neighborhoods where they grew up. Teachers, police officers, firefighters, and breadwinners from other working families find that they cannot afford to buy or even rent homes in the communities they serve (Bell 2002). Many private suburban employers find that they cannot recruit the workers they need, in part because of the lack of affordable local housing. These developments frequently have an adverse disparate impact on racial minorities, and sometimes the impact is intentional (Downs 1998, 1999; Dreier, Schwartz, and Greiner 1988; Orfield 1997, 2002; Rusk 1999).

Responses to the problems associated with sprawl often focus on housing affordability and related issues. Minnesota has enacted tax-based revenue sharing to capitalize a fund to finance affordable housing throughout the region (Orfield 1997). As a result of the Mt. Laurel litigation, New Jersey municipalities are required to develop a plan for housing their fair share of the region's low-income households (Kirp, Dwyer, and Rosenthal 1995). The state of Maryland has enacted a smart growth plan to encourage economic growth in older, developed areas of the state. The package of incentives includes subsidies for employees to live near their jobs (Cohen 2002). In each case, balanced growth, with a conscious eye toward developing affordable housing throughout metropolitan regions, is a central objective. Stronger enforcement of fair housing is also a component of most smart growth initiatives. Such land use policies, consequently, have both direct and indirect effects on groups protected by the Fair Housing Act.

### **Creating a fair housing constituency**

No effective fair housing initiative—be it education, enforcement, land use planning, or any combination of tools—will be developed in the absence of an organized constituency that demands such action. At

least the initial building blocks of an infrastructure for a fair housing social movement have been developed in recent years.

Passage of an array of laws, regulations, and other rules over the past three decades has been critical. The work of organizations like the National Fair Housing Alliance, Center for Community Change, National Community Reinvestment Coalition, and literally hundreds of state and local organizations has breathed life into those rules. These organizations have a presence in legislative and regulatory bodies at all levels of government, in industry trade associations, and with many housing providers. Through Community Reinvestment Act challenges, private lawsuits, HUD complaints, and other advocacy tactics, significant changes have been made in law and practice (Squires forthcoming). Voluntary initiatives through organizations like the Neighborhood Reinvestment Corporation have resulted in community reinvestment and fair housing programs that otherwise would not have existed. Partnerships among neighborhood groups and housing providers have changed the way many within the industry do business (Joint Center for Housing Studies 2002a; Neighborhood Reinvestment Corporation 1995).

But problems persist. As Abravanel notes, HUD continues to receive about 10,000 complaints a year. While the 2000 census shows that suburbs are becoming more diverse and racial minorities are moving into them in greater numbers, by most measures high levels of racial segregation persist, particularly for blacks (Logan 2001). And while homeownership is at record highs for all groups, the racial gap persists, with 74.2 percent of whites versus 48.4 percent of blacks, 46.4 percent of Hispanics, and 53.9 percent of Asians and others owning their homes in 2001 (Joint Center for Housing Studies 2002b). More, and perhaps different, things need to be done.

The affordable housing issue offers the opportunity for the creation of unique, more powerful advocates for fair housing. As indicated above, many suburban employers want to see more affordable housing built. There are developers who would like to build it and lenders who would like to finance it. But exclusionary zoning laws prohibit such construction. Fair housing groups, community development organizations, consumer groups, and others who generally represent low-income and minority constituencies have long supported fair housing initiatives. If these groups were to merge with at least some lenders, developers, and suburban employers, then fair housing would have a stronger voice (Squires et al. 1999).

Public awareness is vital for progress on fair housing. But efforts to nurture that awareness must be linked to stronger enforcement. And neither is likely to occur in the absence of ongoing efforts to organize a constituency that demands fair housing.

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